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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: October 08, 2015

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W.P.(C) 8731/2015

VIVEK SHARMA

..... Petitioner

Through: Mr. Jamshed Ansari, Advocate

versus

AIR FORCE SR SEC SCHOOL AND ORS. Respondents

Through: Nemo for respondent No.1.

Ms. Jyoti Taneja, Advocate for
Mr. Anuj Aggarwal, Additional
Standing Counsel for respondents
No.2 & 3-GNCTD

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

Upgradation of Annual Confidential Reports (*henceforth referred to as the 'ACRs'*) for the years 2001-02, 2002-03, 2006-07 and 2010-11 is sought by petitioner in this petition. Grant of Modified Assured Career Progression Scheme (*hereinafter referred to as the 'MACP'*), as consequential relief is also sought by petitioner.

In the first round of litigation, similar prayer of petitioner was considered by a Coordinate Bench of this Court and earlier writ petition of petitioner stands disposed of vide order of 29th September, 2014 (*Annexure P-5*) directing respondent to consider prayer of petitioner to

seek review of his ACR for the relevant years. In pursuance to the aforesaid order (*Annexure P-5*), petitioner had filed an appeal under Rule 112 (7) of *Delhi School Education Rules, 1973* (*Annexure P-6*) for upgradation of ACR for the period in question. The said appeal stands rejected vide impugned order of 24th August, 2015 (*Annexure-8*). Petitioner had also made a Representation (*Annexure P-7*) seeking MACP to the respondent- School on 26th May, 2015.

At the hearing, learned counsel for petitioner submitted that petitioner's Representation (*Annexure P-7*) has not been decided by respondent-School till date. Impugned order of 24th August, 2015 (*Annexure-8*) is assailed by learned counsel for petitioner on the ground that in this order, the stand of petitioner of ACRs pertaining to the period in question being not communicated to petitioner, has not been dealt with. Reliance was placed by petitioner's counsel upon Apex Court's decision in *Dev Dutt Vs. Union of India & ors.* (2008) 8 SCC 725 to point out that even an 'average entry' in the service record of an employee eliminates such employee from being considered for promotion and so, non-communication of 'average entry' in the ACR is *per se* arbitrary and illegal.

Attention of this Court was drawn to the pertinent observations made in *Dev Dutt (Supra)*, which are as under:-

“ In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or

any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring communication of the entry, or even if there is a rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.”

It was pointed out by learned counsel for petitioner that even ‘*poor grading*’ for the period 2008-09 has not been communicated to petitioner and so, impugned order deserves to be set aside and petitioner ought to be granted benefit of MACP.

Respondent No.1- *Air Force Senior Secondary School* has chosen not to appear despite service.

Learned counsel appearing for respondents No.2 & 3 supports the impugned order and submits that the ‘*poor grading*’ given to petitioner is justified because various Memorandums were served upon petitioner regarding various lapses and so, the gradings awarded to petitioner are justified and that the ACRs in question were communicated to petitioner in the year 2010. It is submitted by counsel for second and third respondent that the ratio of decision in *Dev Dutt (supra)* cannot be made to operate retrospectively, as ‘*average entries*’ cannot be considered to be adverse.

Upon considering the submissions advanced by both the sides and

on perusal of the impugned order (*Annexure -8*), material on record as well as decision cited, I find that the ratio of decision in *Dev Dutt (supra)* cannot be made to operate retrospectively. A bare perusal of Rule 112 (7) of *Delhi School Education Rules, 1973*, reproduced in the impugned order (*Annexure-8*), makes it clear that only adverse entries are to be conveyed and infact, in the year 2010, 'adverse' entries as well as 'average' entries were communicated to petitioner and thereafter, an opportunity was given to petitioner to appeal against these 'average/adverse' entries. The 'average/poor gradings' were given to petitioner for the relevant years on the basis of various Memorandums given to petitioner regarding lapses on the part of petitioner. The plea of non-communication of adverse entry no longer holds good because the 'average/poor grading' given to petitioner had been already conveyed to him in the year 2010 and thereafter, an opportunity had been granted to him to represent against these gradings. Petitioner had done so and respondent has considered these 'average/poor grading' and has found that no case for upgrading of the ACRs in question is made out. Impugned order does not disclose any irrationality nor suffers from any procedural irregularity. There is no violation of principles of natural justice because the 'average/poor grading' stands already conveyed to petitioner in the year 2010 and he had availed of the remedies by filing the appeal.

Scope of judicial review is quite limited. The discretion exercised by respondent is not required to be interfered with, as there is no apparent error in the impugned order. No case for invoking jurisdiction under Article 227 of The Constitution of India is made out. Since there is no

infirmity in the impugned order (*Annexure-8*), therefore, petitioner's claim for grant of MACP no longer survives as of now.

This petition is accordingly dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

OCTOBER 08, 2015

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