

2] Rule was issued in this petition on 15 June 2011, in view of the order dated 19 January 2011 in Writ Petition No. 7255 of 2010. In the said order, this Court took note of the reference pending before the larger bench of the Hon'ble Supreme Court due to the conflict between the views expressed by the Hon'ble Supreme Court itself, in case of ***Dev Dutt V/s. Union of India & ors***¹ on one hand and in cases of ***Satya Narain Shukla V/s. Union of India***² and ***K. M. Mishra V/s. Central Bank of India***³ on the other.

3] In case of ***Sukhdev Singh V/s. Union of India & ors***⁴, the larger bench of the Hon'ble Supreme Court has answered the reference by holding that the view expressed in ***Dev Dutt*** (supra) is correct and that decisions in case of ***Staya Narain Shukla*** (supra) and ***K.M. Mishra*** (supra) taking the contrary view, cannot be said to have laid down good law. In paragraphs 6,7,8 and 9, the Hon'ble Supreme Court has observed thus:

“6. We are in complete agreement with the view in Dev Dutt particularly paras 17, 18, 22, 37 and 41 as quoted above. We approve the same.

7. A three-Judge Bench of this Court in [Abhijit Ghosh Dastidar vs. Union of India](#) followed Dev Dutt. In para 8 of the Report, this Court with reference to the case under

1 (2008) 8 SCC 725

2 (2006) 9 SCC 69

3 (2008) 9 SCC 120

4 (2013) 9 SCC 566

consideration held as under: (Abhijit Ghosh Dastidar case SCC p.148)

“8. Coming to the second aspect, that though the benchmark “very good” is required for being considered for promotion, admittedly the entry of “good” was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having “very good” in the previous year. In those circumstances, in our opinion, non- communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of [Article 14](#) of the Constitution. The same view has been reiterated in the abovereferred decision (Dev Dutt case, SCC p.738, para 41) relied on by the appellant. Therefore, the entries “good” if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.”

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.

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.”*

4] The CAT, in the impugned order, has relied upon the decision in case of **Dev Dutt** (supra) and **Abhijit Ghosh Dastidar V/s. Union of India**⁵. As noted earlier, both these decisions have been approved by the Hon'ble Supreme Court in **Sukhdev Singh** (supra). Accordingly, there is no case made out to interfere with the impugned order, which is quite consistent with the law laid down by the Hon'ble Supreme Court in the aforesaid decisions.

5] Mr. Vinod Joshi, learned counsel appearing for the Petitioner, however submitted that the CAT was not right in directing the Petitioner to ignore the benchmark entries in the ACRs, which, the Petitioner had failed to communicate to the Respondent. Instead, Mr. Joshi submitted that the course indicated in the order dated 5 April 2016 made in Writ Petition No. 7255 of 2010 should be followed. In the said order dated 5 April 2016, this Court, directed the employee concerned be afforded opportunity to represent against the uncommunicated ACRs and such representation may be disposed of in a

5 2009(16) SCC 146

time bound manner. The review DPC was directed to consider the case of the Respondent in Writ Petition No. 7255 of 2010 for promotion to the post of General Manager, depending upon the outcome of such representation.

6] In the present case, we are not inclined to adopt the aforesaid course or modify the impugned order. The directions in paragraphs 4 and 5 of the order dated 5 April 2016 in Writ Petition No. 7255 of 2010 were made in the peculiar facts and circumstances of the said case. In the said case, significantly, no employees in the cadre of concerned Respondent and who were junior to concerned Respondent in the seniority list, were recommended for promotion. In the present case, however, the Respondent's immediate junior Shri. M. J. Bojan was promoted as PSO in 2005. The DPC, in fact considered the ACRs of the Respondent for the years 2000-01 to 2004-05. It is only for the year 2000-01 that the Respondent was assessed as “*good*” and whereas for the subsequent four years, the Respondent was assessed as “*very good*”. On the basis that the required benchmark for promotion is “*very good*”, the Respondent was overlooked for promotion.

7] That apart, we also note that the CAT has merely directed the review DPC to consider the case of the Respondent by ignoring the below benchmark entry in the ACR for the year 2000-01. The record indicates that for the subsequent years, the Respondent was

assessed as “*very good*” , which is the required benchmark for promotion. Further, although directions have been issued to consider the case of the Respondent for promotion from a deemed date, i.e., the date from which her immediate junior was promoted as PSO, the CAT, in the impugned order, has made it clear that in case the Respondent is found to be deserving promotion from such deemed date, the Respondent shall be entitled only to notional benefits of higher pay and other emoluments. In the facts and circumstances of the present case, we find that this was a reasonable order.

8] Accordingly, we see no reason to interfere with the impugned order in the exercise of our jurisdiction under Articles 226 and 227 of the Constitution of India. This petition is, accordingly, dismissed. Interim order, if any, stand vacated. There shall be no order as to costs.

9] In view of dismissal of main petition, Notice of Motion does not survive and same is disposed of accordingly.

[M. S. SONAK, J.]

[V. M. KANADE, J.]