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HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 1676 of 2018**

Chandahas Chandrakar S/o Late Shri M. L. Chandrakar, aged about 60 years, Superintending Engineer in the Office of the Public Works Department, Raipur, R/o S-32, Avanti Vihar Colony, Sector 1 Extension, Telibandha, Raipur, Tahsil and District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Public Works, Department, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. Engineer-in-Chief, Public Works Department, Naya Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Sourabh Sharma, Advocate
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****14/03/2018**

Present is a writ petition where the order under challenge is Annexure P-1 whereby the under Secretary, Public Works Department, Government of Chhattisgarh has rejected the representation of the petitioner on 30.11.2015.

2. The representation made by the petitioner was in respect of certain entries made in his annual confidential report for the year 1989, 1990, 2002, 2005, 2007 & 2008. The foremost ground raised by the petitioner is that the officer who has rejected the representation is lower in rank than the person who had made entries in his annual confidential report. To demonstrate this, Counsel for the petitioner submits that the entries have been made by the Principal Secretary of the Department whereas the representation has been rejected by the Additional Secretary who admittedly is lower in rank than the

person who has made entries. The second ground of challenge by the petitioner is that the order Annexure P-1 is a non speaking order without giving any reason whatsoever and discussing the grounds raised by the petitioner in the representation. Thus, on these two grounds, the impugned order deserves to be set aside.

3. The State government on 22.02.2018 was granted time to file reply while admitting the petition but till date the reply has not been filed by the respondents. It is relevant at this juncture to refer to the judgment of the Supreme Court in the case of **Dev Dutt v. Union of India (2008) 8 SCC 725** wherein paragraph-37 it has been held as under:

“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 authority concerned, and the authority concerned 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 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.”

4. The said judgment has further been reiterated by the Supreme Court in the case of **Sukhdev Singh v. Union of India and others** reported in **(2013) 9 SCC 566** wherein paragraph-8 it has been held as under:

“8. In our opinion, the view taken in Dev Dutt (supra) 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 up-gradation 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.”

5. The impugned order Annexure P-1 thus appears to have been issued by an officer who is lower in rank than the person who has made entries in the ACR of the petitioner.

6. So far as the second ground raised by the petitioner is concerned, the same also is a genuine ground raised by the petitioner that of the impugned order being a non speaking order. It is settled position of law by a catena of decisions of the Supreme Court that any order which has an adverse consequential effect should reflect reasons. However, there is no reason whatsoever given by the authority concerned while passing the impugned order.

7. The question regarding recording of reasons, its importance and necessity came up for consideration before the Supreme Court in case of Kranti Associates Private Limited & Another Vs. Masood Ahmed Khan & Others (reported in 2010 (9) SCC 496) wherein the Supreme Court has extensively and elaborately dealt with the issue of need of giving reasons.

8. Similarly in case of East Coast Railway and Another Vs. Mahadev Appa Rao and Others with K. Surekha Vs. Mahadeo Appa Rao and Others (reported in 2010(7)SCC 678), the Supreme Court in a very categorical terms has held that Arbitrariness in making of an order by an authority can manifest itself in different forms. Every order passed by a public authority must disclose due and proper application of mind by the persons making the order. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable. In the absence of reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing of the order.

9. Likewise, again in case of Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers (reported in 2010(4)SCC 785), the Supreme Court has held that “recording of reasons is an essential feature of dispensation of justice. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighted with the authority in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that order”.

10. Under the circumstances, this Court is inclined to hold that the impugned order Annexure P-1 is bad in law on both the counts i.e. the same having been issued by an Officer lower in rank than the officer who had made entries in the ACR and the impugned order also being a non speaking order.

11. Thus, the impugned order is set aside. It shall be open for the respondents to pass a fresh order on the representation of the petitioner by a competent officer giving reasons while considering the representation objectively.

12. The writ petition thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE