



2025:DHC:10323-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 20.11.2025***+ W.P.(C) 3528/2019
SANJAY GUPTA

.....Petitioner

Through: In person

versus

UNION OF INDIA & ANR

.....Respondents

Through: Ms.Shiva Lakshmi, Mr.Madhav
Bajaj and Mr.Vivek Mathur,
Adv. for UOI**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE MADHU JAIN****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed by the petitioner, challenging the Order dated 14.02.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. No.3185/2015, titled *Sanjay Gupta v. Union of India through its Secretary & Anr.*, dismissing the O.A. filed by the petitioner herein.

2. The petitioner had filed the above O.A. before the learned Tribunal, praying for the following relief:

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of directing the respondents to consider the case of the applicant for granting NFU from 1.3.2014 by conducting the review of the DSC



meeting dated 5.6.2014, by ignoring the uncommunicated below benchmark ACR of the year 2007-08 in the DSC.”

3. It is the case of the petitioner that the petitioner was considered for grant of the Non-Functional Upgradation (NFU) by the Departmental Screening Committee (DSC) held on 05.06.2014, wherein his below benchmark ACR for the year 2007-08 was also considered, though the same had not been communicated to the petitioner at the relevant time. The same was communicated to the petitioner only on 19.06.2014, that is, post the conduct of the DSC.

4. The petitioner filed a representation thereafter, aggrieved by the belated communication of the below benchmark ACR, and asking for the same to not be used against him in promotion considerations. The petitioner then filed the O.A., with the above-quoted prayer.

5. The learned Tribunal dismissed the above O.A. filed by the petitioner herein, by observing that as the petitioner did not challenge his below benchmark ACR for the year 2007-08 and did not request for its upgradation, even after the same had been communicated to him, therefore, no useful purpose would be served by directing a review DSC.

6. We may quote from the Impugned Order as under:

“10. In his representation dated 20.06.2014, the applicant did not make any request for upgradation of the ACR for the year 2007-2008. On the other hand, his plea was that his ACR was liable to be ignored in its entirety. Reliance was placed on certain orders. It is not out of place to mention that the Hon'ble High Court in WP(C) No.6013/2010 and batch in a judgment rendered on 08.10.2010,



categorically held that whatever be the circumstances, in case of employees who are in service, the question of ignoring adverse ACRs does not arise. It was observed that the employee can be given an opportunity to make a representation for improvement thereof. We are not at all satisfied with the approach of the applicant. He was virtually teaching the law to the department, than to make out his grievance. Naturally the respondents have replied in an appropriate manner. When the applicant did not want the ACRs to be upgraded, nobody can help it."

7. The learned Tribunal further observed that the case of the petitioner had thereafter been considered in the DSC meetings held for the years 2015 and 2016 in accordance with the law.

8. The petitioner confines his prayer to the DSC conducted on 05.06.2014. He submits that the said DSC, having considered his uncommunicated below benchmark ACR for the year 2007-08, has committed an illegality and, therefore, a direction be passed for the conducting of a review DSC. He submits that the mere fact that the petitioner had not challenged the below benchmark grading in the ACR for the year 2007-08 even after its communication, would have no relevance to the prayer made. In support, he places reliance on the judgments of the Supreme Court in ***R.K. Jibanlata Devi v. High Court of Manipur***, (2023) 19 SCC 472; and on the Order dated 13.11.2019 passed in Civil Appeal No. 8555/2019, titled ***Lalit C. Joshi v. Bank of Baroda & Ors.***

9. On the other hand, the learned counsel for the respondents submits that the DSC meeting held on 05.06.2014 kept the case of the petitioner in a sealed cover as he was not cleared from the vigilance



angle at that point in time.

10. She further submits that the petitioner, in spite of being communicated the ACR for the year 2007-08, albeit, after the DSC was held on 05.06.2014, did not represent against the same. She submits that, therefore, the mandate of the O.M. No. 21011/1/2010-Estt.A dated 13.04.2010 issued by the Department of Personnel & Training had been complied with, and the DSC meetings held on 23.07.2015 and 29.03.2016 have duly considered the case of the petitioner in accordance with the law. She submits that, therefore, there is no case for a review DSC made out by the petitioner.

11. We have considered the submissions made by the learned counsels for the parties.

12. It is not disputed that the below benchmark grading of the petitioner in the ACR for the year 2007-08 had not been communicated to the petitioner before the conduct of the DSC on 05.06.2014, where his case for grant of the NFU was considered.

13. Though the recommendations of the DSC *qua* the petitioner were kept in a sealed cover as the petitioner was not cleared from the vigilance angle, the only issue to be determined by this Court is whether a direction for the conduct of a review DSC is to be issued in the given circumstances, where the petitioner did not challenge the below benchmark ACR grading even post the communication thereof after the DSC meeting.

14. In ***Lalit C. Joshi*** (supra), the Supreme Court, considering the said issue at hand, has held that even where the adverse remarks are communicated to the officer post the conduct of the DPC and his



representation there against is rejected, such rejection will not come in the way of the officer to seek a review DPC by ignoring the adverse remarks which had not been communicated to him as on the date of conduct of the DPC. The Supreme Court held that the adverse remarks in such ACR would have to be ignored in the review DPC to be so conducted. We quote from the said judgment as under:

“Be that as it may, we are of the considered opinion that the position of ACR was required to be considered as on 30.06.2014, the date on which DPC met admittedly as on that date adverse remarks for the year 2012 were not communicated to the appellant. Thus, it could not have been taken into consideration subsequent communication and rejection of the Representation cannot come in the way of the appellant. As such, the DPC has to reconsider the matter ignoring the adverse remarks which were not communicated to the appellant as on 30.06.2014.

Let a Review DPC be held ignoring the uncommunicated adverse remarks for 2012 in accordance with law within a period of two months from today and fresh decision be taken and communicated to the appellant as per the existing rules as on the date of the DPC i.e. 30.06.2014.”

15. The above principle was re-iterated by the Supreme Court in **R. K. Jibanlata Devi** (supra), wherein again, the Supreme Court directed that the case of the petitioner therein for promotion is required to be considered afresh by ignoring the uncommunicated ACRs.

16. Keeping in view the above principles and applying the same to the facts of the present case, as on 05.06.2014, the below benchmark grading contained in the ACR for the year 2007-08 had not been communicated to the petitioner, therefore, the same was liable to be



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ignored by the DSC. The mere fact that the petitioner did not later challenge the below benchmark ACR upon the same being communicated to him, would have no effect on the right of the petitioner to claim a review DSC, which would ignore the said below benchmark ACR of the petitioner for the period 2007-08.

17. Accordingly, the Impugned Order of the learned Tribunal is hereby set aside. Let a review DSC be held, as on the position prevailing on the said date, that is, 05.06.2014, by ignoring the ACR of the petitioner for the year 2007-08, while considering the other relevant material that was considered by the DSC held on 05.06.2014, within a period of six weeks from today.

18. As it is now admitted that the petitioner was cleared from the vigilance angle, the recommendations of the DSC will be implemented by granting consequential relief(s) to the petitioner.

19. The petition is allowed in the above terms.

NAVIN CHAWLA, J

MADHU JAIN, J

NOVEMBER 20, 2025/sg/SJ