

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 211 of 2009**

- Dr. Rajendra Prasad Tripathi Aged about 50 years, S/o Shri Shivkumar Tripathi R/o New Bus Stand, Bemetara, District Durg (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: Secretary, Higher and Technical Education, D.K.S. Bhawan, Raipur (CG)
2. Commissioner, Higher Education, Science College Campus, Raipur District Raipur (CG)
3. Joint Secretary, Department of Higher Education, State of Chhattisgarh, D.K.S. Bhawan, Raipur (CG)

---- Respondents

For Petitioner : Shri Neeraj Choubey, Advocate.

For Respondents : Shri YS Thakur, Deputy Advocate General with Shri Chandresh Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****22/04/2015**

1. The petitioner is an Assistant Professor (Sociology) and is posted at the Government College, Bemetara. He has preferred this writ petition seeking direction to reconsider his case for promotion and thereafter to grant him all the promotional benefits with retrospective effect.
2. It has been agitated that the petitioner is working as Assistant

Professor for the last more than 25 years and is fully qualified and eligible for promotion to the next higher post i.e. Professor. However, when the consideration for promotion was made in the year 2007, persons junior to him were promoted and the petitioner was left out. The representations filed by the petitioner remained undecided.

3. It has been brought to the notice of the Court that the petitioner's case for promotion was not considered because he could not achieve the benchmark and the petitioner had earned ACR during the relevant period.
4. At this stage, learned counsel for the petitioner would submit that the ACRs were never communicated to the petitioner, which was mandatory in view of the law laid down by the Supreme Court in the matters of **Dev Dutt Vs. Union of India & Others**¹ and **Sukhdev Singh Vs. Union of India and others**². He would submit that the representations filed by the petitioner should have been decided and the petitioner's ACRs should have been upgraded because the relevant ACRs were written by the In-Charge Principal against whom the petitioner has filed cases. The basis of the ACRs was the petitioner's effort to seek judicial remedy and the said recourse to judicial remedy can never be treated as misconduct or undesirable.
5. Referring to the observations made by the Supreme Court in the matter of **Sukhdev Singh** (Supra), learned Deputy Advocate General

1 (2008) 8 SCC 725

2 (2013) 9 SCC 566

would submit that if permitted, the petitioner's representations shall be decided in accordance with law and thereafter the matter shall be considered afresh.

6. In **Sukhdev Singh** (Supra), the Supreme Court reiterated the law laid down in the matter of **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."

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.”

7. 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.
8. 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 considered in accordance with the benchmark which was applied at the time of original DPC by convening review DPC. If the petitioner satisfies the benchmark, he would be entitled for promotion from the date persons junior to him were promoted. The entire exercise may be completed within a period of 6 months from today.

J U D G E