

24.09.2024
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WPCT 134 of 2013
Union of India & Others
– *Versus* –
Dr. Sanjay Ketan Sarkar

Mr. Sanjay Santra
... for the Petitioners/UoI.
Mr. Sarajit Sen
... for the Respondent.

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 02.02.2012 passed by the learned Tribunal in the original application (in short, OA), being OA 2315 of 2010. By the said order the learned Tribunal directed the petitioners to hold a review DPC in respect of the respondent and to promote the respondent as per rules and regulations if otherwise fit ignoring Annual Confidential Reports (in short, ACRs) for 2005-06 and 2007-08 with a further direction that if promoted, the respondent should be given consequential benefits and seniority from the date his immediate junior was promoted to SA grade.

Drawing our attention to a memo dated 13.04.2010 issued by the Director, Department of Personnel and Training, Mr. Santra, learned advocate appearing for the petitioners submits that prior to issuance of the said memo there was no rule towards communication of the below benchmark ACRs. It is also a settled proposition of

law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in case of a statutory authority, it is just the other way. The said authority can act only in terms of the rules prescribed and operative. The allegation that the petitioners have arbitrarily withheld the communication of the ACRs is, thus, not sustainable in law.

He further argues that after issuance of the memo dated 13.04.2004 and pronouncement of the judgment delivered in the case of *Dev Dutt VS. Union of India and Ors.*, reported in (2008) 8 SCC 725 all the below benchmark ACRs of 2006 and 2008 were communicated to the respondent *vide* memo dated 01.06.2010 but the respondent did not file any representation for upgradation. In view thereto, the learned Tribunal ought not to have directed the petitioners to ignore the respondent's ACRs of 2005-06 and 2007-08.

He contends that on the date of issuance of the promotion order *vide* memo dated 15.10.2009, a disciplinary proceeding initiated through issuance of a chargesheet *vide* memo dated 10.02.2006, was pending against the respondent. Such pendency of the disciplinary proceeding was not taken note of by the learned Tribunal while disposing of the OA at the motion stage without inviting any affidavits. In the said conspectus, no legal

right of the respondent was infringed warranting interference of the Court.

Per contra, Mr. Sen, learned advocate appearing for the respondent denies and disputes the contention of Mr. Santra and submits that an executive instruction cannot override the judgment of a Court. In the case of *Dev Dutt (supra)*, the Hon'ble Supreme Court construed non-communication of ACRs to be violative of the constitutional provisions. Pendency of a departmental proceeding could not have been a ground for non-communication of the ACRs. Fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the ACR of a public servant must be communicated to him within a reasonable period enabling him to make a representation for its upgradation.

He submits that admittedly prior to holding of DPC leading to grant of promotion in the year 2009, the ACRs pertaining to the period from 2005-06 and 2007-08 were not communicated to the respondent and 507 candidates were promoted including employees, who were junior to the respondent. The learned Tribunal rightly interfered as the respondent was deprived of the opportunity of being considered for promotion upon completion of the procedure towards communication of ACRs. Such loopholes and lacunae were sought to be ironed out by the petitioners by communicating the ACRs pertaining to the

period 2005-06 and 2007-08 placing reliance upon the memo dated 13.04.2010.

In reply, Mr. Santra submits that the learned Tribunal passed the impugned order paraphrasing different orders passed by the Hon'ble Supreme Court and recapturing a general impression.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that the writ petition was affirmed before this Court on 26.03.2013. By an order dated 06.08.2013, a co-ordinate Bench of this Court passed an interim order to the effect that all steps taken in respect of the employee concerned pursuant to the order passed by the learned Tribunal would abide by the result of the writ petition.

Indisputably, the ACRs pertaining to the years 2005-06 and 2007-08 were not communicated to the respondent prior to issuance of the order of promotion dated 15.10.2009. Candidates, junior to the respondent were also promoted by the said order. Due to non-communication of the ACRs of the above period within time, the respondent was deprived of the opportunity to submit a representation moreso when the remark in the ACRs was below the bench mark for SAG panel. The delay was attributable to the petitioners and the respondent cannot be made to suffer for such laches on the part of the

petitioners. The memo dated 13.04.2010 cannot override the dictum of the Hon'ble Supreme Court. The judgment delivered in the case of *Dev Dutt (supra)* was delivered on 12.05.2008, i.e, prior to the issuance of the circular dated 13.04.2014. It was, thus, incumbent upon the authorities to act strictly in consonance with such judicial mandate of the Court. The rigors of the judgment delivered in the case of *Dev Dutt (supra)* could not have been ignored.

It is well-settled that non-communication of the entries in the ACR of a public servant certainly shall have civil consequences because it would affect the chances of promotion and that such non-communication would be arbitrary and violative of Article 14 of the Constitution of India.

We do not find any infirmity in the order impugned as the learned Tribunal arrived at specific findings applying the proposition of law as laid down in the case of *Dev Dutt (supra)* and the other judgments as referred to in the impugned order.

Accordingly, the writ petition, being WPCT 134 of 2013 is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)

