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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1533 OF 2013

Union of India & ors. ... Petitioners
Vs.
Col. Om Prakash Chand and ors. ... Respondents

Mr. Vinod Joshi for the Petitioner.
Mr. S.P. Saxena for Respondent No.1.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.
DATE : JULY 26, 2016.

P. C.

1] This petition challenges the order dated 19 September 2011 made by the Central Administrative Tribunal (CAT), Mumbai in Original Application No. 274 of 2009 instituted by Respondent No.1.

2] The CAT, in the impugned order, has issued the following directions at paragraph 7:

7. *Having considered the facts of the case and the law attendant thereto by way of judicial pronouncements as briefly discussed above, we are of the view that the applicant has been illegally overlooked for promotion on the basis of certain below-benchmark ACRs which were not communicated to him. Respectfully following the Larger Bench decision of the Hon'ble Apex Court in the case of Abhijit Ghosh Dastidar (supra), which is delivered after considering the decision in Dev Dutt's*

case, we direct that the applicant's case be considered for promotion by conducting review DPC. The review DPC shall consider his case in accordance with the rules for consideration of ACRs but only after ignoring the ACRs for the years 2002-2003 and 2004-2005. If found fit for promotion the applicant shall be promoted to HAG with effect from 06.03.2009, the date on which some of the officers junior in service to the applicant were promoted to HAG cadre.”

3] Rule was issued in this petition on 14 December 2012, 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.

4] 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 **Satya 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:

1 (2008) 8 SCC 725

2 (2006) 9 SCC 69

3 (2008) 9 SCC 120

4 (2013) 9 SCC 566

“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 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.”*

5] 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.

6] 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

5 2009(16) SCC 146

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 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.

7] 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 impugned order records that some of the officers junior in service to the Respondent No.1 were promoted to HAG cadre. The particulars in this regard are contained in paragraph 6.1 of the impugned order.

8] We find that the subject matter of the present petition is covered by our order dated 6 June 2016 made in Writ Petition No. 1911 of 2010 (Union of India Vs. Smt. S.S. Kakade).

9] For the aforesaid reasons, this petition is dismissed. Interim order, if any, stands vacated. There shall however, be no order as to costs.

[M. S. SONAK, J.]

[V. M. KANADE, J.]