

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.08.2012

+ W.P.(C) 2535/2011

INDIAN COUNCIL OF AGRICULTURAL RESEARCH & ANR
... Petitioners

versus

DR. J.P. SHARMA

... Respondent

Advocates who appeared in this case:

For the Petitioner	: Mr Sanjay Kumar Singh for Mr Gagan Mathur
For the Respondent	: Mr Padma Kumar S with Mr K.K. Mishra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order dated 13.07.2009 passed in O.A. No.1564/2008 by the Central Administrative Tribunal, Principal Bench, New Delhi. The petitioner is also aggrieved by the order dated 10.09.2010 passed by the said Tribunal in R.A. No.245/2010 whereby the petitioner's review application was dismissed.

2. The respondent Dr J.P. Sharma was a Senior Scientist working with Indian Agricultural Research Institute (IARI) which functions under the Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi. The said respondent had joined the IARI in 1980 as a Scientist and having obtained the Ph.D. degree was promoted and became a Senior Scientist in the pay scale of `12000-18300 w.e.f. 01.07.1996.

3. Recommendations had been made by the VIth Central Pay Commission which included a recommendation for Career Advancement. Thereafter, a scheme for Career Advancement of Agricultural Research Services (ARS) scientists under ICAR was brought out by the Government by letter dated 19.07.2000 w.e.f. 01.01.1996. The criteria for promotion of Senior Scientist to the post of Principal Scientist in the pay scale of `16400-22400 included completion of 8 years of service as well as contribution in the field of research and academics. The promotion had to be treated as personal regardless of the existence of sanctioned posts. That being the case, the applicant who had completed 8 years of service on 30.06.2004 was eligible to be considered for promotion as Principal Scientist.

4. The promotion to the position of Principal Scientist, under the said

scheme was to be done on the recommendations of the ASRB (Agricultural Scientists Recruitment Board) on the basis of a marking scheme whereby a maximum of 60 marks were to be awarded for research potential; 30 marks (max) for confidential reports and 10 marks (max) for the interview, thereby totaling 100 marks (max). The break-up of the marking scheme was as under:-

“	Item	Score
(a)	Research Potential - 60 (which should be graded as	
	(i) Specific Achievement - 30	
	(ii) Publication - 20	
	(iii) Participation in Seminar etc - 05	
	(iv) Awards/distinction - 05	
(b)	Confidential Reports - 30 (For last 8 years on the scale of outstanding-4, Very Good-3, Good-2, Average-1)	
(c)	Interview - 10	
	Total Score - 100”	

5. The respondent was considered for promotion to the level of Principal Scientist on 11.08.2005. However, by a letter dated 27.09.2005

he was informed that he was not granted the said promotion. Subsequently by a communication dated 19.03.2007 he was informed that the overall grading in his ACR for the period 01.04.2005 to 31.03.2006 was 'average' and this was being communicated to him to enable him to improve his grades but that no representation would be entertained. Despite this, the respondent sent a representation dated 01.06.2007 followed by another one of 19.06.2007 and submitted that the "below benchmark" ACRs which have not been communicated should not be taken into account and a review DPC should be convened to reconsider his promotion. Subsequently, by a letter dated 18.10.2007 the respondent was informed that it was not correct to say that his promotion had not been recommended by the ASRB on account of the 'average' ACR but that his marks for research potential and personal interview were also taken into consideration and because he did not secure the minimum qualifying marks of 75, he was not promoted.

6. The marks obtained by the respondent were as under:-

Research Potential	-	33
ACR	-	14
Personal Interview	-	05
Total	-	52

7. Thus, the respondent had obtained 52 marks out of marks of 100

when he was required to reach the minimum marks of 75 for the purpose of promotion to the grade of Principal Scientist under the Career Advancement Scheme.

8. After considering the arguments advanced by the learned counsel for the parties on both sides, the Tribunal came to the conclusion and issued the following directions:-

“13. In view of the above, we direct the respondents to take up the case of the applicant for selection against the subsequent year for promotion as Principal Scientist under the Career Advancement Scheme. They shall communicate to him the gradings below the benchmark that may have been awarded in the ACRs that are to be taken into consideration for the purpose. After the representation, if any, received within the time stipulated has been decided, the case of the applicant for promotion as Principal Scientist shall be considered and orders passed by the competent authority at the earliest. This exercise be completed preferably before the superannuation of the applicant but not later than three months from the date of receipt of a certified copy of this order. In case the applicant is granted promotion, the consequent service and monetary benefits as well as arrears of the retiral dues shall be extended to him accordingly.”

9. The learned counsel for the petitioner submitted before us that since the respondent had not been ‘eliminated’ from consideration, there was no question of communication of the so-called ‘below benchmark’ ACRs to

the respondent and, therefore, the ratio of the Supreme Court in **Dev Dutt v. Union of India & Ors.:** (2008) 8 SCC 725 would not apply to the facts of the present case.

10. We have examined the decision of the Supreme Court in the case of **Dev Dutt** (*supra*). The following observations of the Supreme Court are relevant:-

“13. In our opinion, *every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not.* Even if there is no benchmark, non-communication of an entry may adversely affect the employee’s chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a “good” or “average” or “fair” entry certainly has less chances of being selected than a person having a “very good” or “outstanding” entry.

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17. In our opinion, *every entry in the ACR* of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the

assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principles of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.”

11. It is apparent from the above extracts that not just ‘poor’ or ‘adverse’ entries but every entry relating to an employee under the State or an instrumentality of the State must be communicated to him, within a reasonable time and it makes no difference whether there is a benchmark or not.

12. The learned counsel for the petitioner has contended, as noted above, that since there was no benchmark prescribed and that the respondent had not been ‘eliminated’ because of his ‘average’ ACR, the ratio in *Dev Dutt* would have no application and there was no need to communicate the said

ACR to the respondent. We cannot agree with this submission made by the learned counsel for the petitioner. It must be seen that although there is no benchmark prescribed insofar as the ACRs are concerned, the fact that the ACRs themselves have been considered and marks have been awarded on the basis of whether the ACRs were 'outstanding', 'very good', 'good' or 'average', the ACR would definitely have a bearing on the total marks which a candidate would receive. In the present case, we find that ACRs which are considered to be as 'outstanding' are given 4 marks, ACRs which are 'very good' are given 3 marks, 'good' ACRs are given 2 marks and 'average' ACRs are given 1 mark. Any ACR whether it is 'outstanding', 'very good', 'good', or 'average', even if there is no benchmark, contributes to the total under the heading of ACR and, consequently, towards the total marks that are awarded to an applicant by the ASRB. Therefore, the marks awarded in the ACR have a definite bearing on the recommendation made by the ASRB for promotion of a candidate to the position of Principal Scientist.

13. It was next contended by the learned counsel for the petitioner that in the year in question, the respondent had obtained 14 marks under the head of ACR and a total of 38 marks for research potential and personal

interview. Thus, even if the maximum mark of 30 were added to the figure of 38, the applicant would still only get 68 marks which was below the minimum requirement of 78 marks. Therefore, according to the learned counsel for the petitioner the direction given by the Tribunal with regard to the communication of the below benchmark ACRs was of no consequence. This argument is not tenable and we agree with the learned counsel for the respondent that the direction that has been given by the Tribunal is to consider the case of the respondent for selection against a 'subsequent' year for promotion as Principal Scientist under the Career Advancement Scheme. It is quite possible that in the subsequent year the respondent gets an entirely different set of marks under the categories of research potential and personal interview and, therefore, the marks that he would obtain in the ACR would definitely be material.

14. From the impugned order we find that the ASRB convenes twice in a year. Therefore, we consider it appropriate to hold that the directions given by the Tribunal with regard to consideration of the respondent's case should be put up before the next meeting of the ASRB, which would, in any event, not be beyond six months because it convenes twice a year.

15. Consequently, in all other respects, we see no reason to interfere with

the direction given by the Tribunal. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

AUGUST 17, 2012
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