

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17187 of 2018

ORDER: (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have assailed the order dated 29th January 2018 passed in O.A.No.1278 of 2015, whereby, the application filed by the respondent has been allowed.

2. Learned Assistant Solicitor General appearing on behalf of petitioners submits that in the instant case, the grading of "Average" in ACRs for the years 2002-03 to 2007-08 were communicated to the respondent on 30th April 2012. He submits that if the grading in ACR is adverse, then only, it is to be communicated to the employee. However, the said fact has not been considered by the Tribunal while allowing the application filed by the respondent herein.

3. To strengthen his argument, the learned Assistant Solicitor General has relied upon the judgment of Supreme Court in **Saroj Kumar v. Union of India & others**¹. In para 9 of the said judgment, the Hon'ble Supreme Court has held as under :

"In the above circumstances, after communication of the entries made to the appellant and subsequent rejection of the representation, now, the law laid down in the cases of Dev Dutt v. Union of India [(2008) 8 SCC 725], Abhijit Ghosh Dastidar v. Union of India [(2009) 16 SCC 146] and Sukhdev Singh v.

¹ (2015) 12 SCC 198

Union of India [(2013) 9 SCC 566], is of little help to the present appellant for the reason that in the present case not only the ACRs have been communicated to the appellant, his representation too has been rejected.”

4. We note, in the aforesaid case before the Supreme Court, it is specifically mentioned that not only ACRs have been communicated to the employee, but his representation was also rejected. But, in the present case, grading of “Average” in ACRs for the years 2002-03 to 2007-08 were communicated to the respondent only on 30th April 2012 i.e. just two months prior to his retirement.

5. It is settled law that whatever the grading of ACR may be, whether it is “Very good”, “Good”, “Average” or “Poor”, it is to be communicated to the employees working in Government offices, Statutory bodies, Public Sector Undertakings and other State instrumentalities where Constitutional obligations and principles of natural justice and fairness apply. Gradings are to be communicated within a reasonable period so that employee concerned gets an opportunity of making representation for improvement of his grading. Such representations have to be decided fairly within a reasonable period by an authority higher than the one which made the entry. This requirement flows from Constitutional obligations of fairness, non-arbitrariness and natural justice, as has been held by the Supreme Court in **Dev Dutt v. Union of India and others**².

² (2008) 8 SCC 725

6. Admittedly, in the present case, grading of ACRs was communicated to the respondent just two months prior to his retirement.

7. In view of above, we find no ground to interfere with the order dated 29th January 2018, passed in O.A.No.1278 of 2015.

8. Writ petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

16th July, 2018

ajr

