

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19083 of 2024

Sanjeev Kumar Son of Ram Lagan Kumar Resident of Flat No.- 203, Jivan Sri Vaishnvi Watika Apartment, Vijay Vihar Colony, Near St. Karens School, Khagaul Road, Saguna More, Danapur-cum- Khagaul, P.O.- Danapur, P.S.- Danapur, District- Patna, Pin Code- 801503.

... .. Petitioner/s

Versus

1. The Chief Secretary, Bihar, Patna.
2. The State of Bihar, through the Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
3. Chairman-cum-Member Board of Revenue, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Sr. Adv. Md. Tauseef Waquar Mr. Akshat Kumar
For the Respondent/s	:	Mr. Addl. Advocate General (07)

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 14-10-2025 This case was directed to be listed after Durga Puja Vacation but by mistake it has been recorded in the order sheet that this case will be listed in the second week of November, 2025. Accordingly, this case has been listed today.

2. Heard learned senior counsel for the petitioner and learned APP for the State.

3. This writ application has been filed on behalf of the petitioner for the following reliefs:-

(i). Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the letter dated 02/12/2024 bearing memo no. 19239 issued



by the concerned authorities under the General Administration Department of the State Government, by which the representation submitted by the petitioner for reviewing the overall grading recorded in performance appraisal report for the period between 04/10/2021 to 31/03/2022 has been rejected.

(ii). Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under General Administration Department, Government of Bihar, Patna to take steps towards considering the case of the petitioner for granting him promotion in the rank of Additional District Magistrate in a similar manner as persons similarly situated persons as the petitioner and also persons junior to him in the rank of Bihar Administrative Service in terms of the provisions contained under the Temporary Ad-Hoc Working Arrangement Rules, 2023 (hereinafter referred to as "the 2023 Rules") in a similar manner as persons similarly situated as the present petitioner have been granted promotions by a notification dated 22/10/2024 bearing memo no. 17086 issued by the concerned authorities under the General Administration Department,



Government of Bihar, Patna.

(iii). Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to extend all the consequential benefits in favour of the petitioner upon grant of promotion to him in the rank of Additional District Magistrate in the services of the State Government in a similar manner as others persons who have been granted the said promotion by the aforesaid notification dated 22/10/2024 bearing memo no. 17086 issued from the General Administration Department of the State Government have been extended.

4. It has been submitted by the learned senior counsel for the petitioner that the petitioner got selected in the 48th to 52nd Combined Competitive Examination conducted by the Bihar Public Service Commission, Patna and his name was recommended for appointment as an officer of Bihar Administrative Service cadre, following which, the petitioner submitted his joining in the capacity of a Probationer Deputy Collector in the services of the State Government as a member of Bihar Administrative Service on 31/12/2010, which was duly accepted by the concerned authorities and thereafter, the



petitioner started discharging his duties against the said post in accordance with law. Thereafter, on the basis of successful completion of period of probation as Deputy Collector in the services of the State Government as a member of Bihar Administrative Service cadre, the service of the petitioner was confirmed and accordingly, he was granted all consequential benefits for which he was entitled.

5. The learned senior counsel for the petitioner further submits that by a letter dated 14/12/2018 bearing memo no. 16389 issued by the concerned authorities of the General Administration Department of the State Government, different authorities in the State Government were communicated the procedure to be followed for the purpose of filling of the performance appraisal reports of Members of Bihar Administrative Service and inter alia, it had been clearly indicated that upon submission of the performance appraisal reports by the reporting authority, communication in the said respect was to be made to the concerned officer and the concerned officer was entitled to make a representation with respect to such entries which was to be considered and a decision was to be taken by the concerned authorities in a time bound manner.



6. It is further submitted by the learned senior counsel for the petitioner that bare perusal of the letter dated 14/12/2018 would clearly demonstrate that in an event if there was any adverse or below benchmark entry made against an officer then he was to be extended the opportunity to represent in the said respect against such an entry so that appropriate decision in the said respect could be taken and the said decision of the State Government was made effective from the year 2018-19.

7. It is further submitted that while the petitioner was continuously discharging his duties in different capacities as an officer of Bihar Administrative Service, he had never been made any communication with respect to any below benchmark or adverse entry having been made against him in his performance appraisal reports submitted by different authorities from time to time.

8. In the meantime, the members of different services of the State Government could not be granted promotion on account of an order dated 11/04/2019 having been passed by the Hon'ble Supreme Court in Civil Appeal No. 4880/2017 involving the question of matter of reservation in promotion in favour of persons working in the services of the



State Government and as such, the promotions in favour of members of different services under the State Government were not being considered and under the aforesaid facts and circumstances, by a notification dated 13/10/2023 issued from the General Administration Department of the State Government, the Temporary Ad-Hoc Working Arrangement Rules, 2023 were notified laying down provisions for consideration of cases of different services of the State Government for granting them promotions on purely temporary working arrangement basis in terms of the aforesaid Temporary Ad-Hoc Working Arrangement Rules, 2023.

9. Learned senior counsel for the petitioner further submits that a bare perusal of Rule-6 of the Temporary Ad-Hoc Working Arrangement Rules, 2023 would demonstrate the effect of temporary working arrangement and the same also contained prescriptions with respect to the manner in which promotions were to be granted which at no stage indicated the principle as was to be followed for effecting such promotions and in this manner, the cases of the concerned members of different services of the State Government were to be considered for grant of promotion primarily on the principle of seniority-cum-fitness.



10. Learned senior counsel for the petitioner further submits that so far as the Bihar Administrative Service Cadre is concerned, promotions are to be granted against the higher posts on the basis of seniority-cum-fitness basis alone and by dint of seniority amongst other persons, the petitioner was also within the zone of the consideration for being considered for grant of promotion in terms of the aforesaid 2023 Rules in the rank of Deputy Secretary in the services of the State Government and as such, soon upon publication of the aforesaid Rules, 2023 by a notification dated 13/10/2023, a notification dated 17/10/2023 bearing memo no. 19522 issued by the concerned authorities under the General Administration Department of the State Government, by which, amongst other persons, the petitioner was granted promotion in the rank of member of Bihar Deputy Secretary Administrative Service in pay level-11 and as such, his name found place at serial no. 66 in the table containing the names and details of persons, who had been granted the said promotions.

11. It is further submitted that on the basis of fulfillment of all the eligibility criteria and requirements, amongst other persons, the petitioner was granted promotion in the rank of Deputy Secretary and this facts clearly demonstrates



that there was no adverse entries or any impediment in consideration of the case of the petitioner for grant of promotion in his favour but in the meantime, the petitioner got to know that the entries made with respect to overall grading in his performance appraisal report for the period between 04/10/2021 to 31/03/2022 in the year 2021- 22 was 4.28 on the scale of 1 to 10 whereas for the period immediately preceding that period and even the durations immediately following that, the overall grading of the petitioner in the performance appraisal reports were above 9 on the scale of 1 to 10.

12. Learned senior counsel for the petitioner further submits that the petitioner, being aggrieved by the said entry, has moved before this Court for referring to overall grading of the petitioner done by the reporting authority in respect of the period between 01/04/2021 05/07/2021 which would clearly demonstrate that while praising the performance of the petitioner as an officer of Bihar Administrative Service, the petitioner has been awarded grading of 9.5 on the scale of 1 to 10. Similarly, for the period between 01/04/2022 to 31/12/2022, the petitioner had been awarded 9.5 overall grade and for the period between 01/01/2023 to 31/03/2023, the petitioner had been awarded an overall grading of 9.91 but unfortunately, for



the period between 04/10/2021 to 31/03/2022 the overall grading of the petitioner had been shown as 4.28.

13. It is further submitted by the learned senior counsel for the petitioner that in terms of the decision of the State Government and in view of the law laid down by the Hon'ble Supreme Court in *Dev Dutt vs. Union of India reported in (2008) 8 SCC 725*, a below benchmark or adverse entry is required to be communicated to the concerned officer for enabling him to submit his representation in respect thereof but unfortunately, in the instant case, the overall grading of the petitioner for the period between 04/10/2021 to 31/03/2022 was not communicated to him as a result of which the petitioner had been deprived of his right to make a representation.

14. It is further submitted by the learned senior counsel for the petitioner that under the aforesaid circumstances, the petitioner by a letter dated 15/10/2024 wrote to the concerned authorities under the General Administration Department indicating therein that for the period between 04/10/2021 to 31/01/2022, the concerned reporting authority had submitted an adverse overall grading in respect of the petitioner after his retirement from the services of the State Government which is not permissible in law and he requested



the concerned authorities/State Government to issue a certificate with regard to ACR/PCR which had been made by the reporting authority after his retirement for depriving the petitioner of service related benefits.

15. It has further been submitted by the learned senior counsel for the petitioner that after submission of the letter dated 15/10/2024 by the petitioner before the authorities concerned, a letter dated 22/10/2024 bearing memo no. 1623 was issued by the Chairman-cum-Member, Board of Revenue. Bihar, Patna, stating that the petitioner was a hardworking and efficient officer and his performance had been found to be satisfactory and accordingly, the Principal Secretary of the General Administration Department of the State Government was requested to review the adverse overall grading having been done in respect of the petitioner.

16. Learned counsel for the petitioner further submits that in the manner as aforesaid, it will be clear that the overall grading in respect of the petitioner for the period 04/10/2021 to 31/03/2022 which has been done by the reporting authority after his superannuation from the service is coupled with the fact that the said adverse entries had not been communicated to the petitioner during the relevant time and



such entries could not be taken note of while considering the case of the petitioner for granting him promotion against higher posts and furthermore, such adverse entries should not be allowed to impede the path of career progression of the petitioner.

17. In furtherance, learned counsel for the petitioner has taken this Court to a notification dated 22/10/2024 bearing memo no. 17086 issued by the concerned authorities, to show that the cases of different members of the Bihar Administrative Service Cadre who were similarly situated as the present petitioner, were considered and they have been granted promotion to the post of Additional District Magistrate or equivalent grades in terms of the provisions contained under the 2023 Rules but the name of the petitioner was not included in the said list and a person junior to him, had also been granted the said promotion.

18. Learned counsel for the petitioner further submits that the action on the part of the concerned respondent authorities of not considering the case of the petitioner for granting him promotion in the rank of Additional District Magistrate is arbitrary, unreasonable and in blatant disregard and violation of articles 14, 16 & 21 of the Constitution of India.



19. It is further submitted by the learned counsel for the petitioner that a letter dated 02/12/2024 bearing Memo No. 19239 was issued by the concerned authorities by which the representation dated 15/10/2024 submitted by the petitioner was rejected by the State Government and it has been mentioned by the said authorities that the said representation was not submitted within the time frame as indicated in the aforesaid notification/letter dated 14/12/2018 bearing memo no. 16389 and as such, the overall grading in respect of the petitioner for the period between 04/10/2021 to 31/03/2022 was kept intact.

20. It has further been submitted by the learned counsel for the petitioner that the action on the part of the concerned respondent authorities in rejecting the representation submitted by the petitioner while referring to the contents of letter dated 14/12/2018 bearing memo no. 16389 issued from the General Administration Department of the State Government is impermissible and arbitrary which shows the highhandedness on the part of the concerned respondent authorities of the State Government.

21. It is further submitted by the learned counsel for the petitioner that a bare perusal of the overall grading in respect of the petitioner for the period immediately preceding



the period between 04/10/2011 to 31/03/2022 would clearly demonstrate that the petitioner had been found to be an efficient and hardworking officer by all the reporting authorities save and except the reporting officer for the aforesaid period 04/10/2021 to 31/03/2022, who had submitted the overall grading of the petitioner in the performance appraisal report after his retirement which is not permissible in the eyes of law.

22. Learned counsel for the State, relying on the submissions made in the counter affidavit filed on behalf of the respondent no. 02, has opposed the application of the petitioner.

23. I have considered the submission of the parties and have also perused the materials on record.

24. The Hon'ble Supreme Court in ***Dev Dutt v. Union of India (Supra)*** had held as under -

17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways :

(1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future;



(2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring



communication of the entry, or even if there is a rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

25. The Hon'ble Supreme Court in the case of ***Abhijit Ghosh Dastidar v. Union of India reported in (2009) 16 SCC 146*** has held as under:-

8. 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 annual confidential report 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 of promotion or getting 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 abovereferred decision (Dev Dutt case [(2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771 : (2008) 7 Scale 403] , SCC p. 738, para 41) 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.

26. Further the Hon’ble Supreme Court in the case of ***Rukhsana Shaheen Khan v. Union of India*** reported in ***(2018) 18 SCC 640*** had held as under -

2. *In view of the decision of this Court in*



Sukhdev Singh v. Union of India, (2013) 9 SCC 566, there cannot be any dispute on this aspect. This Court has settled the law that uncommunicated and adverse ACRs cannot be relied upon in the process.

3. This appeal is, accordingly, allowed and the impugned judgment [*Rukhsana Shaheen Khan v. Union of India, 2006 SCC OnLine Del 1840*] is set aside with the following directions:

(a) The competent authority is directed to ignore the uncommunicated adverse ACRs and take a fresh decision in accordance with law.

(b) The appellant shall be afforded an opportunity of hearing in the process.

4. It will be open to the appellant to make all available submissions, including the reference to the judgment of this Court in *Prabhu Dayal Khandelwal v. UPSC*.

27. The Hon'ble Supreme Court in the case of **Dev Dutt (supra)** has held in no uncertain terms that "every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee.

28. In view of the aforesaid discussions and also in view of the law laid down by the Hon'ble Supreme Court in the



aforesaid cases, the petitioner has made out a case for a direction from this Court directing the respondent authorities to consider his promotion.

29. Accordingly, the letter dated 02/12/2024 bearing memo no. 19239 is hereby set aside.

30. The respondent authorities are directed to ignore the un-communicated adverse entries ACR/PCR for the period between 04/10/2021 to 31/03/2022 for the purpose of considering the promotion of the petitioner and take a fresh decision in accordance with law after affording an opportunity of hearing to the petitioner. Further the promotion, if granted, shall be in parity with the similarly situated persons who were granted promotion vide notification dated 22.10.2024 bearing memo no. 17086.

31. This writ application stands allowed with the aforesaid direction.

(Sandeep Kumar, J)

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