

HIGH COURT OF TRIPURA
AGARTALA
W.P(C) NO.348 OF 2014

Dr. Sankar Bhattacharjee,
 Son of Late Sachindra Bhattacharya,
 Resident of Arundhutinagar Road No.7,
 P.O. Arundhutinagar,
 P.S. West Agartala,
 District West Tripura.

...Petitioner.

- Versus -

1. The State of Tripura,

To be represented by the
 Secretary/Commissioner,
 Department of Education (Higher) Department,
 Government of Tripura,
 New Secretariat Complex, Kunjaban,
 Agartala, West Tripura,
 PIN 799006.

2. The Secretary,

Department of Industries and Commerce,
 Government of Tripura,
 New Secretariat Complex, Kunjaban,
 Agartala, West Tripura,
 PIN 799006.

3. The Secretary,

Department of Scheduled Caste Welfare,
 Government of Tripura,
 New Secretariat Complex, Kunjaban,
 Agartala, West Tripura,
 PIN 799006.

4. The Secretary,

Department of Education (Higher),
 Government of Tripura,
 New Secretariat Complex, Kunjaban,
 Agartala, West Tripura,
 PIN 799006.

5. The Secretary,

Department of Scheduled Tribe Welfare,
 Government of Tripura,
 New Secretariat Complex, Kunjaban,
 Agartala, West Tripura, PIN 799006.

6. The Chairman,

Tripura Public Service Commission,
Akhaura Road, Agartala,
P.O. Agartala, P.S. West Agartala,
District West Tripura.

7. Dr. Debabrata Goswami,

Principal, Govt. Degree College,
Amarpur, Gomati Tripura.

8. Dr. Sibani Bandhyopadhyay,

Principal, Michale Madhusudan Datta College,
Sabroom, South Tripura.

9. Dr. Amiya Kr. Pan,

Principal, Iswar Chandra Vidya Sagar College,
Belonia, South Tripura.

10. Dr. Arup Kr. Dutta,

Principal, Adwaitya Mallya Barman Govt. Degree
College, Sonamura, Sipahijala.

..... **Respondents.**

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the Petitioner : Mr. P. Roy Barman, Advocate.

For the Respondent : Mr. T. D. Majumder,
Nos. 1 to 5 G.A.

For the Respondent No.6 : Mr. P. Dutta, Advocate.

For the Respondent Nos. : None.
7 to 10

Date of hearing : **29.04.2015.**

Date of delivery of
judgment and order. : **01.06.2015.**

Whether fit for reporting : **YES**

JUDGMENT & ORDER

Heard learned counsel Mr. P. Roy Barman for
the petitioner and learned G.A., Mr. T. Dutta Majumder for

the State-respondents and learned counsel Mr. P. Dutta for the respondent No.6. Respondent Nos. 7 to 10 have chosen to remain absent.

2. The petitioner is working as an Associate Professor under the Education (Higher) Department, Govt. of Tripura and now posted at Netaji Subhas Mahavidhyalaya, Udaipur, Gomati. As per the recruitment rules, for the post of Principal, Government (General) Degree Colleges, under the Education (Higher) Department, Govt. of Tripura, vide the recruitment rules of 2012 (a copy is annexed as Annexure P/1 to the writ petition), the petitioner was having with all educational and other qualifications including experience for promotion to the post of Principal. He was senior to private respondent Nos. 7 to 10 as per the seniority list published by the department. A DPC meeting consisting of respondent Nos. 2 to 6, in which respondent No.6 was the Chairman, was held on 24.10.2013 for consideration of promotion to the post of Principal and petitioner's name was in Sl. No.3 of the 17 candidates whose names were forwarded to the DPC for consideration. The DPC in its meeting held on 24.10.2013 did not recommend the petitioner for promotion with the observation ---

“The Departmental Promotion Committee could not recommend Dr. Sankar Bhattacharjee (Sl. No.28 of

the seniority list) for promotion to the post of Principal, Govt. (General) Degree Colleges as his overall A.C.R. grading is below the 'Bench Mark'."

2.1 The DPC minutes consists the list of all the 17 candidates as to who were 'fit' or 'unfit' and out of them in the DPC minute dated 24.10.2013 recommended the candidates in Sl. Nos. 1, 2, 4, 5, 6 and 17 for promotion and subsequently recommended the candidate in Sl. No.8. The DPC has held that as per the guidelines issued by the Govt. of Tripura in the G.A. (P & T) Department Memo dated 10.06.2004, for recommendation of promotion benchmark should be "very good" and accordingly DPC had to recommend the candidates as 'fit' or 'unfit' for promotion as against the name of each of the candidates. The DPC in the grading list of the candidates (Annexure-P/1A to the writ petition) has observed that the petitioner was graded "average" for the year 2008-2009 and graded "good" for the year 2009-2010 and 2010-2011 and "very good" for the year 2011-2012 and 2012-2013 and since the petitioner was not having "very good" grading in all 5(five) years of ACR, his promotion was not considered. The petitioner annexed the copies of all his ACRs from the year 2008-2009 to 2012-2013 and those are marked as Annexure-P/5. The petitioner obtained it through RTI. It is the grievance of the petitioner that though there was no adverse remark recorded by the reporting authority in the ACRs of all those

five years i.e. 2008-2009 to 2012-2013, the reporting authority graded him as “average” for the year 2008-2009 and “good” for the year 2009-2010 to 2010-2011 and “very good” for the year 2011-2012 to 2012-2013. According to the petitioner those grading were made mechanically and whimsically without application of mind. There was no remark of the reviewing authority in the ACR of 2008-2009 and 2010-2011 at all. In the year 2009-2010, the reviewing authority only agreed the remarks made by the reporting authority. In the ACR of 2011-2012 and 2012-2013, the reviewing authority upgraded the remarks given by the reporting authority to be “very good”. The accepting authority has simply accepted the ACRs without recording any remarks at all. It is contended by the petitioner that those ACRs were never communicated to the petitioner to make his representation against the adverse remark and as a result, the fundamental right of the petitioner as guaranteed under Article 14 of the Constitution has been infringed. The petitioner contended that he was entitled to be promoted as Principal and the promotion has been discarded illegally and wrongly on the basis of the vague un-communicated adverse entries made in the ACR and therefore, he prayed for quashing notification dated 13.11.2013 under which private respondent Nos. 7 to 10 and others were promoted to the post of Principal of the

Govt. (General) Degree Colleges and also prayed for directing the respondents to promote him to the post of Principal, Govt.(General) Degree Colleges with retrospective effect i.e. from the date his juniors were appointed and further to direct the respondents not to consider the adverse ACR grading for the year 2008-2009, 2009-2010 and 2010-2011.

3. Respondent Nos. 1 to 5 by filing a joint counter affidavit, *inter alia*, contended that the petitioner was senior to that of the private respondents in the post of Associate Professor, yet, he was not promoted by the Govt. to the post of Principal of Govt. (General) Degree Colleges based on the recommendation of the DPC which found him as not suitable based on his ACR grading and service record. The DPC has considered the service record of the petitioner and others for the preceding 5(five) years and examined and cross-checked the ACR grading and found the petitioner was below the benchmark. As per the procedure of DPC, the benchmark was 'very good' and upon examination of the ACR grading of the petitioner from 2008 to 2013, the DPC did not find him 'very good' and as such he was not recommended by the DPC and that findings of the DPC was concurred by the TPSC and therefore, the petitioner could not be promoted to the post of Principal. The entries in the ACR was not communicated since the grading was "good"

only and good ACR is not considered as an adverse ACR and as such at that material time it was thought that only adverse entries in the ACR should be communicated to the person concerned and good ACR since not adverse was not communicated to him. The petitioner's case was considered by DPC but since he was not found suitable, the DPC could not recommend his name for promotion and therefore, he was not promoted to the post of Principal.

4. Respondent No.6 contended that the Departmental Promotion Committee after considering the service record of the officers coming in the zone of consideration with particular reference to their ACRs for the period of 5(five) years preceding to the year of consideration, determined their merit with reference to the prescribed benchmark and accordingly graded them 'fit' or 'unfit'. The Departmental Promotion Committee could not recommend Dr. Sankar Bhattacharjee (Sl.No.28 of the seniority list), i.e. the petitioner, for promotion to the post of Principal, Govt. (General) Degree Colleges as his overall ACR grading is below the benchmark. It is further contended by the respondent that since the promotion is to be made by the method of selection in Group 'A' post, the Departmental Promotion Committee adopted the criteria laid down in clause (i) of para 2.3.1 of the office Memorandum dated 10.03.1989 of the Government of India, Department of

Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, New Delhi read with instruction of Govt. of Tripura vide Memo dated 10.06.2004 and carefully examined the experience, ACRs and service records of the officers who have come in the zone of consideration for determining them 'fit' or 'unfit'. The benchmark for promotion from Group-A to Group-A post carrying Rs.37,400-67,000/- with A.G.P. Rs.10,000/- plus special allowance Rs.2000/- per month has been treated as 'very good'. However, the case of SC/ST candidates is to be considered irrespective of their benchmark, subject to rejection of the 'unfit'. The petitioner since had one 'average' ACR in the preceding five years, he could not be considered for promotion and was declared by the DPC as 'unfit' for promotion.

5. It is an admitted position that the petitioner was having with all requisite qualification and experience as prescribed under the rules for promotion to the post of Principal, Govt. (General) Degree Colleges under Education (Higher) Department. It is also an admitted position that the petitioner was senior to respondent Nos.7 to 10 in the seniority list. A copy of the final seniority list dated 01.02.2013 annexed by the respondents as annexure-R/1 to the counter affidavit. A tentative seniority list dated 10.01.2012 is annexed by the petitioner and marked as

Annexure-P/2 to the writ petition and in the tentative seniority list the petitioner's name has been figured at Sl. No.29 and in the official seniority list produced by the official respondent Nos. 1 to 5 shows the name of the petitioner in Sl. No.28 and the private respondents are below him.

6. It is an admitted position that the petitioner was having with requisite qualification and experience for promotion to the post of Principal. It is also an admitted position that the benchmark for consideration of promotion was 'very good' in the ACR grading. A copy of the grading of ACR considered by the DPC has been annexed by the petitioner and marked as Annexure-P/1A to the writ petition and same copy also annexed by the respondent Nos. 1 to 5 marked as Annexure-R/4 to the counter affidavit and the respondent No.6 also annexed a copy of the same marked as Annexure-D to the counter affidavit. The DPC considered the ACR grading of 17 candidates whose names were forwarded by the department for consideration of DPC and the DPC remarked 'fit' or 'unfit' against the name of each of the candidates after considering the grading in the ACR. For ready reference and for proper appreciation, let us reproduce the same which reads as follows:-

"GRADING OF A.C.Rs. IN RESPECT OF THE ELIGIBLE OFFICERS COMING IN THE ZONE OF CONSIDERATION FOR PROMOTION TO THE POST OF

PRINCIPAL, GOVT.(GENERAL) DEGREE COLLEGES UNDER THE EDUCATION (HIGHER) DEPARTMENT.

Sl. No.	Name	2008-09	2009-10	2010-11	2011-12	2012-13	Whether Fit/Unfit
1.	Dr.Santirekha Sinha	Good	Very good	Very Good	Very Good	Very Good	Fit
2.	Dr. Chhanda Bhattacharya	Very Good	Very Good	Very Good	Very Good	Very Good	Fit
3.	Dr. Sankar Bhattacharya	Avera-ge	Good	Good	Very Good	Very Good	Unfit
4.	Dr. Debabrata Goswami	Very Good	Very Good	Very Good	Very Good	Very Good	Fit
5.	Dr. Sibani Bandopadhyay	Good	Very Good	Very Good	Very Good	Very Good	Fit
6.	Dr. Amiya Kr. Pan	Very Good	Very Good	Very Good	Very Good	Very Good	Fit
7.	Dr. Amitabha Kar	Good	Good	Good	Very Good	Very Good	Unfit
8.	Dr. Anup Kr. Dutta	Very Good	Very Good	Very Good	Very Good	Very Good	Fit
9.	Dr. Prasanta Chakraborty	Good	Satisfac-tory	Good	Very Good	Very Good	Fit
10.	Dr. Jaharlal Saha	Very Good	Very Good	Very Good	Outst andin g	Outstan ding	Fit
11.	Dr. Tripti Majumder	Very Good	Very Good	Very Good	Very Good	Very Good	Fit
12.	Dr.Ashok Chakraborty	Good	Good	Good	Good	Very Good	Fit
13.	Dr.Pallab Kanti Ghoshal	Very Good	Very Good	Very Good	Very Good	Very Good	Fit
14.	Dr.Sarmistha Banerjee	Very Good	Very Good	Very Good	Very Good	Outstan ding	Fit
15.	Dr.Triptimoy Chakraborty	Good	Very Good	Good	Very Good	Very Good	Fit
16.	Dr. Smita Gupta	Very Good	Very Good	Very Good	Very Good	Very Good	Fit
17.	Dr. Nityananda Das	Good	Very Good	Very Good	Very Good	Very Good	Fit

Sd/-
(Santanu Das)
Secretary,
S.C.Welfare Department

Sd/-
(L.H. Darlong)
Secretary,
S.T.Welfare Department

Sd/-
(K.Ambuli)
Secretary
Education(Higher) Deptt.

AUTHENTICATED
Sd/-
(D.DEBBARMA)
Joint Director
Directorate of Higher
Education,Tripura.

Sd/-
(M.Nagaraju)
Secretary
Industry & Commnerce Deptt.

Sd/-
(A. Sengupta)
Chairman
Tripura Public Service
Commission”

7. A careful examination of the above recommendation of the DPC, we find that person in Sl.No.1 was having with one ‘good’ and four ‘very good’ ACR but he was categorized as ‘fit’ for promotion. Person in Sl.No.5 was

also having with one 'good' and four 'very good' but she was also categorized as 'fit' for promotion. Person in Sl. No.9 was also having with two 'good', one 'satisfactory' and two 'very good' but he was also categorized as 'fit' for promotion. Person in Sl. No.12 was having with four 'good' and one 'very good' but he was also categorized as 'fit' for promotion. Person in Sl. No.15 was having with two 'good' and three 'very good' but also categorized as 'fit' for promotion. Person in Sl. No.17 as shown in DPC minutes belonged to SC category. So, his promotion was considered. It is, therefore, evident that DPC has categorized some of the candidates 'fit' for promotion though they were not having with 'very good' benchmark in the ACR of all the preceding five years. Therefore, I am of considered opinion that there was no consistency in the decision of the DPC since in the minutes of the meeting of the DPC which is annexed as Annexure-P/4 to the writ petition, Annexure-R/2 to the counter affidavit of official respondent Nos. 1 to 4 and Annexure-D to the counter affidavit of respondent No.6, no reason has been assigned as to how the DPC has categorized a particular candidate 'fit' though the candidate was not having with 'very good' benchmark in all the five years ACR.

8. It is expected that a Class-I DPC which consists of the Chairman of Tripura Public Service Commission as

Chairman and other departmental heads as its members should be fair and transparent and should assign reason while taking decision. The DPC has given specific reasons as to why the petitioner was discarded from being marked as 'fit' but how the candidate in Sl.No.1, Sl.No.5, Sl.No.9 and Sl. No.12 were categorized as 'fit' has not been clarified in the minutes of DPC proceeding.

9. I have meticulously gone through the Annexure-P/5 i.e. ACRs of the petitioner for the year 2008-2009 to 2012-2013. Those ACRs have different parts. Part 1A and 1B consists of personal information of the officer concerned. Part-I of each of the ACRs meant for the remarks of the reporting authority consists 8 columns but in none of those columns, the reporting authority made any adverse remarks whereas while grading the petitioner for year 2008-2009, the reporting authority graded him as 'average' and for the year 2009-2010 and 2010-2011 graded him as 'good'. Part-III of the ACR contains the remarks of the reviewing authority. Surprisingly in the ACR of 2008-2009 and 2010-2011 of the petitioner, I find that Part-III is NIL and there is neither any remark nor even a signature of the reviewing authority. In the Part-III of the ACR of 2009-2010, the reviewing authority simply agreed with the remark of the reporting authority. In the ACR of 2011-2012 and 2012-2013 though the reporting authority graded 'good' but the

reviewing authority upgraded it as 'very good' after giving remarks. The Accepting authority in the ACR of all the years just remarked as accepted and put signature.

10. I am constrained to observe that the ACRs were written very casually without application of mind and without any seriousness at all. The reporting authority though made no adverse remark in any of the column, graded 'average' or 'good' which is quite unfortunate and the reviewing authority in the ACRs of the year 2008-2009 to 2010-2011 did nothing and so also the accepting authority.

11. Admittedly, the ACRs were not communicated to the petitioner. Such non-communication of the ACR violates Article 14 of the Constitution. Learned G.A. has submitted that since there was no adverse remark in the ACRs and since the petitioner was graded as 'good' by the reporting authority those were not communicated.

12. Law in this regard has been settled by the Apex Court that the ACR whether it is 'good' or 'very good' should be communicated to the officer concerned since a 'good' entry in fact is an 'adverse' entry because it eliminates the candidate from being considered for promotion. Here in this case 'good' entries of the petitioner's ACR eliminated his

chance of promotion and so those were adverse entries for the petitioner.

13. In the case of **Dev Dutt Vs. Union of India & Ors.** reported in **(2008) 8 SCC 725**, the Supreme Court in para 6 to 10 has held—

“6. The grievance of the appellant was that he was not communicated the “good” entry for the year 1993-1994. He submitted that had he been communicated that entry he would have had an opportunity of making a representation for upgrading that entry from “good” to “very good”, and if that representation was allowed he would have also become eligible for promotion. Hence he submits that the rules of natural justice have been violated.

7. In reply, learned counsel for the respondent submitted that a “good” entry is not an adverse entry and it is only an adverse entry which has to be communicated to an employee. Hence he submitted that there was no illegality in not communicating the “good” entry to the appellant.

8. Learned counsel for the respondent relied on a decision of this Court in Vijay Kumar v. State of Maharashtra 1988 (Supp) SCC 674 in which it was held that an uncommunicated adverse report should not form the foundation to deny the benefits to a government servant when similar benefits are extended to his juniors. He also relied upon a decision of this Court in State of Gujarat v. Suryakant Chunilal Shah (1999) 1 SCC 529 in which it was held: (SCC p.542, para 25)

"25. Purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently

brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance".

On the strength of the above decisions learned counsel for the respondent submitted that only an adverse entry needs to be communicated to an employee. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

9. In the present case the benchmark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have "very good" entry for the last five years. Thus in this situation the "good" entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a "good" entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

10. Hence, in our opinion, the "good" entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-1994 should be upgraded from "good" to "very good". Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the "good" entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the "good" entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the "good" entry was arbitrary and hence illegal, and the

decisions relied upon by the learned counsel for the respondent are distinguishable.”

14. In that reported case, the Supreme Court has further held that every entry irrespective of it is ‘very good’, ‘good’, ‘average’, ‘fair’, ‘poor’ should be communicated to the person concerned. The Court in para 13 to 18 of the judgment observed thus—

“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.

14. In most services there is a gradation of entries, which is usually as follows:

- (i) Outstanding*
- (ii) Very Good*
- (iii) Good*
- (iv) Average*
- (v) Fair*
- (vi) Poor*

A person getting any of the entries at items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the authority concerned.

15. If we hold that only “poor” entry is to be communicated, the consequences may be that persons getting “fair”, “average”, “good” or “very good” entries will not be able to represent for its upgradation, and this may subsequently adversely affect their chances of promotion (or get some other benefit).

16. In our opinion if the Office Memorandum dated 10/11.09.1987, 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 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 v. Union of India* (1978) 1 SCC 248 that

arbitrariness violates Article 14 of the Constitution.

18. Thus it is not only when there is a bench mark 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.”

15. In this case it is an admitted position that the ACRs were never communicated to the petitioner. It was kept in custody of the respondents and considered at the time of consideration of promotion and based on the remarks in the ACR his promotion was denied which is a violation of principles of natural justice. In para 24 and 25 of the judgment in **Dev Dutt (supra)** the Supreme Court has observed thus—

“24. What is natural justice? The rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible. They may, however, be summarized in one word: fairness. In other words, what they require is fairness by the authority concerned. Of course, what is fair would depend on the situation and the context.

25. Lord Esher M.R. in Voinet vs. Barrett (1885) 55 L.J. QB 39 (CA), observed: "Natural justice is the natural sense of what is right and wrong."

16. The Supreme Court has further held that non-communication of the ACR is arbitrariness on the part of the respondents and it violates Article 14 of the Constitution. In para 12 of the judgment the Court held—

“12. It has been held in Maneka Gandhi v. Union of India (1978) 1 SCC 248 that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the ACR of a public servant is arbitrary because it deprives the employee concerned from making a representation against it and praying for its up-gradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits). Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. vs. Yamuna Shankar Misra (1997) 4 SCC 7. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.”

17. In the case of **Sukhdev Singh Vs. Union of India & Ors.**, reported in **(2013) 9 SCC 566**, a larger Bench of the Supreme Court (three judges) while over ruling **U.P. Jal Nigam v. Prabhat Chandra Jain, (1996) 2 SCC 363** has upheld the observation made in **Dev Dutt (supra)** and in para 8 of the judgment, the Court has observed thus—

“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."

18. Law has now been well settled that the ACR irrespective of its adverse or not should be communicated to the person concerned for the reasons as specified by the Supreme Court, quoted above. Non-communication of the ACRs to the person concerned is denial of natural justice and is an arbitrary action on the part of the respondents and it violates Article 14 of the Constitution. In the present case, by not communicating the ACRs on the basis of which the petitioner has been denied promotion, a valuable right of the petitioner has been infringed and therefore, the writ petition is allowed to the extent that the official respondents should communicate the ACRs of those relevant years to the petitioner to facilitate him in submitting his representation and thereafter those representations should be considered by the concerned authorities of the petitioner and the result of such consideration of the report should be communicated to the petitioner and thereafter there shall

be a review DPC to consider the case of the petitioner and if he is found fit for promotion, he should be recommended for such promotion with retrospective effect from the date his juniors were promoted with all service benefits notionally including his seniority.

19. However, though I am not satisfied with the manner in which the DPC categorized the particular candidates as 'fit' or 'unfit', I find no justification to set aside or quash notification dated 13.11.2013 (Annexure-P/3 to the writ petition) which will unsettle the position already settled.

20. The respondents are directed to take appropriate steps to formally communicate all those un-communicated ACRs to the petitioner within 15 days from today and in the event of such communication of the ACRs made by the respondents, the petitioner shall be at liberty to make his representation in respect of those ACRs within 15 days thereafter. The concerned respondents i.e. the authorities of the petitioner shall consider the representations if made by the petitioner within 30 days from the date of making the representation with all sincerity, fairness and transparency and communicate the results of such consideration to the petitioner. The official respondents are directed to convey a review DPC within 30 days thereafter and to consider the

promotion of the petitioner pursuant to the ACR grading and other relevant records and if he is found 'fit' for promotion, the respondents are directed to promote him with retrospective effect from the date his juniors were given promotion and also to give him all other service benefits notionally including seniority.

21. With the above directions, the writ petition stands disposed of.

22. Parties to bear their own costs.

JUDGE.