

Union of India and Others Vs. Dr. V.K. Sharma and Another

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Court : Delhi

Decided On : Mar-01-2012

Judge : Badar Durrez Ahmed & V.K. Jain

Appeal No. : W.P.(C) 8393, 8404 & 8381 OF 2011

Appellant : Union of India and Others

Respondent : Dr. V.K. Sharma and Another

Judgement :

BADAR DURREZ AHMED, J.

(ORAL)

1. These three writ petitions filed on behalf of the Union of India are in respect of the common order dated 22.10.2010 passed in O.A. Nos. 1194/2010, 748/2010 and 1193/2010 in respect of the respondents Dr V.K. Sharma, Dr Shashi Gokhale and Dr Rajkumari Sharma respectively.

2. Before the Tribunal the said respondents had moved the said original applications with the grievance that they had been over looked for non-functional selection grade in the scale of ` . 14300-18300 (pre-revised) whereas doctors junior to them had been promoted by an order dated 12.08.2009.

3. The respondents are Senior Medical Officers (Ayurveda).

4. On behalf of the respondents it had been argued before the Tribunal that they had not been communicated the adverse remarks recorded in their ACRs. It had also been contended that they were not facing any inquiry. The respondents had also stated that they had made representations in this regard but the same had remained without any response.

5. On the part of the petitioner it was contended that since some of the ACRs of the respondents were below the benchmark of “very good”, they were not found fit for promotion by the DPC. The Tribunal after considering the decision in the case of **Dev Dutt v. Union of India and Ors: (2008) 8 SCC 725** observed that the below benchmark grading in the ACRs, before they can be considered by the DPC, would necessarily have to be communicated to the concerned officer for giving him an opportunity to represent against the same. Since that had not been done in the present case, the Tribunal passed the following order:-

“6. In view of the above, we direct the Respondents to communicate to the Applicants all the below benchmark gradings in the ACRs, which were considered by the DPC. These would be communicated within one month from the date of receipt of the certified copy of this order. In case both the reporting and the reviewing authorities have retired, the ACR containing the below bench mark grading would be ignored and an ACR prior to the last ACR considered would be taken into account. The Applicants would represent against the below bench mark grading within one month of the receipt of the communication from the Respondents. The Respondents would consider the representations. If, as a consequence of such consideration, the grading in the ACRs are upgraded to the prescribed benchmark, a review DPC would be held to consider the case of the Applicants for promotion to NFSG within three months from the receipt of the representation of the Applicants. There will be no orders as to costs.”

6. When these matters had come up for hearing before another Bench of this Court on 05.12.2011 it was specifically noted in the order of that date that the petitioner had accepted the representations of the respondents against the below benchmark ACRs for the period prior to 2008-2009 which were made in pursuance of the impugned order dated 22.10.2010. What this meant was that the below

benchmark ACRs have been reconsidered and the respondents ACRs for the respective periods were upgraded. Apart from this it was also noted that the learned counsel for the petitioner was unable to state before this court as regards the status of the review DPC which had also been directed by virtue of the impugned order. The learned counsel for the respondent No.2 (UPSC) states before us today that no requisition for review DPC was sent by the petitioner and that is why the review DPC was not held. The learned counsel for the petitioner submitted that the question of review DPC after communicating the below benchmark ACRs does not arise.

7. He made this submission on the strength of a note prepared by the department of Personnel and Training. The operative portion of which reads as under:-

“2. The DPC guidelines have been issued through Estt.(D) only. The Supreme Court in the SLP in Uttam Chand Natha’s case (SLP Civil Appeal No. 29515 of 2010) by order dated 20/24th December, 2010 not only tagged the SLP with A.K. Goel case but also directed that status quo in the DPC proceedings which was subject matter of dispute before the CAT/High Court, shall be maintained. Therefore, the question of Review DPC after communicating below benchmark ACRs does not arise.”

We may observe straightway that the status quo order that has been passed was in another case i.e., Union of India Vs. Uttam Chand Natha (SLP No. 29515/2010).

However, the order passed by the Tribunal in the present case directing the convening of the review DPC has not suffered any status quo or stay at the hands of a higher forum. Therefore, the view taken in the said note is without any logic or basis.

8. The learned counsel for the private respondents has placed before us a decision of a Bench of three honourable judges of the Supreme Court in the case of **Abhijit Ghosh Dastidar v. Union of India and Ors: (2009 16 SCC 146)**. In the said decision the Supreme Court has observed as under:-

“Coming to the second aspect, that though the benchmark “very good” is required for being considered for promotion admittedly the entry of “good” should have been communicated to him as he was having “very good” in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article of the constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries “good” if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade.”

9. However, we need not even go into that aspect of the matter inasmuch as the question of ignoring the ‘lower-than-benchmark’ ACRs would not arise in the present case because the ACRs themselves have been upgraded in terms of the impugned order. Now, the only question is of convening the review DPC. We have already observed above that the stand taken by the petitioner for not convening a review DPC is not tenable. The only reason as to why the private respondents were not considered for promotion was the fact that they had ‘below-benchmark’ ACRs. Now, those ACRs have been reconsidered and have been upgraded and fall above the benchmark. Thus, the obvious corollary is that the said ACRs and the cases of the private respondents have to be considered for the purposes of promotion. Therefore, a review DPC has to be convened and for considering the private respondents for promotion in the light of the upgraded ACRs.

10. In these circumstances and in the light of these directions and observations there is no reason to interfere with the impugned order passed by the Tribunal. However, we grant further time to the petitioner by directing that the petitioner shall requisition the review DPC within four weeks from today and, on such requisition is being made, the review DPC shall be convened by the respondent No. 2 (UPSC) within six weeks thereafter.

11. With these observations, the writ petitions stand disposed of.

