

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19039 of 2012

Date of decision: 09.10.2015

Chandigarh Administration and othersPetitioner(s)

Versus

Inspector Kewal Krishan & ors.Respondent(s)

**CORAM:- HON'BLE MR.JUSTICE M. JEYAPPAUL
HON'BLE MR.JUSTICE DARSHAN SINGH**

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

* * *

Present: Mr. Vishal Sodhi, Advocate for the petitioner(s).

Mr. Gurinder Singh, Sr. Advocate with Ms. Shivani Sharma, Advocate for respondent No.1.

Mr. Robin Dutt, Advocate for respondents No.2 and 3.

Mr. O.S. Batalvi, Advocate for the **UOI**.

DARSHAN SINGH, J.

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 18.10.2011 (Annexure P-10) passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called 'the

Tribunal') in Original Application No.907-CH-2011 (hereinafter called 'the OA') and the order dated 12.9.2012 (Annexure P-13) passed in misc. application No.731 of 2012 in the aforesaid OA.

2. Respondent No.1-Inspector Kewal Krishan filed OA No. 907-CH-2011 before the learned Tribunal seeking reliefs that the findings of the DPC holding him not fit for promotion to the post of Deputy Superintendent of Police (DSP) be quashed and the petitioners be ordered to consider his claim to be included in List-G over and above the private respondents. To expunge the remarks of the ACRs from 1.4.2009 to 31.3.2010 being termed as 'Average' as the same were never communicated to respondent No.1 and the same should be considered as 'Good'. That the applicant be admitted to List-G from the date when he becomes eligible for the post of the DSP lying vacant. He further prayed to consider his claim against the reserved post in accordance with instructions of the Union Territory Administration as he is a member of Scheduled Castes.

3. Respondent No.1 at the time of filing the OA was serving as Inspector in the Chandigarh Police. The DPC has held him to be not fit for being brought on G-List as he could earn only 11.08 marks as against 12, required for gaining entry into List-G. The deficient has occurred because of the average ACRs for the period 1.4.2009 to 31.3.2010 which was never conveyed to respondent No.1.

4. The said OA was contested by the petitioners that as per Rule 6 of the Punjab Police Rules, 1959 as applicable to the Union

Territory, Chandigarh, the appointments by promotion to the post of DSP is made from Inspectors brought to List 'G' which is the list of the Officers considered fit for promotion to the rank of DSP. As per the guidelines of the DPC issued by the Chandigarh Administration, the ACRs for the last six years are to be considered for promotion. The minimum bench mark required for promotion to the post of DSP is 'Very Good' with at least 12 marks since the post of the DSP is Group 'A' post. Respondent No.1 was considered for promotion as DSP by the DPC in its meeting held on 22.2.2011 along with the private respondents but he was not found fit for admission to List 'G' as he obtained 11.08 marks as against 12 marks whereas respondent No.2-Kehar Singh obtained 14.08 marks and respondent No.3 Inspector-Sukhwinder Pal Singh obtained 13.16 marks respectively. It was further pleaded that as per the instructions issued by the Chandigarh Administration on 21.6.1991 if the performance of the official is consistently average, the same may be conveyed to him so that he may know his defects and improve his performance. As the ACRs of respondent No.1 were not consistently average, so, there was no requirement of communicating his average ACRs. With these pleas, the petitioners have pleaded for dismissal of the OA.

5. The learned Tribunal vide impugned order dated 18.10.2011 allowed the OA invalidating the view obtained by the DPC holding respondent No.1 unfit for being brought on 'G' List in the light of the average grading for the period 1.4.2009 to 31.3.2010. It

was further ordered that the said average grading cannot adversely affect respondent No.1 as it was never communicated to him. The petitioners were directed to consider bringing respondent No.1 on 'G' List with effect from the date he became eligible therefor and a relevant post becomes available. This exercise was to be concluded within one month.

6. On the misc. application filed by respondent No.1, the learned Tribunal vide impugned order dated 12.9.2012 Annexure P-13 directed the personal appearance of petitioner Nos.2 and 3 for clarificatory response.

7. Aggrieved with the aforesaid orders, the present writ petition has been preferred whereby the impugned orders have been challenged on various grounds by the petitioners.

8. We have heard counsel for the parties and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the petitioners contended that as per Rule 6 of the Punjab Police Rules, 1959, List 'G' is to be prepared in consultation with the Public Service Commission. This legal position has not been appreciated by the learned Tribunal. He further contended that the minimum bench mark for the post of DSP, a Group 'A' post, was "Very Good" with at least 12 marks. The case of respondent No.1 was considered in the meeting of the DPC held on 22.2.2011 for admission to the List 'G' for promotion as DSP. However, on the basis of numbering system i.e. 4 marks for 'Outstanding', 3 marks for 'Very Good', 2 marks for

'Good' and 1 mark for 'Average'. Respondent No.1 was not found fit for admission to List 'G' as he had obtained only 11.08 marks as against the minimum requirement of 12 marks.

10. He further contended that respondent No.1 had average report for the period 1.4.2006 to 22.12.2006 and 1.4.2009 to 31.3.2010. He further contended that as the ACRs of respondent No.1 were not consistently average as such those were not required to be communicated as per the instructions dated 21.6.1991 issued by the Chandigarh Administration. Thus, he contended that respondent No.1 was rightly held not fit to be brought on List 'G' for promotion to the post of DSP.

11. On the other hand, learned counsel for respondent No.1 contended that the 'Average' ACR for the period 1.4.2009 to 31.3.2010 on the basis of which respondent No.1 was declared unfit by the DPC to be brought on List 'G' was never communicated to him, the same cannot be taken into consideration. After excluding the said ACRs, respondent No.1 shall be eligible for promotion. The order passed by the learned Tribunal is in consonance with the ratio of law laid down by the Hon'ble Apex Court in case **Dev Dutt versus Union of India (2008) 8 Supreme Court Cases 725**. The same ratio of law has been laid down in **Sukhdev Singh versus Union of India and others (2013) 9 SCC 566**. Thus, he contended that there is no illegality in the order dated 18.10.2011 passed by the learned Tribunal.

12. Learned counsel for respondents No.2 and 3 contended

that respondents No.2 and 3 were found fit for promotion by the DPC so, they are eligible for promotion to the post of DSP. Sufficient number of vacancies to accommodate the respondents are lying vacant.

13. We have duly considered the aforesaid contentions.

14. There is absolutely no denial to the fact that as per the Rules for the promotion to the post of the DSP, which is Group 'A' post, the minimum bench mark will be 'Very Good' with at least 12 marks. The numbering system of evaluation of ACRs has been prescribed in the instructions dated 6.9.2001 issued by the Punjab Government which are being followed by the Union Territory Chandigarh. As per the said numbering system, the 'Outstanding' ACR carries 4 marks, 'Very Good' ACR carries 3 marks, 'Good' ACR carries 2 marks and 'Average' ACR carries 1 mark.

15. It is also not disputed that respondent No.1 along with respondent Nos.2 and 3 was considered for promotion to the post of DSP by the DPC in the course of its meeting held on 22.2.2011 but respondent No.1 was declared unfit to be placed on List 'G' as he had only earned 11.08 marks as against the minimum requirement of 12. It is also not disputed that the deficiency has occurred because of the 'Average' ACR of respondent No.1 graded for the period 1.4.2009 to 31.3.2010. It has also not been disputed at Bar that the said ACR was not communicated to respondent No.1. Learned counsel for the petitioners has contended that as per the instructions dated 21.6.1991 issued by the Chandigarh Administration, if the

performance of an official is consistently average only then, the 'Average' ACRs are required to be conveyed to him so that he may know his defects and improve his performance in the subsequent years. He has contended that in the case of respondent No.1, his ACRs for the period 1.4.2006 to 22.12.2006 and 1.4.2009 to 31.3.2010 were 'Average' which were not consistently graded as 'Average', so, there was no need to communicate the average report to respondent No.1, but this plea raised by learned counsel for the petitioners carries no substance in view of the ratio of law laid down by the Hon'ble Apex Court in cases **Dev Dutt versus Union of India and others** and **Sukhdev Singh versus Union of India and others** (supra).

16. In **Sukhdev Singh's** case (supra), the Hon'ble Apex Court has laid down as under:

*'The view taken in **Dev Dutt, (2008)8 SCC 725** 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 functions more in conformity with the principles of natural justice. Accordingly, it must be held that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.”

17. As per the aforesaid ratio of law, every entry in the ACR whether poor, fair, average, good, very good or outstanding must be communicated to the concerned official within a reasonable period. The Hon'ble Apex Court has also detailed the objectives for such communications. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the petitioners cannot take the shelter behind the instructions dated 21.6.1991 issued by the Chandigarh Administration. Thus, the average ACRs which were not conveyed to respondent No.1 cannot be taken into consideration to his disadvantage.

18. There is no controversy about the factual position that if the average ACR of respondent No.1 for the period 1.4.2009 to 31.3.2010 would not have been considered, he would have certainly met the grade for entry into List 'G' for promotion to post of DSP.

Consequently, the view formed by the DPC for holding respondent No.1 not fit for being brought on List 'G' in view of the average grading of his ACRs for the period 1.4.2009 to 31.10.2010, is invalid and illegal. As such uncommunicated average grading of the ACRs cannot adversely affect the rights of respondent No.1 for being considered for promotion to the post of DSP.

19. Sequelly, we do not find any illegality in the impugned order dated 18.10.2011 passed by the learned Tribunal.

20. The other order challenged in the present writ petition is the order dated 12.9.2012 passed in M.A No.731 of 2012 in O.A No.907-CH-2011 vide which petitioners No.2 and 3 have been directed to personally appear before the learned Tribunal for clarificatory response. No arguments have been addressed before us to assail the validity of this order. So, this order has practically remained unassailed before us at the time of arguments.

21. Thus, keeping in view our aforesaid discussion, the present petition has no merits and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

October 09, 2015
ps