

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 714 of 2016**

- Bharat Lal Banjare S/o Shri Motilal Banjare, aged about 56 Years, presently posted as Additional Secretary, Social, Sports & Youth Welfare Government of Chhattisgarh R/o H.I.G.-I Quarter No. 75, Sector-I, Pandit Deendayal Upadhyay Nagar, Daganiya, Raipur, Tahsil & District Raipur Chhattisgarh

---- Petitioner**Versus**

1. Union of India Through The Secretary, Ministry of Personnel, P.G.A. & Pension, Department of D.O.P. & T, Government of India New Delhi,
2. Union Public Service Commission, Through The Secretary, Dholpur House, Shahjan Road, New Delhi 110069
3. State of Chhattisgarh Through The Chief Secretary, Government Of Chhattisgarh, General Administration Department Of Chhattisgarh, General Administration Department, Mahandi Bhawan, Mantralaya, New Raipur Chhattisgarh
4. Shri Trilok Chand Mahavar, Collector, Mungeli, District Mungeli Chhattisgarh
5. A. Kulbhushan Toppo (I.A.S.) Registrar, State Co Operative Society, Raipur Chhattisgarh
6. Anil Kumar Tuteja, (I.A.S.) Commissioner Municipal Corporation Bhilai, District Durg Chhattisgarh
7. Narendra Kumar Shukla (I.A.S.) Chief Executive Officer, Zila Panchayat, Raipur, District Raipur Chhattisgarh
8. Niranjana Das (I.A.S.) Deputy Secretary, Rajbhawan Sachivalaya Raipur Chhattisgarh
9. Emil Lakra (I.A.S.) Mission Director, National Rural Health Mission, Chhattisgarh Raipur Chhattisgarh
10. Govindram Churendra, (I.A.S.) Deputy Secretary, General Administration Department, Government of Chhattisgarh Mahanadi Bhawan, Mantralaya New Raipur Chhattisgarh
11. Umesh Kumar Agrawal, (I.A.S.) Director, Treasury, Government of Chhattisgarh Shankar Nagar, Raipur Chhattisgarh
12. Dhananjay Dewangan, (I.A.S.) Deputy Secretary, Department of Panchayat and Rural Development, Behind Rajbhawan, Civil Line, Raipur Chhattisgarh
13. Dr. S.K. Alang, (I.A.S.) Secretary Chhattisgarh Lok Ayog, Raipur Chhattisgarh
14. Chhattar Singh Dehre (I.A.S.), Secretary, Public Service Commission, Shankar Nagar Road, Raipur Chhattisgarh
15. Taaman Singh Sonwani (I.A.S.) Chief Executive Officer, Zila Panchayat, Janjgir Champa Chhattisgarh

---- Respondents

And

WPS No. 727 of 2016

- Sudhakar Khalkho S/o Shri Camil Khalkho, aged about 51 Years R/o E - 1, Janpad Para, District Ambikapur (Chhattisgarh).

---- Petitioner

Vs

1. Union of India Through The Secretary, Ministry of Personnel, P G A & Pensions, Department of D O P & T, Government of India, New Delhi.
2. Union Public Service Commission, Through The Secretary, Dholpur House, Shahjan Road, New Delhi 110069.
3. State Of Chhattisgarh, Through The Chief Secretary, Government of Chhattisgarh, General Administration Department, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh).
4. A. Kulbhushan Toppo (I.A.S.), Registrar, State Co-Operative Society, Raipur (Chhattisgarh).
5. Anil Kumar Tuteja (I.A.S.), Commissioner, Municipal Corporation, Bhilai, District Durg (Chhattisgarh).
6. Narendra Kumar Shukla (I.A.S.), Chief Executive Officer, Zila Panchayat, Raipur, District Raipur (Chhattisgarh).
7. Niranjana Das (I.A.S.), Deputy Secretary, Rajbhawan Sachivalaya, Raipur (Chhattisgarh).
8. Emil Lakra (I.A.S.), Mission Director, National Rural Health Mission, Chhattisgarh, Raipur (Chhattisgarh).
9. Govindram Churendra (I.A.S.), Deputy Secretary, General Administration Department, Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh).
10. Umesh Kumar Agrawal (I.A.S.), Director, Treasury, Government Of Chhattisgarh, Shankar Nagar, Raipur (Chhattisgarh).
11. Dhananjay Dewangan (I.A.S.), Deputy Secretary, Department Of Panchayat And Rural Development, Behind Rajbhawan, Civil Line, Raipur (Chhattisgarh).
12. Dr. S. K. Alang (I.A.S.), Secretary, Chhattisgarh Lok Ayog, Raipur (Chhattisgarh).
13. Chhattar Singh Dehre (I.A.S.), Secretary, Public Service Commission, Shankar Nagar Road, Raipur (Chhattisgarh).
14. Taaman Singh Sonwani (I.A.S.), Chief Executive Officer, Zila Panchayat, Janjgir Champa (Chhattisgarh).

---- Respondents

For Petitioners	:	Ms. June Choudhary, Senior Advocate assisted by Ms. Sharmila Singhai, Advocate
For Union of India	:	Shri N.K. Vyas, Assistant Solicitor General
For State	:	Shri B. Gopa Kumar, Dy. Advocate General
For Union Public Service Commission	:	Shri B.D. Guru, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

25.04.2017

1. These writ petitions under Article 227 of the Constitution of India are by two members of the Chhattisgarh State Government Service, who aspire to be considered for being conferred Indian Administrative Services (IAS). Their plea in that regard has been repelled by the Central Administrative Tribunal. Hence, these writ petitions.
2. We have heard the learned Senior Counsel for the Petitioners, the learned Assistant Solicitor General for Union of India, the learned Deputy Advocate General for the State and learned Counsel appearing for Union Public Service Commission.
3. Before the Tribunal, the State Government, the Union Public Service Commission and the 12th Respondent had filed their pleadings. Union of India had remained neutral.
4. To decide these writ petitions under Article 227 of the Constitution of India, we do not have to labour much to mention the detailed facts. It is the admitted situation that the State Government considered the case of the Petitioners for being included in the list to be forwarded to the competent authority. In doing so, the recommendation was made by taking into consideration certain years insofar as ACR (Annual Confidential Report) gradings are concerned. The pivotal issue on

which the case of the Petitioners stand relates to the inclusion of ACR gradings for certain years, which according to the Petitioners are adverse to their interest either by reason of their content or by reason of malice or malafide attributed to the persons who have made those ACR entries. One of the Petitioners has also the contention that there was no reporting officer on a regular basis and hence there is, what could be called as “bulk reporting in one go”. However, the fact of the matter remains that insofar as the ACR gradings of the years in relation to which the Petitioners raised the disputes are concerned, the undisputed situation is that those ACR gradings were never communicated to the Petitioners and they were not notified of those ACR entries.

5. With the aforesaid undisputed fact situation, we may notice that the learned Tribunal considered a couple of decisions of the Government of India, issued in the form of office memorandum and held that certain actions of communicating or writing the ACR gradings have been done in conformity with the OM concerned. But, the fundamental issue that requires to be addressed is the effect of the law laid by the Apex Court through the judgment in **Dev Dutt Vs. Union of India and Others, (2008) 8 SCC 725**, the *ratio decidendi* of which fell for further consideration at the hands of the three-Judge Bench of the Apex Court in **Sukhdev Singh Vs. Union of India and Others, (2013) 9 SCC 566**. Of importance in the light of submissions made on behalf of the learned counsel for the Petitioners is also the decision of the Apex Court in **Prabhu Dayal Khandelwal Vs. Chairman, U.P.S.C. 2015 (8) SCALE 432**. The learned Deputy Advocate General referred also to the judgment of the Apex Court in Civil Appeal No. 6081 of 2015 (judgment dated 18.08.2015).

6. In **Sukhdev Singh** (supra), their Lordships were considering a reference to a larger Bench on an apparent conflict between the decisions rendered by the Apex Court in **U.P. Jal Nigam vs. Prabhat Chandra Jain, (1996) 2 SCC 363**, and **Union of India vs. Major Bahadur Singh, (2006) 1 SCC 368**. That reference order by two-Judge Bench was on 12.12.2006 reported as **Sukhdev Singh vs. Union of India, (2013) 9 SCC 573**. Answering the reference, their Lordships noticed that pending reference to the three-Judge Bench, **Dev Dutt** (supra) was decided. Adverting to paragraph 8 of the judgment in **Sukhdev Singh** (supra), it can be seen that the three-Judge Bench completely concurred with the *ratio decidendi* of **Dev Dutt** (supra) and also delineated the reasons why **Dev Dutt** (supra) ought to hold the field. It is also noticed in **Sukhdev Singh** (supra) that in the backdrop of the apparent conflict between **U.P. Jal Nigam** (supra) and **Major Bahadur Singh** (supra) there was conflict of opinion between different judgments rendered by the Tribunals. Thus noticing that the three-Judge Bench had approved the ratio of **Dev Dutt** (supra), it is profitable to note that **Dev Dutt** (supra) was rendered noticing **U.P. Jal Nigam** (supra) as well as the decision in **Union of India v. S.K. Goel (2007) 14 SCC 641**. The requirement to communicate all ACR entries to the officer / employee concerned was underscored in **Dev Dutt** (supra) and it was held that the Appellant in that case be given an opportunity to represent against the entry in the ACR which he treated as adverse to him.

7. In **Prabhu Dayal Khandelwal** (supra), the Apex Court relied on **Sukhdev Singh** (supra) and also the decision of the three-Judge Bench of the Apex Court in **Abhijit Ghosh Dastidar v. Union of India, (2009) 16 SCC 146**. On the facts of that case, it was ultimately noted that the claim of the Appellant therein could be answered by

ordering that the “good” entries be treated as “very good” entries on the facts and circumstances of that case.

8. We have considered the decision in **Saroj Kumar Vs. Union of India & Others, 2015 AIR SCW 4853** cited by the learned Deputy Advocate General. That was a case where representation was considered and rejected as against the ACR. Obviously, we see that such rejection of representation was on a ground referable to the sustainability otherwise, of objection of the ACR entries. But, in the case in hand, the rejection of the representation has been done for a reason which could be treated as groundless; that is to say, the authority did not have the power to consider the objections to the ACR entries. We are therefore of the view that the ratio of **Saroj Kumar** (supra) has no application to the facts in the case in hand.
9. In the writ petitions in hand, the petitioners were not communicated with the ACR entries. It appears that they invoked the provision under Right to Information Act. However, when representation was made complaining about the ACR entries and seeking that he be visited through an appellate power, the answer was that the State Government was not the competent authority. The representation was addressed to General Administration Department (GAD) of the Government. When such a representation reaches an officer of high rank in the GAD, it goes without saying that it has to be forwarded and routed through the competent authority for consideration otherwise the administrative mechanism of governance will not go forward in the manner in which it should, in the public law and public service. Bearing that in mind, we are of the view that in the cases in hand, ends of justice would be satisfied if the Union Public Service Commission is directed to ignore all the ACR entries of the writ

Petitioners for the years in relation to which the disputes have been raised by the Petitioners on account of non-communication of ACR entries or on account of non-consideration of representations against the ACR entries which they had treated as adverse.

10. For the aforesaid reasons, we are of the view that the decision rendered by the Central Administrative Tribunal is erroneous in terms of the decision, inasmuch as it is one conflict with the law laid by the Apex Court in **Dev Dutt** (supra) and **Sukhdev Singh** (supra). The Tribunal's decision is therefore liable to be visited in exercise of jurisdiction under Article 227 of the Constitution of India. We do so. The question of moulding relief in writ jurisdiction under Article 226 of the Constitution of India or while exercising supervisory jurisdiction under Article 227 of the Constitution of India is fundamentally aimed at rendering justice on the given set of facts, in accordance with law. On the facts and in the circumstances of the case, the petitioners are entitled to reliefs as are ordered hereunder.

11. In the result, these writ petitions are allowed as follows :

(i) The impugned common judgment of the Central Administrative Tribunal in O.A. No. 1489/2013 and O.A. No.1764/2013 is set aside.

(ii) Writ Petition (S) No. 714 of 2016 is further ordered directing that the case of the Petitioner therein would be considered for inclusion in the IAS for the relevant year 2010 ignoring ACR entries for the years 2007-2008.

(iii) Writ Petition (S) No. 727 of 2016 is further ordered directing that the case of the Petitioner therein would be considered for inclusion in the IAS for the relevant year 2010 ignoring ACR entries for the years 2007-2008 and 2008-2009.

(iv) The Union Public Service Commission is directed to carry out the requisite drill and issue its final decision within a period of three months from the date of receipt of a copy of this order.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge