

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3780 of 2014

1. Dhansai Harbansh S/o Shri Kanhaiyalal Harbansh Aged About 57 years Posted As Senior Cooperative Inspector, Office Of Joint Registrar, Cooperative Societies, Division Bilaspur, PS Civil Line, Distt Bilaspur, CG

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Cooperative Department, Mantralaya, New Raipur, PS Rakhi, Dist Raipur, CG
2. The Registrar Cooperative Chhattisgarh Societies, B-Block, Second And Third Floor, Divisional Office, Indrawati Bhawan, New Raipur, CG
3. The Additional Registrar Cooperative Chhattisgarh Societies, B-Block, Second And Third Floor, Divisional Office, Indrawati Bhawan, New Raipur, CG
4. Dinesh Kumar Bisi Posted As Audit Officer, Office Of Assistant Registrar, Cooperative Societies, Munglei, Dist Mungeli, CG
5. Raghuraj Singh Posted As Audit Officer, Office Of Deputy Registrar, Cooperative Societies, Raipur, CG
6. Krishna Kumar Dhruw Posted As Audit Officer, Office Of Assistant Registrar, Cooperative, Societies Gariyaband, CG
7. Dhananjay Kumar Divya Posted As Audit Officer, Office Of Deputy Registrar, Cooperative Societies, Raigarh, CG
8. Suresh Kumar Paikra Posted As Audit Officer, Office Of Deputy Registrar, Cooperative Societies, Ambikapur, Distt Surguja, CG
9. Vijay Singh Uikey Posted As Audit Officer, Office Of General Manager, Maan Mahamaya Cooperative Sugar Factory, Surajpur, Distt Surajpur, CG
10. S.P.Kosariya Posted As Audit Officer, Office Of Registrar, Cooperative Societies, Raipur, CG
11. Vinay Kumar Shrivastava Posted As Audit Officer, Office Of Deputy Registrar, Cooperative Societies, Raipur, CG

12. Neelkumar Chandrakar Posted As Audit Officer, Office Of Assistant Registrar, Cooperative Societies, Kondagaon, CG

---- Respondent

For Petitioner	Shri Prateek Sharma, Advocate
For Respondent/State	Shri Y.S. Thakur, Dy. Adv. General with Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

06/07/2015

Heard learned counsel for the parties.

1. Petitioner has preferred this writ petition seeking promotion on the post of Audit Officer w.e.f. 7-2-2014 when persons junior to him, respondents No.4 to 12, have been promoted. He has also prayed for all consequential reliefs.
2. Without disputing the fact that the respondents No.4 to 12 are juniors to the petitioner, the return filed by the respondent would reveal that the petitioner has not been promoted on account of adverse entries in his Annual Confidential Reports (for short 'ACRs') for some years, which were informed to him for the first time on 28-1-2014 i.e. after one month from the date when the meeting of Departmental Promotion Committee (for short 'DPC') was held i.e. on 23-12-2013.

3. Learned counsel for the petitioner would refer to the order passed by this Court in **Dr. Smt. Veena Tripathi v. State of Chhattisgarh & Others**¹, wherein this Court after referring to the decisions of the Supreme Court rendered in **Dev Dutt v. Union of India and Others**² and **Sukhdev Singh v. Union of India and Others**³, has allowed the petitioner to represent seeking upgradation of ACR/expunction of adverse remarks and based on the outcome of the decision on the representation, the respondents were directed to convene review DPC.
4. In **Sukhdev Singh** (Supra), the Supreme Court reiterated the law laid down in **Dev Dutt** (Supra) and held in paragraphs-4 & 5 thus:-

“4. Then in para 22 at SCC p. 734 of the Report this Court in *Dev Dutt* case made the following weighty observations:

“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.”

1 WPS No.7487 of 2007 (decided on 22-4-2015)

2 (2008) 8 SCC 725

3 (2013) 9 SCC 566

5. In paras 37 and 41 of the Report this Court then observed as follows: (*Dev Dutt case*, SCC pp. 737-38)

“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.

41. 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 military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.”

5. The above part of the judgment of the Supreme Court makes it explicit that when the ACRs have been brought to the notice of the concerned employee, he would have right of representation for

upgrading the ACR and based on decision of such representation, his case for promotion is required to be considered.

6. Therefore, the present writ petition is disposed of with a direction that the petitioner shall move fresh representation before the competent authority within a period of one month from today seeking upgradation of ACR/expunction of adverse remarks, if any. The representation shall be considered and decided within a period of 3 months from the date of submission. In the event, the adverse remarks/comments are expunged and the ACR is upgraded, the petitioner's case shall be re-considered along with the cases of other eligible candidates in accordance with the benchmark which was applied at the time of original DPC by convening review DPC. If the petitioner satisfies the benchmark/eligibility criteria, he would be entitled for promotion along with other consequential benefits from the date persons junior to him were granted the benefit. The entire exercise may be completed within a period of 6 months from today.

7. There shall be no order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri