
(2012) 01 KL CK 0120

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24894 of 2009

Salim Babu, P. K.

APPELLANT

Vs

Chief General Manager, B.S.N.L. and others

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 227

Citation : (2012) 1 ILR (Ker) 541

Hon'ble Judges : Thottathil B. Radhakrishnan, J; C. T. Ravikumar, J

Bench : Division Bench

Advocate : P. V. Mohanan, for the Appellant; Mathews K. Philip, S.C., BSNL and Sri Parameswaran Nair, ASG of India, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Heard learned counsel for the petitioner and learned standing counsel for BSNL. The petitioner was the applicant before the Central Administrative Tribunal. He aspires to be recommended as eligible for movement from Sub Divisional Engineer (SDE) to Senior SDE in the open category. Going by Ext. R-6 OM dated 18-1-2007 of the BSNL, the grading criteria for that is "no adverse, not more than two Averages" for previous 5 (five) years in terms of ACRs. Therefore, if a remark of being "Average" is recorded for more than two times, that becomes detrimental to the employee when he is being considered for assessment of fitness and eligibility for the purpose of such rating on the basis of ACRs. The petitioner contends that for the relevant time, he cannot be mulcted with any entry rating him as Average without that having been communicated to him. Formidable support is drawn by the learned counsel appearing for the petitioner from the law laid by the Apex Court in *Dev Dutt Vs. Union of India (UOI) and Others*, in this regard. He also points out *Abhijit Ghosh Dastidar Vs. Union of India (UOI) and Others*, which reiterates the law laid in *Dev Dutt*.

2. As categorically laid down by the Apex Court in *Dev Dutt's case (supra)*, communication of entries and giving opportunity to represent against them are

of abundant importance when posts which fall for consideration are among those which could be treated as higher posts, where elimination happens following a selection based on ACR notings. As noted in Dev Dutt's case, a single entry can destroy the career of an officer. Non-communication of entries in ACR of a public servant (except in the armed force) has civil consequences as it may affect his promotion and other benefits. The concept of other benefits include confirmation of higher scales of pay and higher grade. The salutary principle emanating out of Dev Dutt's case in this regard, as enunciated in paragraphs 22 and 23 of that judgment, would indicate that even in some cases (not in the case in hand) entry "good" or "very good" may be of adverse consequence when there is competitive evaluation between different officers for promotion to higher cadres when selection is on the basis of ACR assessments and other procedures of like nature. The same principle would categorically apply even in cases where ACRs are taken to determine the eligibility for being granted higher grade. We are sure that Dev Dutt's case was not brought to the notice of the learned Tribunal while Ext. P-1 order was issued. We find that there is an error of law and jurisdiction committed by the Tribunal in as much as the law laid in Dev Dutt's case, which is binding in terms of Article 141 of the Constitution, has not been considered; more particularly because, non-communicated ACR entries, admittedly, have been acted upon as against the applicant, writ petitioner. The Tribunal has made observations on the merits of the ACR entries, even on those which were not communicated by the establishment to the employee. The matter in hand being one under Articles 226 and 227 of the Constitution, we are not to consider that aspect here, on facts.

For the aforesaid reasons,

- (i) the impugned order of the Tribunal is set aside.
- (ii) The parties are directed to mark appearance before the Tribunal on 20-1-2012, so that the matter could be listed appropriately for further consideration and decision afresh, after giving opportunity of hearing to the parties, including by placing further pleadings and materials, if any.
- (iii) This writ petition is ordered accordingly.
- (iv) No costs.