

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak  
And  
The Hon'ble Justice Ajay Kumar Gupta**

**WP.ST 23 of 2015  
With  
IA No: CAN 2 of 2017  
(OLD No. CAN 6048 of 2017)**

**Indrajit Pal  
VS.  
The State of West Bengal & Anr.**

*Petitioner (in-person): Mr. Indrajit Pal*

*For the State : Mr. Tapan Kumar Mukherjee, AGP  
Mr. Somnath Naskar, Advocates*

*Heard & Judgment on: June 30, 2023*

**DEBANGSU BASAK, J.**

- 1.** Writ petition is directed against an order dated June 18, 2014 passed by the West Bengal Administrative Tribunal in OA 1516 of 2012.
- 2.** Writ petitioner appears in person.
- 3.** Writ petitioner contends that, appraisal of Annual Confidential Reports (ACRs) for 5 years were not communicated to the writ petitioner. Since such remarks were not communicated, authorities acted arbitrarily by considering

such period of time while denying the writ petitioner promotion. He relies upon **(2013) 9 SCC 566 [Sukhdev Singh vs. Union of India & Ors.]** , **(2015) 14 SCC 427 [ Prabhu Dayal Khandelwal vs. Chairman, UPSC & Ors.]** and order dated August 28, 2018 passed in **Civil Appeal no. 32 of 2013 [Rukhsana Shaheen Khan vs. Union of India & Ors.]** in support of his contention that, authorities cannot rely upon ACR appraisals which were not communicated to the writ petitioner for the purpose of considering the promotion of the writ petitioner.

**4.** Writ petitioner points out that, the writ petitioner was not communicated the ACR appraisals for 5 years. Such 5-year period was taken into consideration for the purpose of considering promotion of the writ petitioner. Promotion was denied to the writ petitioner. Writ petitioner approached the tribunal by way of an Original Application being OA No. 164 of 2010. Such Original Application was disposed of by an order dated August 29, 2011. The writ petitioner was granted liberty to make a representation and the authorities were directed to make over the ACR appraisal for the 5 years to the petitioner. He submits that, subsequent to the representation being made, the authorities passed an order dated January 13, 2012 where, the claim of the writ petitioner for promotion was denied. He submits that, since, appraisal of the ACRs for 5 years were never communicated contemporaneously to the writ petitioner, therefore, such ACR remarks could not be taken into consideration by the authorities in denying promotion to the petitioner. Therefore, the impugned order dated January 13, 2012 was incorrect. The tribunal erred in not holding the same. He submits that he is entitled to promotion and that the authorities be directed to grant the same.

**5.** As noted above, the writ petitioner approached the tribunal twice. He first approached the tribunal by way of OA No. 164 of 2010. Such Original

Application was disposed of by the tribunal on August 29, 2011. The tribunal directed the authorities to communicate the ACR ratings for the relevant years to the petitioner. Petitioner was granted liberty to file a representation on receipt of the communication from the authority. The order also stipulated that if there was any transfer or retirement of the original authority who recorded the ACRs, the next incumbent holding the office shall dispose of the representation of the writ petitioner on the basis of available records.

**6.** Writ petitioner acted in terms of order dated August 29, 2011 passed in OA 164 of 2010. He did not contend then that, since ACR appraisals for some year were, in fact, never communicated to him contemporaneously, therefore, the same can never ever be taken into consideration and that he must be given a promotion. Rather, he acted on the order dated August 29, 2011 passed in OA 164 of 2010. He received his ACR appraisals from the authorities. He made a representation on the basis of the order of the tribunal before the authorities. His representation was considered and decided by the order dated January 13, 2012.

**7.** The order dated January 13, 2012 noted that the ACRs pertain to the period 2002-2003, April 1, 2003 to September 30, 2003, October 1, 2003 to March 31, 2004 and April 1, 2004 to September 30, 2004, October 1, 2004 to March 31, 2005, 2005-2006 and 2006-2007.

**8.** In the order dated January 13, 2012 the authorities noted that the writ petitioner submitted his self appraisal for the period pertaining to 2002-2003, April 1, 2003 to September 30, 2003, October 1, 2003 to March 31, 2004 and April 1, 2004 to September 30, 2004, before the Sub-Divisional Officer (SDO) on June 24, 2009. He waited for substantial period of time to submit his self appraisal for such period in order to allow transfer of a number of SDO. His

grievance that the ACRs were not written by the SDO under whom he worked was due to his own inaction.

**9.** For the balance period the order dated January 13, 2012 noted that, written communication for corrective measure was not made with regard to day to day affairs unless absolutely necessary to any employee. Moreover, the ACR ratings of the petitioner were in no case 'below average' and therefore did not necessitate a written communication.

**10.** It is not the case of the writ petitioner that, the writ petitioner was treated in a manner which is *de hors* the applicable rules for the grant of promotion. The contention of the writ petitioner is that, since the appraisals of the ACRs for 5 years were not communicated to the writ petitioner, therefore, the writ petitioner must be granted a promotion. According to writ petitioner, when grading 'Good' was not sufficient to yield the prescribed bench mark then it must be construed as 'adverse'.

**11.** With respect, we are unable to subscribe to such a view in the facts of this case. Firstly, at the instance of the writ petitioner, the tribunal on the earlier occasion in OA 164 of 2010 passed an order dated August 29, 2011, as noted above. The writ petitioner accepted the same. The writ petitioner then did not contend then that, since ACR appraisals were not communicated to him, he must be given the promotion.

**12.** Promotion is not a matter of right. Every employee in the zone of considerations for promotion cannot be promoted. What is to be seen is whether a competent authority was considering the candidates in the zone of consideration for promotion fairly and reasonably or not. In a given case, despite a candidate in the zone of consideration receiving "Good" as remarks in his ACR may not secure the promotion in view of a better candidate being available. Simpliciter on the ground that a "Good" remark in an ACR did not

translate to a promotion does not accommodate an inference that the "Good" remark was actually 'average'. In the facts of the present case, we do not find any arbitrariness in the action of the authorities in considering the writ petitioner for promotion. The order dated January 13, 2012 by the authorities pursuant to order of the tribunal dated August 29, 2011 contains reasons as to why, the writ petitioner was not considered for promotion. Moreover, the writ petitioner withheld his self-appraisal for the period from 2002 to September 30, 2004 till June 24, 2009 being a period of seven years and thus is not entitled to claim that he was denied Career Advancement Scheme. He cannot benefit out of his own wrong.

**13.** In **Sukhdev Singh** (supra) the Supreme Court considered **Dev Dutt vs. Union of India & Ors. [(2008) 8 SCC 725]**. The Supreme Court in paragraph 8 of the said judgment held as follows :-

*"8. In our opinion, the view taken in Dev Dutt 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.”*

**14.** In **Prabhu Dayal Khandelwal (supra)** again the Supreme Court directed reconsideration of the claim of promotion of the writ petitioner therein. In the facts of the present case, in the earlier round of litigation writ petitioner was allowed to be reconsidered to the post of promotion which the writ petitioner availed of.

**15.** In **Rukhsana Shaheen Khan (supra)** Supreme Court noted **Sukhdev Singh (supra)** and **Prabhu Dayal Khandelwal (supra)** and directed the competent authority to ignore non-communicated adverse ACRs and take a fresh decision in accordance with law.

**16.** As noted above, the writ petitioner availed of his rights before the tribunal in the earlier round of litigation where, he took a particular stand. He acted on the basis of the order passed by the tribunal.

**17.** At this stage, we are not in a position to allow the writ petitioner to take a stand which is contrary to the order dated August 29, 2011 passed by the tribunal in OA 164 of 2010.

**18.** In such circumstances, we find no merit in the present writ petition.

**19.** WP.ST 23 of 2015 along with all connected applications are disposed of without any order as to costs.

**20.** Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Debangsu Basak, J.)**

**21.** I agree

**(Ajay Kumar Gupta, J.)**

*Dd*