

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.17893 of 2011

Date of decision : 01.09.2015

**rites Limited through its Managing Director, R I T E S
Bhawan, No.1, Sector 29, Gurgaon-122001 Haryana.**

.....Petitioner

Versus

**Central Administrative Tribunal, Chandigarh Bench,
Chandigarh and others**

.....Respondents

CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Deepak Thapar, Advocate
for the petitioner.

Mr. Rohit Seth, Advocate
for respondent no.2.

DARSHAN SINGH, J.

The present Civil Writ Petition has been filed by petitioner RITES Limited under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the order dated 05.08.2011 passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called the 'Tribunal') in Original Application No. 475-HR of 2010.

2. Respondent no. 2 was employed as casual Junior Engineer on 23.10.1982 after completion of diploma in Civil

Engineering. Thereafter, he passed AIME equivalent to B.E/B. Tech in 1991. He also passed MBA with specialization in Operations Management from IGNOU. He was appointed as Technical Assistant on 22.10.1983. Thereafter, he was designated as Junior Engineer w.e.f. 01.03.1986 and on selection, he was promoted as Assistant Manager (Civil) w.e.f. 01.05.1989. Thereafter, he was promoted to the post of Manager (Civil) and then to the post of Deputy General Manager (for short D.G.M) w.e.f 09.03.1999. The next promotional post in the heirarchy was Joint General Manager (for short J.G.M). Respondent no. 2 became eligible for consideration for promotion to the post of J.G.M in 2004 having completed 5 years of service as D.G.M. As per Promotion Policy & Rules (hereinafter called the Promotion Policy), respondent no.2 was considered for promotion alongwith 13 others, but he failed to qualify for selection for promotion as J.G.M, as he could not achieve the target to secure the minimum aggregate of 75 marks out of 100 as per Promotion Policy. He was again considered for promotion in the years 2005, 2007 and 2008, but could not secure the minimum required marks. Ultimately, he challenged the action of the petitioner in not promoting him in the aforesaid years before the Tribunal by moving the Original Application No. 475-HR-2010. The said application was allowed by the learned Tribunal vide impugned order dated 05.08.2011.

Hence this petition.

3. Respondent no. 2 contested the present petition by controverting the pleas raised by the petitioner.

4. We have heard the learned counsel for the parties and have gone through the record of the case meticulously.

5. Initiating the arguments, learned counsel for the petitioner contended that in the Promotion Policy the factors of assessment and evaluation criteria for being empanelled by Departmental Promotion Committee (for short D.P.C) were prescribed. The marks were to be awarded with respect to the educational qualification, grading in the Annual Confidential Reports (for short ACR's) and interview. He contended that in order to secure promotion from the rank of D.G.M to the J.G.M, a candidate has to obtain 75 marks out of 100 marks. Respondent no. 2 obtained only 69 marks. So, he was not eligible for promotion to the rank of J.G.M. He contended that at the time of arguments before the learned Tribunal, respondent no. 2 has confined his claim only qua the promotion in the year 2004 and had given up the claim with respect to the remaining years.

6. He contended that the learned Tribunal has erred in holding that respondent no. 2 shall be entitled to full marks for the A.C.R's simply on the ground that those were not conveyed to him. He contended that there was no benchmark for the grading of the A.C.R's. So, no prejudice has been

caused to respondent no.2 due to non-communication of the said A.C.R's. He further contended that the learned Tribunal has wrongly observed that respondent no.2 should have been awarded full 10 marks for educational qualification as in the Promotion Policy it was specifically provided that a person having minimum education qualification shall be entitled for 8 marks. Only the persons having the additional/higher qualification shall be entitled to 10 marks and respondent no. 2 was rightly awarded 8 marks. He further contended that as per the gradings of his A.C.R's, he was awarded 46 marks. The A.C.R's of last 5 years was to be considered. Thus, he pleaded that respondent no.2 was not entitled for promotion to the post of J.G.M.

7. On the other hand, learned counsel for respondent no. 2 contended that this fact is not disputed that respondent no.2 was having the requisite experience of 5 years. The dispute is only about awarding of the marks for educational qualification and the grading of A.C.R's. He contended that there was no requirement to have any additional/higher qualification. So, there was no logic of having higher marks for additional/higher qualification. He further contended that moreover, it is the admitted case of the petitioner that respondent no. 2 also had a degree of M.B.A, which is an additional qualification and the same was not taken into consideration.

8. He further contended that grading of the A.C.R's was made a criteria/basis for further promotion. The A.C.R's of respondent no. 2 were down graded for the last 2 years. Earlier, he was awarded "very good" A.C.R's and thereafter, he was awarded only the "good" A.C.R's. But, those A.C.R's were not conveyed to him. In the absence of communication of the aforesaid A.C.R's, the respondent no.2 shall be entitled to the full marks. To support his contentions he has relied upon cases **Sukhdev Singh Vs. Union of India JT 2013(8) SC 270, Om Parkash Vs. State of Haryana R.S.A No. 1505 of 1989, d/d 11.07.2014, Abhijit Ghosh Dasidar Vs. Union of India and Ors. 2009(16) SCC 146, Dev Dutt Vs. Union of India and others (2008) 8 Supreme Court Cases 725, Anil Kumar Vs. PEC University of Technology, Sector-12, Chandigarh and others CWP No. 19688 of 2009, d/d 20.04.2011, Dr. Rajinder Kumar Vs. State of Punjab and others, CWP No. 4226 of 2009, d/d 25.07.2011, State of Haryana and others Vs. Satpal, R.S.A No. 3897 of 2010(O&M), d/d 7.12.2011 and R.Kasi Vs. The Registrar Central Administrative Tribunal High Court Buildings Chennai, Writ Petition No. 21073 of 2006, d/d 15.07.2009**. Thus, he contended that there is no illegality in the impugned order passed by the learned Tribunal.

9. We have duly considered the aforesaid contentions.

10. It has not been disputed that during the course of

hearing before the learned Tribunal, respondent no. 2 had restricted his claim to the selection made in the year 2004 alone. The dispute in the present case is with respect to the claim of respondent no. 2 for promotion to the post of J.G.M from the post of D.G.M. The said promotion is governed by the Promotion Policy (Annexure A-9) which became effective w.e.f 01.09.2003. Annexure A to the Promotion Policy provides that the eligibility period is 5 years for promotion to the post of J.G.M from the post of D.G.M. It is not disputed that respondent no. 2 fulfilled the required eligibility period. Annexure B of the Promotion Policy contains the factors of assessment and evaluation criteria and minimum aggregate/overall marks required for being empanelled by the D.P.C. Out of 100 marks there should be 75 minimum aggregate marks for promotion to the post of J.G.M within Cluster-II. It also provides that there will be three factors for evaluation of the criteria i.e. the qualification: 10 marks, A.C.R Gratings: 60 marks and Interview: 30 marks, total 100 marks. Out of that 75 marks have to be secured. The notes to Annexure-B lays down the criteria for awarding the marks for qualification and A.C.R's, which reads as under:-

2. Marks for Qualification will be assigned as under:

Possessing prescribed minimum educational qualification : 8 Marks

Possessing additional/higher qualification than prescribed minimum qualification: 10 Marks

(Note: In respect of the employees covered by Rule 6.4.3 i.e. those possessing lesser qualification than prescribed for the post, assigning of suitable marks depending upon level of qualification may be considered.)

3. Marks for ACRs will be allocated year-wise for each grading like OS, VG and Good proportionately in relation to ACRs for the no. of years of prescribed eligibility period. For example, if the prescribed eligibility period is 5 years and total marks for ACRs allocated are 60, then marks allocation will be OS:12, VG:10, Good: 8. Like-wise if the marks assigned are 50 for 5 years of minimum eligibility period, the allocation of marks will be: OS: 10, VG: 8 and Good: 6.

11. Annexure-A of the Promotion Policy prescribes the eligibility period and minimum qualification for promotion to the post of J.G.M from the post of D.G.M. Rule 4.2.3 of the Promotion Policy provides that seniority for promotion will be maintained discipline-wise, in each pay-scale upto and including the level of General Managers. In Annexure-A and B, it is nowhere provided that any extra marks were to be awarded to a candidate possessing additional/higher qualification. It has only been provided in the notes to Annexure-B. This annexure can not override the substantive Promotion Policy & Rules. So, all the candidates having the minimum academic qualification have to be uniformly and equally assessed. Taking the case from another angle, it is the admitted case of the petitioners that respondent no.2 was also

holding the degree of M.B.A. Annexure R-1/1 is the chart showing the evaluation of the marks. In this chart, the qualification of respondent no. 2 has been shown to be AIME, DCE. His degree of M.B.A is not mentioned in this chart. So, respondent no. 2 was having additional qualification of M.B.A. As per notes to Annexure-B, the candidate possessing additional/higher qualification were entitled for 10 marks. Whereas, respondent no.2 has been awarded only 8 marks by not taking into consideration his M.B.A degree. Thus, firstly the candidates having minimum education qualification should have been uniformly and equally assessed. Secondly, as the additional qualification of respondent no.2 i.e. degree of M.B.A has not been taken into consideration. So, we do not find any illegality in the findings of the learned Tribunal that the marks awarded to respondent no.2 should be revised to 10 instead of 8.

12. The notes to Annexure-B provides that there will be 60 marks allocation to the ACR's of 5 years. 12 marks were to be awarded for outstanding ACR's, 10 marks for very good ACR and 8 marks for good ACR. Annexure-R1/1 shows that different marks have been awarded to the candidates in respect of the grading of their ACR's. The ACR's for 5 years preceding the year of selection were to be taken into consideration. In this case, the ACR's for the years 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004 were

taken into consideration. Respondent no. 2 was awarded 46 marks. He was awarded 10 marks each for the ACR's for the years 1999-2000, 2000-2001 and 2001-2002 and 8 marks each for the ACR's for the year 2002-2003 and 2003-2004. As per the Promotion Policy, the chances of promotion were depending upon the gradings in the ACRs. Admittedly, the remarks in the ACR for any of the year/period mentioned above were never conveyed to respondent no.2. The Hon'ble Apex Court in case **Dev Dutt Vs. Union of India and others (Supra)** has laid down as under:-

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.

The same ratio of law has been reiterated by the Hon'ble Supreme Court in case **Sukhdev Singh Vs. Union of India(Supra).**

13. As per the aforesaid ratio of law, the nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. The grant of “good” entry is of no satisfaction to the employee if it in fact makes him ineligible for promotion or has an adverse effect on his chances. In the instant case also, the “very good” and “good” entries *vis-a-vis* the outstanding ACR's had the adverse effect on the chances of respondent no.2 for promotion to the post of J.G.M. But, admittedly, those ACR's were never conveyed to respondent no.2. As a result of which, he was deprived of an opportunity of making representation against

the said remarks recorded in the ACR's. So, the non-communication of the ACR's during the period of consideration had resulted in prejudice to the respondent no.2 and was illegal.

14. So, we do not find any illegality in the conclusion of the learned Tribunal that respondent no.2 would be entitled to full marks i.e. 60 marks for grading of his ACR's. We also find no error in the conclusion of the learned Tribunal that in this manner the, total marks of respondent no.2 will come to 85 i.e. more than 75 marks, the aggregate marks required for promotion to the post of J.G.M.

15. Thus, keeping in view our aforesaid discussion, we do not find any illegality in the impugned order dated 05.08.2011 passed by the learned Tribunal.

16. Resultantly, the present writ petition has no merits and is hereby dismissed.

(M.JEYAPPAUL)
(JUDGE)

(DARSHAN SINGH)
JUDGE

September 01, 2015

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