

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2013
CC 10415/2013

(From the judgement and order dated 31/05/2012 in CWP No.5042/2002, of The
HIGH COURT OF DELHI AT N. DELHI)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

V.S. ARORA & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)

Date: 19/11/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Ms. Indira Jaising, ASG
Ms. Anindita Pujari, Adv.
Ms. N. Pasha, Adv.

For Respondent(s) Mr. V.S. Arora, in person
no.1

UPON hearing counsel the Court made the following
O R D E R

The delay of 239 days in filing the special leave petition is condoned.

This petition is directed against order dated 31.5.2012 passed by the Division Bench of the Delhi High Court in Writ Petition No.5042 of 2002 filed by the petitioners against the order passed by the Central Administrative Tribunal.

We have heard Ms. Indira Jaising, learned Additional Solicitor General for the petitioners and Shri V.S. Arora, respondent no.1, who has appeared in person, and carefully perused the record.

While he was working as Additional Chief Engineer in Military Engineering Service, the case of respondent No.1 was considered by the Departmental Promotion Committee for promotion to the post of Chief Engineer but his name did not figure in the panel of selected candidates. He filed O.A.No.1570/2001 for issue of a direction to the petitioners to hold review DPC and promote him with retrospective effect. He pleaded that the Departmental Promotion Committee had committed an error by considering the same Annual Confidential Report against the vacancies for the years 1999-2000 and 2000-2001. After considering the rival contentions, the Tribunal allowed the application. Paragraph 7 of that order reads as under:

"In the light of the above discussion, we quash and set aside applicant's assessment by the DPC held on 14.7.2000 for the vacancies of Chief Engineer for the years 1999-2000 and 2000-2001 and direct respondents to convene a review DPC for reconsidering applicant's case for promotion to the post of Chief Engineer for the years 1999-2000 and 2000-2001 ignoring the ACRs in which he was graded as "good" and when such ACRs were not communicated to applicant. Applicant's claim for promotion to the post of Chief Engineer be considered in the above terms within a period of three months from the date of receipt of these orders, as per rules and relevant instructions on the subject. In this manner, if applicant is found fit for

promotion to the post of Chief Engineer he may be promoted to the post of Chief Engineer with effect from the date his immediate Junior was promoted, with all consequential benefits."

The petitioners challenged the order of the Tribunal in Writ Petition No.5042/2002, which was dismissed by the Division Bench of the Delhi High Court along with a batch of other writ petitions including Writ Petition No.3298/2011 Union of India and another v. R. N. Kurmi and others by recording the following observations:

"From the above, it is clear that the DPC should consider the confidential report for equal number of years in respect of all the employees considered for promotion subject to (c) mentioned above. The latter subparagraph) makes it clear that when one or more confidential reports have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if, in any case, even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per sub-paragraph (b) above. If this is also not possible, all the available CRs should be taken into account. We are of the view that the same would apply in the case of non-communicated below benchmark ACRs. Such ACRs should be in the same position as those CRs which have not been written or which are not available for any reasons. Thus, it is clear that below benchmark ACRs, which have not been communicated, cannot be considered by the DPC and the DPC is then to follow the same procedure as prescribed in paragraph 6.2.1 (c), as indicated above.

S.L.P.(C) No.1857 of 2013 arising from CC No.23481/2012 titled Union of India and another v. R.N. Kurmi and others was dismissed by this Court by detailed order dated 14.1.2013, the relevant portions of which are reproduced below:

"Divergent views expressed by coordinate Benches of this Court on the question whether the grading given in the Annual Confidential Report (ACR) of an employee, which falls below the benchmark needs to be communicated to the concerned employee, so as to give him an opportunity to make a representation, before the same can be taken into consideration by the Departmental Promotion Committee (DPC) or the same is liable to be ignored altogether and other ACRs should be considered by the DPC was finally resolved by three-Judge Bench in Abhijit Ghosh Dastidar v. Union of India (2009) 16 SCC 146.

However, by taking advantage of reference made by two-Judge Bench vide orders dated 29.3.2010 and 29.11.2010 passed in SLP(C) No.15700/2009 Union of India v. A.K. Goel and SLP(C) No.29515/2010 Union of India v. Uttam Chand Nahta, respectively, the petitioners have not been acting in consonance with the three-Judge Bench and this has generated in an unnecessary litigation.

Respondent No.1 joined service as Assistant Executive Engineer in 1977. He was promoted as Executive Engineer in 1987 and as Superintending Engineer in 2001. He was considered by the DPC held in 2008 for the post of Additional Chief Engineer against the vacancies of the year 2007-08 but his name was not included in the list of selected candidates apparently because he could not meet the prescribed benchmark in his ACRs.

OA No.847/2008 filed by the respondent was disposed of by the Central Administrative Tribunal (for short, 'the Tribunal') vide order dated 1.12.2008 by directing the concerned authority to communicate the ACR and consider his case afresh after disposal of the representation.

The issue was again considered by the three-Member Bench of the Tribunal and vide order dated 14.5.2010 the direction given earlier was reiterated. In the meanwhile, RA No.146/2009 filed by the respondent was allowed and the matter was revived for fresh consideration. After the disposal of matter by the three-Member Bench the Tribunal disposed of the original application of respondent No.1 and directed that his case to be considered as per order dated 14.5.2010.

The petitioners challenged the last mentioned order in Writ Petition No.3298/2011. They relied upon order dated 8.8.2010 passed by two-Judge Bench of the High Court in Union of India v. Krishna Mohan Dixit WP(C) No.6013/2010 and pleaded that the uncommunicated remarks cannot be ignored while considering the case of an employee for promotion on the basis of merit.

By the impugned order the Division Bench dismissed the writ petition. While doing so, it took cognizance of the judgments of this Court in Dev Dutt v. Union of India (2008) 8 SCC 725, Satya Narain Shukla v. Union of India 2006 (5) SCALE 627, K.M. Mishra v. Central Bank of India (2008) 9 SCC 120, Abhijit Ghosh Dastidar v. Union of India (supra) and order dated 24.11.2009 passed in Civil Appeal No.5319/2003 Union of India v. J.S. Garg, order dated 29.11.2010 passed in Union of India v. Ranjana Kale SLP(C) No.29929/2010 and order dated 16.3.2012 passed in Civil Appeal No.6937/2011 Union of India v. N.K. Bhola. The Division Bench also took cognizance of the fact that Sunil Mathur's case (SLP(C) No.7623/2011) was dismissed on 24.1.2012 in the light of the judgment in Abhijit Ghosh Dastidar (supra) and held that there is no valid ground to interfere with the order of the Tribunal.

In our view, after having accepted and implemented the judgment in Abhijit Gosh Dastidar's case (supra) and agreed for disposal of other similar matters in terms of the judgment of larger Bench, the petitioners cannot seek annulment of the order passed by the Tribunal."

For the reasons recorded in the order passed in R.N. Kurmi's case, which shall be read as part of this order, the special leave petition is dismissed.

Six weeks' time is allowed to the petitioners to implement the order of the Central Administrative Tribunal, Principal Bench, New Delhi as modified by the High Court.

| (Parveen Kr.Chawla)
| Court Master

| | (Phoolan Wati Arora)
| | Court Master