

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (S) No. 7041 of 2008**

Dr.Ambika Prasad Verma, aged about 48 years Son of Late Shri Sharda Prasad Verma, Assistant Professor, Thakur Chedilal, Government P.G. College, Janjgir; resident of Sajeevani Bhawan, Champa Road, Janjgir (CG)

---- Petitioner**Versus**

- 1.** State of Chhattisgarh, Through the Secretary, Higher Education, Mantralaya, D.K.S.Bhavan, Raipur
- 2.** Commissioner, Higher Education, Directorate of Higher Education
- 3.** Director, Higher Education, Directorate,

Both at Government Science College Campus, Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Arvind Shrivastava, Advocate
For Respondents	:	Mr.Shashank Thakur, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****02/08/2017**

The matter is listed for hearing on application for urgent hearing, but with the consent of the parties, the matter is heard finally.

- 1.** The petitioner was selected as Assistant Professor (Political Science) as Ad hoc lecturer on 1.1.1982, he was regularized on 17.3.1987, he was awarded degree of Ph.D in March, 1990 and also confirmed on the said post on 30.6.1990 and he was given senior grade on 17.3.1991. His case for

promotion was considered for the post of Professor by the Departmental Promotion Committee (hereinafter called as 'DPC') and he was found fit and promoted by order dated 19.8.2006, but the said order was cancelled by holding the DPC on 23.7.2007 and order cancelling his promotion was issued on 10.8.2007, feeling aggrieved against that order, the present writ petition has been filed.

2. Mr.Arvind Shrivastava, learned counsel appearing for the petitioner, would submit that the petitioner was duly promoted on the post of Professor and without giving an opportunity of hearing order of promotion was cancelled by review DPC and uncommunicated adverse remark as on 31.3.2001, which was communicated to him on 10.4.2008, has been acted upon, therefore, the impugned order cancelling the promotion of the petitioner deserves to be set aside.
3. On the other hand, Mr.Shashank Thakur, learned State Counsel, would submit that uncommunicated adverse remark has been acted upon by review DPC on the basis of circular of the General Administration Department, State of Chhattisgarh, which provides that such an adverse remark can be acted upon with the previous approval of the GAD and it can be communicated later on.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and

also gone through the record with utmost circumspection.

5. It is not in dispute that adverse remark as on 31.3.2001 was not communicated to the petitioner till the meeting of regular DPC and review DPC was held and it was communicated to him only on 10.4.2008, whereas the petitioner was considered by regular DPC and promoted on 19.8.2006, but review DPC held on 23.7.2007 took cognizance of the uncommunicated adverse remark of 2001 as on 31.3.2001 and acted upon those adverse remark and order of promotion has been reviewed/recalled.
6. The question is whether merely on the basis of circular of the State Government, uncommunicated adverse remark can be acted upon to deny promotion to the petitioner.
7. The law on this point is no longer indispute and well settled by Their Lordships of the Supreme Court in the matter of **Dev Dutt Vs. Union of India and others**¹ and Their Lordships have clearly held that every entry in ACR (whether poor, fair, average, good or very good) must be communicated to him/her within a reasonable period. It was observed as under:-

“17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been

1(2008) 8 SCC 725

communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi vs. Union of India*² that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected

²(1996) 2 SCC 363

without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

41. In our opinion, non-communication of entries in the annual confidential report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.”

8. The correctness of proposition of law laid down by the Supreme Court in the matter of **Dev Dutt** (supra) was doubted and ultimately, the matter was referred to the larger Bench and three-Judge Bench of the Supreme Court in the matter of **Sukhdev Singh Vs. Union of India and others**³ have held that the view taken in the matter of **Dev Dutt** (supra) is correct. It was observed as under:-

“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

3(2013) 9 SCC 566

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 judgment of **Sukhdev Singh** (supra) was followed by the Supreme Court recently in the matter of **Prabhu Dayal Khandelwal Vs. Chairman, Union Public Service Commission and others**⁴.
10. In the matter of **Gurdial Singh Fijji Vs. State of Punjab**⁵, the Supreme Court has clearly held that uncommunicated adverse remark in the confidential report cannot be acted upon to deny promotional opportunities.
11. In the present case, admittedly, the petitioner has not been communicated adverse remark of the year 2001 and it has been acted upon and he has been denied promotion on the ground of said adverse remark.
12. Consequently, the impugned order dated 10.8.2007 (Annexure P/1) cancelling the promotion of the petitioner on the post of Professor is hereby set aside and order dated 19.8.2006 (Annexure P/3) is restored. The respondents have already communicated the adverse remark to the petitioner. The petitioner is at liberty to make a representation to the State Government and in turn, the State Government will consider and decide the same fairly

4(2015) 14 SCC 427

5(1979) 2 SCC 368

and objectively as held by the Supreme Court in the matter of **Dev Dutta** (supra).

13. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-