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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-23318-2017 (O&M)  
Date of Decision:22.09.2023

**VINOD GOYAL**

.....Petitioner

V/s.

**STATE OF PUNJAB AND OTHERS**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present: Mr. Sherry K. Singla, Advocate,  
for the petitioner.

Mr. R.K. Kapoor, Addl. A.G., Punjab.

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**SANJEEV PRAKASH SHARMA, J. (Oral)**

1. The petitioner by way this Writ Petition assails the action of the respondents in denying him the benefit of Assured Career Progress scheme (for short “ACP”) on completion of nine years of service on the ground that the petitioner has one “average” Annual Confidential Report in his credit.

2. Learned counsel for the petitioner submits that apart from the ACRs for the years 2010-11 and 2012, the petitioner’s ACRs are “very good”. He further submits that the earlier ACRs of the petitioner were also “good” and “very good”, however, in the year 2010, the respondents have marked “zero” against the competency in typing and computer work as well as for innovation on computer work. Counsel for the petitioner submits that thereafter, the petitioner has a “very good” record to his credit and in the same column, he has been awarded “very good” comment and overall gradation is also “very good”.

3. Learned counsel for the petitioner submits that the said adverse remarks were never communicated to the petitioner and he, therefore,

submits that these adverse remarks should be expunged from his ACR and he should be granted the benefit of ACP on completion of nine years of service.

4. In support of his submissions, he relies on judgment passed by this Court in the case of **RITES Limited through its Managing Director, RITES Bhawan Vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and Others; 2017(1) SLR 1.** He further relies upon the judgment rendered by this Court in the case of **All Punjab Gramin Bank Employees Union Vs. Punjab Gramin Bank and Others; 2013(3) SCT 101** and also refers to the judgment passed in the case of **Dev Dutt Vs. Union of India and Others; (2008) 8 SCC 725,** and **State of U.P Vs. Yamuna Shankar Misra; 1997(4) SCC 7,** to submit that without communicating the ACRs, the petitioner cannot be denied the benefit of ACP.

5. *Per contra*, learned counsel appearing for the respondent-State has supported the action of the respondents and submitted that as per the Government instructions, only adverse remarks are required to be conveyed to the employees. It is stated that ACRs are not written on the basis of preceding years, but are written on the basis of the work conduct and accuracy and performance during the year relating to which the ACR is to be written. The petitioner was not giving good response and performance to respondent No.5 and therefore, the remark entered in his credit does not warrant any interference of this Court and Writ Petition deserves to be dismissed.

6. I have considered the submissions of learned counsel for the parties.

7. A look at two ACRs for the period 04.02.2010 to 31.03.2011 and for the period upto 31.03.2012 reflects that the competency in typing and computer work (speed and clarity) has been detailed out as “zero”. Similarly, innovation on computer work has also been detailed out as “zero” by the Reviewing Officer and for the period upto 31.03.2012, he has been again rated for competency in typing and computer work as “zero” below average, for management and work too below average and for innovation on computer work, it is again mentioned as below average. Thus, for two consecutive years, the petitioner’s ACRs have been “average” and “below average”.

8. In **Dev Dutt** Vs. **Union of India and Others** (Supra), the apex Court has held as under:-

*“13. It has been held in Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC 597 that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the A.C.R. of a public servant is arbitrary because it deprives the concerned employee from making a representation against it and praying for its up-gradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits). Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. vs. Yamuna Shankar Misra 1997 (4) SCC. Hence such non-communication is,*

*in our opinion, arbitrary and hence violative of Article 14 of the Constitution.”*

9. In **Abhijeet Ghosh Dastidar Vs. Union of India and Others;** 2009 (16) SCC 146, the apex Court has held as under:-

*“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.*

10. Thus, even an average ACR is considered to be of adverse comment, may take away a rightful claim of promotion or grant of ACP or selection scale. In the present case, respondents have denied the petitioner the

benefit of ACP based on the adverse remarks as above. However, the overall assessment in both the ACRs has been made as “average” by the Reporting Officer which is agreed by the Reviewing Officer.

11. In these circumstances, considering that these ACRs were going to affect the petitioner’s future service, the same should have been conveyed. Even otherwise, where there was an adverse remark of “below average” in different columns, the same should have been communicated.

12. The Supreme Court in the case of **Gurdial Singh Fijji** Vs. **State of Punjab and Others**; (1979) 2 SCC 368 has held that if the adverse remarks have not been communicated, the same should not be looked into. The relevant portion of the observations made by apex Court is as under:-

*“The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him.”*

13. Thus, an un-communicated ACR have to be ignored.

14. If the un-communicated ACR of the petitioner are ignored, the remaining ACRs of the petitioner are found to be “very good”. The denial of benefit of ACP based on the un-communicated adverse ACRs, therefore, has to be held to be bad in law. The respondents were required to examine the record without looking into the un-communicated ACRs. Accordingly, he would be entitled for grant of benefit of ACP on completion of nine years of service. Even otherwise, the assessment of record of the petitioner for grant of selection scale and ACP has to be distinguished from that for the purpose of assessing the record for promotion in the case of **R.K. Jibanlata Devi Vs. High Court of Manipur through Registrar General and Others;** 2023 SCC Online SC 178 . The said aspect has been re-examined and it has been held as under:-

*“6. In the present case the dispute is with respect to the post of Assistant Registrar in the High Court of Manipur. Prior to the Rules 2020, the promotion to the post of Assistant Registrar was governed by the Gauhati High Court Service Rules, 1967. However, the Manipur High Court framed its own rules namely Rules, 2020. The DPC met to fill up the post of Assistant Registrar on 09.04.2021. Therefore, as such the Rules, 2020 which were prevailing at the time when the DPC met were rightly considered.*

*6.1 XXX XXXX*

*6.2 XXX XXXX*

*6.3 XXX XXXX*

*6.4 In the present case the petitioner got “Good” gradings for the year 2016-17 and received “Very Good” gradings in her ACRs for the years 2017-18 and 2018-2019. It was the specific case on behalf of the petitioner which has not been denied that the ACRs grading of “Good” for the year 2016-17*

*was never communicated to the petitioner even till the DPC met. Therefore, as per the law laid down by this Court in catena of decisions more particularly, as observed and held by this Court in Rukhsana Shaheen Khan (supra); Sukhdev Singh (supra) and Dev Dutt vs. Union of India and Ors, (2008) 8 SCC 725 uncommunicated adverse ACRs may be even with “Good” entry which can be said to be adverse in the context of eligibility for promotion is not to be relied upon for consideration of promotion.*

15. Keeping in view thereto, the present Writ Petition deserves to be allowed and is accordingly allowed. The respondents are directed consider the case of the petitioner for ACP on completion of 9 years of service. Accordingly, his salary shall be revised. The exercise shall be conducted within a period of three months henceforth.

16. All the pending applications in this Writ Petition stand disposed of accordingly.

September 22, 2023  
Ess Kay

[ SANJEEV PRAKASH SHARMA]  
JUDGE

|                             |   |     |   |    |
|-----------------------------|---|-----|---|----|
| Whether speaking / reasoned | : | Yes | / | No |
| Whether Reportable          | : | Yes | / | No |