

(2011) 12 AHC CK 0410
In the Allahabad High Court
Case No : Writ Petition No. 479 (SB) of 2010

State of U. P. and another	Vs	APPELLANT
Dev Raj Vishwakarma and another		RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Constitution of India, 1950 — Article 14
Uttar Pradesh Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 1995 — Rule 4, 5

Citation : (2012) 1 ADJ 316

Hon'ble Judges : Uma Nath Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Devendra Kumar Arora, J.—This bunch of writ petitions have been filed on behalf of the State of U. P. for quashing of judgment & order passed by the learned U. P. State Public Services Tribunal in different claim petitions.

2. In all these writ petitions a common legal issue is involved regarding the issuance of the directions by the learned Tribunal to the effect that where-ever there is a conflict of entries between those recorded by the Reporting Officer, Reviewing Authority or the Accepting Authority, the entry as is recorded by the Reporting Officer would prevail and should be read as the actual entry of the concerned government servant. Such a direction of the learned Tribunal is based on the reasoning that the Reviewing or the Accepting Authority while altering / changing the entry from a higher one (higher grading) to a lower one, has failed to record any justifiable reason for the same and the same were recorded in utter violation of the principles of natural justice. Accordingly, all the writ petitions are being considered and decided by means of the common judgment & order.

3. Writ Petition No. 479 (SB) of 2010 State of U. P. & others vs. Dev Raj

Vishwakarma & another is taken up as a leading case in this judgment.

4. By means of this writ petition, the petitioner (State) has challenged the judgment & order dated 28.7.2009, passed by State Public Services Tribunal in Claim Petition No. 375 of 2009 Dev Raj Vishvakarma vs. State of U. P. and another whereby the learned Tribunal allowed the claim petition of the opposite party no. 1 and the grading recorded by the Reviewing Authority and the Accepting Authority lowering down the category of the petitioner from "Utkrisht" (outstanding) to "Ati Uttam" (very good) were quashed and a further direction was issued to treat these entries as "Outstanding" and take necessary steps for promotion and grant of other service benefits.

5. The learned Standing Counsel appearing for the petitioner-State challenged the order passed by the learned Tribunal on mainly two grounds. Firstly, the learned Tribunal failed to appreciate correctly the procedure prescribed by various Government Orders for recording entries in Annual Confidential Rolls (hereinafter referred to as "ACRs") of employees. Secondly, the learned Tribunal exceeded its jurisdiction in giving a direction to the State to treat the entry recorded by the Reporting officer as the final entry and take consequential steps regarding promotion of the claimant-respondent from the date the junior persons had been promoted.

6. Substantiating the first ground, the learned counsel for petitioner-state relied upon three Government Orders dated 28th March, 1984, 30th October, 1986 and 5th March, 1993, respectively. The Government Order dated 28th March, 1984 provides that in the event of conflict between the grading as given by the Reporting Officer, Reviewing Officer and Accepting Officer, it is the grading given by the Accepting Officer which would be treated as the actual grading of an employee. It further provides that the Reporting Officer should give clear and specific grounds for grading an employee as "Utkrisht" (Outstanding). The Government Order dated 30th Oct., 1986 reiterates the same policy in principle, while enumerating various Government Orders, issued on the subject of recording entries in ACRs and summarizing them in a concise manner in the annexure attached to it. In the Government Order of 5th March, 1993, the earlier Government Order issued on 28th March, 1984 has been reiterated, and in para 2 (2) thereof it has been provided that in the event of a conflict of grading at any level, the grading as recorded by the Accepting Officer would be treated as final and actual grading of an employee concerned. The learned Standing Counsel appearing for the State-Petitioner further submitted that the record reveals that none of these Government Orders were challenged by any of the claimant-respondents in any of the claim petition. The learned counsel for the State also submitted that in the normal hierarchal set up of Government, the grading recorded by the reporting officer who is subordinate to the Reviewing Officer and Accepting Officer, initiates or sets into motion the process of recording ACRs. The reviewing officer furthers the process set into motion which culminates in final grading given by the Accepting Officer. If the Reporting Officer's grading is

treated as final, it would result in administrative chaos.

7. The learned Tribunal has treated the process of reviewing and accepting as that of "down grading". "Down grading" of an entry as understood in Service Jurisprudence is only when a comparison is undertaken with previous years' entries which results in lowering down of marks of an earlier period of service as recorded in the earlier ACR.

8. The learned Standing Counsel has referred to the judgment of the Hon'ble Supreme Court in the case of U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, where the Hon'ble Apex Court in para 2 has observed that if an employee legitimately had earned an "outstanding" report in a preceding year which, in a succeeding one, and without his knowledge, is reduced to the level of satisfactory without any communication to him, it would certainly be adverse and affect him at one or the other stage of his career.

9. In the bunch of cases, at hand, the learned Tribunal had actually drawn no comparison whatsoever of the grading of an incumbent going down from the one recorded in the previous year. On the other hand, for the same year, where there has been a conflict between the entry recorded by the Reporting, Reviewing and Accepting Officers, the learned Tribunal has read it as "downgrading" which clearly is a misunderstanding of the term.

10. The learned counsel for the State-petitioner has, in support of the second ground of challenge, referred to the direction issued by the learned Tribunal that not only the entry impugned by the claimant respondent be treated as non-existent, it be replaced by the entry of "outstanding" as recorded by the Reporting Officer and the employee be considered for promotion w.e.f. date his juniors have been promoted. The learned Tribunal had usurped the jurisdiction of the Administrator in replacing the impugned entries by an entry of "Outstanding." The learned Tribunal could at the most have remanded the matter to the competent authority for taking appropriate steps for re-recording of the quashed entry after giving opportunity of hearing to the employees concerned.

11. Sri Shreesh Kumar, learned counsel for claimant-respondent while countering the arguments raised on behalf of the petitioner-state has relied upon a judgment of coordinate Bench of this Court in Surendra Kumar Vs. State of U.P. 2006 (3) UPLBEC 2834 wherein the Bench interfered in the grading of "good" given by Reviewing Officer, the D.M. Faizabad to a Tehsildar. The Division Bench has held that no opportunity of hearing was given to the employee, nor the D.M. has given any reason for converting the entries from "outstanding" to "good".

12. The Division Bench has relied upon the Supreme Court decision in the case of U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, where the Hon'ble Apex Court has held that even where the entry is going a step down, like falling from "Very good" to "good", it may reflect adversely upon the career prospects of an employee and, therefore, before recording such an entry in the succeeding year, the authorities must give an opportunity of hearing. The

downgrading being reflected by comparison to an earlier year; such an entry may be qualitatively downgrading and cannot be sustained without any reason for recording of the same being apparent from the record.

13. Mr. Shreesh Kumar has also referred to a Government Order dated 07.5.1981 whereby guidelines were laid down for awarding fresh remarks in case of expunction of adverse remarks and it has been provided therein that if adverse remarks are expunged by competent authority on representation of an employee, then there is no justification for awarding fresh remarks as the entry in the character roll can be made by the same officer who had seen the work of the subordinate officer for a minimum and continuous period of three months.

14. It is further submitted by Sri Shreesh Kumar that since the entire procedure for recording A.C.Rs. is governed by executive instructions and there are no statutory rules in this regard and the Government Order dated 07.5.1981 having not been superseded by any of the Government Orders, issued subsequently, it has to be followed by the administrative authorities. On the expunction of the entries made by the Reviewing and Accepting Officers, the matter could not have been remanded by the Tribunal to the State Government for making fresh entry for the year in question as the present incumbents on the post of Reviewing and Accepting Authority have not seen the working of the respondent for three months continuously, as required by the Govt.. Orders.

15. Shri Shreesh Kumar has also relied upon the judgment rendered by Hon''ble Supreme Court in the case of Dev Dutt Vs. Union of India (UOI) and Others, in which a Division Bench of the Apex Court has laid down the law with regard to communication of all entries, of whatever nature to an employee concerned in case he wished to represent against the same to the competent authority for its up-gradation. The Hon''ble Apex Court has expanded the principles of natural justice to become applicable to the process of recording of A.C.Rs.

16. Sri Shreesh Kumar has argued that in the case of the claimant-respondent, the Reviewing and Accepting Authority had not given any opportunity of hearing to the employee before recording the entry and even after the recording of the same, it was not communicated. Thus, neither pre-decisional nor post decisional hearing was given to the claimant respondent.

17. The learned Standing Counsel for the petitioner-state submitted in rejoinder that the judgment in the case of Surendra Kumar (supra) has not considered the Government Orders dated 28th March, 1984 nor the Compilation dated 30th October, 1986, nor the Government Order dated 5th March, 1993 though it does refer to the judgment of the Hon''ble Supreme Court in the case of Prabhat Chand Jain (supra), it fails to appreciate that the said judgment was rendered in a different context and related to downgrading of an entry in A.C.R. of an employee in a subsequent year. The Division Bench has not recorded any reason for applying the concept of downgrading to the process of decision making in recording entry in A.C.R. of the same year.

18. The learned counsel for the State further submitted that after the judgment in the case of *Dev Dutt vs. Union of India* (supra), the legal situation has changed completely regarding communication of A.C.Rs. Now, every entry needs to be communicated to an employee, thus, giving him an opportunity to make a representation against the same which is to be decided by an authority next higher in rank to the one giving such entry.

19. Communication of the entry recorded by the Reviewing and Accepting Officer was not done at the time of recording of the same as it was not required in any of the Government Orders that mid-way in the process of finalization of an entry for a particular year, the officer responsible for the same should consult the employee concerned and invite objections to the proposed entry, to be finally recorded.

20. Having considered the arguments raised by both the sides and having gone through the case laws submitted viz. *U.P. Jal Nigam v. P.C. Jain*, *Dev Dutt v. Union of India* and *Surendra Kumar vs. State of U.P.* we find that while Government Orders dated 28th March, 1984, 30th October, 1986 and 5th March, 1993 clearly provide that the entry recorded by the reporting officer is not to be considered as final and in the event of a conflict between the grading given by the Reporting Officer and that given by Reviewing Officer or Accepting Officer, the grading of the Accepting Officer shall be final grading for the particular period of service tenure of an employee concerned. Moreover, other Government Orders referred to in the compilation dated 30th October, 1986 do not cast any duty on the Reviewing or Accepting Officer to give pre-decisional hearing to the employee concerned. The only duty cast upon the Reviewing or Accepting Officer is to give detailed reasons for not accepting the grading proposed by the Reporting Officer and in case an outstanding grading is recorded, special reasons for the same are required to be stated. The State Government has not framed any statutory rules for recording of A.C.Rs. and maintenance of service books. The executive instructions that govern the field, have not been challenged by any of the claimant respondents nor have been considered by the learned Tribunal.

21. It stands to reason that the process as started by the Reporting Officer is furthered by the observations recorded by the Reviewing Officer and finalized by the entry made by the Accepting Authority. The Hon'ble Supreme Court in the constitution bench decision rendered in the case of *Bachhittar Singh Vs. The State of Punjab*, has held that internal nothings on the files during the process of decision making do not confer any enforceable right upon a litigant seeking benefit from the same. Unless the order is duly authenticated by the competent authority and is issued and thereafter communicated, the whole situation is in a flux and the authority is prone to change its mind mid-way and to decide the same issue in a completely different manner than it earlier proposed.

22. While going through the law on the subject of A.C.Rs., we have come across judgments rendered earlier by the Constitution Benches of the Hon'ble Supreme Court which have neither been referred to in the afore-cited three decisions

relied upon by the counsel for both the sides nor have been cited before us at any stage. However, it is settled position in law that this Court can take judicial notice of earlier binding precedents even if the same are not cited at the Bar.

23. A Constitution Bench of the Hon'ble Supreme Court in the case of Prakash Chandra Sharma vs. O.N.G.C. 1970 SLR 116 was dealing with an employee who challenged his supersession by his juniors on the ground that adverse remarks made in his A.C.R. had not been communicated to him and as per the Circular governing the said entries to be recorded in A.C.Rs, it was necessary that every employee should know as to what were his defects. It was argued that had the appellant therein been given opportunity, he would have represented against the adverse remarks relied upon by the Commission for his supersession and might have easily satisfied the higher authority that the remarks were uncalled for and unjustified. Because of lack of communication of such adverse remarks, the petitioner had been discriminated and therefore, the said adverse remarks could not be allowed to remain in his A.C.Rs and stand in the way of his promotion. The Hon'ble Supreme Court refused to interfere in the said case.

24. Another Constitution Bench of the Hon'ble Supreme Court in the case of R.L. Butail vs. Union of India reported in 1970 SLR 926, while considering the arguments raised by the appellant therein, that the Reporting Officer was bound to hear the appellant before deciding to make the entry and such recording of adverse remarks amounted to censure and a penalty under rule 11 of the Central Civil Services (Control, Classification & Appeals) Rules 1965 and therefore, could not have been given without affording an opportunity of hearing, did not agree with the said argument of the appellant.

25. The Hon'ble Supreme Court held that a confidential report is intended to be a general assessment of work performance of a government servant subordinate to the Reporting Authority. Such reports are maintained for the purposes of serving a data for determining the comparative merit when questions of promotion, confirmation etc. arise. Only in cases where a "censure" or a "warning" is issued, the officer making the order is expected to give reasonable opportunity to the Government Servant to represent his case.

26. The Constitution Bench in the case of R.L. Butail rejected as unsustainable the argument of the appellant that the omission to provide opportunity of hearing before making adverse remarks in the A.C.R would render such report vitiated. The Constitution Bench was of the view that rules do not provide for a prior opportunity to be heard before adverse entry is made in the A. C. R.

27. The Constitution Bench further observed that it is true that such adverse remark may be taken into consideration when a question such as that of promotion arose and when comparative merits of persons eligible are considered, but when a government servant is aggrieved by adverse remark, he has an opportunity of making representation. Such representation would be considered and the higher authority, if satisfied may either amend, correct or even expunge

a wrong entry, so that it cannot be inferred that a government servant aggrieved by an confidential report is without a remedy. Making of an adverse entry is, thus, not equivalent to imposition of penalty which would necessitate an enquiry and giving of reasonable opportunity of being heard to the concerned government servant.

28. In other words, the Hon''ble Supreme Court was of the opinion that before making any adverse remark in Annual Character Roll, the Reporting Officer need not to give any opportunity of hearing. It is only after such an adverse entry is made, the same should be communicated to the government servant concerned, who may make a representation to the higher authorities against such a report. It is only "post decisional" hearing that is envisaged in cases where reports in Annual Character Rolls are adverse.

29. In the case of *Gurdayal Singh Fiji Vs. The State of Punjab & others*, AIR 1981 SC 215, the Hon''ble Supreme Court was considering the case of the appellant who had been deprived of selection in Indian Administrative Service cadre by promotion from Punjab Civil Service cadre on the ground that the Government of Punjab had refused to give integrity certificate to him. The appellant had made a representation which was rejected. The Hon''ble Supreme Court in the said case held that although the decision of the Selection Committee could not be influenced by an adverse report in a confidential roll unless such report is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to such adverse report, the Court was not competent to issue a direction for promotion of the appellant. It could only direct for reconsideration of the whole case by the competent executive authority in accordance with relevant Regulations by applying the test of merit or suitability cum seniority. It was left to the discretion of the competent authority to work out the details and pass appropriate order after giving opportunity of hearing to the appellant.

30. That in the case of *Union Public Service Commission Vs. Hiranyalal Dev and Others*, the Hon''ble Supreme Court set aside the directions issued by the Central Administrative Tribunal for promotion of the petitioner after ignoring certain adverse remarks in his confidential character roll. The Hon''ble Court has held that the proper course to be adopted was that the direction be issued to the authority concerned to consider the case of the employee afresh by indicating a broad frame work within which the competent authority should act. No direction could be issued usurping the jurisdiction of the competent authority.

31. On examining the issue in light of the aforesaid facts and circumstances as well as legal position, we are inclined to accept the submission of learned counsel for the petitioner "State" that the learned Tribunal completely misunderstood the concept of down grading. It is really a misnomer to refer to the disagreement between the reporting, reviewing and accepting authorities as "downgrading". Actually, recording of Annual Confidential Remarks (ACRs) is a complete process in itself. The process is set rolling (as per the time schedule laid down in G.O."s)

with the first recording made by reporting officer. In the second step, the said recording is reviewed by the reviewing authority and in the next stage of the process the accepting authority records his grading. It is this final grading as is given by the accepting authority that ends the process of recording of grading.

32. In normal parlance, as also based on the literal meaning of the term "down-grading", it would imply when the grade of an incumbent is pushed down or goes down. The grade of an incumbent, as per the Government Orders is the one that has been recorded by the Accepting Authority. The other grades as given by the Reporting or the Reviewing officer were only part of the decision making process ending in the recording of the ACR of the government servant.

33. In Service Jurisprudence when we talk about downgrading of incumbent, it is actually meant that the grading of an incumbent has gone down as compared to his grading over the previous years. This interpretation of downgrading is deducible also from the judgment of the Hon'ble Supreme Court in the case of U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, whereof it has been so observed:

...If an employee legitimately had earned an "outstanding" report in a particular year, which, in a succeeding one, and without his knowledge, is reduced to the level of "satisfactory" without any communication to him, it would certainly be adverse and affect him at one or the other stage of his career.

34. In the bunch of cases, at hand, the learned Tribunal had actually drawn no comparison whatsoever over the grading of an incumbent going down from the one recorded in the previous year.

35. On the other hand, for the same year, where there has been a conflict between the entries recorded by the Reporting, Reviewing and Accepting Authorities, the learned Tribunal has termed it as "down grading" which is clearly a misunderstanding of the term.

36. The only judgment on the subject (which has also been relied upon by the concerned government servants) is in the case of Surendra Kumar Vs. State of U.P. (2006) 3 UPLBEC 2834 wherein it has been held that the entry as given by the Reviewing Authority could not be sustained inasmuch as it went down by two steps without affording opportunity and without giving reasons. Noticeably, the said judgment does not take into consideration the Government Orders dated 28th March 1984, or the compilation dated 30th October, 1986 or the Government Order dated 5th March 1993. Though it does refer to the judgment of the Hon'ble Supreme Court in the case of P. C. Jain which relate to down gradation in subsequent years, but it does not record any reasons for applying the concept of down gradation to the entry of the same year.

37. Learned counsel for petitioner has placed reliance upon a case of Dev Dutt Vs. Union of India (UOI) and Others, in which the Hon'ble Supreme Court has developed the principle of natural justice by enlarging the ambit and scope of

Article 14 to reach a conclusion that every Annual Confidential Entry, whether adverse or good or very good, deserves to be communicated to an incumbent inviting objections thereon and the same are to be disposed of by an authority higher than the one who gave the entry. However, the said judgment does not deal with situations where the reviewing and accepting authorities differ in giving grading and observations as compared to the reporting authority.

38. In the present circumstances, there is no dispute between the parties that in view of prevailing law, none of the entries were communicated to any of the government servants. Hence, the impact of such non-communication may render the entire entry as being violation of Article 14 inasmuch as it takes away the right of representation as has been elucidated in the Dev Datt's case. Still an entry would stand adverse or otherwise, in the character roll of the incumbent and would form the basis of future service benefits to the incumbent concerned.

39. As such, the judgment and order of the learned Tribunal which directs reading of annual entry recorded only by the Reporting Authority over and above Reviewing and Accepting Authorities, can not be sustained and has to be necessarily set aside.

40. The Hon''ble Supreme Court in the case of U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, in paragraph 3 had laid down three guide lines regarding downgrading in the character roll of an officer-

(i)communication;

(ii)recording of reasons and

(iii)opportunity to representation

41. The Hon''ble Supreme Court in the case of Dev Dutt vs. Union of India (Supra) while dealing with the issue of Annual Confidential Reports (A.C.R.) was pleased to observe that it is well settled that no rule or government instruction can violate Article 14 or any other provision of the Constitution, as the Constitution is the highest law of the land. The Government Orders, if they are interpreted to mean that only adverse entries are to be communicated to the employee concerned and not other entries, would become arbitrary and hence, illegal, being violative of Article 14. All similar rules, government orders/office memorandum, in respect of all services under the State, whether civil, judicial, police, or other service (except the military), will hence also be illegal and are, therefore, liable to be ignored. The Hon''ble Supreme Court held that fairness and transparency in public administration require 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 military), must be communicated to him within a reasonable period so that he can make a representation for its up-gradation.

42. The concerned paras 36 & 37 of the aforesaid judgment are being reproduced as under:

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 up-gradation. 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.

43. At the end of judgment, the Hon'ble Supreme Court directed for communication of the entry to the concerned appellant within a period of two months with liberty to make representation against the said entry with further direction to decide the same within further two months thereafter and if the authorities upgrade the entry of the appellant then the opposite parties shall consider him for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

44. In State of Uttar Pradesh there are statutory rules regarding disposal of representations made against the adverse Annual Confidential Reports and allied matters namely U. P. Government Servants (Disposal of the representation against adverse annual confidential reports & allied matters) Rules, 1995 which provide a very strict time frame for disposal of representation made against the adverse Annual Confidential Reports and Rule 5 of the said Rules further provides that where an adverse report is not communicated or a representation against an adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated as adverse for the purposes of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned. As per the law laid down by the Hon'ble Apex Court in the case of Dev Dutt (Supra) every report/entry (whether poor, fair, average, good or very good) is

required to be communicated to the concerned government servant in order to enable him to make representation for its up-gradation.

45. We have also examined the Government Order dated 7th May, 1981, relied upon by Sri Shreesh Kumar, learned counsel for the claimant-respondents; we do not agree with the submissions as the said Government Order is not applicable in the facts of present cases, as it has been provided therein that if adverse remarks are expunged by competent authority on representation of an employee, then there is no justification for awarding fresh remarks as the entry in the character roll can be made by the same officer who had seen the work of the subordinate officer for a minimum and continuous period of three months. The cases at hand are neither the case of wrongful recording of the entry by the officer and nor that the same has been decided to be expunged by the competent authority. In the present case, it is the Tribunal which issued directions for not taking into consideration the grade given by the reviewing and accepting authority as no reasons have been recorded by the concerned authority.

46. This Court is of the view that the learned Tribunal cannot take up the role of the reviewing or accepting authority and cannot direct the authorities to take into consideration the views recorded by the Reporting Officer ignoring the entry recorded by the Reviewing or Accepting Authority. While setting aside entry given by the Reviewing and Accepting Authority, it was incumbent upon the learned Tribunal to remand the matter to the concerned authority with the direction to act in accordance with law.

47. On the basis of above analysis and after considering all the facts and circumstances of the case as well as the legal position, we hereby allow all the writ petitions and quash the judgment and order of the learned Tribunal dated 28.7.2009 as well as all the other impugned judgments of learned Tribunal and direct the State Government to communicate the entries to the concerned government servants with liberty to them to make representation to the higher authorities within period of two months, which would consider and decide the same in accordance with law within a further period of two months and thereafter follow up action would be taken by the competent authorities within period of further two months in accordance with law.

48. Considering the background of present case, we hereby direct the Chief Secretary to State Government of U.P. to issue appropriate Government Order/ Circular for communication of all the entries (whether poor, fair, average, good or very good) to all the state employees as per dictum of Hon''ble Supreme Court, as laid down in paras 36 & 37 of case of Dev Dutt Vs. Union of India (UOI) and Others, with a further provision for making representation to the higher authorities and if necessary, appropriate amendment be made in U. P. Government Servants (Disposal of the representation against adverse annual confidential reports & allied matters) Rules, 1995.

49. All the Writ Petitions stand allowed accordingly.

50. Registrar of this Court is directed to transmit a copy of this judgment & order to the Chief Secretary to State Government of U.P, Lucknow for its necessary compliance.