

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4053 OF 1998
WITH
CIVIL APPLICATION NO. 856 OF 2015**

R.C. Singh ...Petitioner
Versus
Union of India and ors. ...Respondents

Mr. Anupam Chattopadhyay for the Petitioner.
Mr. Parag Vyas a/w. Mr. D.P. Singh for Respondent Nos.1 & 2/UOI.

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

DATE OF RESERVING THE JUDGMENT : 19th APRIL 2018.
DATE OF PRONOUNCING THE JUDGMENT : 26th APRIL 2018.

JUDGMENT:

1] Civil Application No. 856 of 2015 was already allowed by order dated 9th June 2017. That is how this matter is taken up for final hearing.

2] Heard learned counsel for the parties.

3] The challenge in this petition is to the judgments and orders dated 10th October 1997 and 18th December 1997 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No. 414 of 1993 and Review Petition No. 97 of 1997

instituted by the petitioner seeking the relief that uncommunicated entries in his Annual Confidential Reports (ACRs) be excluded from consideration by the DPC for promotion to the post of Deputy General Manager (DGM).

4] Mr. Anupam Chattopadhyay, learned counsel for the petitioner, submits that the petitioner was denied promotion to the post of Dy. General Manager in the year 1991 itself, relying on adverse remarks for the year 1988-1989, even though, the petitioner's representation against adverse remarks was pending. Mr. Chattopadhyay submits that even after the direction of the CAT to exclude these adverse remarks from consideration, the petitioner was denied promotion to the post of Dy. General Manager on the ground that the petitioner's assessment was "good", but the bench mark prescribed was "very good". Relying upon ***Dev Dutt vs. Union of India and ors. - (2008) 8 SCC 725, Sukhdev Singh vs. Union of India and ors - (2013) 9 SCC 566*** and ***Abhijit G. Dastidar vs. Union of India and ors. - (2009) 16 SCC 146***, Mr. Chattopadhyay submits that even the entry of "good" was required to be communicated to the petitioner, particularly, since such

entry, fell short of the bench mark very good prescribed for promotion to the post of Dy. General Manager. Mr.Chattopadhyay submits that since such entries were never communicated to the petitioner, it is only appropriate that the petitioner is granted promotion to the post of Dy. General Manager with effect from year 1991. Mr. Chattopadhyay agrees that since the petitioner has been actually promoted as Dy. General Manager some time in the year 1993, the relief of deemed date from 1991 along with consequential benefits will suffice. For all these reasons, Mr. Chattopadhyay submits that the impugned orders may be set aside/modified and the relief, if necessary, in moulded terms may be granted to the petitioner.

5] Mr. Parag Vyas, learned counsel for the respondent Nos.1 and 2/UOI, submits that there is no reason to interfere with the impugned judgments and orders, particularly, because the CAT has applied the law, as it then stood and there was absolutely no requirement of communicating entries like "*good*" to an employee. He submits that at this point of time, it will not be possible to

undertake any exercise of review of ACRs. He points out that factually, the petitioner was promoted to the post of Dy. General Manager in the year 1993 and therefore, it is not as if the petitioner, has suffered any great prejudice. He points out that the petitioner was also further promoted to the post of General Manager and the petitioner is drawing retiral benefits on such basis. Taking into consideration of all these circumstances, Mr. Vyas submits that this petition may be dismissed, at this point of time.

6] The rival contentions now fall for our determination.

7] From the perusal of the impugned order dated 10th October 1997, it is seen that the CAT has relied upon the ruling of the Hon'ble Supreme Court in case of ***U.P. Jal Nigam vs. Prabhat Chandra Jain - (1996) 2 SCC 363***, in order to deny the relief to the petitioner. After the impugned order was made on 10th October 1997, the Hon'ble Supreme Court in *Dev Dutt (supra)* and ***Union of India vs. Major Bahadur Singh - (2006) 1 SCC 368*** has taken a view in variance with *U.P. Jal Nigam's case (supra)*. Upon noticing the inconsistency in the two decisions, a

reference was made to a three Judge Bench in *Sukhdev Singh (supra)*. The reference Bench has in terms affirmed the view taken in *Dev Dutt (supra)* and *Major Bahadur Singh (supra)* and overruled the view in *U.P. Jal Nigam (supra)*. On this short ground, the impugned judgment and order made by the CAT is required to be set aside.

8] In *Dev Dutt (supra)*, 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.

9] In *Dastidar (supra)*, 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.

10] In *Sukhdev Singh (supra)*, the three Judge 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.

11] Taking cognizance of the aforesaid developments, the Division Bench of this court in Writ Petition No. 7255 of

2010 decided on 5th April 2016 (***Union of India and anr. vs. Prabhakar S. Patil and anr.***) has granted liberty to employee to represent against the remarks in the ACRs and further, directed the authorities to dispose of the representation within a time bound schedule. If the representations were to be accepted, then, the DPC was directed to reconsider the issue of promotion for grant of deemed date.

12] In the present case, however, although we agree with the contention of Mr. Chattopadhyay that the respondents were not justified in taking into consideration un - communicated remarks of “good” in the ACR of the petitioner in the light of law laid down by the Hon'ble Supreme Court in *Dev Dutt (supra)*, *Dastidar (supra)* and *Sukhdev Singh (supra)*, we cannot overlook the circumstance that the petitioner was in fact promoted as Dy. General Manager in the year 1993. Therefore, the question of is only whether the petitioner deserves to be promoted from 1991 as contended by him or whether the promotion from 1993 as Dy. General Manager suffices, in the facts and circumstances of the present case.

13] Normally, in such matters, there is no question of directing promotion without referring the matter to the DPC. Then again, the normal order in such matters is to afford the employee an opportunity of making representation against the remarks and depending upon the out come of such representation, to direct the DPC to reconsider the issue of promotion or deemed date. At this point of time, to direct the petitioner to represent against the entries of the years 1986 to 1991 and thereafter, to require the consideration of such representation by DPC does not, in the facts and circumstances, seem to be an appropriate order to make. Besides, as noted earlier, it is not as if some serious injustice has resulted to the petitioner. The petitioner, ultimately, was promoted as Dy. General Manager in the year 1993 and thereafter, as a General Manager. The petitioner is drawing retiral benefits commensurate to his position as General Manager. The grant of any deemed date from 1991 will make hardly any significant difference to these retiral benefits.

14] Mr. Chattopadhyay, however, submits that the petitioner is determined to clear his name and vindicate his stand. Fortunately for the petitioner, the decisions of the Hon'ble Supreme Court in *Dev Dutt (supra)*, *Dastidar (supra)* and *Sukhdev Singh (supra)* vindicate the petitioners stand that remarks like “good” , since, they fall short of the prescribed bench mark of “very good” ought to have been communicated to him before they are taken into consideration by the DPC for promotion to the post of Dy. General Manager. To that extent, we uphold the petitioner's contention. However, for the aforesaid reasons, we do not deem it appropriate at this point of time, to issue any direction for reconsideration of the petitioner's case for deemed date, because this would involve afford of opportunity to the petitioner to represent against the remarks, also this would require the respondents to take any decision upon such representation, at such a belated stage and thereafter to re-constitute a DPC depending upon the result of the representation.

15] Therefore, even though, we uphold the legal contention of the petitioner that remarks like even “good”

in his ACR were required to be communicated to him, in the peculiar facts and circumstances of the present case, we grant no further relief to the petitioner.

16] The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)