

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.685 of 2019

Reserved on: 04.06.2026

Decided on: 29.07.2026

Uploaded on: 29.07.2026

Jai Ram Verma

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?¹ Yes

For the petitioner: Mr. Ramesh Kaundal, Advocate.

For the respondents: Mr. Amandeep Sharma, Additional Advocate General, for respondents No.1 and 2-State.

Mr. Vikrant Thakur, Advocate, for respondent No.3.

Respondent No.4 proceeded against ex-parte vide order dated 05.03.2019.

Jiya Lal Bhardwaj, Judge

The petitioner by way of present petition has prayed for the following substantive reliefs:

*"i) That this Hon'ble Court may kindly be pleased to quash the rejection letter **Annexure P/13** vide which representation Annexure P/9 was rejected by the Respondent No.1.*

ii) That this Hon'ble Court may kindly be pleased to quash the instructions issued by the Himachal Pradesh Government vide its letter No.Karmik(Ni-II)B(19)-7/91 dated 12-05-1992 (also incorporated in Hand Book on Personnel Matters Vol.I

¹ Whether reporters of Local Papers may be allowed to see the judgment?

as Annexure 16.32 at page 613), these instructions being unreasonable, arbitrary, unconstitutional and against the object of writing ACRs.

*iii) That the DPC proceedings held on 31-03-2008 **Annexure P/1** may kindly be quashed and Respondent No.1 to 3 may kindly be directed to hold review DPC assessing the suitability of the petitioner on the basis of average grading obtained considering available last five years available ACRs or to call for the ACR for the year from the Officer who has watched the performance of the petitioner for longer period (i.e. 8 months). The directions may kindly also be issued restraining the DPC down grading the ACR entry without complying to the rules of natural justice.*

iv) That the Respondents may kindly be directed to give all consequential benefits to the petitioner from the date his juniors have been given in case he is found fit for promotion by the review DPC including considering him for the next higher post of District Controller Food, Civil Supplies & Consumer Affairs."

2. The facts as emerge from the pleadings are that the petitioner was appointed as Sub Inspector in the year 1973 with the respondents-State and promoted as Inspector in the year 1982. The meeting of the Departmental Promotion Committee (in short "DPC") was held on 31.03.2008 in the office of respondent No.3 to fill up 10 posts of Food and Supplies Officers, out of which, 8 posts were reserved for General category and 2 posts for Scheduled Caste category. The DPC considered 24 General candidates for 8 posts of

General category and 4 candidates for Scheduled Caste category. After the meeting of the DPC, 3 persons junior to the petitioners were promoted as Food & Supplies Officers in the order of merit assigned wrongly in the DPC. The copies of the promotion orders were issued and one Raghuvir Singh and respondent No.4 were promoted to the posts of District Inspectors (now Food and Supplies Officers) as evident from Notification dated 13.06.2008 (Annexure P/3). The petitioner was promoted to the post of District Inspector, Food, Civil Supplies & Consumer Affairs after about three months vide Notification dated 09.09.2008 (Annexure P/4). As per the seniority list, the names of junior persons to the petitioner were at Sr. No.10, 11 and 14, whereas the petitioner was at Sr. No.8. When the aforementioned promotion orders were issued, the petitioner was posted at Pachhad Block of Sirmour District and the promotion order of the petitioner was issued separately and the copies of the promotion orders of his juniors were not endorsed to him and thus he had no knowledge of his supersession by his juniors. On the

promotion of the petitioner, his pay was drawn against the vacant post of Food & Supplies Officer in the Directorate of Food, Civil Supplies & Consumer Affairs and he was ordered to continue to hold the charge of the Inspector of Pachhad Block. It was only in June, 2010, when he was posted in the office of District Controller, Food, Civil Supplies & Consumer Affairs, Solan, he came to know that he has been superseded by his three juniors. The petitioner thereafter made enquiries at personal level as to how the petitioner was superseded by his three juniors but could not find satisfactory answer. Even respondents No.1 & 2 were not having the record/information as to on what basis the petitioner was superseded by his juniors and it was, only in reply to para 13(ii) of the earlier CWP No.5711/2011, it was stated that assessment/gradation of the ACRs of the petitioners for the year 2003-2004, in two DPC meetings held in the month of May, 2007 and 31.03.2008 was done in the HP Public Service Commission and no record was available with respondents No. 1 and 2. After knowing about the aforesaid fact, the

petitioner obtained the information under the Right to Information Act with his grading in different years given in the ACRs and from a perusal of the information supplied to him, it was revealed that he was given 'Very Good' for the year 2000-01, "Good" for the years 2001-02, 2002-03 and 2003-04, "Very Good" for the year 2004-05 and 'Excellent' for the year 2005-06. The ACR for the year 2006-07 was stated to be not available on 31.03.2008 when DPC met. The petitioner has been given grading of 'Very Good' in the ACRs for the year 2007-08, 2008-09 and 2009-10. It has also been averred that the ACR for the year 2006-07 was not available with the Department on the date of meeting of DPC held on 31.03.2008 and in its place the ACR of the year 2001-02 was considered. This has been done illegally. It has also been averred that in the DPC convened on 15.05.2007, the petitioner was assessed as 'Very Good' as evident from a perusal of Annexure of P-7. It has further been averred that ACR for the year 2006-07, the same was not only got written belatedly, but it was got written from the officer who was not

competent to write the same. The petitioner was not communicated about the ACRs and thus, the same could not have been considered by the DPC and the action on the part of the respondents in not communicating the same is illegal, arbitrary and unconstitutional. The petitioner cannot be made to suffer for the inaction on the part of the Department in not completing the ACRs.

3. The petitioner had earlier filed the writ petition bearing CWP No.5711 of 2011, which came to be disposed of on 03.08.2011, when a direction was given that in case no order has been made on the representation made by the petitioner dated 13.06.2011, respondent No.1 shall pass an order on the representation. After the direction given by the Court, respondent No.1 passed an order on 06.08.2011, rejecting the claim of the petitioner holding that when the petitioner was promoted on the basis of the recommendation of the DPC, he accepted the said order without any protest. The petitioner was well aware about the fact that three of his juniors had superseded him in the promotion and he did not

make any representation against the above recommendations of the DPC at that point of time. He has now preferred the representation at a belated stage against promotion of his juniors and thus rejected his representation.

4. The petitioner feeling aggrieved by the order dated 06.08.2011 (Annexure P-13) has challenged the same on the grounds *inter alia* that respondent No.1 had passed the order on the same date when he made the representation on 06.08.2011. There is no discussion as to from which rule or law the DPC drew the power to consider downgraded entries of ACRs for the year 2001-02 to 2003-04 to deny promotion or get the petitioner superseded by his juniors on the basis of such entries which were never conveyed to him. It is not known that where from the DPC drew power to downgrade the 'Excellent' ACR entries in the ACR for the year 2005-06 to 'Very Good' whereas 'Excellent' entry was recorded by the reporting officer on the basis of performance of the petitioner in that year in conducting record 531 inspections of various shops in his area against

the fixed target of 420 inspections. 'Excellent' entry in the ACR for the year 2005-06 was accepted by the Reviewing as well as Accepting Authority. Even the Head of Department (Accepting Authority) has no power to downgrade the entry of ACR without affording opportunity to the affected official. The order of rejection of representation made by the petitioner is bad in law and prayed to quash the same and further promote him from the date his juniors were promoted besides other reliefs.

5. Respondents No.1 and 2 filed reply to the petition and averred that the representation made by the petitioner has been decided after examining each and every issue given therein and also taking into consideration the oral as well as written arguments submitted by the petitioner. It has further been averred that the petitioner has prayed for quashing the proceedings of the DPC held on 31.03.2008 on the grounds that the DPC has wrongly assessed his ACRs and three of his juniors were wrongly placed above him in the merit list. In this respect, it has been submitted that the post of Food &

Supplies Officer is a selection post on which promotion is made on the basis of merit-cum-seniority. The DPC meeting convened on 31.03.2008 in the H.P. Public Service Commission had duly adopted the aforesaid selection criterion and based on the assessment/gradation of the ACRs, the persons junior to the petitioner superseded him in the merit list. On the basis of the recommendations by the DPC, two juniors to the petitioner were promoted on 13.06.2008 and one on 03.07.2008. The petitioner was promoted on 09.09.2008. The petitioner neither made any representation against the above promotion orders till a very long period of three years nor represented against the tentative seniority list of the Food & Supplies Officers, drawn on the basis of above promotion orders, as on 30.07.2009.

6. It has also been averred that the petitioner has no legitimate ground to challenge the order. The plea taken by the petitioner that he was not aware of the promotion of his juniors till June, 2010, is absolutely incorrect. The tentative seniority list of the Food and Supplies Officers, as on

31.07.2009 was drawn and circulated by respondent No.2 vide Memo dated 28.08.2009 for inviting objection, if any, from the concerned including the petitioner. In the seniority list, two juniors, i.e. Raghuvir Singh and respondent No.4, who were promoted earlier to the petitioner to the post of Food & Supplies Officers on merit basis, have been shown senior to the petitioner was shown at Sr. No.14 and 15 and the petitioner was shown at Sr. No.16. The petitioner did not make any objection against the above seniority list. The petitioner is trying to mislead this Court by concealing the facts that he was not aware of the promotion of his juniors till June, 2010. The plea taken by the petitioner that the downgraded ACRs were never conveyed to him is not right. The ACR downgraded from 'Very Good' to 'Good' in the succeeding year was not required to be conveyed to the petitioner. As per instructions of the Government only adverse entries made in the ACRs are conveyed to the official concerned. It has further been averred that due to non-availability of ACRs of the petitioner for the year, 2006-2007,

ACR for the year 2001-2002 was considered by the DPC in its meeting held on 31.03.2008, which was done in accordance with the instructions issued by the Himachal Government vide letter No.Karmik(Ni-II)B(19)-7/91 dated 12.05.1992 (as incorporated in Hand Book on Personnel Matters Vol.1 as Annexure 16.32 at Page-613). So far as the fact that the DPC in its meeting held in the month of May, 2007 for promotion to the posts of Food & Supplies Officers accepted the ACRs for the year 2003-04 of the petitioner as 'Very Good' and in the DPC meeting held on 31.03.2008, the same ACRs were accepted as 'Good', is concerned, it has been averred that the DPC was held in the HP Public Service Commission and entire record in that regard is with the Commission. The non-recording of the ACR of the petitioner for the year 2006-2007 was due to transfer of the petitioner from District Solan to District Sirmour at Nahan, where he remained under the control of two different authorities and due to this reason the ACRs could not be got written well in time. The gradation of the ACRs for the above two periods i.e. for the year 2006-2007

and ACR of 2001-02 will not make much difference. Hence the petitioner was given 'Good' in both the ACRs. It has been averred that the petitioner had already retired from Government service on 31.08.2011 before his fulfilling the eligibility condition for promotion to the post of District Controller, Food, Civil Supplies & Consumer Affairs. The respondents have not disputed the fact that the ACRs were not supplied to the petitioner.

7. Respondent No.3-Commission filed reply and averred that according to the Recruitment and Promotion Rules, the post of District Inspector, Food, Civil Supplies & Consumer Affairs being a selection post has to be filled on the basis of merit-cum-seniority from amongst the Inspectors having five years' service in the grade and the promotions to the said posts fall within the purview of the H.P Public Service Commission. The meeting of DPC for consideration of eligible 28 Inspectors (General-24 and SC-04) for promotion to 10 vacancies was convened on 31.03.2008 on the basis of proposal received from the Government (Department of

Food, Civil Supplies & Consumer Affairs) and on the basis of assessment of the said DPC, recommendations were made to the Government. The entries made in the ACRs of all the eligible officials including the petitioner, for five years from 2002-2003 to 2006-2007 (due to non-availability of ACR of petitioner for the year 2006-2007, his ACR for the year 2001-2002 was considered) against the vacancies available in the year 2008, assessed him as 'Good' on the basis of their considered judgment.

8. Respondent No.3-Commission also filed a short affidavit on 17.09.2025, taking the plea that the petition is barred by delay and laches because the present petitioner has assailed the DPC dated 31.03.2008, first time in CWP No.5711/2011. The petitioner had given first representation on 13.06.2011 against the DPC dated 31.03.2008, which is barred by delay of almost three years and the petitioner is silent on this account. It has been averred that the DPC was convened as per the Handbook on Personnel Matters and after scrutinizing the entire record pertaining to the meeting

of DPC held on 15.05.2007 along with ACRs of the relevant five years, it was revealed that the DPC had made following assessment/overall grading in respect of the petitioner as 'Very Good'. In the said DPC meeting, the petitioner was overall assessed as 'Very Good'. His three seniors were also assessed as 'Good' but in view of the instructions issued by the Government, he could not supersede them as the difference of length of service in the feeder grade between these officials was more than two years. Thereafter, the DPC was convened on 31.03.2008 and in the said meeting, the DPC assessed the petitioner as 'Good'. The petitioner was recorded as 'Very Good' in the DPC in its meeting held on 15.05.2007 as he was recorded as 'Very Good', three times making overall assessment 'Very Good' as per the prevailing instructions of the Government of Himachal Pradesh, whereas, he had been overall graded as 'Good' by the DPC held on 31.03.2008 as he had been assessed as 'Good' three times and 'Very Good' twice, making his overall assessment 'Good'. This difference in overall assessment/grading from

'Very Good' to 'Good' was due to his recording of assessment/grading for the year 2003-04 as 'Good' by the DPC having different Chairman & one Departmental Member.

9. The petitioner filed rejoinders to the replies filed by respondents No.1 and 2 and controverted the facts.

10. I have heard the learned counsel for the parties and also perused the record carefully.

11. It is not in dispute that the petitioner was not communicated about his ACRs. It is also not in dispute that the petitioner was senior to the persons namely Raghuvir Singh, Ramesh Chand and Tota Ram. It is also not in dispute that the petitioner in the earlier DPC convened on 15.05.2007 was assessed as 'Very Good'. A perusal of the promotion order issued in pursuance of the recommendations of the DPC when Raghuvir Singh and respondent No.4 were promoted, reveals that the copy of promotion order was not supplied to the petitioner. Even when the promotion orders were issued in respect of Tota Ram, Inspector, vide Notification dated 03.07.2008 (Annexure P-3), the same was

not communicated to the petitioner. It is only the Notification dated 09.09.2008 (Anexure P-4), when the petitioner was promoted, the same was addressed to him.

12. As per the tentative seniority list of Inspector Grade-I, Food & Supplies in the pay scale of Rs.5480-8,925, as on 01.07.2007 (Annexure P-5), the petitioner was at Sr. No.8 and Raghuvir Singh, respondent No.4 and Tota Ram were at Sr. No.10, 11 and 14, respectively. It has not been disputed by the respondents that when the private respondents were promoted and the petitioner was subsequently promoted, he was serving and posted at Pachhad Block of Sirmour District and the promotion order of the petitioner was issued separately.

13. Respondents No.1 and 2 have not placed on record any tangible material to suggest that the petitioner was made aware about the order of promotion of his juniors. The petitioner has averred in the petition that it is only in June 2010, when he was posted in the office of District Controller, Food, Civil Supplies & Consumer Affairs, Solan, he came to

know that he has been superseded by his three juniors.

14. Respondents No.1 and 2 while filing reply has made an attempt that after promotion of the petitioner and his three juniors, tentative seniority list of the Food & Civil Supplies Officers as on 31.07.2009 was circulated by respondent No.2, vide memo dated 28.08.2009 (Annexure R-1), but it has not been shown that the same was delivered to the petitioner.

15. It is settled law that when a tentative seniority list is issued, the same is got signed from the officers or the copy thereof is supplied through registered post, so that, if he/she is aggrieved by his seniority, he/she may prefer the objection against the same. Once, the petitioner has not been informed about the promotion orders of his juniors and further even the tentative seniority list of Food & Civil Supplies Officers as on 31.07.2009, circulated vide Memo dated 28.08.2009, was not served upon him and he was ordered to continue to hold the charge of Inspector of Pachhad Block and came to know only when posted in the office of District Controller, Food,

Civil Supplies and Consumer Affairs, Solan, in June 2010, the plea taken by the respondents that the petition is hit by delay and laches, is without any basis. Thus, it is concluded that the petition filed by the petitioner was well within time.

16. As per the Handbook on Personnel Matters, Volume-I, a procedure has been prescribed for making promotions to Selection Posts. Before discussing the same, the principles to be followed as referred in para 16.25(h) are reproduced hereunder:

"Subject: Principles for promotion to Selection Posts- Procedure for overall classification.

I am directed to say that sub-para 4 of para I of this Department's letter of even number dated 25.09.1973 provides that the officers should be classified as "Outstanding" "Very Good" "Good" on the basis of merit as determined from their record of service. No precise procedure for assessing overall classification has been prescribed and accordingly the question of prescribing the same time past. After careful Consideration, the following procedure for assessing the over-all classifications is prescribed.-

- i. The confidential reports for three to five years should be classified separately for each year as "Outstanding, "Very good", "Good" and "Fair".*
- ii. Each type of assessment shall carry marks as under:-*

<i>Outstanding</i>	<i>5 Marks</i>
<i>Very Good</i>	<i>4 Marks</i>

Good 3 Marks

Fair 2 Marks

The classification for each year shall be evaluated in the form of marks in the above manner and the total marks shall be worked out for three to five year.

iii. After total evaluation is made in the manner at (ii) above, average marks shall be worked out by dividing the total marks by the same number as the number of years for which confidential reports have been considered. Thus an officer who gets average marks of 4.5 or above in this manner shall be considered as "Outstanding" those getting average marks of 3.5 or above but below 4.5 shall be classified as "Very Good", and those getting an average of 2.5 or above but below 3.5 marks shall be classified as "Good", officers who earn less than 2.5 average marks shall be classified as "fair". The following example is given to illustrate the method of working out average classification:-

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Case-I

Case-II

<i>Year for which C.R.S. considered</i>	<i>Yearly Classification</i>	<i>Marks</i>	<i>Average Marks</i>	<i>Yearly Classification</i>	<i>Marks</i>	<i>Average Marks</i>
<i>1968-69</i>	<i>Good</i>	<i>3</i>	<i>21/5</i>			
<i>1969-70</i>	<i>Very Good</i>	<i>4</i>	<i>4.2</i>			<i>4.67</i>
<i>1970-71</i>	<i>Very Good</i>	<i>4</i>		<i>Very Good</i>		
<i>1971-72</i>	<i>Outstanding</i>	<i>5</i>		<i>Outstanding</i>		
<i>1972-73</i>	<i>Outstanding</i>	<i>5</i>		<i>Outstanding</i>		
	<i>Total</i>	<i>21</i>				

Overall

Overall

Classification: Very Good. Classification: Outstanding

iv. The officers whose overall classification is fair shall be considered as ineligible for promotion and will be excluded from the field of choice while making selections in the manner prescribed in sub-para 4 of para 1 of this

Department's letter referred to above.

2. *It may be made clear that the over-all classification as made in the above manner shall be the criterion for preparing select list in the manner prescribed in sub-para 4 of para 1 of this Department letter under reference and in that context a Junior official securing say 4.8 average marks and classified as "Outstanding" shall not be placed above the senior one who gets say 4.5 average marks is also classified as "Outstanding".*

3. *The above procedure shall come into force with immediate effect and may please be strictly adhered to in all cases for making selection for selection posts.*

4. *The receipt of this letter may kindly be acknowledged."*

17. As per the procedure prescribed above, the confidential reports for three to five years should be classified separately for each year as "Outstanding", "Very Good", "Good" and "Fair". Further each type of assessment shall carry marks. Outstanding 5 marks, Very Good, 4 marks, Good 3 marks and Fair 2 marks. For clarity, the table showing the ACRs of each year of the petitioner from 2001-2002 onwards graded are reproduced as under:-

<i>Year for which C.R.S. considered</i>	<i>Yearly Classification</i>	<i>Marks</i>	<i>Average Marks</i>	<i>Yearly Classification</i>	<i>Marks</i>	<i>Average Marks</i>
2001-02	Good	3	18/5			
2002-03	Good	3	3.6			4

2003-04	<i>Good</i>	3		<i>Good</i>	3	
2004-05	<i>Very Good</i>	4		<i>Very Good</i>	4	
2005-06	Excellent	5		Excellent	5	
	Total	18				

18. If the grading of ACRs of the petitioner is also considered from the year 2001-02 till 2005-06, the petitioner would have got 18 marks since he had got 'Good' for 2001-2002 and 2002-2003, 'Very Good' for the years 2003-2004 and 2004-2005 and 'Excellent' for 2005-2006 and if divided by 5, the same would be 3.6 i.e. 'Very Good' as per para iii of the ibid instructions contained in the Handbook on Personnel Matters. Since, the petitioner was to be given 'Very Good', respondent No.3 has wrongly assessed him as 'Good', by merely considering that he had been graded 'Good' for 3 years even ignoring that the petitioner was assessed as 'Excellent' for the ACR of the year 2005-2006 and 5 marks were to be given to him.

19. A perusal of the DPC dated 15.05.2007 (Annexure P/7) reveals that the petitioner had been graded 'Very Good' for the years 2003-04, 2004-05 and 2005-06 and it is not

known that why he has been considered as 'Good' for the year 2003-04 in the subsequent DPC convened on 31.03.2008.

20. The petitioner after coming to know about the fact that his juniors have been promoted had approached the Court when his representation was not being considered, which he had made on 13.06.2011 and this Court had given directions to the respondents to decide the same. Respondent No.1 after the directions given by the Court had rejected his representation only on the plea that the petitioner had accepted the promotion orders without any protest and further he was well aware about the fact that three of his juniors had superseded him in the promotion and he did not make any representation against the above recommendations of the DPC at that point of time.

21. Once, the petitioner had specifically averred that he was unaware about the promotion orders of his juniors made earlier to him and the ACRs were not communicated to him, respondent No.1 could have considered that aspect but without venturing into the merit of the case, claim of the

petitioner was rejected on the ground that he did not object when he was promoted to the post of Food & Civil Supplies Officer.

22. The Hon'ble Supreme Court in ***Dev Dutt vs. Union of India and others, (2008) 8 SCC 725***, has held that every entry in the ACR of a public servant must be communicated to him. All gradings whether 'Outstanding' 'Very Good', 'Good', 'Average' or 'Poor' are required to be communicated to an employee working in the Government Offices or Statutory bodies, Public Sector Undertakings or other State Instrumentalities. The public servant should have a right to make representation and thus, all gradings are required to be communicated to him within a reasonable period. Even an Outstanding ACR should be communicated since that would boost the morale of the employee and make him work harder. Further, the representation, so made, should be decided by an authority higher than the one, who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration, as it

would be an appeal from Caesar to Caesar. The relevant paras of the judgment read as under:-

"16. In our opinion if the office memorandum dated 10/11-9-1987, is interpreted to mean that only adverse entries (i.e. "poor" entry) need to be communicated and not "fair", "average" or "Good" entries, it would become arbitrary (and hence illegal) since it may adversely affect the incumbent's chances of promotion, or to get some other benefit. For example, if the benchmark is that an incumbent must have "very good" entries in the last five years, then if he has "very good" (or even "outstanding") entries for four years, a "good" entry for only one year may yet make him ineligible for promotion. This good" entry may be due to the personal pique of his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or to for some other extraneous consideration.

17. In our opinion, every entry in the A.C.R. 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 vs. Union of India* (supra) 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 principle 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.***

19. to 21. xxxxx

22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

23. In the present case, the action of the respondents in not communicating the 'good' entry for the year 1993-1994 to the appellant is in our opinion arbitrary and violative of natural justice, because in substance the 'good' entry operates as an adverse entry (for the reason given above).

24. to 33. xxxxx

34. Originally there were said to be only two principles of natural justice : (1) the rule against bias and (2) the right to be heard (audi alteram partem). However, subsequently, as noted in A.K. Kraipak's case (supra) and K.L. Shephard's case (supra), some more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons vide S.N. Mukherjee vs. Union of India AIR 1990 SC 1984. In Maneka Gandhi vs. Union of India (supra) (vide paras 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

35. Thus natural justice has an expanding content and

is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

*36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that **all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation.** This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.*

*37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. **We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar.** All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.*

*38. We, however, make it clear that the above directions **will not apply to military officers because the***

position for them is different as clarified by this Court in Union of India vs. Major Bahadur Singh 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants)."

23. In the present case, admittedly the petitioner has not been communicated of any ACR and thus, the ACRs which have graded him as 'Good' have to be ignored for the purpose of considering the petitioner for promotion to the post of Food and Supplies Officer when his juniors have been considered and promoted. Even otherwise since the average of the grading of the petitioner as per the Handbook on Personnel matters was having 'Very Good' on the average of marks, he could not have been graded as 'Good' by taking ACRs of three years as 'Good' which is not the import of the instructions as discussed above.

24. The Hon'ble Supreme Court had again the occasion to deal with respect to communication of ACRs and a three-Judge Bench in ***Abhijit Ghosh Dastidar vs. Union of India and others***, (2009) 16 SCC 146, has reiterated the view

taken in **Dev Dutt's case** (supra) and held that non-communication of entries in the ACRs of a public servant whether he is in civil, judicial, police or any other service, other than the armed forces, has civil consequences, because it may affect his chances of promotion or getting other benefits and as such non-communication would be arbitrary and violative of Article 14 of the Constitution. The relevant para of the judgment reads as under:-

"8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly the entry of "good" was not communicated to the appellant. The entry of "good" should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (Dev Dutt case, SCC p. 738, para 41) relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of

the grading given to him."

25. In the present case, the petitioner was graded as 'Excellent' for the year 2005-06, however, even that ACR has been treated as 'Very Good', which clearly shows that the DPC did not consider him for promotion to the post of Food and Civil Supplies Officer only for the reason that his ACRs for the year 2001-02 was 'Good' and the total ACRs out of 5 were having only two 'Very Good'. It is not disputed by the respondents that for the year 2000-01, the petitioner was assessed as 'Very Good'.

26. The view taken by the Hon'ble Supreme Court in ***Dev Dutt's case*** (supra) has again been followed by a three-Judge Bench of the Hon'ble Supreme Court in ***Sukhdev Singh vs. Union of India and others, (2013) 9 SCC 566***, and reiterated the same view that non-communication of the entries in the Annual Confidential Report to a public servant has civil consequences affecting his chances of promotion and getting other benefits. The relevant paras of the judgment read as under:-

"7. A three-Judge Bench of this Court in *Abhijit Ghosh Dastidar v. Union of India* followed *Dev Dutt*. In para 8 of the Report this Court with reference to the case under consideration held as under: (*Abhijit Ghosh Dastidar case (2009) 16 SCC 146, SCC p. 148*)

"8. Coming to the second aspect, that though the benchmark 'very good' is required for being considered for promotion, admittedly the entry of 'good' was not communicated to the appellant. The entry of 'good' was not communicated to him as he was having 'very good' in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or getting other benefits. **Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (*Dev Dutt case, SCC p. 738, para 41*) relied on by the appellant. Therefore, the entries 'good' if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."**

8. In our opinion, the view taken in *Dev Dutt* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same.

Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR-poor, fair, average, good or very good-must be communicated to him/her within a reasonable period."

27. The plea taken by the respondents that the petition is barred by delay and laches is not accepted for the reason that the petitioner was not endorsed the orders of promotions of his juniors and at the relevant time he was serving as Inspector, in Pachhad Block of Sirmour District and further the seniority list was never served on him. He came to know about their promotions only in the month of June, 2010. The petitioner was not communicated about the ACRs. As already observed above, the respondents had not placed on record any material that the petitioner was aware about the promotions of his juniors earlier to him and thus, the plea taken by the petitioner that he came to know about the promotion of his juniors only in the month of June 2010 cannot be disbelieved.

28. The overall record of the petitioner suggests that the petitioner had been performing well and due to that reason, he was assigned the ACRs of 'Excellent' for the year 2005-06.

29. Learned counsel for the respondent had vehemently argued that since the petitioner has approached this Court after three years, the petition is liable to be dismissed. He placed reliance upon the judgment passed by the Division Bench of this Court in **CWP No.1218 of 2021**, titled, ***Suresh Kapoor and others vs. State of H.P. and others***.

30. The facts of the said case are not attracted to the present case for the simple reason that in the said case, the petitioners had not pleaded that they were not aware about the promotion orders of their juniors. In the present case, the petitioner specifically averred that he came to know about the fact of his juniors having been promoted earlier to him and he obtained the information under the Right to Information Act and thereafter made a representation to rectify the mistake. However, when his claim was not acceded to, he has

approached the Court and thus, the law declared in the said judgment is not attracted to the facts and circumstances of the case. The Court in the said judgment had held that a person aggrieved by the order of promotion should approach the Court at least within six months or at the most a year of such promotion.

31. In the present case after coming to know about the illegal promotion of his juniors, the petitioner had obtained the information under the RTI Act and thereafter made a representation and thus, the petition filed by him is well within time.

32. The petitioner had approached this Court in the year 2011 i.e. before his retirement. He has impleaded respondent No.4 as a party respondent in the petition, who after service has now retired and, therefore, it would not be in the interest of justice to quash his appointment, but the petitioner cannot be denied the benefits of his promotion to the post of Food and Supplies Officer from the date when respondent No.4 and other persons junior to the petitioner

were promoted vide Notification dated 13.06.2008. In case the petitioner ought to have been promoted as on 13.06.2008, he would have got the chance for consideration to the next higher post and not promoting him from the date when his juniors have been promoted has marred his prospects for further promotions and, therefore, keeping in view the peculiar facts of the present case coupled with the fact that the petitioner was never communicated about his ACRs, the petition instituted by the petitioner deserves to be allowed.

33. Consequently, the present petition is allowed and the respondents are directed to promote the petitioner to the post of Food and Supplies Officer w.e.f. the date when his juniors were promoted vide Notification dated 13.06.2008 with all consequential benefits. In case, the petitioner is found eligible for further promotion to the post of District Controller, Food, Civil Supplies and Consumer Affairs, he will also be considered for the said post with all consequential benefits. In case the posts were not available supernumerary

posts be created to make promotion of the petitioner. The respondents are directed to complete the entire exercise within a period of three months from today.

34. The petition is accordingly disposed of. However, there shall be no order as to costs. Pending miscellaneous application(s), if any, shall also stand disposed of.

29th July, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**