

(2016) 02 TP CK 0027
In the Tripura High Court
Case No : W.P.(C) No. 33 of 2015

Pratap Chakma

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14
Constitution of India, 1950 — Article 14
Right to Information Act, 2005 — Section 6

Citation : (2016) 02 TP CK 0027

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : K.N. Bhattacharji, Sr. Advocate, Kohinoor N. Bhattacharji and S. Chakraborty, Advocates, for the Appellant; S. Chakraborty, Addl. GA, for the Respondent

Final Decision : Disposed off

Judgement

S. Talapatra, J.—1. By means of this writ petition, the petitioner who is a member of Tripura Civil Service (SSG) has challenged the action of the respondents No. 1 and 2 of non-communication of ACRs for the periods of 2008-09 and 2009-10 wherein the petitioner has graded "good" and in consequence of which the petitioner even though is senior to the respondents No. 2 and 4 has not been selected by the Selection Committee for promotion to Indian Administrative Service (IAS) in terms of the provisions of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 in their meeting held on 02.12.2013 at New Delhi. The said Selection Committee graded the petitioner "good", whereas the respondents No. 3 and 4 had been graded "very good" after their own assessment.

2. It appears from the minutes of the meeting of the Selection Committee for promotion to the IAS held on 02.12.2013 (as disclosed under Section 6 of the Right to Information Act, 2005 by the Union Public Service Commission vide their

communication dated 17.02.2014, Annexure-14 to the writ petition) that the Selection Committee had classified the eligible officers as "outstanding", "very good", "good" and "unfit" on an overall assessment over their service records. Thereafter, they had prepared the list in terms of the vacancies available, placing the officers first who were classified as "outstanding", thereafter the officers who were classified as "very good" and thereafter the officers who were classified as "good". For purpose of placing their names in the list, the seniority of the concerned officers in the State Civil Service was considered in the respective classes meaning "outstanding", "very good" and "good". The said exercise was admittedly carried out in conformity with the Regulation 5(4) and 5(5) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. In the minutes, the following observation has been made for making the classification:

"4.4. The Committee were further informed that the Selection Committee has to go through the records of the eligible officers and make their assessment after deliberating on the quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing officer/Accepting Authority in the ACRS for different years and then finally arrive at the classification to be assigned to each officer. For making an overall relative assessment, the Committee is not to depend solely on the grading recorded by the Reporting/Reviewing officer/Accepting Authority but is to make its independent assessment of the service records of the eligible officers. The Selection Committee is to take into account orders regarding appreciation for the meritorious work done by the concerned officers. Similarly, it has also to keep in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation, have not been completely expunged."

3. Even though the Selection Committee has observed that for finally arriving at the classification to be assigned to each officer they were not dependent solely on the grading as recorded in the ACRs but they had taken overall assessment of the service records. The petitioner, after having knowledge of the outcome of the proceeding, made attempts to explore why he was superseded by the respondents No. 3 and 4. Initially, his ACRs which were sent to the Selection Committee were not disclosed to him by the State Public Information Officer of the General Administration (P&T) Department as well as by the First Appellate Authority constituted under the Right to Information Act, 2005. Finally, when the petitioner filed the second appeal in the Tripura Information Commission, the said commission by its final order dated 25.02.2014, Annexure-A to the rejoinder filed by the petitioner, directed the concerned SPIO to supply the copies of the ACRs from 2002-03 to 2010-11. Within 7 days from the date of having the copies by way of disclosure, the petitioner made the representation to the Reporting Authority for review and upgrading so far the gradings in the ACRs for the period of 2008-09 and 2009-10 are concerned.

4. The Secretary, Tribal Welfare Department, the Reporting Authority had

reviewed and upgraded the grading from "good" to "very good" for the year 2008-09. The Reporting Authority communicated his decision to the Secretary, GA (P&T) Department by the communication dated 17.05.2014, Annexure-6 to the writ petition. The Reporting Authority for purpose of review of the grading of the petitioner for the year 2008-09 has observed as under:

"2. I have gone through carefully the points raised in the representation by Sri Chakma, Ex. Jt. Director, TW during 2008-09. I agree to the point raised by Sri Chakma. He is now working under me and he has improved by this time, sincere & hard working. The grading given during the period 2008-09 had been reviewed and now given the grading as "Very Good"."

5. It appears from the communication dated 09.06.2014, Annexure-7 to the writ petition, that the Secretary, Tribal Welfare Department was asked by the GA (P&T) Department to furnish his view para-wise against the representation made by the petitioner for taking further course of action. The said Secretary, Tribal Welfare Department furnished his comments para-wise to the Chief Secretary, GA (P&T) Department by a forwarding letter dated 10.10.2014, Annexure-8 to the writ petition. He had reiterated in the said letter dated 10.10.2014 that he had reviewed the ACR grading of the petitioner and changed that to "Very Good". The para-wise comments are part of Annexure-8. But the upgrading by way of review was not accepted by the Accepting Authority as it would be apparent from the memorandum dated 22.11.2014, Annexure-9 to the writ petition. For purpose of reference, the entire text of the memorandum dated 22.11.2014 is reproduced as under:

"The undersigned is directed to refer to the representation dated 08-08-2014 of Shri Pratap Chakma, TCS SSG, Addl. Director, Tribal Rehabilitation in Plantation & PTG, Tripura in regard to upgradation of ACR grading from "Good" to "Very Good" for the year 2008-09 and to state that the said representation of Shri Chakma has carefully been considered by the authority and it is rejected."

6. In this context, the petitioner has filed this writ petition praying that the memorandum dated 22.11.2014, Annexure-9 be quashed. He has further urged this court to declare that he "has been illegally omitted from consideration for induction to IAS against vacancies for the year 2012 on the basis of uncommunicated ACRs for the year 2008-09 and 2009-10". The petitioner has further prayed for absorbing him against the subsequent vacancies treating as senior to the respondents No. 3 and 4. Alternatively, ACRs for the period for 2008-09 should be treated as "very good" in terms of the communication dated 10.10.2014, Annexure-14 and the first part of the period 2009-10 be treated as non-initiation period whereas the second part of 2009-10 be treated as "very good" inasmuch as the review authority was on extension of service and the person who passed the order had no acquaintance of the petitioner's performance. He has further urged for direction to consider the petitioner's induction to IAS or recommend his name to the Selection Committee. The petitioner has also sought for a writ of prohibition in respect of filling up one

available vacancy against which the petitioner might be considered if he succeeded in the writ petition.

7. Mr. S. Chakraborty, learned Addl. GA had raised jurisprudential objection as to the maintainability of the writ petition on the premises that the reliefs as prayed in this writ petition is directly or indirectly related to the appointment to the IAS by way of promotion. For considering such subject matter, this court lacks in the jurisdiction in view of Section 14 of the Central Administrative Tribunal Act. That apart, he has pointed out that the petitioner had already approached the competent jurisdiction by filing an original application being OA No. 383 of 2015 raising the similar dispute in the Central Administrative Tribunal, Guwahati Bench.

8. On the face of such jurisprudential objection, Mr. K.N. Bhattacharjee, learned senior counsel has made it abundantly clear at the outset that the petitioner would not press any relief in respect of appointment to the IAS by promotion. Such relief be treated by this court as abandoned. That apart, the petitioner has filed an additional affidavit dated 02.02.2016 for purpose of showing that OA No. 383 of 2015 has been withdrawn by him on 22.01.2016. A copy of the order dated 22.01.2016 has been made part of the said additional affidavit.

9. Mr. K.N. Bhattacharjee, learned senior counsel appearing for the petitioner has submitted that there were seven vacancies to be filled up by promotion to the IAS from the State Civil Service of Tripura. While filling up those vacancies, the petitioner, belonging to the ST category, has been superseded by the respondents No. 3 and 4 in terms of the recommendation made by the Selection Committee from its meeting dated 02.12.2013. The petitioner after gathering the relevant ACRs which were communicated on 19.08.2013 after the meeting of the Selection Committee held on 02.12.2013, could realise that on the basis of the grading made in the un-communicated ACRs he was classified as "good". From the disclosed ACRs it appeared to the petitioner that he was assessed "good" for the year 2008-09 and to non-initiation certificates were considered for first half of 2009-10 (01.04.2009 to 31.08.2009) and the second half of 2009. The petitioner filed the representation and the Reporting Authority upgraded his grading from "good" to "very good", but no order was passed for the ACR period of 2009-10. But the said up-gradation was not accepted by the Accepting Authority arbitrarily.

10. Mr. Bhattacharjee, learned senior counsel has submitted on the basis of the disclosed office notes (Annexure-11 to the writ petition) that the Chief Secretary did not assign any reason for not accepting the up-gradation. Mr. Bhattacharjee, learned senior counsel has submitted that the apex court in *Dev Dutt Vs. Union of India and Ors.* reported in , (2008) 8 SCC 725 has enunciated as under:

"12. It has been held in *Maneka Gandhi vs. Union of India & Anr.* , AIR 1978 SC 597 that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the A.C.R. of a public servant is arbitrary because it deprives the concerned employee from making a representation

against it and praying for its up-gradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits). Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide *State of U.P. vs. Yamuna Shankar Misra*, 1997 (4) SCC 7. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

13. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry.

14. In most services there is a gradation of entries, which is usually as follows:

- (i) Outstanding
- (ii) Very Good
- (iii) Good
- (iv) Average
- (v) Fair
- (vi) Poor

A person getting any of the entries at items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the concerned authority.

[Emphasis supplied]

11. The said legal principle has been restated in *Abhijit Ghosh Dastidar vs. Union of India* and others reported in , (2009)16 SCC 146 and *Sukhdev Singh vs. Union of India* and others reported in , (2013)9 SCC 566. Thus, Mr. Bhattacharjee, learned senior counsel appearing for the petitioner has contended that for non-communication the petitioner has suffered serious detriment including the supersession by his junior officers in the State Civil Service.

12. In response to such submission, Mr. Chakraborty, learned Addl. GA has submitted that the petitioner has not been superseded on the basis of the uncommunicated ACRs for the period from 2008-09 and 2009-10 alone. The Selection Committee considered the cases for promotion to the IAS in terms of regulation 5(4) and 5(5) of the said Regulation. That apart, Mr. Chakraborty, learned Addl. GA has submitted that at the relevant time, the law as enunciated in *Dev Dutt Vs. Union of India and Ors.* did not operate the field. Only after issuance of the memorandum dated 05.08.2010 it has been made mandatory to communicate all entries to the officer concerned. Even a grading "outstanding" has to be communicated for boosting the morale of the officer and encouraging him to work harder. Mr. Chakraborty, learned Addl. GA has submitted that merely for non-communication no officer can be allowed to claim a particular overall grading for purpose of appointment.

13. Having due regard to the rival contentions and the records as produced, this court is of the view that after the representation was filed by the petitioner for up-gradation of the grading, the Accepting Authority for purpose of ACRs for the period from 2008-09 and both the Reporting and Accepting Authorities, on non-initiation certificate for the period from 2009-10, did not act fairly and reasonably. To act fairly and reasonably is incumbent on the State in view of the law laid down in *Maneka Gandhi vs. Union of India* reported in , (1978) 1 SCC 148. The legal principle as laid down in *Dev Dutt Vs. Union of India and Ors.* is entirely based on *Maneka Gandhi vs. Union of India*. This court has examined the process of disposal of the said representation filed by the petitioner for up-gradation. It is apparent from the file that the Reporting Authority upgraded the petitioner to "very good" for the year 2008-09. However, neither the Reporting Authority nor the Accepting Authority did grade the petitioner for the period from 2009-10. After obtaining the para-wise comments on the representation of the petitioner for up-gradation the Accepting Authority, the Chief Secretary rejected the assessment of the Reporting Authority for upgradation by the following note dated 18.11.2014 (part of Annexure-11):

"I don't agree for upgradation by Shri Darlong (Reporting Authority) now. We may reject his application dt. 8.8.14 for upgradation and accordingly communicate as such upgradation cannot be done keeping in view of his nomination to IAS."

14. Having compared with the para-wise comments of the Reporting Authority, part of Annexure-8, this court does not think that the Accepting Authority has considered the premises for up-gradation as considered by the Reporting Authority. Moreover, the observation that such up-gradation cannot be done keeping in view of his nomination to IAS is entirely unacceptable. Consequently, the memorandum dated 22.11.2014 (Annexure-9 to the writ petition) is quashed and set aside. If the Accepting Authority is of the view that the up-gradation is warranted, that has to be done so that the officer concerned does not suffer any prejudice. That apart, what this court has witnessed is that the petitioner has not

been graded for the period 2009-10. This court cannot accept any assessment where no grading has been awarded. Hence, this writ petition is disposed of with the following directions:

1. The Accepting Authority shall reconsider the representation filed by the petitioner for upgrading his grading from "good" having due regard to the grading "very good" as proposed by the Reporting Authority premised on his views as recorded (part of Annexure-8 to this writ petition) and grade the petitioner afresh for the period of 2008-09 by a reasoned order.
2. After grading the petitioner, the Accepting Authority shall grade the petitioner for the period of 2009-10.
3. If the petitioner is upgraded for the period of 2008-09 and graded for the period of 2009-10, having due regard to the grading awarded for the period from 2008-09, those ACRs be sent at once to the Union Public Service Commission for placing the same before the Selection Committee for appointment to the IAS by promotion from the State Civil Service with a copy of this order for their due consideration.

It is made clear such exercise shall be completed within a period of 15(fifteen) days from the day when the petitioner shall furnish a copy of this order along with the records containing copies of the ACRs as disclosed for the relevant period, para-wise comments of the Reporting Authority and the office notes including the note of the Chief Secretary and other communication.

The disposal of this writ petition shall not preclude the petitioner from taking any step on the basis of the outcome of the said exercise.

There shall be no order as to costs.