

SAROJ KUMAR

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v.

UNION OF INDIA AND OTHERS

(Civil Appeal No. 6081 of 2015)

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AUGUST 18, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Service Law – Promotion – Denial of – On the basis of uncommunicated remarks in the ACRs – After direction of court in the first round of litigation, ACRs communicated to the employee – Subsequent thereto representation of the employee rejected – After the direction of the court in the second round of litigation, representation of the employee again rejected after reconsideration thereof – In the third round /present litigation, Tribunal directed the authorities concerned to reconsider the case of the employee from the date his juniors were promoted – High Court set aside the order of Tribunal – On appeal, held: In the present case, not only the ACRs have been communicated to the employee, his representation too had been rejected – Therefore, after communication of the ACRs and rejection of the representation, Tribunal was not correct in directing to reconsider the promotion of the employee from the date his juniors were promoted, having treated the remarks as uncommunicated.

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Dev Dutt v. Union of India and Ors. (2008) 8 SCC 725: 2008 (8) SCR 174; Abhijit Ghosh Dastidar v. Union of India and Ors. (2009) 16 SCC 146; Sukhdev Singh v. Union of India (2013) 9 SCC 566: 2013 (5) SCR 1004 – held inapplicable.

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Case Law Reference

2008 (8) SCR 174

held inapplicable.

Para 8

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A (2009) 16 SCC 146 held inapplicable Para 8
 2013 (5) SCR 1004 held inapplicable Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No.

B 6081 of 2015

From the Judgment and Order dated 27.02.2014 of the High Court of Judicature at Allahabad in Writ Appeal No. 50733 of 2012

C K. Radhakrishnan, Ajay Singh and Vivek Narayan Sharma for the Appellant.

Tushar Mehta, ASG, Sunil Mathews, Mukesh Verma and B.V. Balram Das for the Respondents.

D The Judgment of the Court was delivered by

E **PRAFULLA C. PANT, J.** 1. This appeal is directed against judgment and order dated 27.2.2014, passed by the High Court of Judicature at Allahabad in Writ – A No. 50733 of 2012 whereby the High Court has allowed the petition and set aside the order dated 16.1.2012 passed by the Central Administrative Tribunal, Allahabad Bench (for short “the Tribunal”) in Original Application (OA) No. 658 of 2011. By F said order the Tribunal (CAT) had directed that the claim by the appellant Saroj Kumar for promotion be considered ignoring earlier uncommunicated entries of Annual Confidential Reports (ACRs). The controversy in the present case relates to the downgrading ACRs of the appellant without giving him G any opportunity, which were later communicated and representation made by the appellant was also considered and rejected.

H 2. We have heard learned counsel for the parties and perused the papers on record.

3. Succinctly stated, the facts are that the appellant Saroj Kumar was selected through Civil Service Examination, 1985, and was allotted Indian Defence Accounts Service (for short "IDAS"). On 29.1.1996 he was promoted as Junior Administrative Officer with effect from 12.1.1996. He was promoted in the pay scale of Rs.14200-18200 vide order dated 10.11.2000 and was given Selection Grade with effect from 5.5.2000. Later, on 14.6.2004 he was posted as Joint Controller of Defence Accounts, Jabalpur (M.P.). A DPC was convened for promotion in the Senior Administrative Grade on 10.5.2006. It is pleaded by the appellant that to his utter shock, ignoring him, juniors to him were promoted.

4. Having aggrieved with the denial of promotion, the appellant, in the first round of litigation, filed OA No. 640 of 2006 before CAT, Allahabad Bench, challenging the proceedings of the DPC, and granting promotion to the junior officers. The Tribunal, vide order dated 18.9.2008, disposed of the OA remitting the matter back to the respondent authorities for communication of annual confidential reports and to consider the case of the appellant afresh, keeping in mind the law laid down by the Apex Court in *Dev Dutt v. Union of India and others*¹. In response to said order, the appellant was communicated the annual confidential reports and he submitted representation on 29.7.2009 to the respondent authorities pleading that in *Abhijit Ghosh Dastidar v. Union of India and others*² it has been held that if a grading falling below the benchmark, has not been communicated to the concerned employee, it has to be ignored while considering the promotion of such employee. However, vide order dated 22.1.2010, the respondent authorities rejected the representation against downgrading of remarks by Reviewing Authority and upheld the ACRs for the period 1999-2000, 21.6.2000 to 31.3.2001

¹ (2008) 8 SCC 725

² (2009) 16 SCC 146

A and 1.4.2001 to 31.3.2002, which, according to the appellant, should have been treated uncommunicated.

5. As such, in the second round the appellant filed OA No. 490 of 2010 before the Tribunal challenging the rejection of the representation by the respondent authorities. The Tribunal was pleased to allow the OA vide order dated 27.4.2010 and set aside the order dated 22.1.2010 and once again remitted the matter back to the respondent authorities for reconsideration of the representation of the appellant. Aggrieved by the same, the respondent authorities filed Civil Miscellaneous Writ Petition No. 8357 of 2011 before Allahabad High Court, which was dismissed on 21.2.2011. While dismissing the writ petition, the High Court observed that alleged downgrading of the ACRs of the appellant by the then Reviewing Authority (against the grading recorded by the Assessing Officer and the Reporting Officer) was without any material available on record. The High Court further observed that the decision of the competent authority is simply reiteration of downgrading of the three entries by the Reviewing Officer, by observing that the Reviewing Officer has downgraded the entries consciously based on work parameters. It further observed that if the complaints were there, the same should have been mentioned while downgrading the entries. The respondents, vide order dated 23.3.2011, after considering the matter afresh, again found no substance in the representation and rejected the same.

6. In the third round, appellant filed OA No. 658 of 2011 before the Tribunal challenging the order dated 23.3.2011, passed by the authorities. Said OA was also allowed by the Tribunal on 16.1.2012, and the order dated 23.3.2011 was set aside with further direction to the respondent to reconstitute the Review DPC and reconsider the case of the appellant. Aggrieved by said order of the Tribunal, the respondents filed

Writ - A No. 50733 of 2012, which is allowed vide impugned order challenged before us. A

7. On behalf of respondent No. 4, Deputy Controller of Defence Accounts has filed its counter affidavit. Relevant paragraphs of the same are reproduced below: - B

“7. The Hon’ble High Court, by the impugned judgment and order held that the issue in the present case is not with regard to considering the claim of the petitioner ignoring the uncommunicated entries, and there is no such prayer in the O.A. filed by the petitioner nor has the Hon’ble Tribunal directed the reconsideration of the claim of the petitioner for promotion ignoring the uncommunicated entries through review DPC; subsequent to the first order of the Hon’ble Tribunal, the uncommunicated entries were made available to the petitioner and he made a representation against the entries; this representation was rejected, leading to the filing of another OA 490/2010 by the petitioner, wherein the Hon’ble Tribunal held that the order on representation was not a reasoned order and directed reconsideration of the representation in the light of law laid down by this Hon’ble Court in Dev Dutt vs. Union of India & Ors. (2008) 8 SCC 725; W.P. 8357/2011 filed thereafter was dismissed by the Hon’ble High Court by order dated 21.2.2011 holding that the complaints which led to the downgrading of the ACRs of the petitioner and the reasons for relying on the complaints have not been recorded in the order rejecting the representation; if the petitioner wanted his claim for promotion considered ignoring the uncommunicated ACRs, he should have challenged the order of the Hon’ble Tribunal dated 27.4.2010 in O.A. 490/2010 and that of the Hon’ble High Court dated 21.2.2011 in W.P. 8357/2011; the Hon’ble C D E F G H

A Tribunal, by order dated 16.1.2012 in O.A. 658/2011 has not recorded any reasons for disagreeing with the conclusions drawn by the competent authority in its detailed order supported by reasons. The Hon'ble High Court thus remanded the matter back to the Hon'ble
B Tribunal to examine the merits of the order rejecting the representation of the petitioner."

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C "9. It is strongly denied that the adverse entries remained uncommunicated because of active concealment by the respondents resulting in violation of fundamental rights of the petitioner and the principles of natural justice. It is submitted that as per DOPT OM dated 11.5.1990,
D communication was mandatory only in cases where adverse entry was made in the ACR. Since the gradings in the relevant ACRs of the petitioner were not adverse but below bench mark, they were not communicated to him. However, during the pendency of the first of the OAs
E filed by the petitioner, O.A. 640/2006, this Hon'ble Court rendered judgment in Dev Dutt vs. Union of India & Ors. (2008) 8 SCC 725. In view of the law laid down in Dev Dutt's case, the Hon'ble Tribunal, by order dated
F 18.9.2008 in O.A. 640/2006, directed the authorities to reconsider the case of the petitioner. In compliance of the order of the Hon'ble Tribunal in O.A. 640/2006, the confidential reports for the relevant period 1999-2000, 21.6.2000 – 31.3.2001 and 2001-2002 were made available to the petitioner, and his representation was
G considered by the competent authority."

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H "11. It is respectfully submitted that the directions contained in paras 43 and 44 of this Hon'ble Court in

Dev Dutt's case that the below bench mark entry be communicated to the employee and his representation be decided, and the directions in para 37 "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....." have been followed in letter and spirit. The ACRs of the petitioner were written by the PCDA/CDA as reporting officer, reviewed by the PCDA (Pensions)/Addl. CGDA accepted by CGDA. The representations of the petitioner have been considered by higher authority, namely, two different Secretaries (Defence Finance) and speaking orders issued. Since there is no upgradation of below bench mark gradings, there is no necessity for holding review DPC."

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"13. The Hon'ble High Court has correctly found that the below bench mark entries were communicated to the petitioner as per the directions of the Hon'ble Tribunal and Hon'ble High Court, and the issue that remains is not with respect to non-communication of entries but with regard to whether the representation of the petitioner has been considered objectively and order passed stating the complaints received and giving reasons for relying on the said complaints for downgrading the entries."

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8. From the above paragraphs of the counter affidavit it is clear that after first round of litigation i.e. OA No. 640 of 2006, concluded vide order dated 18.9.2008, passed by the Tribunal, communication of the entries, due to which the appellant's promotion was affected, was made and representation was submitted by the appellant on 12.6.2009. It is also clear from the record that the representation of the appellant was rejected vide order dated 22.1.2010. Consequent to subsequent

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- A direction of the Tribunal in second round of litigation, as affirmed by the High Court in Civil Miscellaneous Writ Petition No. 8357 of 2011, the matter has been reconsidered and rejected. In the above circumstances, after communication of the entries made to the appellant and subsequent rejection of the representation, now, the law laid down in the cases of *Dev Dutt v. Union of India* (supra), *Abhijit Ghosh Dastidar v. Union of India and others* (supra), and *Sukhdev Singh v. Union of India*³, is of little help to the present appellant for the reason that in the present case not only the ACRs have been communicated to the appellant, his representation too has been rejected.

9. In our opinion, the High Court has rightly taken note of the fact that on conclusion of second round of litigation neither there was direction by the Tribunal nor by the High Court to ignore the entries in question (after rejection of the representation against it) for promotion of the appellant from the date when his juniors were promoted. In the present round, the Tribunal has erred in directing the authorities to consider the case of the appellant for promotion from the date when his juniors were promoted, ignoring the remarks, which had been communicated after first round of litigation. We are in agreement with the High Court that after the ACRs have been communicated and representation has been rejected, the Tribunal should not have treated the remarks uncommunicated.

10. Therefore, we do not find any error in the impugned order passed by the High Court.

11. Accordingly the appeal is dismissed. There shall be no order as to costs.

Kalpana K. Tripathy

Appeal dismissed.

³ (2013) 9 SCC 566