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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9724/2017

RAJ BAHADUR .....Petitioner

Through: Ms. Jyoti Dutt Sharma, *Amicus Curiae* with Mr. Mani Kant Sharma, Adv. along with petitioner in person

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Hanu Bhaskar and Mr. Aakash Singh, Adv. for UOI
Mr. K.K. Jha, SPC for UOI
Mr. Vardhman Kaushik, Adv. for R-3/UPSC

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (ORAL)

% **12.12.2024**

C.HARI SHANKAR, J.

1. The facts of this case are somewhat peculiar.

2. The petitioner initially instituted OA 2218/2013 before the Central Administrative Tribunal[1], aggrieved by the fact that he had not been promoted to the post of Income Tax Officer w.e.f.[2] 1990-91, because of certain adverse remarks recorded in his Annual Confidential Reports[3] for the years 1985-1986 and 1986-1987. He,

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[1] "the Tribunal", hereinafter
[2] "with effect from"
[3] "ACRs" hereinafter

therefore, sought the following reliefs in the OA:

> "i) To quash and set aside order dated 27.1.11 at A-1 & dated 15.3.11 A-2 and further direct the respondents to hold the review DPC and to consider the name of the applicant and if found fit then promoted to the post of Income Tax Officer with effect from 1990-1991 ignoring the adverse remarks recorded in the ACRs in the year 1985-86 and 1986-87 with all consequential benefit including seniority and promotion and pay and allowance and all retiral benefits.
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> ii) Any other relief which this Hon'ble Court deemed fit and proper may also be awarded to the applicant."

3. The said OA came to be disposed of by the Tribunal by judgment dated 17 December 2015. Para 18 of the said decision reads thus:

> "18. In totality of the facts and circumstances of the case, we are of the view that review DPC has erred in examination of applicant's claim for promotion to the post of ITO from the year 1990. As per the decision of the Hon'ble Supreme Court in Badri Nath Pandey (supra) and in view of clear directives of the Hon'ble High Court that the DPC should consider the case of the applicant only in view of the altered status of the ACRs, we find that the consideration of the DPC in its meeting held on 22.12.2010 is bad in law. We, therefore, allow the instant OA and direct the respondents to convene another review DPC whereby the case of the applicant for promotion to the post of ITO for 1990 & 1992 be considered as if there were no offending ACRs for the years 1985-86 and 1986-87 having been deleted from the date they were recorded and the same cannot treated to be deleted from the date of the order of deletion. The respondents are further directed to complete the exercise, as ordained above, within a period of three months from the date of production of certified copy of this order."

4. It is not in dispute that, consequent to the aforesaid judgment dated 17 December 2015 of the Tribunal, the respondent in fact considered the case of the petitioner for promotion to the grade of Income Tax Officer and, by order dated 11 November 2016, approved the promotion of the petitioner as Income Tax Officer w.e.f. 28 March

1990.

5. This, according to the petitioner, did not amount to compliance with the directions contained in para 18 of the judgment dated 17 December 2015 by the Tribunal. The petitioner sought to contend that as his OA had been "allowed", the petitioner was also entitled to all consequential reliefs in the form of future promotions, seniority and the like.

6. Aggrieved by the fact that this relief had not been granted to the petitioner, he instituted CP 509/2016 before the Tribunal, praying that contempt proceedings be initiated against the respondent for failing to comply wholly with the directions contained in para 18 of the judgment dated 17 December 2015.

7. The said CP 509/2016 came to be disposed of by the Tribunal by the following order dated 23 January 2017:

> "This CP has been filed for alleged disobedience of the order of this Tribunal dated 17.12.2015, the operative part of which reads as follows:-
>
> > "18. In totality of the facts and circumstances of the case, we are of the view that review DPC has erred in examination of applicant's claim for promotion to the post of ITO from the year 1990. As per the decision of the Hon'ble Supreme Court in Badri Nath Pandey (supra) and in view of clear directives of the Hon'ble High Court that the DPC should consider the case of the applicant only in view of the altered status of the ACRs, we find that the consideration of the DPC in its meeting held on 22.12.2010 is bad in law. We, therefore, allow the instant OA and direct the respondents to convene another review DPC whereby the case of the applicant for promotion to the post of ITO for 1990 & 1992 be considered as if there were no

offending ACRs for the years 1985-86 and 1986-87 having been deleted from the date they were recorded and the same cannot treated to be deleted from the date of the order of deletion. The respondents are further directed to complete the exercise, as ordained above, within a period of three months from the date of production of certified copy of this order."

2. In compliance thereof, the respondents have filed an affidavit on 18.12.2016 along with which they have attached a copy of their order dated 11.11.2016 by which promotion of the applicant as I.T.O, Group 'B' has been approved w.e.f. 28.03.1990. Learned counsel for the respondents argued that with the passing of the aforesaid order, the Tribunal's order has been fully complied with. The petitioner, who is present in the Court, however, stated that he was entitled to the consequential benefits of further promotion to higher posts, as a result of being promoted with retrospective effect. On instructions, learned counsel for the respondents stated that the respondents are taking action on the same and shall be considering the applicant for promotion to higher posts as well in due course. Learned counsel for the respondents has also handed over a copy of the letter dated 19.01.2017 in the open Court.

3. We have considered the aforesaid submissions. We find that our directions in order dated 17.12.2015 were only to consider the applicant for promotion as ITO which has been granted. Therefore, we are satisfied that our order has been complied with.

4. Accordingly, this C.P. is closed. Notices issued to the alleged contemnors are discharged."

8. The aforesaid order constitutes subject matter of challenge in the present writ petition filed by the petitioner under Article 226 of the Constitution of India.

9. *Stricto sensu*, it is clear that no substantial error can be said to exist in the impugned order dated 23 January 2017 passed by the Tribunal. We are in agreement with the Tribunal that the order dated 17 December 2015 essentially directed the respondent only to consider the case of the petitioner for promotion to the grade of Income Tax Officer ignoring the ACRs for the years 1985-1986 and 1986-1987.

10. This having been done, and the petitioner having in fact been promoted as Income Tax Officer w.e.f. 28 March 1990, the Tribunal was clearly correct in observing that no case for contempt survived in the matter and in accordingly closing the contempt proceedings.

11. We, however, find ourselves in some difficulty in closing this petition on this note, in view of certain orders which have come to be passed by this Court earlier in these proceedings.

12. During the pendency of the present proceedings, the petitioner was considered for further promotion to the grade of Assistant Commissioner of Income Tax[4].

13. In this context, we deem it appropriate to reproduce the following orders, which have been passed by this Court from time to time in the present proceedings:

> Order dated 25 February 2019
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> "W.P.(C) 9724/2017 and CM APPLS. 39570/2017 & 7449/2019
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> Respondents have placed on record the OM dated 28.01.2019 alongwith the application for exemption (CM No.9078/2019). The same shows that for consideration for the promotion to the post of Assistant Commissioner of Income Tax, the petitioner was assessed as 'Very Good' in the vacancy year 2001-02 by the DPC, which held its meeting between 3rd to 6th October, 2001. For the following years i.e. 2002-03 to 2009-10, his

[4] "ACIT"

vigilance status was withheld and the sealed cover procedure was adopted.

The petitioner submits that he was not granted promotion in the year 2001- 02 despite being assessed "Very Good" for the alleged reasons that there was less number of vacancies. He submits that it is not correct. He wishes to place on record the documents to establish the position of record that there was sufficient number of vacancies. The respondents should also clarify the merit position as assessed by the DPC 2001-02 and the list of officers who were promoted as Assistant Commissioner of Income Tax for the said vacancy year.

Another issue raised by the respondents is that since the petitioner is now seeking holding of Review DPC, and in the meantime the petitioner stands convicted and sentenced in a case under the Prevention of Corruption Act, whether the said aspect could be a reason to not to hold a Review DPC in respect of the petitioner. We grant time to both the parties to bring case law on the said aspect on the next date. The petitioner shall file an affidavit within three weeks, with advance copy to the respondents and the respondent shall file reply to the said affidavit within four weeks thereafter.

The documents produced by the respondents should be produced on the next date as well.

List on 15.10.2019."

Order dated 10 December 2019

"**W.P.(C) 9724/2017, CM APPL. 39570/2017 (stay), CM APPL. 22697/2019 and CM APPL. 31802/2019**

3. In para 3.3 of the counter affidavit it is stated as under:-

> "Subsequently, in the light of order dated 17.12.2015 of Hon'ble Central Administrative Tribunal (in short, C.A.T.), PB, New Delhi in OA No.2218/2013, the petitioner was given promotion to the post Income Tax Officer (ITO) from a retrospective date i.e. 28.03.1990 against his original date of promotion i.e., 11.06.1993, by the concerned Regional Cadre Controlling Authority (CCA). His seniority in the grade of ITO was also fixed above Shri A.R. Gautam by the respective Regional CCA. Accordingly, the petitioner's

seniority is being re-fixed in the respective All India Inter-se Seniority List of ITOs. Since Shri A.R. Gautam had been promoted to the post of ACIT against the vacancy year 2000-01, the Department will submit a proposal to the Union Public Service Commission (UPSC) for convening a meeting of the Review DPC for the vacancy year 2000-01 on receipt of all the requisite documents, service records and vigilance status of the applicant."

4. It is accordingly directed that the department should submit its proposal to UPSC for convening the Review DPC for the vacancy year 2000-01 on or before 31st December, 2019. The Review DPC should hold its meeting not later than 31st January, 2020 and take a decision in the matter not later than 20th February, 2020. A supplementary affidavit shall be filed by the Respondents placing the decision of the Review DPC before the next date of hearing.

5. The Petitioner who appears in person states that all the records are already available with the Respondents. It will be the responsibility of the Respondents to make sure that the Review DPC has all the requisite documents, service records, vigilance status of the Petitioner, etc. before the meeting of the Review DPC.

6. List on 12th March, 2020.

7. Order dasti."

<u>Order dated 18 November 2020</u>

"The present matter has been taken up for hearing by way of Video Conferencing on account of COVID-19 pandemic.

Mr. Kamal Kant Jha, learned Senior Panel Counsel appears on behalf of respondent No.1 and 2 and prays for time to obtain instructions qua the compliance with the direction issued by this Court vide order dated 10.12.2019 and in particular paragraph 4 thereof, which reads as follows:-

> "…..4. It is accordingly directed that the department should submit its proposal to UPSC for convening the Review DPC for the vacancy year 2000-01 on or before 31st December, 2019. The Review DPC should hold its meeting not later than 31st December, 2020 and take a decision in the matter not later than 20th February, 2020. A supplementary affidavit shall be filed by the respondents

placing the decision of the Review DPC before the next date of hearing."

Mr. Kamal Kant Jha, learned Senior Panel Counsel further states that, despite repeated attempts, he has not been able to obtain instructions from the concerned officer.

In this view of the matter, we direct Mr. Pradeep Kumar Kanojia, Deputy Commissioner of Income Tax, Headquarters (Litigation) in the office of Principal Chief Commissioner of Income Tax (Pr. CCIT), C.R. Building, I.P. Estate, New Delhi-110002, to appear before this Court through Video Conferencing on the next date of hearing to address this Court qua the compliance with the aforementioned direction issued by this Court vide the said order dated 10.12.2019.

Renotify on 23.12.2020."

Order dated 7 January 2021

"The petition has been heard by way of video conferencing.

Learned counsel for the respondent nos. 1 & 2 states that the order dated 18th November, 2020 has been complied inasmuch as a review DPC has been convened.

He, however, states that the petitioner did not find place in the panels for either of the two vacancy years i.e. 2000-2001 and 2001-2002.

None is present for the petitioner.

In the interest of justice, re-notify on 11th May, 2021.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail."

Order dated 18 January 2024

"W.P.(C) 9724/2017

3. The only surviving grievance of the petitioner in the present petition is that though in pursuance to the orders passed by the learned Tribunal, he has been considered by a Review DPC on 29.10.2020 for promotion to the post of Assistant Commissioner(Income Tax), the very same ACRs which were earlier treated as "Very Good" by the erstwhile DPC, have been treated as "Good.

4. Learned counsel for the petitioner submits that even though the

DPC has a right to give its own gradings qua any ACRs, the downgrading cannot be done in an arbitrary manner and that too without assigning any reasons.

5. Learned counsel for the respondent/Union of India prays for and is granted time to obtain instructions.

6. At request, list on 13.03.2024."

14. As such, it is clear that this Court has, adopting an expansive approach, probably because the petitioner was appearing in person, also entered into the aspect of entitlement of the petitioner for promotion to the grade of ACIT.

15. Though we are of the opinion that this exercise may, strictly speaking, not have been justified in view of the proscription on this Court acting as a court of first instance in service disputes which were not first agitated before the Tribunal, as contained in the judgment of the Supreme Court in ***L Chandra Kumar v UOI***[5]**,** we cannot be unmindful of the fact that this petition has remained pending before this Court for several years, and that the aforesaid orders may have lead the petitioner to believe that this Court would also examine the aspect of his entitlement to the promotion as ACIT.

16. The aforesaid orders reveal that this Court did enter into the said aspect to some extent and directed the respondent to convene a review DPC to consider the petitioner's case for promotion as ACIT. The respondent returned to the Court and submitted that, though a review DPC was convened, the petitioner could not be promoted as

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[5] **(1997) 3 SCC 261**

the petitioner, on the basis of his ACRs for the relevant years, did not make the grade for promotion.

17. Ms. Jyoti Dutt Sharma, who has very ably assisted us as *amicus curiae* in this matter, submits that the respondent illegally downgraded the said ACRs, which was the reason why the petitioner was not promoted as ACIT and that, on the face of it, the downgrading of the petitioner's ACRs was not in accordance with law.

18. We cannot, however, extend the jurisdiction of this Court to a point where we would now examine the consideration of the petitioner by the review DPC for the post of ACIT, as per the directions issued by this Court in its order dated 10 December 2019, and the entitlement of the petitioner to such promotion. Assuming that there was any illegality in the said consideration, or in the downgrading of the ACRs of the petitioner, that clearly constitutes an entirely new and independent cause of action, which the petitioner would have to agitate before the Tribunal in the first instance.

19. If we are to enter into that aspect in these proceedings, it might amount to a direct violation of the law laid down in ***L Chandra Kumar***.

20. While, therefore, we decline to interfere in the present writ petition, nonetheless, given the manner in which the proceedings have continued before this Court, we deem it appropriate to further order as under:

(i) The petitioner would be at liberty to raise any grievance before the Tribunal regarding his further promotions, including promotion to the grade of ACIT, which took place during the pendency of these proceedings before this Court, which would include a right to challenge the decision of the review DPC which took place on 29 October 2020, as well as any downgrading of ACRs which may have taken place in the interregnum. For this, however, the petitioner would have to institute a fresh Original Application before the Tribunal. In the event of such OA being filed within two weeks from today, the respondent shall not be entitled to plead limitation, as a defence, applying the principle of *actus curiae neminem gravabit*[6].

(ii) In the event that such an OA is filed, the Tribunal is requested to decide the OA expeditiously and, if possible, within a period of four weeks from the date of its filing.

(iii) We also request Ms. Jyoti Dutt Sharma, who has assisted us in this matter and for which we express our appreciation, to also assist the petitioner, in the event that he chooses to avail the liberty granted by us above, subject, of course, to the petitioner consenting thereto.

(iv) Needless to say, the right of the petitioner to assail any order which may come to be passed by the Tribunal, should he be aggrieved thereby, would remain reserved.

[6] Act of court would prejudice no one.

21. The writ petition is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

MANOJ JAIN, J.

DECEMBER 12, 2024/*dsn*

Click here to check corrigendum, if any