



2023:DHC:9019



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Pronounced on: 15th December, 2023**

+ **W.P.(C) 44/2021, CM APPL. 34457/2021 & 31948/2023**
PANKAJ PRAKASH Petitioner

Through: Petitioner in person.

versus

UNITED INDIA INSURANCE COMPANY LIMITED & ANR.
..... Respondents

Through: Mr. Amit Kumar Singh, Ms. K.
Enatote Sema and Ms. Chubalamla
Chang, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India, praying for the following reliefs:

“a) Issue a writ, order or directions against the Respondents thereby quashing the order dated 21.09.2020 passed by the Respondents against representations made by the Petitioner.

b) Issue a writ, order or direction to the respondents to promote the petitioner with effect from 29.05.2014 when his juniors have been promoted, with all consequential benefits including seniority continuity, salary arrears, consequential promotions and other benefits applicable to the cadre/scale thereafter etc.

c) Issue directions to the respondents to disclose overall marks of work record (score APAR) before promotion exercise every year and also disclose marks of all



employees/officers considered for promotion in different parameters of promotion to maintain full transparency and fairness in promotions.

d) Issue directions for criminal investigations against respondents for committing fraud and manipulations in promotions by deliberately misinterpreting ministry's office memorandum and Hon'ble Supreme Court Judgements for their vested interests and completely discovering and disregarding the directions of the hon'ble Supreme Court in aforementioned judgments.

e) Cost of the litigations as incurred by Petitioner till date in various proceedings against the respondents, may also be awarded in favour of the Petitioner and against the Respondent.

f) Pass any such order or further orders as the Hon'ble Court may deem just and fair in the facts of the case, in the interest of justice."

FACTUAL MATRIX

2. The petitioner had joined United India Insurance Company (hereinafter "respondent no.1") on 27th November, 1989, as a direct recruit (Scale 1) and was promoted to Scale 2 in the month of May, 1998. At present, the petitioner is employed at the post of Manager (Scale 4).

3. Subsequently, in August, 2009 the petitioner was promoted in Scale-3.

4. The petitioner became eligible for his next promotion between 2014-2015 and the said promotion exercise took place on the basis of a written examination, annual performance appraisal reports and seniority.

5. According to the promotion policies in place, the employees working at the post of Deputy Manager for three years become eligible for promotion to the post of Manager (Scale 4).



6. Since the petitioner met the aforesaid criteria, he appeared for the written examination and scored 71 marks out of total marks of 100, however his name was not included in the result published on 29th May, 2014.

7. Subsequently, the petitioner filed an application under the Right to Information Act, 2005 (hereinafter “RTI”) dated 2nd June, 2014, thereby, requesting the respondent no.1 to provide copies of the Annual Performance Assessment Report (hereinafter “APARs”) for the Years 2010-2011, 2011-2012 and 2012-2013.

8. Thereafter, vide letter dated 2nd July, 2014 the respondent no.1 replied to the above mentioned RTI application filed by the petitioner, thereby, stating therein that the APARs so requested by the petitioner could not be disclosed since the same was challenged before the Madras High Court in W.P. No. 2250/2013 and a stay had been provided on the same. However, the petitioner was provided only the final ratings given to him in different traits and parameters,

9. Further, the petitioner made another representation dated 13th June, 2014 to the Chairman-cum-Managing Director no.1, thereby, seeking a reason as to why he was not promoted. However, the said representation was not acknowledged by the respondent no.1.

10. Simultaneously, the petitioner also moved an RTI application dated 4th August, 2014 in order to seek information from the respondent no.1 vis-à-vis the marks obtained by him and the reckoning parameters i.e., seniority, work record and written examination and cut-off marks for promotion from Scale 3 to Scale 4 for the period of 2014-2015.



11. Subsequently, the Central Public Information Officer (hereinafter “CPIO”) responded to the aforesaid RTI application vide letter dated 9th September, 2014, whereby, the CPIO showed his inability to provide the marks of the successful candidates in all the three parameters by seeking shelter under Section 8.1 (j) of the Right to Information Act, 2005.

12. Thereafter the petitioner made a representation to the Joint Secretary, Secretary of the Department of Financial Services, Ministry of Finance (MoF), Government of India, which was not decided.

13. Thereafter, the petitioner filed a writ petition bearing No. 7631(S/B) of 2016 against the respondents before the High Court of Judicature at Allahabad, Lucknow Bench, seeking directions against the respondent to quash the result of the promotion exercise carried out by the respondents, due to which the petitioner was not promoted to the post of Manager (Scale 4) and additionally seeking directions to the respondent to consider the petitioner for the said post.

14. The aforesaid writ petition was dismissed vide judgment dated 6th October, 2016 against which the petitioner preferred a review petition bearing no. 103173 of 2016 before the same Court, which stood dismissed vide order dated 17th January, 2017.

15. Further, the petitioner preferred Civil Appeal Nos. 5340-5341/2019 before the Hon’ble Supreme Court on the ground that the entries in the APAR for the year 2011-12 and 2012-13 were not disclosed to him and were not taken into consideration while carrying out the promotion exercise of 2014-2015, as a result of which the petitioner was unable to submit a representation at the relevant time.



16. The aforesaid Civil Appeal was decided vide judgment dated 10th July, 2018 and it was decided that non-communication of the entries by the respondent no.1 was a matter of consideration since a legitimate grievance had been brought forth by the petitioner. The Hon'ble Supreme Court accordingly directed the respondent no.1 to provide the APAR entries for the relevant years and further to consider the representation which may be made by the petitioner in response of grading assigned to him for the years considered while carrying out the promotion exercise for 2014-2015.

17. In the aforesaid judgment, the Hon'ble Supreme Court also observed the fact that on 19th October, 2012 the Ministry of Finance (Department of Financial Services) had drawn the attention of Public Sector Companies to its earlier Office Memorandum dated 14th May, 2019 issued towards implementation of decision taken in ***Dev Dutt v. Union of India, (2008) 8 SCC 725*** and sought compliance of the said Office Memorandum.

18. Thereafter, on 19th August, 2019, the respondent provided certain documents stated to be the APARs for the year 2011-12, 2012-13 and 2013-14, however it is alleged by the petitioner that the same were not in accordance with the directions of the aforesaid memorandum.

19. Further, vide letter dated 30th August 2019, the petitioner requested the respondent No.1 to disclose overall marks/ratings/grades in different parameters of APARs.

20. Subsequent to the aforesaid letter the respondent vide letter dated 26th September, 2019 communicated to the petitioner that they had already



disclosed the APARs for the relevant year 2011-12, 2012-13 and 2013-14 in compliance of the directions passed by the Hon'ble Supreme Court.

21. Aggrieved by the above mentioned letter, the petitioner preferred a contempt petition bearing no. (Civil) Nos. 1248-1249 of 2019, which was dismissed in view of the APARs which had already been communicated.

22. Thereafter, the petitioner made a representation dated 15th January, 2020 to the respondent no.1, thereby, mentioning his contention by enclosing a copy of sample APAR of an officer of Ordnance Factory services which is being communicated as per the guidelines of the Office Memorandum dated 14th May, 2009.

23. The aforesaid representation was replied to vide email dated 21st September, 2020, thereby rejecting the petitioner's promotion since the year 2014.

24. Aggrieved by the order dated 21st September, 2020 the petitioner has preferred the present petition.

SUBMISSIONS

(On behalf of the petitioner)

25. Learned counsel appearing on behalf of the petitioner submitted that the conduct of the respondents' vis-à-vis the order dated 21st September, 2020 is completely unfounded, arbitrary, erroneous and hence is in violation of Article 14 of the Constitution of India.

26. It is submitted that the aforesaid order has been passed deliberately, illegally and in contravention of the guidelines issued vide Office Memorandum dated 14th May, 2009 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India.



27. It is further submitted that the order dated 21st September, 2020 has been passed by completely overlooking and disregarding the directions passed by the Hon'ble Supreme Court in cases titled *Dev Dutt vs Union of India (Supra)*, *Sukhdev Singh vs Union of India (2013) 9 SCC 566*, *Rukhsana Shaheen Khan v. Union of India, (2018) 18 SCC 640* and the judgement dated 10th July, 2020 passed in the case of the petitioner.

28. It is submitted that the order dated 21st September, 2020 is liable to be quashed since the same is invalid and incomplete as the APARs have been disclosed without disclosing the overall marks obtained by the petitioner in the APARs of 2011-12, 2012-14 and 2013-14.

29. It is submitted that the said order is not sustainable since non-disclosure of marks obtained by the petitioner leaves a huge scope of manipulation in the promotion process and therefore makes it an arbitrary process.

30. It is submitted that the said order is liable to be quashed since the representation dated 15th October, 2020 made by the petitioner has been placed before a biased authority i.e., General Manager (Personnel) to decide promotion from Scale 3 to Scale 4 which is in violation of the directions dated 10th July, 2012 issued by the Hon'ble Supreme Court. Moreover, the order dated 21st September, 2020 has not been signed by the authority who decided the representation rather has been signed by a junior authority i.e., Deputy General Manager (Personnel) which completely disregards the specific directions of the Hon'ble Supreme Court and thus the same amounts to contempt of Court.

31. It is submitted that the petitioner received 'A' ratings in all parameters in APARs of 2018-19 and 2019-20 and immediately made a



representation to respondent no.1 seeking to disclose the overall marks but received no response.

32. It is also submitted that on the eve of the hearing of the Contempt petition, the respondents sent an e mail and attached a backdated order i.e., the order dated 21st September, 2020, thereby, rejecting the petitioner's promotion since the year 2014.

33. In view of the foregoing submissions, it is prayed that the present petition may be allowed, and the reliefs may be granted as prayed.

(On behalf of the respondent)

34. *Per contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that the order dated 21st September, 2020 has been passed as per the directions issued by the Hon'ble Supreme Court.

35. It is submitted that the petitioner was considered for promotion in the year 2014, however, he did not meet the desired cut-off marks and therefore was not promoted during that promotion exercise.

36. It is submitted that the petitioner did not secure the cut off marks and accordingly was not promoted since the promotion upto Scale 5 is granted on the basis of overall ranking obtained under the various parameters for measuring merit and seniority and the same is best determined by the company.

37. It is submitted that while disclosing the APARs, the respondents are duty bound to maintain fairness and transparency in public administration, moreover, the respondent has disclosed the APAR since 2013-2014 onwards and since the petitioner's APAR was rated 'A'



(outstanding) or 'B' (Average), there was no need for the same to be disclosed.

38. It is submitted that promotions are conducted strictly and in accordance with the provisions of the promotion policy for officers, 2006 and the allegation that candidates junior to the petitioner have been promoted is frivolous, moreover, the petitioner secured lesser marks than the cut-off in all three channels i.e., Normal Channel, Seniority Channel and Fast Track Channel and hence was not granted promotion.

39. It is submitted that before the year 2013-2014, the company took a uniform decision to disclose APARs in cases wherein the grading awarded was below average and further, the full disclosure of APARs was undertaken only 2013-14 onwards.

40. It is submitted that the circular dated 14th May, 2005 was issued for internal mechanism of the ministry and the same was adopted by the respondent no.1 in the year 2013 and therefore only APARs that were below average were communicated to the employees.

41. It is further submitted that the respondent no.1 has complied with the directions issued by the Hon'ble Supreme Court and disclosed the APARs of the petitioner to him, subsequent to which the petitioner filed a contempt petition against the respondent no.1 which was consequently dismissed by the Hon'ble Supreme Court on the grounds that the same had been complied with by the respondent no.1.

42. It is submitted that vide representation/order dated 21st September, 2020, the respondent no.1 disclosed the APARs obtained by the petitioner for the years 2011-12, 2012-14 and 2013-14 and further communicated to the petitioner that he was unable to meet the cut-off criteria as desired by



the respondent no.1 and therefore the petitioner's request for retrospective promotion from the year 2014 was denied.

43. It is further submitted that the aforesaid order has been issued in due compliance with the law and hence suffered from no illegality.

44. It is also submitted that the petitioner was duly considered for the promotion exercise of 2014-15 but did not meet the criteria as laid down by the respondent no.1. Moreover, the petitioner does not have a vested right to be promoted since the same is a matter best determined by the organisation conducting the promotion exercise.

45. In view of the foregoing submissions, it is prayed that the instant petition may be dismissed, being devoid of any merit.

FINDINGS AND ANALYSIS

46. Heard the parties and perused the material on record.

47. It is the case of the petitioner that his request for retrospective promotion from the year 2014 was denied by the respondent no.1. It is contended that the respondent no.1 has failed to disclose the overall marks of work record in different parameters of promotion to maintain full transparency and fairness in the promotion. It is also contended that the respondent no.1 has acted in an arbitrary manner, thereby, not disclosing the marks of the APARs obtained by the petitioner.

48. In rival contentions, it has been submitted that the respondent no.1 has communicated all the APARs necessary for the promotion exercise of 2014-15. It is further contended that the petitioner has been promoted to the position of scale 4 at the time he qualified for the same, however, the same promotion was not granted to him at the time of the promotion exercise conducted in 2014-15. Moreover, the petitioner was duly



considered for his promotion in the said year but failed to meet the required cut-off.

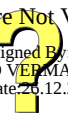
49. In view of the above facts and circumstances, this Court deems it imperative to adjudicate the present petition by deciding the issues framed herein below:

I. Whether the order dated 21st September, 2020 suffers from any illegality that warrants this Court's interference?

II. Whether the petitioner is liable to be promoted w.e.f. 2014?

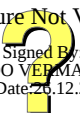
50. In order to adjudicate the flagged issues, it is imperative for this Court to analyse the order dated 21st September, 2020. The relevant portion of the said order is reproduced herein:

"SLP No. 33462-33463 of 2018V-Your representation dated 15/01/2020 A. Judgment dated 10.07.2019 of Hon'ble Supreme Court in Civil Appeal No. 53405341 of 2019: This has reference to the order dated 10/07/2019 of the Hon'ble Supreme Court of India on the captioned appeal wherein it is directed as under: "(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; (Hi) 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. B. Disclosure of APARs in compliance of directions of Hon'ble Court In compliance to the above said Judgment, copies of the APARs for the years 2011-12, 2012-13 and 2013-14 containing entries/rating which are considered for promotion during Promotion Exercise 2014-15 have been provided to you through our Regional office I, New Delhi vide their communication dated 19/08/2019. Thereafter, you responded in your letter dated 30/08/2019 that mere providing of copies of APARs without giving the trait wise marks is not in full compliance to the directions of the Court and is also in violation of the DOPT guidelines on sharing of APAR. The same was duly replied vide our Regional Office I, New Delhi letter date^25/09/2019 stating that in terms of the directions of the Hon'ble Supreme Court, the complete set of APARs for the relevant years 2011-12, 2012-13, 2013-14 which were taken into account for the promotion exercise 2014-15 have been provided. C. Contempt proceedings and Orders therein: However, you have initiated a contempt petition no. 1248-1249 of 2019 before Hon'ble Supreme Court alleging that there is breach of the order of the Court. The same was dismissed by the Hon'ble Court vide order dated 06/01/2020 with the following observations:...it is difficult to accept the contention of the petitioner that there is a breach of the order of this Court. The Contempt Petitions are dismissed. We, however, clarify that in pursuance of the directions issued by this Court, it would be open to the petitioner to make a representation raising such contentions as the petitioner may be advised. D. Objections/Representations dated 15.01.2020 and 13.06.2014 on the APARs: That despite the fact that all information in terms of the directions passed by the Hon'ble Supreme Court of India in its Judgment and Order dated 10.07.2019 passed in Civil Appeal No.5340-5341 of 2019 have been duly complied with..We are, for the sake of clarity, once again clarifying all queries/issues, which are being sought to be raised by you in your representation dated 15/01/2020. You have stated-therein that your representation



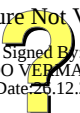


dated 13/06/2014 may be treated as part of the present representation. Both the representation has been considered together and all objections raised therein concerning APARs are being taken together. That you have raised the following queries in the aforesaid representations with regard to APARs:-. 1".MeresharingofAPARcopies without giving marks assigned against 'A', 'B', 'C' ratings given in different parameters and sub-parameters of APARs of.2011-12. 2012-13 and 20.13-14 is not in full compliance to the Order of Hon'ble Supreme Court &OM hence the overall marks obtained in each APARs to be communicated. You have cited the case of APAR of Ordinance Factory. 2." The rating "B" "C" along with "A" given indifferent parameters of APAR 2011-12 is not correct, biased hence to be set aside due to various reasons stated in your representation given in 2014 (dated 13/06/2014). You have referred to the cases of promotion of 8 officers during 2014-15 and claimed that from the list of promoted officers, it is clear that only on the basis of CRA/Work record marks, you have not been promoted despite best grades given by reporting/review officers. 3. The lower than bench mark grade at any stage should have been communicated to you for the years which have been considered for promotion. 4. You have stated that during Promotion Exercise 2014, Officers who have scored lesser marks (written &Seniority) than you were promoted to Scale IV and claimed that you deserved increase in marks and outstanding performance ratings for the same due to following grounds:

- a. You have completed M.Sc., MCA Post Graduate diploma in Human Resource Management and 4 years' full time residential management programme from Indian Institute of Management which are benefited by the organisation.*
- b. You are senior to other mentioned officers except Mr. P K Rastogi as you pertain to 1989 batch whereas the others pertain to 1991, 1992 batches.*
- c. (i) The branches such as BO Basti, BO Sitapur and BO, Bijnor which were running under heavy loss for 3 years were brought into profit by your sincere efforts and that due to your efforts*



the BO Bijnor was upgraded to DO and started functioning independently from 01/04/2011. (ii) During your tenure as BM, BO Sitapur and SBM, BO Bijnore, you continued your pursuit to eliminate corruption/dummy agency in the system and alleged that the management penalized you by transfer from Sitapur to Bijnor within 2 years. d. During your tenure at RO Lucknow, more number of MACT cases were settled through Lok Adalat and more number of cases were dismissed in default in Company's favour saving a huge amount of around Rs. 40/50 lakhs in one years' time including heavy interest saving on MACT awards. Therefore, you claimed for discretionary extra plus points by the Promotion Committee compared to others who have scored lesser marks than you (written & seniority) and also very junior to you. 5. At the time of your promotion from Scale II to III in 2009, the management / GIPSA decided to consider 5 more junior batches along with your batch to clear the long bottleneck developed in Scale II cadre leading to undue benefit given to these officers at that time. 6. In 2012, you became eligible for appearing in promotion examination under fast track • channel by completing 3 years of service in the present cadre with fellow qualification. However, you were debarred to appear as per GIPSA circular stating that the eligibility criteria for fast track channel would be 4 years of service in the cadre without Insurance qualification. 7. Few of the above promoted officers were not eligible for promotion through fast track channel as they were not fulfilling the insurance qualification eligibility criteria at the time of announcement of promotion exercise 2014-15. At that time, GIPSA management issued a circular arbitrarily to allow those officers to appear provisionally in fast track examination and complete fellow qualification before 31/03/2014. E. Consideration of the objections/representations and disposal thereof by the Authority: Your representation on APAR considered for Promotion Exercise 2014-15 and all relevant records





have been carefully perused by the senior level authority, ie. General Manager (HR) and upon such review, you are informed as under:1. Regarding your contentions that mere sharing of APAR taken into consideration for Promotion Exercise 2014 is not in full compliance of the order passed in the SLP, we would like to draw reference to the order dt. 6/1/2020 of the Hon'ble Supreme Court wherein it was stated that ..."it is difficult to accept the contention of the petitioner that there is a breach of the order of this Court

Thus your above contention is devoid of any merits.

2. In the APAR of 2011-12, the existence of certain IR issues and its handling have been recorded by the assessing officers. Accordingly, the rating has been done. Further the traits are rated "A" as also "B" which was also confirmed by the Reviewing Officer.

In the absence of any specific substance brought out by you to overrule the above

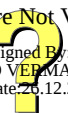
remarks of the assessing officers, the said assessment is upheld.

3. In the assessment of APAR prior to Disclosure System, "Below Average" or "Poor" rating warranted communication to the Appraiser. There was no bench mark grade as claimed by you. However, pursuant to the orders of the Hon'ble Court, complete disclosure of all the APARs have been made.

4. a. Your academic qualification is a matter of record and the promotion is a cumulative effect of various criteria such as written examination, work record, interview apart from seniority as applicable for the relevant channel of promotion and your claim of supersession by juniors is not tenable.

b. As far the performance relating to BO, Basti, Sitapur etc., the same relate to period Prior to 2011-12. Even for APAR of 2011-12, "A" ratings / grades are noted. Thus the contribution/work record is rated appropriately.

c. It is noted that your performance in TP Claims were duly acknowledged and it was stated in the APAR for 2012-13 as "In TP, due to his follow up able to achieve 36% disposal. I rate him as outstanding." Similar ratings have been recorded in APAR of 2013-14.





5. The objections raised by you about the promotion exercise 2009 has no relevance to the promotion exercise 2014-15 and are extraneous to the subject matter. However, it is to be noted that the amendment to the promotion policy was amended at the relevant point of time and was made applicable to all employees uniformly. Further, in the same year, you have been promoted to the cadre of Scale III.

6. As regards your contention on introduction of eligibility criteria of 4 years of service to appear under Fast track channel, it is observed that your allegations are baseless as It has been brought to the knowledge of the employees vide circular dated 15/6/2011 that for the year 2012-13, the eligibility to appear under Fast Track channel would be 4 years in the present cadre which was reiterated vide circular dated 13/7/2012. The said amendment to promotion policy is uniformly applicable to all officers across the Company as well as to all the 4 PSGICs. It is pertinent to mention that you are not eligible for promotion in PE 2012-13 under both the channels as you had not completed 3 years as on 31/03/2012 which was the cutoff date for eligibility.

7. Regarding eligibility criteria for awarding insurance qualification marks during PE 2014-15, It is observed that as per the Promotion policy, the cutoff date for eligibility is 31st March. The Promotion exercise 2014-15 had commenced on 27/12/2013, the officers who are awaiting the results of AMI and FIN as on 31/3/2014 were allowed to appear for the pre-promotion written examination on provisional basis. The said provision was applied uniformly for all officers. Finally, only those officers who fulfilled the eligibility requirement as on 31/3/2014 were considered for further process of selection.

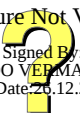
In view of the above, there are no circumstances warranting any change in the ratings of APARs and the existing ratings are hereby confirmed. The decision taken in the promotion exercise in the year 2014-15 is absolutely correct. There is no ground for inclusion of your name in the promotion exercise in the year 2014-15. your representation is disposed accordingly...”



51. A bare perusal of the aforesaid order makes it evident that the same had been issued in due compliance with the judgment dated 10th July, 2019, whereby, the Hon'ble Supreme Court had issued directions to the respondent to communicate the entries in the APARs for the years which were taken into account while conducting the promotional exercise of 2014-15 within a period of one month from the date of receipt of copy of the judgment. Further, in compliance with the aforesaid judgment, on 19th August, 2019 the petitioner was provided with the copies for the APARs for the years 2011-12, 2012-14 and 2013-14 i.e., the APARs which were taken into consideration for the promotional exercise conducted for the year 2014-15.

52. Subsequently, the petitioner initiated contempt proceedings against the respondent for non-compliance of the judgement dated 10th July, 2019 which was dismissed vide order dated 6th January, 2020. The respondent no.1 further clarified all the questions of the petitioner which were raised through representations dated 15th January, 2020 and 13th June, 2014.

53. It was stated by the respondent that at the time of the petitioner's promotion from Scale 2 to Scale 3 in the year 2009, the respondent no.1 decided to consider 5 more junior batches along with the petitioner's batch for promotion so as to clear the long bottleneck so developed in the Scale 2 cadre which led to undue benefit having been given to the officers at that time. It is stated that in 2012, the petitioner became eligible for appearing in the promotion exercise under the fast-track channel, thereby, having completed three years of service in the cadre of employment at that time. It is further stated that the General Manager, who is the senior level authority, has carefully considered the case of the petitioner and has





provided reasons as to why the petitioner was not promoted during the promotion exercise of 2014-2015. The respondent no.1 has further disclosed the APAR for the year 2011-12, thereby stating that the petitioner was awarded trait 'A' and 'B' which were further confirmed by the reviewing officer. It is further disclosed that the academic qualification of the petitioner is a matter of record, and the promotion is a cumulative effect of various criteria such as written examination, work record, interview and seniority as applicable for the relevant channel of promotion. The respondent no.1 essentially rejected the claim of the petitioner on the basis of the eligibility criteria of 4 years of service to appear under the fast-track channel and further observed that the petitioner had not completed the said criteria as on 31st March, 2012 i.e., the cut-off date for eligibility. It is further contended that the promotion exercise for the period of 2014-2015 commenced from 27th December, 2013 and only the officers who fulfilled the eligibility criteria as on 31st March 2014 were considered for further process of selection.

54. The aforesaid order was issued in compliance with the judgment dated 10th July, 2019 and the pending contempt petition bearing no. 547-575/2020 was dismissed in terms of this order, thereby, establishing that the directions issued by the Hon'ble Supreme Court were followed by the respondent no.1.

55. It has been alleged by the petitioner that the order dated 20th September, 2020 has been signed by the junior authority i.e., the General Manager (Personnel Department) which is in complete disregard of the directions issued by the Hon'ble Supreme Court, however, there seems to be no such specification mentioned by the Hon'ble Supreme Court in the



directions so passed. It is apposite to analyse the directions issued to the respondent no.1 by way of judgment dated 10th July, 2019. The relevant portion of the judgment has been reproduced herein:

“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.”

56. A bare perusal of the aforesaid directions make it evident that the respondents were directed to supply the undisclosed APARs within one month from the date of receipt of the judgment. Further, the respondent no.1 was directed to accept any representation made by the petitioner which was to be decided within a period of three months from the date of receipt of the said representation.



57. Further, on the basis of the said representation, the competent authority was directed to take a decision if any modification in the decision of promotion of the petitioner from Scale 3 to Scale 4 was warranted. Moreover, the respondent no.1 was directed to carry out the process in a fair manner and the same was also to be submitted before an authority at a sufficiently senior level.

58. The said direction does not specify the exact position of authority that is required to accept the said representation. The order dated 20th September, 2020 has been signed by the deputy General Manager, which appears to be a sufficiently senior position and therefore the same cannot be termed as illegal in any manner.

59. Moreover, the petitioner preferred to file a contempt petition against the respondent no.1 which was dismissed by the Hon'ble Supreme Court vide order dated 6th January, 2020. The relevant portion of the aforesaid order has been reproduced herein:

“Following the judgment and order of this Court dated 10 July 2019, the petitioner has been communicated the Annual Performance Appraisal Reports having a bearing on the promotion for 2014-15. In view of the above position, it is difficult to accept the contention of the petitioner that there is a breach of the order of this Court. The Contempt Petitions dismissed. We, however, clarify that in pursuance of the directions issued by this Court, It would be open to the petitioner to make a representation raising such contentions as the petitioner may be advised.

Pending applications, if any, stand disposed of.”

60. A reading of the said order makes it clear that there exists no case for non-compliance of the judgment dated 10th July, 2019. Moreover, the APARs so desired by the petitioner were communicated to him and hence

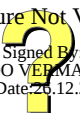


the directions issued by the Hon'ble Supreme Court had been duly complied with by the respondent no.1. Furthermore, the Court left it open for the petitioner to make any representations, so desired by him.

61. At this juncture, it is imperative for this Court to analyse the power of the High Court as under Article 226 of the Constitution of India. The same has been analysed by different Courts time and again in a catena of judgments.

62. In case titled ***Benedict Denis Kinny v. Tulip Brian Miranda, (2021) 12 SCC 780***, the Hon'ble Supreme Court brought to light the extent of the jurisdiction that may be exercised by a High Court under Article 226 of the Constitution of India and held that such jurisdiction is extraordinary and discretionary and is to be exercised only in situations where there is a serious injustice. The relevant paragraphs of the said case have been reproduced herein:

“21. We need to first notice the nature and extent of the jurisdiction of the High Court under Article 226 of the Constitution of India. The power of judicial review vested in the High Courts under Article 226 and this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction under Article 226 is original, extraordinary and discretionary. The lookout of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a statutory authority, a tribunal or an authority within the meaning of Article 12 of the Constitution. The judicial review is designed to prevent cases of abuse of power or neglect of a duty by the public authority. The jurisdiction under Article 226 is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted on them. The courts are guardians of the





rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of Article 226 is very wide and can be used to remedy injustice wherever it is found. The High Court and the Supreme Court are the constitutional courts, which have been conferred right of judicial review to protect the fundamental and other rights of the citizens. Halsbury's Laws of England, Fifth Edn., Vol. 24 dealing with the nature of the jurisdiction of superior and inferior courts stated that no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so. In para 619, Halsbury's Laws of England states:

“The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendancy in certain classes of claims, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular claim.

22. The nature of jurisdiction exercised by the High Courts under Article 226 came for consideration by this Court in large number of cases. In Sangram Singh v. Election Tribunal [Sangram Singh v. Election Tribunal, AIR 1955 SC 425], Article 226 of the Constitution of India in reference to Section 105 of the Representation of the People Act, 1951 came for consideration. Section 105 of the Representation of the People Act provided that “every order of the Tribunal made under this Act (Representation of the People Act) shall be final and conclusive”. Argument





was raised in the above case that neither the High Court nor the Supreme Court can itself transgress the law in trying to set right what it considers is an error of law on the part of the court or tribunal whose records are under consideration. It was held that jurisdiction of the High Court remains to its fullest extent despite Section 105. This Court also held that jurisdiction of the High Court in Article 226 and under Article 136 conferred on this Court cannot be taken away by a legislative device. In para 13, the following has been laid down : (AIR pp. 428-29)

“13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal.

It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-à-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105.”

63. The aforesaid judgment makes it evident that the High Courts exercise the powers vested under Article 226 of the Constitution of India only in circumstances where there exist certain irregularities and



illegalities. Further, situations wherein no illegality exists, such powers should not be exercised.

64. The power enshrined under Article 226 is solely to prevent cases where there exists any abuse of power or law or duty by a public authority. Moreover, a High Court should be hyper vigilant while exercising its jurisdiction under Article 226. The power under the said Article is discretionary and this exceptional power of judicial intervention cannot be exercised for grant of relief in individual cases, but in a larger public interest.

65. In the instant petition, the petitioner has claimed that the order dated 20th September, 2020 is illegal, arbitrary and bad in law, however, in view of the Contempt Petition as well as the directions issued to the respondent no.1, it is evident that there is no illegality committed by the respondent no.1. The APARs were disclosed to the petitioner for the years relevant to the promotion exercise of 2014-15 and the petitioner was further permitted to make his representation in accordance with the same.

66. In so far as the Office Memorandum (hereinafter “OM”) dated 14th May, 2009 is concerned, it is apposite for this Court to analyse the same in order to adjudicate the issues flagged above i.e., Whether the order dated 21st September, 2020 suffers from any illegality that warrants this Court’s interference? And whether the petitioner is liable to be promoted w.e.f. 2014. The relevant portion of the said OM is reproduced herein:

“The undersigned is directed to invite the attention of ministries/ departments to the Existing provisions in regard to preparation and maintenance of. Annual Confidential Reports which inter-alia provide that only adverse remarks should be communicated to the officer reported upon for



representation, if any the Supreme Court has held in their judgement dated 12.5.2008 in the case of Dev putt vs Union of India (Civil Appeal No.7631 of 2002) that the object of writing the confidential report and making entries is to give opportunity to the public servant to improve the performance. The 2nd Administrative Reforms Commission in their Report has also contended that the performance appraisal system for all services be made more consultative and transparent on the lines of the PAR of the All India Services. 2. Keeping in view the above position, the matter regarding communications of entries in the ACRs in the case of civil services under the Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government (i) The existing nomenclature of the Annual Confidential Report, will be modified as Annual Performance Assessment Report (AFAR). (ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority, wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment. (iii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon. (iv) The concerned officer shall be, given the opportunity make any representation against the entries and the final grading given in the Report within a period fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the



concerned officer on or before fifteen days from' the day of disclosure, the APAR will be treated as final.

(v) The new system of communicating the entries in the APAR shall be made applicable April 2009 before for considering adverse remarks under the existing instructions f consultation with the reporting and/or before him within a period of thirty days from the date of receipt to the representation. (vi) The competent authority after due consideration may reject the representation or may based on the material placed accordingly. The decision of the competent authority and of receipt of the decision of the competent authority by the concerned APAR Section. communicated to the officer reported upon within fifteen days."

67. A bare perusal of the said Office Memorandum makes it clear that it was after the issuance of the Office Memorandum that the nomenclature of APAR was introduced. As per the said OM, it is evident that the APARs were to be disclosed to the officer so concerned and upon such disclosure, the concerned officer would be provided with an opportunity to make a representation against the entry and the final grading must be provided within a period of 15 days after such representation is made. Such representation should be restricted only to specific factual observations contained in the report and failure to make such representation would render the initial APAR granted, final.

68. Adverting to the facts of the case, it is evident that the order dated 20th September, 2020 does not suffer from any illegality as the same has been issued in compliance with judgment dated 10th July, 2019 as well as the Office Memorandum dated 14th May, 2009. Moreover, the Contempt Petition filed by the petitioner was dismissed by the Hon'ble Supreme Court in light of the APARs provided by the respondent no.1 and hence



the petitioner appears to be re-agitating the issue so settled by the Hon'ble Supreme Court while dismissing the aforesaid Contempt petition.

69. In view of the aforesaid facts and discussions, it is observed that the order dated 20th September, 2020 does not require this Court's intervention.

70. Accordingly, issue no. I is decided.

71. Adverting to the second issue at hand i.e., whether the petitioner is liable to be promoted w.e.f. 2014.

72. It is a well settled law that promotion is not a fundamental right, rather the right to be promoted is a fundamental right. The said principle has been dealt with by the Hon'ble Supreme Court in a catena of cases.

73. In case titled ***Union of India v. Sangram Keshari Nayak, (2007) 6 SCC 704***, the Hon'ble Supreme Court has as follows:

"11. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefore. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the Bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him."

74. Similarly, in case titled ***Union of India v. Hemraj Singh Chauhan, (2010) 4 SCC 290***, observed the following :

"36 It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part



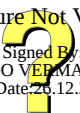
of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.”

75. The aforesaid judgments make it crystal clear that promotion is not a vested right; rather, the right to be considered for a promotion when the time arises is a fundamental right. In the present petition, the petitioner was duly considered for the promotion exercise conducted for 2014-15, however fell short off the cut-off marks required for the said promotion. Moreover, the petitioner was given his due promotion when he met the required criteria and is now seeking retrospective promotion at a stage when he was not eligible to be promoted.

76. In cases of retrospective promotions, established legal principles dictate that such actions should only be taken with compelling reasons and a solid foundation. While there have been instances where courts approved retrospective promotions, these were typically based on special circumstances, like the application of specific rules in the given situation.

77. The Hon’ble Supreme Court in the case of ***Union of India &Anr. vs. Manpreet Singh Poonam & Ors.,(2022) 6 SCC 105***, held as follows:

“18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules





which might apply to a promoted post facilitating further promotion which is governed by a different set of rules.

19. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17-04-2012 with effect from 01-07-2011, when the actual vacancies arose, which in any case is a benefit granted to the respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

20. This Court in Union of India v. K.K. Vadera has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that: (SCC p. 627, para 5)

“5....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post after a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

21. Similarly, this Court in Ganga Vishan Gujrati v. State of Rajasthan, has held that: (SCC pp. 52-53, para 45)

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This





principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra. The principle was reiterated by this Court in State of Bihar v. Akhouri Sachindra Nath, and State of Uttaranchal v. Dinesh Kumar Sharma. In Pawan Pratap Singh v. Reevan Singh, this Court revisited the precedents on the subject and observed: (Pawan Pratap Singh case, SCC pp. 281-82, para 45) '45. ... (i) The effective date of selection has to be understood in the context of the Service Rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.'

This view has been re-affirmed by a Bench of three Judges of this Court in P. Sudhakar Rao v. U. Govinda Rao."



78. In the instant case, the petitioner has been duly considered for the promotion in the year 2014-15, however, did not qualify for the promotion as per the APARs disclosed by the respondent no.1. Furthermore, the Petitioner was granted his promotion when the said requirement was met by him and hence denial of the same does not amount to violation of any fundamental right of the petitioner. Matters concerning promotions are best determined by the management of the company sanctioning such promotions and do not warrant the Courts' interference unless there has been a lack of opportunity provided to the individual seeking such promotion.

79. In view of the above facts and discussions, this Court is of the view that the petitioner was duly afforded an opportunity to be considered for promotion during the promotion exercise of 2014-15, however, he did not qualify for the same. Moreover, the petitioner was duly promoted when he qualified for the same and hence is not liable to be promoted from the year 2014.

80. Accordingly, issue No. II is decided.

CONCLUSION

81. It is a settled principle of law, that promotion is not a vested right however, the aggrieved has the right to be considered for the same. The Court's intervention is not warranted in situations wherein the aggrieved has been duly considered for the said promotion.

82. The petitioner has claimed that the respondent no.1 has not complied with the directions provided by the Hon'ble Supreme Court Civil Appeal Nos. 5340-5341/2019, vide judgment dated 10th July, 2018. Subsequently, in light of the same, the petitioner preferred a contempt



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petition bearing no. 574-575/2828 against the respondent no.1 which was disposed of vide order dated 15th October, 2020, however, the petitioner has preferred the instant petition re-agitating the same issue as has been disposed of by the Hon'ble Supreme Court in light of the representation dated 21st September, 2020.

83. In view of the above discussion of facts and law and for the purposes of adjudication of the instant petition, the petitioner has not been able to make out a case which requires interference of this Court. Therefore, this Court does not find any merit in this instant petition to issue any writ.

84. Accordingly, the petition is thus, dismissed being bereft of any merits. Pending applications, if any, also stand dismissed.

85. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 15, 2023
sv/ds/av