

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7255 OF 2010**

Union of India & Anr.

.. Petitioners

versus

Prabhakar S. Patil & Anr.

.. Respondents

Mr. Suresh Kumar with Mr. N. D. Sharma and Mr. N. R. Prajapati for petitioners.

Mr. S. V. Marne for respondent no. 1.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.**

DATE : 05 APRIL 2016

P.C.:

1] This petition is directed against the order of the Central Administrative Tribunal (CAT) dated 9 March 2010, by which, the petitioner no. 1 has been directed to consider the case of the respondent no. 1 for promotion by ignoring ACRs for the years 2001-2002 and 2002-2003. Further, CAT has issued directions that upon respondent no. 1 being found fit for promotion, his case may be considered for retrospective promotion w.e.f. 7 August 2006 with all consequential benefits (but only notional benefit of pay and other emoluments till the actual date of promotion).

2] This Court, by means of a detailed order dated 19 January 2011 issued Rule and interim relief in terms of prayer clause (b). At the stage of issuance of Rule and grant of interim relief, the question as to whether every entry in ACR i.e. poor, fair, average, good, very good or

outstanding should be communicated to the employee concerned was pending consideration before a Three Judge Bench of the Hon'ble Supreme Court, in view of the conflicting views expressed in **Dev Dutt vs. Union of India & Ors.**¹ on one hand and **Satya Narain Shukla vs. Union of India**², **K. M. Mishra vs. Central Bank of India**³, on the other. The parties were however granted liberty to mention this matter after the resolution of conflict by the Hon'ble Supreme Court on the subject.

3] The Hon'ble Supreme Court, in **Sukhdev Singh vs. Union of India & Ors.**⁴ has resolved the conflict by holding that the view taken in **Dev Dutt** (supra) represents the correct position in law and that the decisions in **Satya Narain Shukla** (supra) and **K. M. Mishra** (supra) taking the contrary view are declared to be not laying down good law. In paragraphs 8, 9 and 10, the Hon'ble Supreme Court has observed thus:

"8. In our opinion, the view taken in Dev Dutt 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 becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.

1 (2008) 8 SCC 725

2 (2006) 9 SCC 69

3 (2008) 9 SCC 120

4 (2013) 9 SCC 566

9. *The decisions of this Court in Satya Narain Shukla v. Union of India and K. M. Mishra v. Central Bank of India and the other decisions of this Court taking a contrary view are declared to be not laying down good law.*

10. *Insofar as the present case is concerned, we are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. The civil appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the authorities concerned for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the authorities concerned appropriately in accordance with law."*

4] In view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court, the view taken by CAT shall have to be upheld. However, in so far as the final directions issued by CAT are concerned, the same would, in the peculiar facts and circumstances of the present case, warrant some modification. In this case, there is no dispute that at the stage when the Departmental Promotion Committee (DPC) considered the case of respondent no. 1, no employees in the cadre of respondent no. 1 and who were junior to respondent no. 1 in the seniority list, were recommended for promotion. Besides, for the years 2001-2002 and 2002-2003 it is not as if respondent no. 1 was issued any adverse remarks but, the remarks were down graded. In view of the law laid down in **Dev Dutt** (supra) and now in **Sukhdev Singh** (supra) no doubts, even such remarks had to be communicated to respondent no. 1, so that, respondent no. 1 would have the opportunity to represent against the same.

5] The respondent no. 1, by now, is aware of the remarks in his ACRs for the years 2001-2002 and 2002-2003. In modification of the directions issued by CAT in the impugned order dated 9 March 2005,

we grant liberty to respondent no. 1 to represent against such remarks within a period of six weeks from today. If such representation is addressed to the appropriate authority within a period of six weeks from today, such authority to consider and dispose of the same as expeditiously as possible and in any case, within a period of six weeks from the date of its receipt. The DPC to then consider the case of respondent no. 1 for promotion to SAG post of General Manager as per directions issued by CAT in the impugned order dated 9 March 2010. This exercise may be completed by DPC / respondents as expeditiously as possible, considering that respondent no. 1 is due to retire from service.

6] Save as modified as aforesaid, the impugned order dated 9 March 2010 made by CAT is not interfered with.

7] Rule is accordingly made partly absolute in the aforesaid terms. There shall be no order as to costs.

8] All concerned to act on basis of authenticated copy of this order.

CHIEF JUSTICE

(M. S. SONAK, J.)

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