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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14.05.2024

+ W.P.(C) 13310/2022, CM APPL. 40397/2022 –Stay, CM APPL. 40398/2022 -Ex. & CM APPL. 40399/2022 -Delay.

UNION OF INDIA & ORS.

..... Petitioner

Through: Mr. Ravi Prakash, CGSC with Ms. Astu Khandelwal, Mr. Taha Yasin, Mr. Yasharth Shukla, Mr. Ali Khan, Mr. Ayushman, Advs.

versus

SMT REKHA VISHNOI

..... Respondent

Through: Mr. Parmeet Singh, Mr. Sagar Saxena, Mr. Sarthak Pandey, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 28.11.2018 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 452/2015. Vide the impugned order, the learned Tribunal has allowed the Original Application (O.A.) filed by the respondent/applicant and has, consequently, set aside the minutes of the DPC dated 18.02.2014 whereby, the respondent was not recommended for promotion to the post of Chief Commissioner of Income Tax (CCIT) for the vacancy year 2011-12 for which she was being considered on the basis of her two ACRs for the years



2007-08 and 2008-09 wherein, she had been graded as 'very good'. While allowing the O.A., the learned Tribunal has taken note of the fact that though the respondent's two ACRs for the relevant period, i.e., 2007-08 and 2008-09 had been upgraded by the competent authority to 'very good', the DPC had opined that the said up-gradation was erroneous and her grading was required to be taken as 'good', which grading was below the bench mark.

2. After considering the submissions of learned counsel for the parties and perusing the record, the learned Tribunal held that even though the DPC was entitled to make its own assessment of the ACRs of an employee at the time of considering him for promotion, however, the grading given by the competent authority cannot be altered without recording appropriate reasons which, in the present case, as per the Tribunal were found to be missing. It is in these circumstances that the Tribunal has set aside the decision of the DPC and, consequently, directed the petitioners to conduct a review DPC for considering the respondent's case for promotion to the post of CCIT for the vacancy year 2011-12. Being aggrieved, the petitioner has approached this Court by way of the present writ petition

3. In support of the petition, learned counsel for the petitioner submits that the impugned order is liable to be set aside as the learned Tribunal has erred in holding that no reasons for treating the respondent's ACR's as 'good' were provided by the DPC. By drawing our attention to the reasons given by the DPC, he submits that these reasons were sufficient to show as to why the DPC had decided to treat the two ACRs of the respondent as 'good' against the 'very good' grading given by the competent authority. He, therefore, prays that the impugned order be set aside.



4. On the other hand, Mr. Parmeet Singh, learned counsel for the respondent supports the impugned order and submits that not only are the findings of the Tribunal well reasoned warranting no interference by this Court, but even otherwise, the petition having been filed belatedly is liable to be dismissed on this ground alone.

5. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the impugned which read as under:

“10. Except stating that the review DPC is of the opinion that the overall grading of the officer works out to 'Good' only and there is no justification for upgrading his ACRs from 'Good' to Very Good', no reason whatever is mentioned. The exercise undertaken by the review DPC was totally opposed to the one stipulated under O.M. dated 09.05.2014.

11. There is another interesting development in this case. The case of the applicant was considered by another DPC for the post of CCIT against vacancy of the year 2013-14. Through an order dated 18.02.2018, the DPC found the applicant 'fit' and she was accordingly promoted on notional basis, inasmuch as she retired from service by that date. The ACRs of 2007-08 and 2008-09 became relevant for this vacancy also. The position is that while DPC which met for the vacancies of 2013-14 found nothing objectionable in his ACRs of the applicant for the years referred to above, the one which met on 18.02.2011 took exactly the opposite view. The same cannot be countenanced in law.

12. We, therefore, allow O.A. No. 452/2014 and set aside the minutes of the DPC which met on 18.02.2014. The respondents are directed to convene another DPC to consider the case of the applicant for promotion to the post



of CCIT against the vacancy of 2011-12. It is needless to mention that such a DPC, as and when convened, shall take into account, that the applicant was found 'fit' for promotion to the very post against the vacancy of 2013-14. The above exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order.”

6. From a perusal of the aforesaid, what emerges is that the learned Tribunal after examining the minutes of DPC which had decided to downgrade the respondent's ACRs for the year 2007-08 and 2008-09 to 'good' from 'very good', found that no reasons for this downgrading were forthcoming from the minutes of the DPC.

7. Having perused the extracts of this decision of the DPC to treat the respondent's two ACRs as 'good', we find ourselves in agreement with the learned Tribunal that the DPC, while downgrading the respondent's ACRs from 'very good' to 'good', has not recorded any reasons. Undoubtedly, even though it is always open for the DPC to make its own assessment regarding the gradings awarded to an employee, but any decision of the DPC, to alter the gradings recorded by the competent authority must be based on objective criteria and should be reflected from the minutes of the DPC itself. In the present case, it is clear that the DPC has, without recording any reasons, proceeded to simply state that the gradings of 'very good' should be treated as 'good'. This, in our view, is not permissible.

8. Further, since there is no satisfactory explanation for the delay accorded by the petitioner in approaching this Court, the same suffers from the vice of being barred by gross delay. Be that as it may, since we find that the writ petition is liable to be dismissed on merits itself, we are refraining



from commenting any further on the delay in filing of the writ petition.

9. For the aforesaid reasons, finding no infirmity with the impugned order, we dismiss the writ petition along with all pending applications.

10. As prayed for, the petitioners are granted further eight weeks' time to comply with the impugned order.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 14, 2024

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