

Court No. - 6

Case :- WRIT - A No. - 2837 of 2024

Petitioner :- Bhagat Singh

Respondent :- State Of U.P Thru. Prin. Secy. Divyangjan Sashaktikarn Vibhag Lko. And 3 Others

Counsel for Petitioner :- Brijesh Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner as well as Ms. Deepsikha, learned Chief Standing counsel appearing for all the respondents.
2. With the consent of learned counsel appearing for the contesting parties, the writ petition is finally being decided.
3. Learned counsels for the parties state that the facts of the case have already been set forth in detail in the orders dated 09.04.2024 and 24.04.2024.
4. For the sake of convenience, the orders dated 09.04.2024 & 22.04.2024 are reproduced below:

The order dated 09.04.2024 reads as under:

"1. Heard.

2. The contention of learned counsel for the petitioner is that in terms of the Government Order dated 04.06.2009, a copy of which is Annexure-12 to the writ petition, as the petitioner has been awarded by the State Government as Best Handicapped Employee consequently he would be entitled for extension of service by two years. The said Government Order also provides for grant of an additional increment as a personal pay to the employee concerned.

3. As the petitioner was due to retire on attaining the age of superannuation 31.03.2024 and was also not given the additional increment consequently he staked his claim for being given the said benefits of which extension of service has been turned down by means of order dated 26.03.2024, a copy of which is Annexure-1 to the writ petition, on the ground that the petitioner does not have an outstanding service record for the purpose of extension of service as categorically provided in

paragraph 2 of the Government Order dated 04.06.2009.

4. *Learned Standing Counsel prays for and is granted a week's time to seek instructions as to why the petitioner has not been given the benefit of an additional increment and as to what is found adverse in his service records as to entail the respondents to not grant extension of service to the petitioner in terms of the Government Order dated 04.06.2009. List thereafter as fresh."*

The order dated 22.04.2024 reads as under:

"1. Heard.

2. In pursuance to the order dated 09.04.2024, Ms. Deep Shikha, learned Chief Standing Counsel, states that she has received instructions dated 12.04.2024 from respondent no.2 per which so far as the claim of the petitioner for extension of service is concerned it has not been found feasible to extend the said benefit in terms of the Government Order dated 04.06.2009 as the petitioner is required to have outstanding service record but the petitioner was not having an outstanding service record for the period from 2001-2002 till 2020-2021 and consequently the petitioner has not been granted extension of service.

3. As regards non-grant of additional increment, again the service record does not entail the grant of said increment to the petitioner.

4. Responding to that learned counsel for the petitioner states that so far as the grant of additional increment is concerned, as per the Government Order dated 04.06.2009, copy of which is Annexure-12 to the writ petition, the said grant of additional increment is to be considered upon award at the State level itself and the petitioner having been granted the award on 03.12.2017 as per the certificate, copy of which is Annexure-4 to the writ petition, he should have been granted the additional increment in the year 2017-2018 itself.

5. So far as non-extension of service is concerned, the argument of learned counsel for the petitioner is that as the Government Order dated 04.06.2009 provides for extension of service upon the employee concerned having outstanding service record and the respondents have not granted the extension of service on the ground of the petitioner not having an outstanding service record from the period 2001-2002 till 2020-2021 although subsequent thereto from 2002-2003 and 2007-2008 for certain period the petitioner was having an outstanding service record and the said entries which were below 'outstanding' were not communicated to the petitioner which were required to be communicated keeping in view the judgment of the Hon'ble Supreme Court in the case of Dev Dutt vs. Union of India and others-(2008) 8 SCC 725 consequently the entries which are below 'outstanding' could not have been acted upon by the respondents in denying the extension of service.

6. Considering the aforesaid, let the learned Standing Counsel seek instructions as to whether the entries which were below 'outstanding' as awarded to the petitioner were ever communicated to him and if so, the dates when the said communication was made. Further instructions would also be obtained that when the Government Order dated 04.06.2009 itself provides for grant of an additional increment upon a State level award

being conferred on the employee concerned as to the impediment in the grant of additional increment which prima facie could have been granted to the petitioner in the year 2017-2018 itself.

7. Let the said instructions be obtained within two weeks. List thereafter as fresh."

5. From perusal of the aforesaid orders, it emerges that the claim of the petitioner for being granted the extension of service beyond his date of superannuation on 31.03.2024, i.e. for a period of two years, has been rejected by the respondents on the ground that the petitioner is not having outstanding entries in the service record which a *sin qua non* for grant of extension of service in terms of the Government Order dated 04.06.2009, a copy of which is annexure 12 to the petition. The claim of the petitioner for grant of additional increment has also been rejected.

6. The Court had required the learned Standing counsel to seek specific instructions.

7. Today, learned Chief Standing counsel on the basis of instructions states that (a) as the petitioner was not having outstanding entries for the period from 2001-02 till 2020-21 although, intermittently, for the period from 2002-03 and 2007-08 for certain period, the petitioner's entries were outstanding yet as an outstanding entry is required in order to get the benefit of the order dated 04.06.2009 i.e. for two years' extension in service, consequently, his claim has been turned down and (b) so far as non grant of additional increment to the petitioner is concerned, it is contended that as the petitioner never demanded the grant of additional increment, consequently, the said additional increment has also not been granted.

8. Learned Chief Standing counsel, as per her instructions, also states the entries which were below "outstanding" were not communicated to the petitioner. The said non-communication is

in terms of the rules namely Uttar Pradesh Government Servant (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matter) Rules, 1995 (**hereinafter referred to as "Rules, 1995"**) in which there is no provision for communication of all entries to the employee concerned and it is only entries which are poor or unsatisfactory which are required to be communicated.

9. With regard to non extension of service on the ground of the petitioner not having outstanding entries in the service record, learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of **Dev Dutt Vs. Union of India 2008 (8) SCC 725** to argue that the Apex Court has held that every entry should be communicated to the employee concerned and non communication of the entry, even though not *per se* adverse, would be unfair on the part of the respondents and hence, violative of the rules of natural justice.

10. So far as the demand not having been raised for grant of additional increment is concerned, learned counsel of the petitioner has placed reliance on the Government Order dated 04.06.2009 to indicate that no demand is required to be raised by the employee concerned and the additional increment should be granted to the employee upon receipt of the Best Handicapped Employee Award at the State level.

11. Heard the learned counsel for the parties and perused the record.

12. From a perusal of the record, it emerges that the Government Order dated 04.06.2009 has been issued pertaining to the extension of service by two years with respect to handicapped employees who are having an outstanding service record. The said government order also provides for grant of an

additional increment on receipt of a State certificate of the Best Handicapped Employee. Admittedly, the petitioner has been awarded by the State Government as the Best Handicapped Employee and a certificate dated 03.12.2017 has been issued, a copy of which is annexure 4 to the petition. However, he has not been granted the additional increment on the ground that he has not raised the demand for grant of the same. The extension of service has also not been granted to the petitioner after his retirement on 31.03.2024 on the ground that the petitioner does not have outstanding service record as has categorically been provided in the Government Order dated 04.06.2009.

13. From perusal of the record, it emerges that the petitioner was not having an outstanding service record for the period from 2001-2002 till 2020-21 although subsequent thereto from 2002-03 and in 2007-08, for a certain period, the petitioner was having an outstanding service record. Admittedly, the entries below "outstanding" have not been communicated to the petitioner as per the instructions as stated by the learned Chief Standing counsel.

14. The learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of **Dev Dutt (supra)**. This Court vide order dated 22.04.2024 has specifically indicated the reliance placed on the judgment of **Dev Dutt (supra)** and the learned counsel for the petitioner as well as learned Standing counsel were required to seek instructions.

15. Strangely, despite the aforesaid orders, today also, both the learned counsels for the contesting parties have continued to place reliance on the judgment of **Dev Dutt (supra)** without indicating the fact that subsequent to the aforesaid judgment of **Dev Dutt (supra)**, three Judges of Hon'ble Supreme Court in

the case of **Sukhdev Singh Vs. Union of India 2013 (9) SCC 566** have considered and reaffirmed the said judgment. Again, the Hon'ble Supreme Court in the case of **Pankaj Prakash Vs. United India Insurance Company Limited and Another 2020 (17) SCC 590** have considered both the judgments i.e. the judgments of **Dev Dutt (supra)** as well as **Sukhdev Singh (supra)**. No doubt the judgment of **Dev Dutt (supra)** has been affirmed in the case of **Sukhdev Singh (supra)** and followed in the case of **Pankaj Prakash (supra)** yet both the learned counsels for the contesting parties namely learned counsel for the petitioner as well as learned Chief Standing counsel had not even cared to indicate to the Court the aforesaid position of law. Both the learned counsels are required to be more careful in future.

16. Whether communication of all entries is required to be made is no longer *res integra* having been settled by the Hon'ble Supreme Court in the case of **Pankaj Prakash (supra)** wherein the Apex Court has held as under:

"7. While assessing the rival submissions, we must, at the outset, note that the law laid down by the two-Judge Bench of this Court in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] has been reaffirmed by three Judges in Sukhdev Singh [Sukhdev Singh v. Union of India, (2013) 9 SCC 566 : (2014) 1 SCC (L&S) 279] .

12. Admittedly, for one of the years under consideration (2011-12) for the promotional exercise for 2014-15, the appellant was graded a "B", while for the subsequent two years, he was graded an "A". Consequently, the fact that the appellant was given a lower grading for 2011-12 would materially affect whether or not he should be promoted from Scale III to Scale IV for the year in question. The non-communication of the entries is, therefore, a matter in respect of which a legitimate grievance can be made by the appellant, particularly having regard to the position in law laid down in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] and Sukhdev Singh [Sukhdev Singh v. Union of India, (2013) 9 SCC 566 : (2014) 1 SCC (L&S) 279] .

13. The next question to consider is the substantive relief which should be granted to the appellant. The promotional exercise of 2014-15 has been completed. The appellant has since been promoted in 2018. The ends of justice would be made if a direction is issued to the respondent to consider the representation, if any, that may be submitted by the appellant in

respect of the grading which was assigned to him for the relevant years which were taken into consideration during the promotional exercise for 2014-15.

14. We issue the following directions:

14.1. Within a period of one month from the date of receipt of a certified copy of this order, the respondent shall communicate to the appellant the uncommunicated entries in the APARs for the years which were taken into account for the promotional exercise of 2014-15.

14.2. Within a period of two months from the date of receipt of the above, it would be open to the appellant to submit his objections and representation to the respondent.

14.3. The representation shall be considered within a period of three months from the date of receipt of the representation.

14.4. Thereafter, based on the result of the decision, the competent authority shall take a decision on whether any modification in the decision for promotion from Scale III to Scale IV for 2014-15 in respect of the appellant is warranted.

14.5. In order to ensure that this exercise is carried out fairly, we direct that the competent authority shall ensure that the representation that is submitted by the appellant is placed before an authority at a sufficiently senior level to obviate any bias or injustice."

17. A perusal of the judgment of the Apex Court in the case of **Pankaj Prakash (supra)** indicates that the Apex Court has categorically held that every entry in the Annual Confidential Report of a public servant is to be communicated to him within a reasonable period so that he can make a representation for its up gradation. In the case of **Dev Dutt (supra)**, the Apex Court held that in its opinion, the communication of every entry would be the correct legal position even though there may be no rule / government order requiring communication of the entry or even if, there is rule / government order prohibiting it, because of principles of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in the opinion of the Apex Court requires the communication and that Article 14 will override all rules or government orders.

18. Incidentally, the entries which were below "outstanding" were not communicated to the petitioner as per the instructions

made available to the learned Chief Standing counsel. The said non-communication has been done as per the 1975 Rules in which there is no provision for communication of all entries to the employee concerned and it is only entries which are poor or unsatisfactory which are required to be communicated. The said argument is patently fallacious taking into consideration of the judgment of the Apex Court in the case of **Pankaj Prakash (supra)** wherein the Apex Court had held that all entries should be communicated to the employee concerned.

19. So far as the non grant of the additional increment to the petitioner is concerned, it is argued that as the petitioner did not raise any demand for the same, he was not granted the same. The said argument is patently misconceived inasmuch as Government Order dated 04.06.2009 does not provide anywhere that the employee concerned, who has been awarded by the State as the Best Handicapped Employee, should make a demand for the grant of additional increment as from the Government Order dated 04.06.2009 it flows out that the said additional increment has to be granted.

20. Keeping in view of the aforesaid discussion, the writ petition is **partly allowed**. The respondents are directed to grant the benefit of additional increment to the petitioner w.e.f. the date of the State Award to the petitioner dated 03.12.2017 considering the Government Order dated 04.06.2009 w.e.f. the date of government award.

21. The respondents are also directed to communicate all the entries to the petitioner within a period of six weeks from the date of receipt of the certified copy of this order. On the said entries being communicated, the petitioner may make a representation, if he so chooses, against the said entries within four weeks thereafter. The said representation will be decided

within next two months. In order to ensure that this exercise is carried out fairly, the Court directs that the competent authority shall ensure that the representation that is submitted by the petitioner is placed before an authority at a sufficiently senior level to obviate any bias or injustice. If the entries of the petitioner are upgraded to "outstanding", the respondents shall consider extension of service of the petitioner in terms of the Government Order dated 04.06.2009 with all consequential benefits.

22. The order impugned dated 26.03.2024 is **quashed** to the aforesaid extent.

Order Date :- 9.5.2024
S. Shivhare