

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5299 OF 2003**

Union of India and ors. ...Petitioners
Versus
P. Sundara Mohan and anr. ...Respondents

Mr. Suresh Kumar a/w. Nisha Balani for the Petitioners.
Mr. Satyajeet Shirke i/b Mr. Uday Warunjikar for the
Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 22nd MARCH 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 6th May 2003 made by the Central Administrative Tribunal (CAT) allowing O.A. No. 835 of 2002 instituted by the respondent No.1-original applicant - P.Sunder Mohan.

3] The CAT, after noticing that the petitioners had failed to communicate to respondent No.1-original applicant entries in confidential roll, even though, the entries/overall gradation had failed to reach the level of the prescribed

bench mark, has issued the following operative direction in the impugned judgment and order:

“27. Accordingly, we direct the Respondents to communicate the ACRs from 1998-99 to 2000-2001 to the Applicant within one month of receipt of the order. The representation received shall be disposed of by a speaking order within two weeks of the receipt of the same under intimation to the Applicant. If as a result of the examination any change is made in the ACR then a review DPC may be held to reconsider the Applicant for the post of Senior Accounts Officer. We hope that this entire exercise, shall be carried out within three months of the receipt of the order. There shall be no order as to costs.”

4] Since the impugned judgment and order was made in the year 2003, there have been certain developments in the legal position, which support the case of the respondent No.1-original applicant, rather than the petitioners. In ***Dev Dutt vs. Union of India and ors.- (2008) 8 SCC 725***, the Hon'ble Supreme Court has held that whether an entry is adverse or not, depends upon its actual impact on the employee's career and not on its terminology. Therefore, even an entry of “good” can be adverse in the context of eligibility for promotion. Such entry, therefore, has to be communicated to the officer concerned.

5] In ***Abhijit Ghosh Dastidar vs. Union of India and ors. - (2009) 16 SCC 146***, the Hon'ble Supreme Court

following *Dev Dutt (supra)* has held that non-communication of entries in ACRs of a public servant has civil consequences. Non-communication is therefore, arbitrary and violative of Article 14 of the Constitution of India. Further, it was held that the grading “good” which was below the benchmark “very good” prescribed for promotion, ought to have been communicated to the officer concerned.

6] In ***Sukhdev Singh vs. Union of India and ors. - (2013) 9 SCC 566***, the three Bench of the Hon'ble Supreme Court held that 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 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 functions more in conformity with the principles of natural justice. Accordingly, it must be held that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.

7] In the present case, the CAT, in the impugned judgment and order, has taken the same view as has been taken in cases of *Dev Dutt (supra)*, *Abhijit Dastidar (supra)* and *Sukhdev Singh (supra)*. Therefore, following the decisions of the Hon'ble Supreme Court, there is no case made out to interfere with the impugned judgment and order.

8] Rule is therefore, discharged. The interim relief, if any, is hereby vacated. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)