

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12th February, 2020

Decided on: 20th February, 2020

+ **W.P.(C) 7279/2016**

UNION OF INDIA AND ANR. Petitioners

Through Mr. Rakesh Kumar, CGSC with
Mr. Raghav Nagar, Advocates

versus

SUDHIR CHOPRA AND ORS. Respondents

Through Mr. Raj Shekhar Rao, Mr. Yatinder
Garg, Mr. Vinayak, Advocates with
Respondent in person

+ **W.P.(C) 10815/2016**

UNION OF INDIA & ANR. Petitioners

Through Mr. Rakesh Kumar, CGSC with
Mr. Raghav Nagar, Advocates

Versus

SUDHIR CHOPRA Respondent

Through Mr. Raj Shekhar Rao, Mr. Yatinder
Garg, Mr. Vinayak, Advocates with
Respondent in person

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These are two petitions challenging two different orders of the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') but arising

out of the same set of facts. Accordingly, they are being disposed of by this common judgment.

2. W.P.(C) 7279/2016 by the Union of India through the Ministry of Defence ('MoD') and the Director General, Defence Estates ('DGDE'), is directed against an order dated 25th August, 2015 passed by the CAT allowing the OA No. 2808/2012 filed by Respondent No. 1, Mr. Sudhir Chopra, as well as the order dated 17th March, 2016 of the CAT, allowing Mr. Chopra's RA No. 52/2016. W.P.(C) 10815/2016 by the same Petitioners is directed against an order dated 27th October, 2015 passed by the CAT, allowing Mr. Chopra's OA No. 1897/2013.

Snapshot of the impugned orders

3. By the first impugned order dated 25th August, 2015 in OA No. 2808/2012, the CAT quashed the communications dated 29th February, 2012 of the Petitioners whereby decisions dated 28th February, 2012 of the Competent Authority ('CA') rejecting Mr. Chopra's representations against the adverse remarks and below benchmark grading in the Annual Confidential Rolls ('ACRs') for the years 2000-'01 till 2005-'06 were communicated. The CAT directed the Petitioners to convene Review Departmental Promotion Committees ('Review DPCs') to consider the case of Mr. Chopra for promotion to Senior Administrative Grade ('SAG') and Higher Administrative Grade ('HAG') on par with his immediate juniors with all consequential benefits following therefrom. By the second impugned order dated 17th March, 2006, the CAT by consent allowed RA 52/2016 filed by Mr. Chopra and quashed the decisions of the CA

communicated on 4th August, 2011 and 17th August, 2011 on the representations of Mr. Chopra against the adverse remarks and below benchmark grading in his ACRs for 2006-'07 and 2007-'08.

4. As far as the order dated 27th October, 2015 in OA No. 1897/2013 is concerned, the CAT by the said order directed the Petitioners to convene a Departmental Screening Committee ('DSC') meeting to review the case of Mr. Chopra for grant of Non-functional Upgradation ('NFUG') on par with his immediate juniors on the basis that in terms of its decision in OA No. 2808/2012 the status of Mr. Chopra's ACR had undergone a change.

5. The CAT in the first impugned order dated 25th August, 2015 noted that OA No. 2808/2012 was the "8th round of litigation" between Mr. Chopra and the Petitioners.

Background facts

6. Mr. Chopra was an officer of the Indian Defence Estates Service of the 1980 batch. He superannuated on 29th February, 2012 from Junior Administrative Grade ('JAG') (Non-functional Selection Grade) without getting promoted to SAG and HAG.

7. According to Mr. Chopra, he was posted in Delhi from 1995 to 1999 as Deputy Director General in the Headquarters of the Directorate General, Defence Estates during which period he claims to have pointed out about the "motivated and fraudulent handling" of the Maharaja of Kota land case where payment to the tune of Rs. 8 crores had been made to the Maharaja of

Kota whereas he was entitled to receive only Rs. 2 lacs under the Urban Land Ceiling Regulation Act, 1976. He refers to a note sent by him in his capacity as Deputy Director General (Hiring) in the case of a hired building known as Ahmedabad House, Ballard Estate, Mumbai, in which the MoD had ordered an enquiry into the handing over of the possession of three hired floors of the said building to private parties. According to Respondent No. 1, the concerned file disappeared from the custody of the then Additional DGDE.

8. Mr. Chopra claimed that by way of punishment for having pointed out the above cases, he was transferred to Shillong in June, 2000 with additional charge of the Defence Estates Officer ('DEO'), Guwahati.

9. Mr. Chopra claimed that he brought out another issue regarding the handling of the land acquisition matter of Sonapur Tea Company and was divested of the additional charge of the DEO Guwahati. He points out that he was retained in Shillong for almost 5 years and in this period his ACRs were spoiled. His specific allegation was that his career was ruined by the then DGDEs (who were impleaded as Respondent Nos. 3 and 4 in his OA No. 2808/2012).

10. On 1st April, 2005, Respondent No. 1 was posted on a faculty position in the National Institute of Defence Estate Management ('NIDEM'). One month later, Respondent No. 4 in OA No. 2808/2012 became the Director General, NIDEM. He was the same person against whom the Respondent No. 1 had earlier made a complaint. He had reported to the Central

Vigilance Commission ('CVC') in June, 2000 alleging that the files of the Ahmedabad House hiring case had disappeared in 1999 from the custody of Respondent No. 4, pursuant to which the MoD had ordered an investigation in the manner. At that time, the Respondent No. 4 was the Additional DG (Vigilance) in the Directorate General, Defence Estates. There is a specific averment in the OA by Respondent No. 1 that Respondent No. 4 fabricated a letter purportedly issued on the signatures of the then Director, NIDEM, after his death in October, 2005, which did not bear any file number and was received in the office of Respondent No. 2 i.e. DGDE on 17th August, 2005 one day before he allegedly signed it on 18th August, 2005, purportedly recommending that the Respondent No. 1 be compulsorily retired.

11. Between April, 2005 and June, 2009, Respondent No. 1 was posted as Joint Director in NIDEM at Delhi. During this time, in 2007, he was issued a charge-sheet for a minor penalty, for writing a letter to Transparency International India to supply their free-of-cost publication titled 'India Corruption Study' to improve governance by signing letters as 'Joint Director' and not 'For Director'. The said disciplinary case did not proceed.

12. Respondent No. 1 filed OA No. 819/2008 in the CAT in March, 2008 challenging the aforementioned charge-sheet. During the pendency of the said OA, Mr. Chopra was awarded the penalty of censure. The CAT by its judgment dated 13th January, 2009 quashed the said penalty and directed the Petitioners to decide the charges afresh from the stage of consideration of reply to the charge-sheet. In the meanwhile, a DPC was held in May, 2007. Its recommendation relating to Mr. Chopra was kept in a sealed cover. Two

Officers junior to Mr. Chopra were promoted to SAG in 2007.

13. Mr. Chopra challenged the order dated 13th January, 2009 of the CAT in this Court to the extent that the CAT had directed the Department to conduct an inquiry afresh. The said writ petition was disposed of by this Court in December, 2010 directing the Petitioners to conclude the inquiry within six months. The disciplinary proceedings concluded in the month of February, 2011 with the charges not being proved. The Disciplinary Authority ('DA') issued an order to that effect on 1st February, 2011. Meanwhile, 60 more officers junior to Mr. Chopra were promoted as SAG.

14. According to Mr. Chopra, even after the conclusion of the disciplinary proceedings on 1st February, 2011, the sealed cover was not opened. Mr. Chopra was compelled to once again approach the CAT by filing OA No. 2515/2011 in which directions were issued by the CAT on 15th July, 2011 to the Petitioners to open the sealed cover. It is only on the opening of the sealed cover in August, 2011 that Mr. Chopra came to know for the first time that he had been declared unfit for promotion by the DPC on the basis of incomplete ACRs containing uncommunicated adverse remarks and below benchmark grading.

15. Prior to this, when Mr. Chopra had sought his ACRs for the years in question under the Right to Information Act, 2005 ('RTI'), Respondent No. 2, i.e., DGDE denied him the information by way of a letter dated 18th March, 2010. Later, by a letter dated 22nd September, 2010, Mr. Chopra was provided with the ACRs for the years 2000-06. He was asked to make a

representation within 15 days failing which his ACRs would be treated as final.

16. By a letter dated 7th October, 2010, Mr. Chopra represented against the adverse remarks and below benchmark grading in the ACRs of 2000-‘06. He pointed out that copies of the ACRs of 2006-‘07 up to 2009-‘10 had still not been furnished to him. He sought to know why the incomplete reports had been furnished to the Union Public Service Commission (‘UPSC’) for DPC purposes, particularly since the ACRs would become final if no representation was received within 15 days.

17. When despite several reminders no reply was received from the DGDE and since his date of superannuation was imminent, Mr. Chopra again approached the CAT with OA No. 3677/2011 for directions to the Petitioners to consider him for promotion to SAG and HAG on the ground that the ACRs containing un-communicated adverse remarks and below benchmark grading should be treated as *non est* for violation of orders of the Department of Personnel and Training (‘DoPT’) at each stage and for failing to dispose of his representations within time.

18. The CAT by order dated 9th February, 2012 disposed of OA No. 3677/2012 with directions to the Petitioners to decide the representations of Mr. Chopra on the ACRs for the relevant period within a period of two weeks. The said representations were rejected by the CA on 28th February, 2012.

OA No. 2808/2012

19. Thereafter Mr. Chopra again approached the CAT with OA No. 2808/2012. Apart from questioning the rejection of his representations, he pointed out that the DPC had overlooked various violations of the DoPT's guidelines in relations to his ACRs. In particular, the delay in writing the ACRs ranged up to 17 months; adverse remarks and below benchmark grading were never conveyed to Mr. Chopra; most of the ACRs for 2000-'01 to 2005-'06 were never placed before the Reviewing Authority/Accepting Authority ('RA/AA'); 4 out of 5 ACRs were never placed before the AA and mostly contained a note to the effect that the AA had demitted office.

20. In one case, i.e. for 2001-'02, the ACR was accepted by an authority who should have reviewed the report. Mr. Chopra pointed out that it was incumbent on the Respondent No. 3 the OA to obtain the remarks of the AA and not herself perform the function of AA, and asking a staff officer, who is not competent to do so, to review the report. There were no targets/objectives/rules fixed by any of the Reviewing Officer ('ROs') and, therefore, they could not objectively evaluate the performance of Mr. Chopra and giving a below benchmark grading of 'good' for the purposes of his promotion to SAG after 2000. Respondent No. 1 specifically urged that the adverse remarks in the ACRs and below benchmark grading were vitiated by the personal grudges of Respondent Nos. 3 and 4 against him and violated all laid down parameters of an independent assessment. Respondent No. 1 set out in detail what was wrong with each of the ACRs from 2001-'02 up to 2007-'08.

Case of the Petitioners

21. In their reply before the CAT, the Petitioners denied Mr. Chopra's allegations. It was submitted that Respondent No. 4 was a man of unquestioned integrity and had been appointed as Member (Administrative), CAT following his retirement. Respondent Nos. 3 and 5 had retired from service before the impugned orders were passed and even before the earlier order dated 9th February, 2012 was passed by the CAT in OA No. 3677/2011. It was stated that by an order dated 1st February, 2007, Mr. Chopra was charge-sheeted for administrative misconduct which finally concluded in an administrative warning by an order dated 1st February, 2011.

22. A preliminary objection was raised that the OA was barred by limitation and due to misjoinder of parties. It was submitted that Mr. Chopra was seeking promotion from 2006 whereas the OA had been filed in 2012. According to the Petitioners, the orders rejecting the representations were detailed and reasoned orders. It was denied that Mr. Chopra was a whistleblower as claimed by him. On the contrary, it was alleged by the Petitioners that Mr. Chopra was an incompetent Officer filing false complaints against senior officers of integrity. The Petitioners denied having violated any rules or instructions.

Impugned order of the CAT

23. In the impugned order dated 25th August, 2015 the CAT identified the following three issues for consideration:

“1. Whether consideration of applicant's representations in

respect of his ACRs for the period 2001-01 to 2005-06 was as per the rules with due application of mind and under instructions of the DOP&T on the subject?

2. Whether the charges of mala fide leveled against the respondents are sustainable in law?

3. What relief, in any, could be granted to the applicant?"

24. The CAT first noted Office Memorandum ('OM') dated 27th April, 2011 which laid down the procedure for DPCs to consider ACRs with below benchmark grading. Reference was then made to an OM dated 19th May, 2011 which directed the CA to consider representations against adverse remarks and below benchmark grading in ACRs on the basis of the material placed before the CA within 30 days of receipt of such representation. Reference was made to Annexure III of Chapter 53 of Swamy's Complete Manual on Establishment and Administration for Central Government Offices, which provides for the time schedule for submitting Annual Performance and Appraisal Review ('APAR').

25. Reference was then made by the CAT to the decision in ***Dev Dutt v. Union of India (2008) 8 SCC 725*** which led to the above OM's being issued. The CAT then analysed in detail the handling of the representations and the case of Mr. Chopra *vis-à-vis* the ACRs for each of the concerned years in a tabular form. The CAT then referred to the contents of one of the covering letters dated 29th February, 2012 enclosing the decision of the CA dated 20th February, 2012. An observation was made by the CAT that "all the impugned orders have been issued to stereo typed manner but only differ in

year of ACRs.” Accordingly, Issue No. 1 was answered by the CAT in favour of Mr. Chopra.

26. As regards Issue No. 2, the CAT observed that no satisfactory explanation was offered by the Petitioners in response to the averments in the application. The CAT also took specific note of the allegation of backdating of correspondence and observed as under:

“We have also looked into the original file and found that the remarks had been written on these two dates i.e. 10.05.2002 and 06.02.2003. It is, therefore, evident that letter dated 17.04.2013 had been written in ignorance or deliberately overlooking the facts that the remarks had already been recorded, we believe, with the purpose of setting the records straight. However, since the respondent no. 3 had already recorded the remarks herself on the above dates, it was a ploy to cover the late consideration of ACRs.”

27. The CAT then dealt with the letter purportedly written on 18th August, 2005 by one Mr. G. Venkataramani, the then Director of NIDEM, who functioned as such for a period of 19 days between 1st July, 2005 to 19th August, 2005, in which he alleged that Mr. Chopra showed insubordination, indiscipline, the tendency of bypassing his superiors, and also “for removing of DFA”. In that letter, he purportedly recommended that Mr. Chopra be transferred out of NIDEM immediately. As regards the said letter, the CAT observed as under:

“It reveals from perusal of the document that the file was marked to Addl. DG on 17.08.2005. It is further revealed that the endorsement over the document was marked to Dy. D.G., who in turn endorsed over the same ‘please put up’. It is not understood that how a letter written on 18.08.2005 could be

issued and have reached the office of Director General in a matter of day and also been marked down to the authorities. Perusal of the file reveals that signatures of the authorities over the letter dated 18.08.2005 and marking down the same Addl. DG are in two inks. It would appear to our mind that the letter has been backdated and G. Venkataramani, who was Director only for 19 days, was seriously ill at that time and expired later. It appears that he was made to sign on a letter which had already been written. We are also curious to understand as to how within a period of less than a month the late G. Venkataramani was in a position to submit report against the applicant, that too when he was physically not well. This only indicates that there is some hanky-panky at work.”

28. The CAT concluded that there was “institutional malice at work” and that “the entire department down the line appears to have been against the applicant.” The CAT noted:

“The applicant appears to have been punished for his acts of exposing the previous irregularities and that is why he was left to languish at one place for a period of more than 5 years whereas the tenure prescribed was for two years. It is a matter of common knowledge that such persons, who upset the apple cart, are never dear to the department. The malice at law is not doing what is prescribed under law as per the prescription but in a different way with some ulterior motives.”

29. Finally, the CAT held:

“In totality of facts and circumstances of the case, we quash the impugned orders dated 29.02.2012 (five in numbers) as they are hit by malice of both facts and law, and have been passed against and in ignorance of the express instructions of the Government attempted to be covered by interpolation on later dates. Therefore, we direct the respondents to convene a review DPC to consider the case of the applicant for promotion to SAG and HAG at par with his immediate juniors with all

consequential benefits flowing therefrom.”

Review Application

30. A Review Application No. 52/2016 was filed by Mr. Chopra to the limited extent of pointing out to the CAT that it had not quashed the order rejecting his representations against the ACRs for 2006-‘07 and 2007-‘08. By the second impugned order dated 17th March, 2016, the said prayer was allowed by the CAT as under:

“Learned counsel for the respondents fairly conceded that looking to the tone and tenor of the order as well as its contents, the omission for quashing the representation against the ACRs for two years i.e. 2006-07 and 2007-08 appears to be an inadvertent clerical error and, therefore, he would have no objection to the same.”

31. This Court has heard the submissions of Mr. Rakesh Kumar, learned Central Government Standing Counsel appearing for the Petitioners and Mr. Rajshekhar Rao, learned counsel appearing for Mr. Chopra.

Submissions on behalf of the Petitioners

32. One of the first grounds urged by Mr. Rakesh Kumar on behalf of the Petitioners is that the CAT erred in referring only to the covering letter dated 29th February, 2012 without actually referring to the order dated 28th February, 2012 of the CA which was enclosed with the said letter. He accordingly submits that the CAT failed to consider the orders passed by the CA which contained detailed reasons for rejection.

33. Secondly, it is pointed out that there was no OM dated 27th April, 2011

but there was an OM dated 27th April, 2010 issued by the DoPT regarding ACRs with below benchmark grading considered in past DPCs. That OM nowhere prescribed any deadline for reporting and reviewing authorities for writing remarks in the APARs. Thirdly, it is submitted that the Petitioners had considered Mr. Chopra's representations in relation to the ACRs for the years 2000-'01 to 2006-'07 strictly in accordance with the OMs dated 13th April, 2010, 27th April, 2010 and 19th May, 2011 and which were issued after the decision in *Dev Dutt (supra)*. The new system of writing and communicating ACRs became effective only on 1st April, 2009 and not on 1st April, 1999 as noted by the CAT.

34. It is next submitted by Mr. Kumar that even the earlier order dated 9th February, 2012 of the CAT did not confer any right upon Mr. Chopra to be heard in person and the principles of natural justice were not going to be violated merely because he was not heard in person. It is submitted that Mr. Chopra did not impugn the rejection of the orders of his representations for the year 2000-01 to 2007-08 and therefore they could not have been quashed by the CAT.

35. As regards the orders dated 17th July, 2011 and 4th August, 2011 rejecting Mr. Chopra's representations against the ACRs for 2006-07 and 2007-08 respectively, it is submitted that if indeed these had not been made available to Mr. Chopra, he could have easily obtained them under the RTI Act. It is further submitted that since the CAT had neither held the decision of the DPC to be invalid or illegal nor actually quashed the relevant ACRs for the aforementioned periods, no Review DPC could have been ordered.

According to Mr. Rakesh Kumar, the CAT itself had held in the earlier order dated 9th February, 2012 in OA No. 3677/2011 that a Review DPC is to be convened only if the overall assessment of Mr. Chopra gets upgraded. Here, there was no such direction.

36. It is submitted that the CAT failed to appreciate that Mr. Chopra himself had delayed his self-appraisal for the years 2000-‘01 to 2005-‘06 which was to have been submitted by 15th April every year. It is further submitted that prior to 16th February, 2009, there were no instructions whereunder the Reporting and Reviewing Authorities forfeited the right to record remarks in the APARs if they were not made within the stipulated time. Therefore, in the present case, delay in recording the ACRs by the Reporting and Reviewing Authorities was inconsequential.

37. Mr. Rakesh Kumar took exception to the CAT referring to a letter dated 17th April, 2013 when no such letter had in fact been written by Respondent No. 3 in OA No. 2808/2012, as she had already retired on 31st January, 2005. Instead, there was a letter dated 17th April, 2003 which related to the ACR for 2001-‘02. For that year, the Reporting Authority made his remarks on 15th November, 2002 and the Reviewing Authority made his remarks on 14th August, 2003 i.e. after the letter dated 17th April, 2003 was written by Respondent No. 3. Thereafter, Respondent No. 3 made remarks on 18th August, 2003. It is accordingly submitted that the comments of the CAT were based on incorrect facts and therefore its conclusions to that extent were vitiated.

38. As regards the letter of Mr. Venkataramani, it is pointed out by Mr. Kumar that he was Director from 1st July to 10th October, 2015 and not just for 19 days. It is submitted that with the CAT itself having made several errors in the impugned order, the error in the date of 18th August, 2005 was inconsequential. It is submitted that the CAT has tried to create a mountain out of a molehill by imputing malafides merely on account of an error in the date. Mr. Kumar submitted that the several complaints made by Mr. Chopra were unsubstantiated and had ultimately been closed after consideration.

39. As regards the grant of the NFUG, it was submitted by Mr. Kumar that its denial was justified. On account of the below benchmark gradings, in terms of the DoPT OM dated 27th August, 2010, Mr. Chopra was not entitled to NFUG. It is further submitted that the status of Mr. Chopra's ACRs remains the same as there were no directions of the CAT to upgrade them. The directions for grant of NFUG were therefore not capable of implementation.

Submission on behalf of Mr. Chopra

40. Mr. Rajshekhar Rao, learned counsel for Mr. Chopra, referred to the detailed orders passed by the CA on the Petitioner's representations and sought to demonstrate that many of these orders were simply "cut and paste." They betrayed a lack of application of mind.

41. Mr. Rao submitted that the conclusion reached by the CAT thereon was therefore correct although it may only have referred to the covering letters in the body of its impugned order. He took the Court through the table set out

in the impugned order of the CAT which showed that for several years the remarks of Reviewing and Accepting Authority were never obtained and adverse remarks were never conveyed to Mr. Chopra. There was therefore a clear violation of DoPT instructions.

42. Mr. Rao submitted that time limits for completion of the ACRs were laid down by a DoPT OM dated 23rd September, 1985 in terms of which superior officers were required to issue written warnings to the Reporting and Reviewing Authorities in the case of failure to adhere to the time schedule. Therefore, it was not correct for the Petitioners to contend that no adverse consequence could flow if the remarks of the Reporting and Reviewing Authorities were entered beyond time.

43. Mr. Rao pointed out how in the previous order the CAT had not rejected Mr. Chopra's prayer for being heard in person but had observed that the Petitioners may grant him that opportunity. He pointed out that had such an opportunity been given, he would have specifically drawn the attention of the CA to the various DoPT OM's and instructions regarding the time schedule for writing ACRs and that ACRs with un-communicated remarks could not be placed before the DPC. Mr. Rao pointed out that there had still been no explanation offered by the Petitioners why the adverse remarks in his ACRs were never conveyed to Mr. Chopra; why his ACRs which did not contain remarks of the RAs and AAs were placed before the DPC; and why his representations were not decided within 30 days.

44. As regards the rejection of his representation against the ACRs for 2006-

‘07 and 2007-‘08, Mr. Rao pointed out that what was conveyed to Mr. Chopra by letters dated 4th August, 2011 (for ACRs 2006-‘07) and 17th August, 2011 (for ACRs 2007-‘08) was a one-line reply stating that his representation had been considered and rejected. This in no way constituted a well-reasoned order.

Analysis and reasons

45. At the outset, the Court would like to note that the law in relation to the mandatory requirement of communicating not just adverse entries in one's ACRs but even below benchmark gradings has been well-settled by the judgment in ***Dev Dutt*** (*supra*). While it is true that this judgment led to the DoPT issuing the OM dated 13th April, 2010 making it mandatory for below benchmark ACRs to be communicated, the legal position in relation to uncommunicated ACRs being relied upon by a DPC was explained in the subsequent judgment in ***Abhijit Ghosh Dastidar v. Union of India*** (2009) **16 SCC 146** as under:

“4. It is not in dispute that the CAT, Patna Bench passed an order recommending the authority not to rely on the order of caution dated 22.09.1997 and the order of adverse remarks dated 09.06.1998. In view of the said order, one obstacle relating to his promotion goes. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other

benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

5. Learned counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion on 28.08.2000. Therefore, the appellant also be deemed to have been given promotion from 28.08.2000. Since the appellant had retired from service, we make it clear that he is not entitled to any pay or allowances for the period for which he had not worked in the Higher Administrative Grade Group-A, but his retrospective promotion from 28.08.2000 shall be considered for the benefit of re-fixation of his pension and other retrial benefits as per rules.”

46. The legal position was thereafter summarised by a three-judge Bench of the Supreme Court in *Sukhdev Singh v. Union of India (2013) 9 SCC 566* 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 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 becomes

more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - poor, fair, average, good or very good - must be communicated to him/her within a reasonable period.”

47. In the above background, the Court has examined the orders passed by the CA on 28th February, 2012 rejecting each of Mr. Chopra’s representations. In the orders dated 28th February, 2012, in relation to ACRs for 2003-‘04 and 2004-’05, it has been stated in paragraphs 2 that the Reporting Authority had awarded Mr. Chopra the overall grading of ‘good’ which was concurred with by the RA. At the same time, the CA records in paragraphs 4 (i) that the ACR itself carries a certification that the RA and AA for the said period had demitted office and their assessment could not be recorded. Clearly, this was a contradiction which was overlooked by the CA.

48. Likewise, in the order rejecting the representation against the adverse remarks in the ACR and the below benchmark grading for 2005-’06, it is observed in paragraph 4 (iii) that:

“I find that the allegation of victimisation and harassment made by Shri Chopra in his representation are of vague nature and nothing specific is cited which would substantiate the likelihood of his ACR for 2000-01 being vitiated by said factors.”

49. Clearly, this is a ‘cut and paste’ error. The year 2000-‘01 could not have figured in an order pertaining to the year 2005-‘06.

50. Mr. Chopra points out how as regards the CAT having only referred to the forwarding letters, Mr. Chopra had sought to bring the omission to the

notice of the CAT by filing MA No. 3599/2015. However, he was advised to file a review application instead. The Court is inclined to agree with Mr. Chopra that the representations against the ACRs of the years 2006-'07 and 2007-'08 were dealt with in a lackadaisical manner, in which the CA acted without actually dealing with the objections raised by Mr. Chopra. There is nothing to show that the CA considered the detailed objections.

51. In respect of the ACR for 2001-'02, the CA remarks that while the remarks of the RA are null and void, there is no reason to nullify the remarks of the AA. If indeed the remarks of the RA are a nullity, the question of the AA accepting those remarks does not arise.

52. The Court has not been provided a satisfactory explanation as to why the adverse entries in the ACRs were not communicated to Mr. Chopra within the stipulated time, and, as pointed out by him, why incomplete ACRs or ACRs with uncommunicated entries were placed before the DPC.

53. As regards the error of the CAT in reproducing the date of the letter dated 17th April, 2003 of the Respondent No. 3, the Court finds nothing much turning on that error since the fact remains that the manner in which the CA has dealt with the representations is most unsatisfactory. This did warrant interference by the CAT.

54. Therefore, on Issue No. 1, the Court finds no error having been committed by the CAT in concluding that the rejection of Mr. Chopra's representations by the CAT was unsustainable in law.

55. As regards the second issue of malice in law, the Court finds this to be one of the extraordinary cases of continuous harassment faced by Mr. Chopra at the hands of the Department. While the Court need not dwell much on the role of the individuals, the facts do speak for themselves and these have been adverted to in great detail in the impugned order of the CAT. Even if one were to keep aside the remarks in the letter of Mr. Venkataramani, who in any event supervised the work of Mr. Chopra for a very short period between July and August, 2005, the overall facts paint a grim picture of the manner of dealing with an officer.

56. Consequently, the Court is not persuaded to interfere even with the above conclusion of the CAT. There may be errors in the reproduction of the dates of some of the correspondence, but that makes no difference to the overall picture, which supports the conclusions reached by the CAT.

57. As regards the point that the CAT has not actually directed the up-gradation of ACRs, there are sufficient instructions to suggest that the ACRs which contain un-communicated adverse entries and below benchmark grading will not be acted upon by the Review DPC, which will instead go by the ACRs for the earlier years. Further with Mr. Chopra having superannuated, the exercise is not going to affect any other person because all that will happen is that Mr. Chopra, if found fit, will be granted SAG and HAG which will only end up giving him some monetary benefit as far as his pension is concerned.

58. Therefore, the Court finds that the direction issued by the CAT for holding Review DPCs and giving all consequential benefits to the Respondents, to be in order, and does not call for interference.

59. As regards the second impugned order regarding the grant of NFUG, this is a logical corollary to the conclusions reached by the CAT in OA No. 2808/2012. Consequently, the Court does not find any ground to interfere with the second impugned order as well. The order in the Review Application being virtually consensual, which is evident on a plain reading of it, that too does not call for any interference.

60. All consequential orders, by way of implementation of the CAT's impugned orders be issued by the Petitioners within 12 weeks from today.

61. Accordingly, both writ petitions are dismissed but in the circumstances, with no orders as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 20, 2020

tr