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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3091/2014
DDAPetitioner

Through: Mr. Arun Birbal, Adv.

versus

MADHU BALA DHAMRespondent
Through: Mr. Anuj Kr. Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **11.02.2025**

AJAY DIGPAUL, J.

1. The relevant facts that emerged from the pleadings are as follows:

The respondent herein, Madhu Bala Dham, had been serving as an Assistant Director (Planning) in the Delhi Development Authority (DDA)/petitioner, since 1989. The post of Assistant Director (Planning) is a feeder cadre for promotion to the post of Deputy Director (Planning) under the applicable Recruitment Rules. Upon completing 10 years of service in 1999, the respondent became eligible for promotion to the higher post, which is Deputy Director (Planning).

2. On 27.08.2003, the DDA held a Departmental Promotion Committee (DPC) meeting to consider eligible candidates for promotion to the post of Deputy Director (Planning). Based on the overall assessment, the DPC found the respondent "unfit" for



promotion. Consequently, she was not included in the panel for promotion. The respondent was never communicated anything adverse by way of caution or notice for improvement by the petitioner.

3. Aggrieved by this non-promotion, the respondent filed W.P. (C) 5761/2003 in this Court, wherein the following reliefs were sought:

“1) call for the service records of the petitioner and also the proceedings of the DPC held on 27.8.2003 and which is not available with us now.

2) quash and set aside any grading given to the petitioner below the bench mark without any caution/warning/advisory note and without any communication to the petitioner for providing any opportunity of being heard and declare that the same ought not be considered by the DPC, and

3) direct the respondents to promote the petitioner to the post of Deputy Director (Planning) by holding a review DPC strictly in accordance with the Govt. of India instruction dated 8.2.2002, and

4) pass such other and further orders as this Hon'ble Court may deem fit and necessary in the interest of justice.”

The court vide order dated 08.09.2003 granted a stay by directing the petitioner DDA to restrain from declaring result of the DPC, if the result is not already declared.

4. In the meantime, the respondent retired on attaining the age of superannuation on 30.09.2004.

5. The stay which was granted by this court in W.P. (C) 5761/2003 was vacated during the year 2005 and thereafter a senior level DPC was held on 16.03.2005, but the name of the respondent was not included in the consideration zone owing to the reason that she had already retired on attaining the age of superannuation.



6. The petitioner DDA carried the matter in appeal by way of LPA 428/2004, wherein vide order dated 21.12.2010, it was stated by the court that this issue was disposed of in terms of directions given in an another matter in W.P. (C) No. 6013/2010, *UOI v Krishna Mohan Dixit*¹. The concluding paragraphs of the said decision which was delivered on 08.10.2010 are reproduced as under:

“22. In view of the aforesaid, we are of the considered view that the orders passed by the Tribunal in all these cases cannot be sustained. Thus the orders passed by the Tribunal would stand modified to the extent that the adverse ACRs which falls within the consideration zone i.e. in the relevant 5 years before the date of holding the DPC, if not communicated earlier but are below bench mark would be communicated within a period of 4 weeks from today to the incumbent officer if not communicated so far. The respondent would then be eligible to make a representation within 15 days thereof if not made already, and that such representation would be decided by the competent authority, which, of course, would be higher in rank to the authority who gave the adverse ACR within next 2 weeks irrespective of the fact whether the Reporting Officer or the Reviewing Officer or both are available or not. In case, the ACR is upgraded, making the incumbent eligible for consideration, review DPC would be held based upon the reappraised ACRs for the relevant period within six weeks. In case, the review DPC finds the incumbent fit for promotion, the benefit thereof would be given to him from the date when he was entitled for promotion to the next post had the ACR in question would not have been considered averse to him with all consequential benefits.

23. All the writ petitions are disposed of in terms of directions given above. Interim orders, if any, stands vacated.”

7. The court therein directed the petitioner DDA to communicate any below-benchmark ACRs from the relevant five year period (1996-97 to 2000-01) that had not been previously communicated, allowing the respondents to make representations against them. The court further ordered that if any representations resulted in the upgradation



of the ACRs. A review DPC should be held to reconsider the respondent's case for promotion.

8. Following the court's directions, the respondent filed a representation on 18.02.2011 highlighting that her ACR for the year 1999-2000 had been downgraded from "Very Good" to "Average" without any justifiable reason and those were never communicated to her.

9. The Vice Chairman, DDA reconsidered/examined the ACRs for the period 1996-97 to 2000-01 and upon reviewing this inconsistency, the Vice Chairman, upgraded the ACR for 1999-2000 from "Average" to "Very Good." However, there was consistency in the assessment of the ACRs for the remaining years and therefore remained unchanged.

10. On 13.06.2011, a review DPC was convened, where the respondent's case was reconsidered based on the upgraded ACR for 1999-2000 and the unaltered ACRs for the remaining years. Despite the upgradation, the DPC concluded that the respondent did not meet the benchmark requirements for promotion, as three out of the five ACRs still had "Average" ratings. The review DPC, therefore, did not recommend her for promotion, and the decision was communicated vide order No. F.10 (92)2011/LC/DDA/4250 dated 07.07.2011.

11. Aggrieved with this outcome, the respondent subsequently filed O.A. No. 2767/2012 on 28.08.2012 before the Central Administrative Tribunal, Principal Bench, New Delhi², wherein the following reliefs

¹ 2010 SCC OnLine Del 3589

² hereinafter "Tribunal"



were sought:

- “a) To call for the ACRs of the applicant for the year 1996-97 to 2000-01
- b) Quash and set aside the order No. F(92)2011/LC/DDA/4250 dt. 7.7.2011 passed by respondent No. 1 whereby the respondent has not upgraded the ACRs of the aforesaid years.
- c) Direct the respondents to promote the applicant to the post of Deputy Director (Planning) by holding a review DPC strictly in accordance with the Govt. of India instructions dated 8.2.2002; and
- d) Pass such other and further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.”

The respondent therein contended that the below-benchmark ACRs should not have been considered by the review DPC for promotion to higher grade as they were not properly communicated to the respondent within the prescribed timeline, as covered in *Abhijit Ghosh Dastidar v UOI & Ors*³.

12. The Tribunal, vide order dated 18.02.2014 allowed the O.A. and set aside the DDA's decision dated 07.07.2011. The concluding paragraphs of the order are reproduced as under:

“8. We have gone through the facts of the case and the law cited by both sides. There is no dispute that the ratio laid down in *Abhijit Ghosh Dastidar* case (supra) now holds the field and, therefore, the present case has to be seen in context of the same. It is true that the department had rightly considered the directions of the Hon'ble High Court and then convened a review DPC. But the applicant was found unfit. However, we agree with the learned counsel for the applicant that the ratio of the *Dixit* (supra) case will no longer apply and the department should have considered the decision of the Hon'ble Supreme Court in *Abhijit Ghosh Dastidar* (supra) before coming to a final conclusion.

9. In view of above discussion, in the light of ratio laid down in *Abhijit Ghosh Dastidar* (supra), we feel that the impugned order dated 7.07.2011 cannot be sustained and the same is, therefore,

³ (2009) 16 SCC 146



quashed and set aside. The respondents may hold a review DPC and reconsider applicant's case, even though she is retired for over ten years now, strictly in accordance with law laid in Abhijit Ghosh Dastidar (supra). These directions shall be complied with within two months from the receipt of a certified copy of this order. No costs'."

The Tribunal therein directed the DDA to hold a fresh review DPC, excluding the below-benchmark ACRs from consideration, and determine the respondent's eligibility for promotion.

13. The petitioner, DDA, has filed the present writ petition challenging the Tribunal's order, where the following reliefs are sought:

“(a) Allow the present civil writ petition and set aside the judgement dated 18.02.2014 passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2767 of 2012 (Madhu Bala Dham Vs. DDA) and dismiss the OA filed by the respondent herein; And
(b) Pass such other order as are deemed fit and proper in the facts and circumstances of the case.”

14. Having heard the learned Counsel for both sides, we are not inclined to interfere with the impugned judgment of the Tribunal for the following reasons:

(i) The Division Bench of this Court in its judgment dated 08.10.2010 in W.P. (C) 6013/2010 had clearly directed that the adverse ACRs of the respondent, which were required to be communicated to the respondent and that the respondent given a chance to represent there against and that the DPC would act only on the basis of the decision taken in the said representations.



(ii) The question that had arisen as noted in the above judgment dated 08.10.2010 was whether the DPC could act on the basis of adverse ACRs in respect of which the outcome of the representation was not communicated to the respondent.

(iii) This aspect of the matter stands clarified by a DoP&T OM dated 14.05.2009, of which we may reproduce para 2(v)(vii):

“2. Keeping in view the above position, the matter regarding communication of entries in the ACRs in the case of civil services under the Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government:-

(v) The new system of communicating the entries in the APAR shall be made applicable prospectively only with effect from the reporting period 2008-09 which is to be initiated after 1st April 2009.

(vii) The competent authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the competent authority and the final grading shall be communicated to the officer reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section.”

(iv) Clearly as per 2(vii), the decision on the representation was required to be communicated to the respondent within 15 days of the receipt of the representation. In this case, the representation was received on 08.02.2011 and the decision was communicated on 07.07.2011, after the DPC was held on 13.06.2011.

(v) Clearly, therefore, the DPC which was in taking into consideration those ACRs in respect of which the decision on the



representation had not been communicated to the respondent till the date of convening of the DPC.

15. We, therefore, are in agreement with the decision of the Tribunal that the said act could not be taken into consideration.

16. The Tribunal has only directed that the DPC should act on the basis and should ignore the said adverse ACRs and decide the respondent's entitlement to promotion on the basis of the law laid down by the Supreme Court in *Abhijit Ghosh Dastidar*.

17. The decision in *Abhijit Ghosh Dastidar* constitutes the law as stood. The decision in *Abhijit Ghosh Dastidar* was subsequently followed by the Supreme Court in *Sukhdev Singh v UOI*⁴.

18. In that view of the matter, we find no reason to interfere with the impugned judgment of the Tribunal which is accordingly affirmed in its entirety. Let the judgment of the Tribunal be implemented within a period of four weeks from today.

19. The petition is accordingly dismissed.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

FEBRUARY 11, 2025/aky/sk

Click here to check corrigendum, if any

⁴ (2013) 9 SCC 566