

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.15128 of 2004

% Date of decision: 15.07.2008

DR. PURNA CHANDRA TRIPATHY ...PETITIONER
Through: Mr. Rani Prakash, Advocate.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS
Through: Ms. Anjana Gosain, Advocate
with ASI (M) K.C. Joshi for the
Respondents.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. Rule DB.
2. At the request of the learned counsels for the parties, the
petition is taken up for final disposal.
3. The petitioner joined CRPF as a Medical Officer on
13.12.1983 and picked up his promotions from time to

time. The petitioner attained the position of Chief Medical Officer (OG).

4. The DPC was held on 3.3.2004 for promotion to the post of CMO (NFSG) and the case of the petitioner was also considered but the petitioner was not selected while almost thirty (30) officers junior to him were so promoted.
5. The representations of the petitioner did not result in any action and the petitioner filed the writ petition.
6. A subsequent development has been that the petitioner has been promoted on 3.5.2005 and thus the only question which survives for consideration is the date from which the petitioner should be so promoted.
7. On hearing learned counsels for the parties and perusing the pleadings it is obvious that the petitioner was not promoted on account of the fact that he had certain entries in his ACRs which were "GOOD". These entries could not meet the required benchmark of "VERY GOOD", which was essential for promotion. Thus, it is not a case where on comparative merit on a pyramidal system, the petitioner has not been promoted but a case of prescribed benchmark "VERY GOOD" not being fulfilled.
8. Learned counsel for the petitioner has drawn our attention to the Circular Order dated 31.10.1972 issued

by the CRPF dealing with the problems of defects in respect of promotion, probation, extension of service, etc. The relevant para 1 is as under:

“1) In several cases adverse remarks contained in the ACRs of officers, have not been communicated to them and if at all communicated, it is observed that proper procedure has not been followed. The reporting should invariably give (at all lines) the necessary advices, guidance and assistance to the officer being reported upon to correct his faults and deficiencies before endorsing adverse remarks in the ACR. If this part of the reporting officers duty is properly performed, there should be no difficulty about recording adverse entries, because they would only refer to defects which had persisted despite the reporting officers efforts, to have then corrected. Accordingly in mentioning any faults/defects, the reporting officers should also give an indication of the efforts he had made, by way of guidance, admonition etc. to get the defects removed and the result of such efforts. In this connection reference is invited to para 159 of CRPF Manual Volume – I where in it has been laid down that every entry which may adversely affect the promotion of an officer, should be communicated to him and a note to this effect must be included in the entry itself. It further says that before such an entry is made an opportunity must be given to the officer concerned to show cause either verbally or in writing, why it should not be done.”

9. It is, thus, submitted that once the grading of the petitioner was below the benchmark and has adverse consequences on his promotion they were required to be communicated to the petitioner.
10. It is not in dispute that the ACRs were never communicated to the petitioner ostensibly on the ground that they were not adverse to the petitioner. However, the circular of the respondents itself makes it clear that if an ACR adversely affects the promotion of an officer the

same should be communicated to the officer irrespective of the fact whether it is *ipso facto* adverse and before the entry is made an opportunity must be given to the officer concerned to show cause why it should not be done.

11. Learned counsel for the petitioner seeks to rely upon the decision of the Supreme Court in Civil Appeal No.7631/2002 titled Dev Dutt Vs. Union of India & Ors. decided on 12.5.2008 prescribing all ACRs should be communicated to an employee/officer but the perusal of the judgement shows that the same makes an exception in the cases of the armed services.
12. In our considered view, the aforesaid would make no difference to the present case since the respondents themselves as per their circular have prescribed the requirement of communication of an ACR which affects the promotion of an officer. The ACR of the petitioner being below the benchmark adversely affected him at the time of his promotion and thus ought to have been communicated to him, so that he could have represented against the same. In this context some of the observations in Dev Dutt case (supra) are useful:

“10. In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is

not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

11. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.

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18. For example, if the bench mark is that an incumbent must have 'very good' entries in the last five years, then if he has 'very good' (or even 'outstanding') entries for four years, a 'good' entry for only one year may yet make him ineligible for promotion. This 'good' entry may be due to the personal pique of his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or for some other extraneous consideration.

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40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public

administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

13. In view of the aforesaid facts, we consider it appropriate to direct that the ACRs below the benchmark be communicated to the petitioner for all the relevant years in question within a period of one (1) month from today. The petitioner would be entitled to file a representation against to the same within a period of one (1) month thereafter and a decision by the competent authority [which has to be higher than the authority which gave the ACR in view of the observations in Dev Dutt case (supra)] be taken within two (2) months thereafter for reviewing the ACRs. If the reviewing authority finds favour with the representation of the petitioner, the fresh gradings be noted in the ACRs of the petitioner and consequently the petitioner would be entitled to the benefit of the promotion from the date he would have been actually so promoted but for the ACRs being below the benchmark. This would naturally effect the date of promotion but it is made clear that the petitioner will not claim any monetary benefits in the interregnum period when he was not so promoted. Naturally in case the petitioner's date of promotion is changed, for any further service benefits or promotion the petitioner would be

entitled as if he was promoted from an earlier date except to the extent of the financial benefit for the interregnum period of time.

14. The petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

JULY 15, 2008
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MOOL CHAND GARG, J.