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HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 1303 OF 2009**

Ajay Bharatan (IRLA 2525), S/o Shri C.B. Bharatan, aged about 44 years, Commandant, Central Reserve Police Force, Office of D.I.G.P., C.R.P.F., V.I.P. Estate, Block No.1, Raipur (CG)

... Petitioner**versus**

1. Union Of India, through Ministry of Home Affairs, through the Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. Director General, Central Reserve Police Force, C.G.O. Complex, Lodhi Road, New Delhi- 110003.
3. Inspector General of Police, Special Sector, Block No.11, Old Sectt. Building, Delhi 110521
4. T. Sekhar Irla 2533 Gc. Crpf, Pallipuram, Trivandrum, Kerala 695316
5. Vivek Vaid (IRLA 2522)- N.S.G. - The Group Commander (CRO), NSG Headquarter (Record Wing), near Domestic Airport, Mehram Nagar, New Delhi 110037
6. Shri Mahindra Jha (IRLA 2501) SPG- DIGP (Retired), DGM, Security, Room 121, Vesundara Bhawan, Bandra East, Mumbai.
7. Praveen Kumar Sharma (IRLA-2505), DIG, GC CRPF, Bilaspur, Village Bharni via Ganiyari, P.O. Sakri, Kota Road, Bilaspur (CG) 495112
8. Mool Chand Panwar, Office of IGP, CRPF, Tripura, B.T. College, Complex, Agartala, Tripura – 799005
9. T. Sekhar (IRLA 2533), GC, CRPF, Pallipuram, Trivandrum, Kerala-695316
10. Sudhakar Upadhyay (IRLA 2557), NSG- The Group Commander (CRO), NSG Headquarter (Record Wing), near Domestic Airport, Mehram Nagar, New Delhi 110 037.
11. Satpal Rawat (IRLA 2558), GC, CRPF, Agartala, PO Salbagan, District West Tripura, Tripura 799 012
12. Ram Gopal Rai Bhat (IRLA 2509), DIGP, CRPF, Siliguri, PO Siliguri Bazar, Naukaghat Siliguri, Distirct Jalpaiguri 734 005
13. Radha Mohan Meena (IRLA 2515) DIGP CRPF, Neemuch (MP) 458441
14. Nagarjun Penumur (IRLA 2498) DIG, CRPF, Jallandhar, PO Katarpur, Jallandhar, PO Kartarpur, Jallandhar, Punjab 144801
15. Shyam Chand (IRLA 2503), DIG, OPS, Srinagar, Jammu & Kashmir, C/o 56 APO, PIN 410507
16. Sarbjit Singh (IRLA 2511), DIGP, CRPF, Pune, Talegaon, PO-Vishnupuri, Pune (MH) 410507
17. Pratap Singh (IRLA 2520), DIGP, CRPF, Bangalore, Yelahanka, Bangalore, Karnataka 560064.

... Respondents

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- Mr. Abhishek Sinha, Advocate, for the Petitioner.
 - Mr. B. Gopa Kumar, Asstt. Solicitor General, for Respondent-UOI.
 - Mr. Ratan Pusty, Govt. Advocate, for Respondent-State.
 - Mr. K.R. Nair, Mr. Ravindra Sharma and Mr. Vedant Bhelonde, Advocate, under instructions of Mr. P.R. Patankar, Advocates, for the respective Respondents.
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Hon'ble Shri Justice P. Sam Koshy**Order on Board**

22/10/2018

1. The present writ petition has been filed challenging the action on the part of the respondents in not considering the case of the petitioner for promotion to the post of Additional Director General of Police ("ADIG", in short) now redesignated as Director General of Police ("DIG", in short) in the Departmental Promotion Committee ("DPC", in short) that was convened on 10.4.2008.
2. Facts relevant for the adjudication of the present dispute is that the petitioner was at the relevant point of time i.e. in the year 2008 working as a Commandant under the respondents and was posted at that point of time at Raipur. The next promotional post which the petitioner was entitled for was the post of ADIG which was subsequently redesignated as DIG. The criteria for promotion was the merit-cum-seniority and the benchmark fixed was that of "very good" for the previous five years of DPC. The relevant Annual Confidential Report ("ACR", in short) for consideration for the purpose of promotion for DPC that was held on 10.4.2008 was of the year 2002-03 to 2006-07.
3. The contention of the petitioner is that except for the year 2002-03, the ACR gradings of the petitioner in all the subsequent four years was "very good" and so far as the ACR for the year 2002-03 is concerned, the same has not been communicated to the petitioner. That as per the information available to the petitioner and which also stands affirmed from the return filed by the respondents before this Court in the present writ petition, he was originally awarded "very good" and which was also affirmed by the Reviewing Authority however the Countersigning Authority had subsequently downgraded it by giving "average". This according to the petitioner has become an adverse ACR so far as the petitioner is concerned for the purpose of promotion. According to the petitioner, applying the judgment of

the Hon'ble Supreme Court in the case of **Dev Dutt v. Union of India & Others, 2008 (8) SCC 725**, the said entry made in the ACR of 2002-03 could not have been taken into consideration by the department without the same having been communicated to him at the appropriate point of time and the entry so made in the said year has proved to be fatal for the petitioner so far as the promotion is concerned. According to the petitioner, immediately when he came to know about the fact that the petitioner has been denied promotion only on account of the said adverse entry which was made in the year 2002-03 in the ACR, he had made a representation on 9.10.2008, Annexure P-15, which till date has been undecided by the respondents. He further submits that right from the judgment of **Dev Dutt** (supra) and the subsequent decisions of the Hon'ble Supreme Court so also by this Court, it has been reiterated that any entry made in the ACR of the employee/officer and which has been taken as an adverse so far as the benchmark determining promotion is concerned, it will be considered as an adverse entry. According to the counsel for the petitioner, the said entry ought to have been made available to the petitioner at the relevant point of time itself so that he could have got an opportunity to represent to the higher authorities for reconsideration and at least could have got an opportunity to know about it much in advance. That the use of the said entry has been detrimental so far as the promotional avenues of the petitioner is concerned.

4. Contention of the respondents in their reply and the additional returns that they have filed is that the entry of "average" entered in the ACR of the petitioner for the year 2002-03 cannot be considered to be adverse entry and that it is only the adverse entries which have to be communicated.

5. According to the counsel for the Government of India, since the petitioner did not have requisite benchmark for all the five years preceding the date of DPC, the petitioner has been found not fit for promotion and the

entry of “average” cannot be taken as an adverse entry. It is only a case where the petitioner was not found fit for promotion and therefore the same cannot be said to be either illegal or bad in law.

6. Given the aforesaid facts and circumstances of the case, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of **Dev Dutt v. Union of India & Others, 2008 (8) SCC 725**, wherein it has been held as follows:

“17. In our opinion, every entry in the A.C.R. 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 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](#) (supra) that arbitrariness violates [Article 14](#) of the Constitution.

20. In U.P. Jal Nigam's case (supra) there is only a stray observation "if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading". There is no discussion about the question whether such 'good' grading can also have serious adverse consequences as it may virtually eliminate the chances of promotion of the incumbent if there is a benchmark requiring 'very good' entry. And even when there is no benchmark, such downgrading can have serious adverse effect on an incumbent's chances of promotion where comparative merit of several candidates is considered.

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.

23. In the present case, the action of the respondents in not communicating the 'good' entry for the year 1993-94 to the appellant is in our opinion arbitrary and violative of natural

justice, because in substance the 'good' entry operates as an adverse entry (for the reason given above).

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33. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

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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.”

7. Subsequently, the said judgment in the case of **Dev Dutt** (supra) was considered by the Larger Bench of the Hon'ble Supreme Court in the case of **Sukhdev Singh v. Union of India & Others, 2013 (9) SCC 566**, wherein again considering all the earlier decisions of the Supreme Court on this subject, the Hon'ble Supreme Court finally vide its judgment dated 23.4.2013, in paragraphs 7, 8 & 9, has held as under:-

“7. A three-Judge Bench of this Court in *Abhijit Ghosh Dastidar v. Union of India* and others followed *Dev Dutt*. In paragraph 8 of the Report, this Court with reference to the case under consideration held as under:

"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 get 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 above referred decision 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 a good law."

8. The aforesaid decisions of the Hon'ble Supreme Court further stand reiterated in one of the recent decisions of the Hon'ble Supreme Court in the case of **Rukhsana Shaheen Khan v. Union of India & Others**, decided on 28.8.2018 in Civil Appeal No. 32 of 2013.

9. From the perusal of the record, it appears that the respondents have originally filed a detailed reply on 10.7.2009. Subsequently, they have filed two more additional returns one on 29.4.2010 and another on 22.9.2016. That each time they have taken a fresh new ground trying to defend their case. Admittedly, the original stand which was taken by the respondents was that the petitioner was not found fit on account of grading of "average" which was given to the petitioner in the year 2002-03.

10. It is also not in dispute that the ACR for the year 2002-03 was not communicated to the petitioner before the DPC was held on 10.4.2008. It is also necessary to take note of the fact that it is also not in dispute that the Reporting Officer as well as the Reviewing Authority both had found the petitioner's grading to be that of "very good" and it was only the

Countersigning Authority who has downgraded the same from “very good” to “average”. Before downgrading the said entry made by the Reporting Officer affirmed by the Reviewing Authority, no opportunity of hearing was given to the petitioner, neither was he communicated in this regard by the authorities concerned before the DPC was held.

11. Given the said facts, this Court has no hesitation in reaching to the conclusion that the entry so made in the year 2002-03 was found to be detrimental so far as the promotional avenues of the petitioner is concerned. Even if accepting the version of the respondents that it may not be an adverse entry, but since it has an adverse consequence so far as the promotional avenue of the petitioner is concerned it becomes an adverse entry for the petitioner. Therefore applying the judgment of the Hon'ble Supreme Court in the case of **Dev Dutt** (supra) which has been further reiterated by the Larger Bench of the Hon'ble Supreme Court in the case of **Sukhdev Singh** (supra), it was incumbent upon the authorities to have communicated the said entry to the petitioner promptly.

12. Given the said facts and taking into consideration the ratio laid down by the Hon'ble Supreme Court in the aforesaid two decisions and which still hold good, the non-consideration of the petitioner for the promotional post of ADIG at that point of time on the adverse entry for the year 2002-03 does not seem to be proper, legal and justified.

13. Given the said facts, this Court is of the opinion that, let the petitioner make a fresh representation in addition to the representation that he has already made on 9.10.2008 which according to the petitioner still has been undecided by the authorities. So far as the entries made in the year 2002-03 is concerned, the respondent authorities concerned shall reconsider the case of the petitioner in the light of the contents of the said representation and thereafter if entry so made by the Countersigning Authority is found to

be unjustified then the authorities would grant him suitable grading and thereafter consider the case of the petitioner for promotion by holding a review DPC so far as his entitlement is concerned on the date when the original DPC was held i.e. on 10.4.2008.

14. Let the respondent concerned take a decision on the representation of the petitioner within a period of two months from the date of receipt of certified copy of this order and thereafter necessary consequential decision, including holding a review DPC, be also taken within a further period of sixty days.

15. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge