

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

+ W.P.(C) No. 6156/2007

% Date of Decision : 19th of February, 2009

DURGA PRASAD Petitioner
! Through: Mr. Ravi Prakash and
Mr. Vikrant Ghumare, Advs.

versus

\$ U.O.I & ANR Respondent
^ Through: Mr. Ankur Chhibber, Adv.

* **CORAM:**
HON'BLE MR. JUSTICE B.N.CHATURVEDI
HON'BLE MR. JUSTICE S.L.BHAYANA

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

: **B.N.CHATURVEDI, J. (Oral)**

1. The petitioner, a Deputy Commandant in CRPF, was considered for promotion to next higher rank by a DPC on 24th March 2005 and subsequently by another DPC on 5th May 2006, but since he was facing a departmental enquiry, the

result of his promotion was kept in a sealed cover on both the occasions. The petitioner was exonerated in the departmental enquiry on 21st February 2007 whereafter, the results of DPCs held in 2005 and 2006 respectively, which were kept in sealed covers, were opened and it was revealed that the petitioner was found unfit for promotion by both the DPCs. The result of his being found unfit for promotion, as disclosed from the sealed covers for the said two years, was communicated to the petitioner on 3rd April 2007. The petitioner was however, promoted subsequently on 29th September 2007 as 2nd-in-Command.

2. The grievance of the petitioner is that the adverse ACRs for relevant years that were taken into consideration by the respective DPCs held in the years 2005 and 2006 were never communicated to him and, therefore, the same could not have constituted the basis for his being found unfit for promotion by the respective DPCs. Learned counsel for the respondents referring to the records of DPC held in the year 2005, points out that the DPC concerned had taken into consideration ACRs of the petitioner for the last five years starting from 30th June 1999 onwards, barring the period of two years or so when the petitioner was under suspension.

3. Learned counsel for the petitioner contends that the

respondent's Standing Order dated 31st October 1972 required that every entry which could adversely affect the promotional prospect of an officer was to be communicated to the officer concerned and a note in this respect was to be included in the entry list. The said Standing Order also provided that before such an entry was made, an opportunity had to be given to the officer concerned to show cause, either verbally or in writing, why it should not be done.

4. The relevant part of the aforesaid Standing Order reads thus:

“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.”

5. Learned counsel submits that in petitioner’s case the ACR entries for the relevant years, adversely affecting his promotion were, contrary to the said Standing Order, never communicated to him.

6. Learned counsel for the respondent contends that the said Standing Order of 1972 was superseded by another Standing Order No. 56/2001 dated 18th October 2001 whereby the requirement of communicating the grading in the ACR was done away with and only adverse grading, if any, recorded in the ACR were required to be communicated to the officer concerned.

7. The bench mark in terms of relevant DOPT OM requires three ‘Very Good’ entries in the ACRs for the last five years that are to be taken into consideration for promotion by the DPC. Learned counsel for the respondent with reference to the ACRs for the relevant years, which were taken into consideration by the DPC held in the year 2005, points out that the grading in the ACR for the year 30th June 1999 to 31st March 2000 was ‘Very Good’ while the grading for the year

2000-01 was 'Good' only. He concedes that this ACR for the year 2000-01 was never communicated to the petitioner.

8. Learned counsel for the petitioner contends that non-communication of the grading for the year 2000-01, inspite of being so required in terms of the Standing Order of October 1972, deprived him of making any representation against the grading during that year. He refers to a Division Bench decision of this Court dated 15th July 2008 in WP (C) No. 15128/2004 involving similar facts wherein taking note of Standing Order of October 1972, the petitioner therein was granted relief by directing the respondent to communicate the ACRs, which were below the bench mark during the relevant years to enable him to make a representation against the same and on such a representation being made, the same was required to be accorded due consideration by the competent authority and in case the reviewing authority found substance in the representation, a fresh grading was required to be noted in the ACRs.

9. Learned counsel for the petitioner pleads for the petition being decided in terms of the decision dated 15th July 2008 of the Division Bench of this Court in WP (C) 15128/2004 by directing the respondent to communicate to the petitioner the ACR for the year 2000-01, being below the bench mark, within

a specific time frame to enable him to represent against the same and on his so doing, the competent authority to act in the manner, as directed in the said WP (C) 15128/2004 to grant the benefit of promotion to him from the due date.

10. As the facts and issue involved in the present case are more or less similar to the one in WP (C) 15128/2004 and thus covered by the Division Bench decision of this Court therein, we direct that the ACR for the year 2000-01, being below the bench mark shall be communicated to the petitioner within one month from this date and it would be open to the petitioner to submit his representation against the same within another one month thereafter. A decision reviewing the ACR for the year 2000-01 shall be taken by the competent authority (which has to be higher than the one which recorded the said ACR, in view of observation of the Supreme Court in 'Dev Dutt v. UOI & Ors' in Civil Appeal No. 7631/2002 decided on 12.5.2008) within two months. In the event of a favourable decision on the representation of the petitioner, a fresh grading in the said ACR would be noted and as a consequence the petitioner would become entitled to the benefit of promotion from the date he would have otherwise been promoted but for the below bench mark ACR for the year 2000-01 and his date of promotion being adjusted accordingly

but subject to the condition that the petitioner will not claim any monetary benefits for the interregnum period when he was not so promoted. Needless to say that in case of change of date of his promotion, all other service benefits including promotion shall be reckonable from such changed date of promotion.

The petition is thus allowed in terms as aforesaid with no orders as to costs.

(B.N.CHATURVEDI)
JUDGE

(S.L.BHAYANA)
JUDGE

FEBRUARY 19, 2009

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