

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 1857/2011 & CM APPLNo.3965/2011

Reserved on: October 17, 2011

Decision on: November 8, 2011

CHARANJIT LAL KHATRI

..... Petitioner

Through: Mr. V.K. Rao, Senior Advocate
with Mr. Sudeep Dey, Advocate.

versus

SECRETARY GENERAL, RAJYA

SABHA SECRETARIAT AND ORS.

..... Respondents

Through: Mr. J.P. Sengh, Senior Advocate
with Ms. Zubeda Begum, Mr.
Sumeet Batra and Ms. Ankita
Gupta, Advocates.

CORAM: JUSTICE S. MURALIDHAR

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

JUDGMENT

08.11.2011

1. The Petitioner, who retired as Assistant Director (E&T) from Rajya Sabha Secretariat, the Secretary General of which has been arrayed as Respondent No. 1, has in this writ petition sought the expunging of certain adverse remarks in his Annual Confidential Report ('ACR') for the period from 1st August to 31st December 2007. The petition also seeks the quashing of an order dated 28th April 2010 passed by the Rajya Sabha Secretariat communicating to the Petitioner the gradings in his ACRs for the years 2005, 2006, 2007 (August-December) and 2008 which were below the prescribed benchmark of 'very good' required for his next

promotion as Deputy Director (E&T). The petition further seeks a direction to the Respondents to promote the Petitioner as Deputy Director (E&T) with effect from 1st October 2010 or 1st February 2011 when his junior was promoted.

2. The Petitioner joined the Rajya Sabha Secretariat on 9th July 1987 on the post of Translator in the grade of Rs. 550-900/- revised to Rs. 7450-11500. Subsequently, he was promoted to the post of Assistant Editor in the grade of Rs. 8000-13500 on 1st April 1997 after rendering about ten years of service.

3. On 30th June 1994 the Rajya Sabha (Recruitment and Conditions of Service), Rules 1957 [‘Rules’] were amended. In terms of the amendment, in the Editorial Cadre the post of Translator was to be filled up by way of direct recruitment and the essential qualification for the post was a Master’s degree in English or Hindi, experience of technological work in Hindi and ability to translate. The next promotional post was Assistant Editor which was to be filled up 100% from amongst Translators who had completed five years’ service, failing which by direct recruitment. The next promotional post was Editor which was to be filled up 100% from amongst Assistant Editors who had completed three years’ service. The next promotional post was Senior Editor which was to be filled up by selection from the grade of Editor with a minimum of three years’ service as Editor or combined five years’ service in both grades of Assistant Editor and Editor. The next promotional posts were of Chief Editor and Director.

4. All the services and cadres governed by the Rules were re-structured by an order dated 25th June 2007 issued by the Rajya Sabha Secretariat.

There were amendments made in the Editorial and Translation (E&T) Services. The post of Assistant Editor was re-designated as 'Editor', the post of Editor was re-designated as 'Assistant Director (E&T)', the post of Senior Editor was re-designated as Deputy Director (E&T), the post of Chief Editor was re-designated as 'Joint Director (E&T)' and the post of Principal Chief Editor was re-designated as 'Director (E&T)'.

5. The Petitioner states that in the years 2007-08 he was working under one late Mr. Jagjit Singh who was his Reviewing Officer and who, according to the Petitioner, was biased against him since the Petitioner had pointed out certain irregularities in the translation made by Mr. Jagjit Singh in the year 2002 when he was the Editor in charge. It is alleged that in the year 2005 Mr. Jagjit Singh refused to sanction leave to the Petitioner on the occasion of the marriage of his daughter as well as on the occasion of sickness of his wife. Ultimately his leave was got sanctioned by the senior most officer in the E&T service. The Petitioner made representations on 17th March, 18th March, 26th April and 26th June 2008 to the Deputy Director (E&T), Rajya Sabha Secretariat about the reluctance of Mr. Jagjit Singh to sanction him leave.

6. On 16th July 2007, ten officers were promoted from the post of Executive Officer to the posts of Deputy Director. According to the Petitioner, these officers had not served the requisite number of years in the feeder grade as provided in the Rules. Against the adverse entries made in his ACR for the period from 1st August to 31st December 2007, and the overall grading of 'poor', the Petitioner submitted a representation on 2nd April 2008. By an Office Memorandum ('OM') dated 17th June 2008 the Rajya Sabha Secretariat informed him that his representation had been rejected. Thereafter, he filed an appeal. By an order dated 2nd March

2009 he was informed that it had been decided that adverse entries made against Serial Nos. 14 (ii), 18 (v), 21, 24 and 25 (a) were expunged. However, after consideration of other relevant factors, it was decided by the Respondents that the entries made in Serial Nos. 11, 12, 14 (iv), 15, 17, 18 (i), (ii) & 25 would remain in the Petitioners' ACR for the period from 1st August to 31st December 2007. On 16th March 2009 the Petitioner made a further representation reiterating his request for expunging the remaining adverse entries as communicated to him by a letter dated 2nd March 2009. Meanwhile, the Petitioner made an application under the Right to Information Act, 2005 ('RTI Act') seeking to know the rule position regarding the sending of an email directly to Secretary, General of Rajya Sabha Secretariat. In response thereto, he was by letter dated 19th October 2009 giving point-wise information as provided by the Personnel Section. *Inter alia* it was informed that there was a criteria for *in-situ* promotion of Assistant Director (E&T) to the grade of Deputy Director (E&T). Much of the information sought in relation to the *in-situ* promotion were refused by stating that 'the information requested for is not available in material form.'

7. On 17th February 2010 the Petitioner made a representation to Respondent No. 1 pointing out that a post of Joint Secretary (E&T) has become vacant since 1st February 2010 on the retirement of the incumbent. The post of Director (E&T) has also become vacant on the death of Mr. Jagjit Singh and the senior-most official in the immediate lower grade was likely to become eligible for promotion to the grade of Director (E&T). It was pointed out that if the service of the two *in-situ* Deputy Directors in E&T service were regularized, then it would address the problem of acute stagnation being faced by the senior-most Assistant Directors in the E&T service to some extent. Further representations made

in the same vein on 21st April, 7th May, 20th October, 2010, 6th January, 7th January, 14th February and 15th February 2011.

8. The Petitioner states that he was surprised to receive a letter dated 28th April 2010 on 6th May 2010 where for the first time he was informed by the Respondents that his grading in the ACRs for the years 2005, 2006, 2007 (August to December) and 2008 were below the prescribed benchmark of 'very good'. He submitted a reply on 7th May 2010. When the Petitioner became eligible for consideration for promotion to the post of Deputy Director on 1st August 2010 as per the conditions *in-situ* scheme no steps was taken by the Respondents. His junior Mrs. Punam Sahni was promoted as Deputy Director (E&T) on 24th February 2011. With the Petitioner due to retire on 30th April 2011 he submitted a representation on 24th February 2011 seeking *in-situ* promotion. However, no action was taken thereon. Thereafter, the Petitioner filed the present petition on 17th March 2011.

Pleadings

9. One of the points urged by the Petitioner is that his Reviewing Officer for the period 1st August 2007 till 31st December 2008 was late Mr. Jagjit Singh who was biased against him since the Petitioner had complained about his irregularities much before the writing of the ACRs. Late Mr. Jagjit Singh refused to sanction leave to the Petitioner on account of his daughter's marriage and leave for that purpose was finally sanctioned by the superior authority. The Petitioner therefore submits that the adverse entries were made *malafide* and ought to be expunged. Referring to the decision of the Supreme Court in ***Dev Dutt v. Union of India (2008) 8 SCC 725***, it is submitted that the Petitioner ought to have been communicated much earlier about his ACRs being below the benchmark

for the purposes of *in-situ* promotion as Deputy Director (E&T). The Petitioner has cited instances of certain other officers who were promoted as Deputy Directors without considering their eligibility as per the recruitment rules. The Petitioner states that his ACRs for the years subsequent to 2008 have been very good.

10. In the reply filed by the Respondents, it is pointed out that prior to the Office Memorandum (OM) dated 13th April 2010 only adverse remarks in the ACR had to be communicated to the concerned officer. Thereafter, wherever the ACR contained a grading below the benchmark for promotion to the next post it would be communicated to the officer. It is pointed out that the Petitioner's grading for the year 2005 was 'fair' and 'good', 'good' for 2006, 'poor' for 2007 with adverse remarks for the period from 1st August to 31st December 2007, and 'good' for the year 2008. The DPC which met on 4th November 2010 did not find the Petitioner fit for *in-situ* promotion as Deputy Director (E&T) since he did not fulfil the requisite benchmark of 'very good' in the previous five years. Further, it is pointed out that the Petitioner's representation dated 7th May 2010 was sent to the reporting/reviewing officer for their comments. Thereafter, the competent authority by an order dated 12th October 2010, taking all aspects of the matter into consideration, decided not to interfere with the grading given to the Petitioner. The position remained unchanged at the subsequent DPC meeting held on 31st January 2011. When the DPC met on 30th April 2011 it deferred the proceedings since the Petitioner's ACR for the year 2010 was not available. Thereafter, after the said ACR become available, the DPC convened another meeting on 11th February 2011. In view of the adverse entries in the ACR of 2007 and the below benchmark grading in some other years (2005 to 2008) his overall performance, even after taking into account his

ACR for 2010, could not make him eligible for consideration for promotion to the grade of Deputy Director (E&T). Consequently, the DPC did not recommend the Petitioner's *in-situ* promotion as Deputy Director. Since Mrs. Punam Sahni fulfilled the requirement she was promoted as such. The Respondents also disputed that the Petitioner's averment that he had had an unblemished record. Reference is made to the advisory note issued on 9th April 1991 issued to the Petitioner for improving his quality of his work; an advisory note issued on 16th July 1999 about his requiring to work hard to attain the satisfactory level of working; an advisory note on 18th February 2002 issued for improvement and punctuality in attendance; adverse entries in the ACR for 2001; a warning issued on 30th July 2002 for incorrect translation/vetting of unstarred question; an advisory note issued on 21st February 2003 for improvement of punctuality and maintaining discipline and adverse entries for the ACRs for the year 2002. It is pointed out that the advisory note and the adverse entries in the ACRs for the period from 1991 to 2007 were written by a number of officers under whom the Petitioner worked and not late Mr. Jagjit Singh alone.

11. Along with his rejoinder, the Petitioner placed on record a comparative chart of the remarks in his ACRs during the years 2006 to 2010. The Petitioner points out that the Respondents were required to consider only the past five years' ACRs, i.e., from 2006 onwards whereas the Petitioner's ACR for the year 2005 has also been wrongly considered. In the first half of 2005 although the Petitioner was awarded the grade 'good' by the reporting officer, the reviewing authority without any valid reason down-graded it to 'fair'. According to the Petitioner, for the period from 2005 to June 2006 the remarks of 'excellent' given in the ACR were arbitrarily down-graded by the reviewing authority Mr. P.P. Kaushik, the

then Joint Director, on the persuasion of Mr. Kathuria and late Mr. Jagjit Singh who were his good friends. According to the Petitioner the Rajya Sabha Manual of Office Procedure 2002 under point (vii) provides that for promotion up to but excluding the pay scale of Rs. 3,700-5,000 (pre-revised) the benchmark is good and in respect of a post of a higher grade the benchmark is 'very good'. For the post of Under Secretary/Senior Editor/Deputy Director which was in the pay scale of Rs. 3,500-5,000 the benchmark was 'good'. According to the Petitioner the revised pay scale with effect from 1st January 1996 placing the Under Secretary/Senior Editor in the corresponding pay scale of Rs. 12,000-16,500 would not affect the benchmark which remained as 'good'. The Petitioner submits that he was unfairly discriminated *vis-a-vis* one Mr. Jugal Kishore, Assistant Director who despite being junior was promoted as Deputy Director by down-grading the post of Joint Secretary which was lying vacant. The Petitioner in his rejoinder points out that the benchmark of very good only to Deputy Director in the pay scale of Rs. 12,000-16,500 whereas the Petitioner being Assistant Director was equal to the post of Under Secretary. The Petitioner has placed on record a comparative chart which shows the minimum bench mark for promotion in the Government of India, the Lok Sabha Secretariat and the Rajya Sabha Secretariat. This shows that in the pre-revised pay scale of Rs. 3,500-5,000 revised to Rs. 10,000-15,200 in the Government of India, and 3,500-5,000 in the Lok Sabha revised to Rs. 12,000-16,500 the benchmark was only 'good' whereas for posts in the same pay scale in the Rajya Sabha, the benchmark was 'very good'.

12. When the case was heard on 26th September 2011 Mr. J.P. Singh, learned Senior counsel appearing for the Respondents sought and was granted permission to file a further affidavit in response to the points

urged in the rejoinder affidavit. Pursuant thereto the Respondents filed an additional affidavit on 14th October 2011 clarifying that as per para 5.8.1 of Sectional Manual of Office Procedure, 2010 the benchmark for promotion to posts carrying a grade pay of Rs. 7,600 was 'very good'. Therefore, the benchmark for promotion to the post of Deputy Director (E&T) in the Rajya Sabha Secretariat was 'very good' on the relevant date when the Petitioner's case was considered by the DPC. The Respondents contend that the DPC makes its own assessment on looking into various entries in the ACR and does not necessarily have to accept the grading given by the reporting/reviewing officer.

Submissions of Counsel

13. Mr. V.K. Rao, learned Senior counsel appearing for the Petitioner points out that there are two distinct issues that arise for consideration in the present case. He submits that the first concerns the adverse entries in the Petitioner's ACR for the period 1st August to 31st December 2007. The second issue concerns the below benchmark entries for the years 2006 and 2008. He submits that a comparison of the entries of these years with the corresponding entries for the subsequent years, i.e., 2009 and 2010 shows that the adverse entries were not justified. Also some of the remarks for the entries in 2008 did not stand to reason and did not justify a lower grading of 'good' while for the subsequent years the remark for these very entries was 'very good'. He submits that the matter should be placed before the appropriate Authority in the Rajya Sabha Secretariat to review the ACRs for this period. It is submitted that the grading of 'poor' for the period 1st August to 31st December 2007 and the grading 'good' for the year 2008 was only on account of the bias harboured against the Petitioner by late Mr. Jagjit Singh who was his reviewing officer and, therefore, these entries should be expunged. Although the Petitioner's representation

did result in expunging some of the adverse entries in the ACR for the period from 1st August to 31st December 2007, the overall grading was allowed to be retained as 'poor'. On the issue of reconsideration of the Petitioner's case for promotion as Deputy Director, Mr. Rao submits that the case must be placed again before the DPC after the ACRs are reviewed for the above years.

14. On behalf of the Respondents, Mr. J.P. Singh, learned Senior counsel points out that the scope of judicial review in the matter is limited. He submits that the court will normally not sit in appeal over the subjective assessment of the work of a subordinate officer unless it is shown to be vitiated by *malafides*. The case of *malafides* against late Mr. Jagjit Singh was not even *prima facie* made out in light of the fact that the Petitioner's lower grading of 'good' for the year 2006 was given when his reviewing officer was Mr. P.P. Kaushik. The allegation that Mr. Kaushik was influenced by late Mr. Jagjit Singh was a sweeping one without any basis. The DPC had gone strictly by the applicable circulars and rules and, therefore, its decision that the Petitioner was not fit for *in-situ* promotion did not call for any interference.

ACR for the period 1st August to 31st December 2007

15. The first issue concerns the entries in the Petitioner's ACR for the period 1st August to 31st December 2007. His reporting officer was one Mr. Om Prakash, Deputy Director and the reviewing officer was late Mr. Jagjit Singh, Joint Director. The remarks in the ACRs as originally recorded by the reviewing officer in serial Nos. 11, 12, 14, 15, 17, 18, 21, 24, 25 and 26(a) & (b) read as under:

“11. Does the Reporting Officer : Partly agrees. His level of agree with all that is work performance and recorded under Part II by punctuality in attending

- the Officer? If not, enumerate precisely the extent of disagreement with reasons therefor
- office has not been satisfactory.
12. State of Health : He takes leave on medical ground particularly during Parliament period.
14. Proficiency in interpretation/ability in translation, revision and editing : Short
- (i) Coverage : Short
- (ii) Accuracy : Poor
- (iii) Style : General
- (iv) Command on language : Not up to the level required in the Section
- (v) Voice : N.A.
15. Degree of intelligence and general knowledge : His level of intelligence and general knowledge is below normal.
17. Punctuality in attendance : He was not punctual in attendance.
18. Comment clearly in unambiguous terms on the following attributes of the Officer in relation to his performance
- (i) Commitment to the task assigned : His commitment to the task assigned was not up to the mark.
- (ii) Devotion to duty : His devotion to duty was below normal level.
- (iii) Human relations (his conduct his colleagues, superiors and subordinates) : He maintained satisfactory relations with his colleagues
- (iv) Public relations : He maintained good public relations.
- (v) Intellectual honesty, creativity and innovative qualities : He takes no interest in learning new devices and adopting innovations.

- (vi) Integrity : His integrity is of normal level.
21. Please indicate if any of the items in this part the Reporting Officer administered any written or oral or counselling warning/reprimand and how the officer reacted thereafter : The officer was advised and given warning through the Section In charge for improving his work performance and to be punctual. No improvement has been observed.
24. Is the Officer reported upon specially suited for any particular job? If so, the nature of placement should be suggested : Seldom takes any job or responsibility seriously.
25. Aptitude and potentials of the Officer reported upon and suggestion for possible lines of growth and development : Escaping work
26. (a) Overall assessment of performance and qualities : Lacks commitment to the task assigned. Lacks devotion to duty. No leadership quality often remains on leave on medical ground which raises doubts about his being fit for job. Does not use his potential. Poor in punctuality. No interest in learning and application of new techniques.
- (b) Grading : Poor”

16. When the Petitioner’s representation dated 2nd April 2008 was rejected by the Respondent Rajya Sabha Secretariat on 17th June 2008, the Petitioner preferred an appeal which was disposed of by a memorandum dated 2nd March 2009 issued by the Director. He was informed that it had been decided that the entries against Serial Nos. 14(ii), 18(v), 21, 24 and 26(a) had been expunged. However, the entries against clauses 11, 12,

14(iv), 15, 17, 18(i), (ii) and 25 remained. It was sought to be pointed out by Mr. Rao that there was no logical purpose in not expunging the adverse entry against Serial No. 14(iv) which states that his command on language “not up to the level required in the Section” while the adverse remark of ‘poor’ as regards ‘accuracy’ was expunged. Likewise entry against Serial No. 18(v) which states that “he takes no interest in learning new devices and adopting innovations” has been expunged but the entry against Serial No. 18(i) that “his commitment to the task assigned was not up to the mark” was retained. The entry against Serial No. 18(ii) which stated that his devotion to duty was “below normal level” was retained. In other words, it was submitted that the retention of some of the adverse entries was inconsistent with the expunction of certain other adverse entries during the above period. Finally, it was submitted that in light of the expunction of some of the adverse entries the overall grading in Serial No. 26 (b) could not remain as ‘poor’.

17. The fact remains that the overall assessment of the performance and qualities as noted against in Serial No. 26(a), viz., that the Petitioner lacked commitment to the task assigned; lacked devotion to duty; had no leadership qualities; does not use his potential etc. have all been expunged. The adverse entry at Serial No. 26(a) had in fact summarized some of the adverse entries against Serial Nos. 14(iv), 18(i) & (ii), 15, 17 and 25. If the adverse remarks against Serial No. 26(a) have been expunged it is indeed illogical that some of the adverse entries in the above Serial Nos. have been retained. Also the retention of the overall grading as ‘poor’ in Serial No. 26 (b) is inexplicable. While, this Court will not sit in appeal over the decision of the reviewing officer or the appellate authority on the entries against the Serial Nos., it is plain that there is an obvious error in retaining the overall grading for the period 1st

August to 31st December 2007 as ‘poor’ even while expunging the adverse entries in Serial No. 26(a). However, what other appropriate overall grading should be given is for the concerned authority to decide. Consequently, as regards the ACR for the period 1st August to 31st December 2007, this Court directs the entire matter to be placed before the appropriate Authority of the Rajya Sabha Secretariat for a fresh decision as to what the overall grading should be considering that many of the adverse remarks, as noticed hereinbefore have, by the memorandum dated 22nd March 2009, been asked to be expunged. Further, considering that the overall grading of the Petitioner for the period 1st January 2007 to 31st July 2007 is ‘very good’, a decision will be taken as to what the overall grading for the entire year 2007 should be. This disposes of the first issue.

Below benchmark grading for 2006 and 2008

18. The annexure to the additional affidavit filed by the Respondents is an extract from the Sectional Manual of Office Procedure, 2010. It makes it clear that the benchmark for promotion to the post/grade carrying a grade pay of Rs. 7,600 and above is ‘very good’. Para 5.9.1(ii) also makes it clear that for the purposes of promotion to the next higher post, the ACRs of the preceding five years in respect of all officers have to be scrutinized. Therefore on these two aspects, there can be no dispute.

19. In ***Dev Dutt v. Union of India*** the Supreme Court had explained that non-communication of not only an adverse entry but even a below benchmark entry in the ACR to the concerned employee would be violative of principles of natural justice. It is thereafter that the Respondents issued a circular whereby communication of below benchmark entries to the employees was made mandatory. In view of the

changed legal position resulting from the decision of the Supreme Court in *Dev Dutt v. Union of India* the Petitioner was communicated the below benchmark entry in the ACRs for the years 2005, 2006 and 2008. The adverse entries for the period from 1st August to 31st December 2007 were already communicated to the Petitioner against which he gave a representation on 2nd April 2008.

20. As regards the below benchmark entries for the year 2008, this Court is not inclined to interfere for more than one reason. The grading of 'good' is not really an adverse entry; it is a below the benchmark entry. Interfering with such a grading at this stage after the Petitioner has superannuated is really not called for particularly since it is not going to change the Petitioner's prospects for promotion as Deputy Director. Even if the Petitioner's grading for 2008 is upgraded to 'very good' for both halves, he would does not have the benchmark grading of 'very good' for the year 2006. Even for 2007 only the grading in the first half is 'very good'. Even if the grading for the second half of 2007 on review is upgraded, the Petitioner would still not have the benchmark grading of 'very good' for all the five preceding years, i.e., 2006 to 2010. This would make him ineligible for consideration for promotion as Deputy Director (E&T).

21. In that view of the matter, it is not necessary to examine the plea of *malafide* raised by the Petitioner against late Mr. Jagjit Singh, who in any event has expired. Further the plea is relevant only for the years 2007 and 2008 and not 2006 for which year in any event the Petitioner has a below benchmark grading. The reviewing authority for 2006 was Mr. P.P. Kaushik and there is no specific allegation of bias against him except stating that he was friend of Mr. Jagjit Singh. That is too vague an

allegation to merit any serious consideration.

22. For all of the aforementioned reasons, this Court is not persuaded to interfere with the Petitioner's grading in the ACRs for the years 2006 and 2008. This Court is also not persuaded to direct that the Petitioner's case for promotion as Deputy Director (E&T) should be placed before the appropriate Authority of the Rajya Sabha Secretariat for reconsideration.

Directions

23. Consequently, the only relief that the Court is prepared to grant is to direct the Respondent Rajya Sabha Secretariat to take a fresh decision on the Petitioner's overall grading in the ACR for the period 1st August to 31st December 2007, and his overall grading for the entire year 2007, in light of the present judgment. Such decision will be taken by the Rajya Sabha Secretariat within a period of eight weeks from today and communicated to the Petitioner within a week thereafter.

24. With the above directions, the writ petition and pending application are disposed of, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J

NOVEMBER 8, 2011

rk/ak