

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.8941 of 2016
Date of decision: 11.02.2020

Ajay Rawat

.....Petitioner

V/s.

State Bank of Patiala and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Abhinav Bansal, Advocate with
Mr. Sandeep Bansal, Advocate,
for the petitioner.

Ms. Madhu Dayal, Advocate,
for respondent Nos. 1 to 3

Sanjay Kumar, J. (Oral)

The petitioner, a Middle Management Grade Scale-III (MMGS-III) officer in the service of the State Bank of Patiala, now the State Bank of India, is aggrieved by the communications dated 14/28.12.2011 (Annexure P-5) and 17.07.2012 (Annexure P-7), whereby he was informed that he was not found fit for promotion to Senior Management Grade Scale-IV (SMGS-IV) and was therefore not called for the interview. The petitioner also assails the action of the Bank in not communicating the adverse remarks recorded by the Reporting Authority in his Annual Appraisal Reporting Forms (AARF) for the years 2009-10 and 2010-11.

In terms of the relevant rules, the petitioner was required to complete five years in service as a MMGS-III officer and have a minimum

AARF score of 80 marks for each year during the immediately preceding five years to be considered for promotion to SMGS-IV. It is an admitted fact that the petitioner was eligible for consideration for such promotion by 01.04.2012, in terms of completing the requisite five years in MMGS-III. However, as his AARF scores for the years 2010 and 2011 were less than 80 marks, he did not come within the zone of consideration.

The scores secured by the petitioner reflect that for the years 2004, 2005, 2006, 2007, 2009 and 2012, he got over 90 marks and in the year 2008, his AARF score was 89 marks. It is only during the years 2010 and 2011 that his AARF scores were below 80 marks. For the year 2010, the Reporting Officer awarded him 62 marks while the Reviewing Officer enhanced it to 65 marks and in the year 2011, the Reporting Officer awarded him 52 marks while the Reviewing Officer increased it to 55 marks. The sudden fall in his AARF scores for these two years, which were preceded by exceptionally high scores and were again followed by exceptionally high scores during the years 2012, 2013, 2014 and 2015 reflect a rather strange and peculiar situation.

The case of the petitioner was that the Reporting Officer was inimically inclined towards him and that was the reason why he was awarded lesser marks during these years. The Reporting Officer was made a party to this writ petition by name, but he did not choose to enter appearance before this Court despite service of notice.

In any event, Ms. Madhu Dayal, learned counsel appearing for the Bank, fairly conceded that the aforesaid lesser marks were awarded to the petitioner on the strength of the adverse entries made by the Reporting

Officer in the Confidential Reports of the petitioner. She also admitted that these remarks were never communicated to him. According to her, there were no written instructions requiring such a procedure to be followed.

It may however be noted that the Supreme Court laid down the law in this regard, as long back as in the year 2008, in **'Dev Dutt V/s. Union of India and others'** [2008(8) SCC 725]. Therein, the Supreme Court noted that every entry, and not merely a poor or adverse entry, relating to an employee under the State or an instrumentality of the State must be communicated to him within a reasonable period and it makes no difference whether there is any benchmark or not in that regard. The Supreme Court further clarified that its direction to do so would apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State, in addition to Government servants. Affirming the law laid down in ***Dev Dutt***, a three-Judges Bench of the Supreme Court in the recent decision in **'Pankaj Prakash V/s. United India Insurance Company limited and another'** [2019 AIR (SC) 3879] issued the following directions:

'15. We issue the following directions:

- (i) Within a period of one month from the date of receipt of a certified copy of this order, the Respondent shall communicate to the Appellant the uncommunicated entries in the APARs for the years which were taken into account for the promotional exercise of 2014-15;*
- (ii) Within a period of two months from the date of receipt of the above, it would be open to the Appellant to submit his objections and representation to the Respondent;*
- (iii) The representation shall be considered within a period of three months from the date of receipt of the representation;*

(iv) Thereafter, based on the result of the decision, the competent authority shall take a decision on whether any modification in the decision for promotion from Scale III to Scale IV for 2014-15 in respect of the Appellant is warranted; and

(v) In order to ensure that this exercise is carried out fairly, we direct that the competent authority shall ensure that the representation that is submitted by the Appellant is placed before an authority at a sufficiently senior level to obviate any bias or injustice.

In the light of the aforestated directions, it would be necessary for the Bank to now undertake the exercise, as indicated *supra*, and thereafter take a call on whether or not the petitioner was fit and eligible for promotion to SMGS-IV upon completion of the requisite five years of service in MMGS-III. In the event the Bank decides to review the AARF scores awarded to the petitioner during the relevant years, viz., 2010 and 2011, the Bank shall decide as to whether the petitioner would be entitled to promotion to SMGS-IV with retrospective effect and if so, the consequential benefits that he would be entitled to. This exercise shall be completed expeditiously and in any event, not later than three months from the date of receipt of a certified copy of this order.

The writ petition is allowed to the extent indicated above.

No order as to costs.

(SANJAY KUMAR)
JUDGE

11.02.2020

rakesh

whether speaking/non speaking : Yes/no

whether reportable/non reportable : Yes/no