

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

WP (C) No. 542/2009 & CM No. 1207/2009

%

Decided on : January 29, 2009

Union of India & Anr.

... Petitioners

through :

Mr. R.N. Singh with
Mr. A.S. Singh, Advocates

VERSUS

Harsh Prakash & Anr.

... Respondents

through :

Mr. Manish Kaushik, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. By the impugned judgment, the learned Tribunal has given a direction to the petitioner only to communicate those ACRs which fall below the benchmark. There is not even a direction for constituting a Review DPC immediately. On the contrary, only liberty is granted to the respondent herein to prefer representation, if any, against such ACRs and only in the event of grading being upgraded, the Review DPC was directed to be convened. The Tribunal, in this process, has followed the judgment of the Supreme

2. Learned counsel for the petitioner submits that in a recent judgment in the case of *K.M. Mishra v. Central Bank of India & Ors.*, (2008) 2 SCC (L&S) 833. The Apex Court in this case has taken the view that the entries which are not adverse need not be communicated.
3. We do not find that the two judgments are contradictory. Precisely, the same question has been dealt by us in a recent judgment in the case of *D.G. Employees State Insurance v. R.S. Gautam & Ors.* {WP (C) No. 12110/2006 decided on 13.1.2009}. Taking note of the judgments of the Supreme Court in *Dev Dutt* (supra) as well as *K.M. Mishra* (supra) and other judgments, we analysed the law in the following manner :-

“Learned counsel for the petitioner submits that reliance upon *U.P. Jal Nigam* (supra) which is relied upon by the Full Bench in *J.S. Garg* (supra) by the Tribunal was not appropriate in view of later pronouncement of the Supreme Court in the case of *Union of India and another vs. Major Bahadur Singh*, (2006) 1 SCC 368. She submits that in the said case the Supreme Court categorically held that the ratio laid down in *U.P. Jal Nigam* (supra) would be applicable only to the employees of Jal Nigam. She also referred to a recent judgment of the Supreme Court in the case of *K.M. Mishra vs. Central Bank of India and others*, (2008) 9 SCC 120 wherein the Supreme Court dealt with the question where the appellant in the said appeal who was given excellent rating before 1995 was grading “Very Good” in the year 1995 and thereafter in his ACR for the year 1996-97 he was rated as “Good”. It was argued by him that line down from excellent to “Very Good” and then to “Good” amounted to downgrading and such ACRs should have been communicated to him making him to represent against. The Supreme Court in this case opined that grading “Good” was not adverse it was not necessary to communicate this grading. As against that learned counsel for the respondent has referred to another judgment of the Supreme Court in *Devdutt vs. Union of India and others*, (2008) 8 SCC 725. In this case another DB of the Supreme Court has held in no uncertain terms that principle of natural justice demand that all ACRs should be communicated to the

employees. This principle, it is held, shall apply to employees of statutory authorities/public sector employees and other instrumentalities of State (in addition to Government servants) and it is held excluded only in the case of officers because the position for them is different as clarified in the case of **Major Bahadur Singh** *(supra). 3

It was submitted by Ms. Jyoti Singh that since there appears to be an equality between K.M. Mishra and Devdutt and both judgments are of two Judge Bench, K.M. Mishra should be followed as that is latter in point of time.

After hearing learned counsel for the parties, we are of the opinion that in this case it is not even necessary to delve into the question where there is any equality between the two judgments of the case or not. In the present case it is not disputed that benchmark for promotion to the post of Assistant Directors etc. in the petitioner organisation is 3 "Good" gradings out of 5. Thus an employee who is earning the grading "Good" can safely presume that he would have good chances of getting promoted to the higher post. However, in case he is given the grading which is below "Good", then it affects his promotional prospects. Therefore when the respondent had earned, in the previous year, "Good" grading and it was in the subsequent years downgraded to average which in fact has become reason to deny him promotion a downgrading him to "Average" for the purpose of promotion has to be treated as adverse entry. Therefore it was required to communicate this entry to the respondent to enable him to make representation there against. Since this entry was recorded for 3 years successively were not communicated to the respondent, we are of the view taken by the Tribunal that in such circumstances these gradings could not have been taken into consideration while considering his case for promotion as Assistant Director etc. We find that under similar circumstances in Devdutt the Supreme Court had given the following directions while holding that grading good which was below benchmark should have been communicated to the appellant in the said case :-

"We, therefore, direct that the "good" entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment."

4. Therefore, we are of the view that even if there is a dispute as to whether all the ACRs, whether 'Good' or 'Adverse', are to be communicated or not, there is no doubt that those ACRs, which fall below the benchmark, have to be necessarily communicated.
5. We, therefore, are in agreement with the view taken by the learned Tribunal. This writ petition, along with the application, is accordingly dismissed.


(A.K. SIKRI)
JUDGE


(SURESH KAIT)
JUDGE

January 29, 2009
nsk