

(2017) 01 CHH CK 0072
In the Chhattisgarh High Court
Case No : 3004 of 2016

Sudhram Deshlahra, S/o Late Shri Chaituram

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Constitution of India, Article 14, Article 226 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts to Issue certain writs

Citation : (2017) 01 CHH CK 0072

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : Tridib Bhattacharya, Dhiraj Wankhede

Final Decision : Allowed

Judgement

1. Invoking jurisdiction of this Court under Article 226 of the Constitution of India the petitioner herein seeks to challenge the order dated 15.6.2016 (Annexure P/1) by which representation of the petitioner for upgradation of his entry in the Annual Confidential Report (ACR) has been rejected by respondent No.2 herein.

2. The essential facts required to judge the correctness of plea raised at the Bar are as under:-

2.1 The petitioner is working on the post of Assistant Sub-Inspector. Case of eligible candidate for promotion from the post of Assistant Sub-Inspector to Sub-Inspector was considered in the year 2012, 2013 and 2014, however, the petitioner was not promoted. He was informed by order dated 21.12.2015 (Annexure P/6) that since he has been graded "x" (C) in the ACRs of the year 2011, 2012 and 2013, therefore, the Departmental Promotion Committee has held him ineligible for promotion to the post of Sub-Inspector.

2.2 Thereafter, the petitioner made representation to the competent authority

through the Superintendent of Police, Balod and respondent No.2 by order dated 15.6.2016 (Annexure P/1) has held that entry "x" (C) given to the petitioner is not adverse entry and there is no provision for correction in the grade and rejected the representation of the petitioner.

2.3 Feeling aggrieved against the order passed by respondent No.2, the petitioner has filed this writ petition under Article 226 of the Constitution of India challenging the legality, validity and correctness of the order dated 15.6.2016 (Annexure P/1) by which it has been held that entry "x" (C) is not adverse entry and there is no provision for correction in the grade.

3. Mr.Tridib Bhattacharya, learned counsel appearing for the petitioner, would submit that the petitioner having denied of promotion on the ground of award of entry "x" (C) in the ACRs of the year 2011 and 2012, it is not open to respondent No.2 to hold that entry "x" (C) is not adverse remark. He would further submit that any entry less than "excellent" or "outstanding" is adverse entry and the petitioner is entitled for upgradation and his representation has to be considered by the competent authority to upgrade the entry, therefore, the impugned order dated 15.6.2016 (Anneuxre P/1) passed by respondent No.2 deserves to be set aside.

4. On the other hand, Mr.Dhiraj Wankhede, learned Government Advocate appearing for the respondents/State, would submit that order passed by respondent No.2 is in accordance with the Standing Operational Procedure issued by the Police Headquarter on 13.3.2002.

5. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised herein and also gone through the documents appended with the petition with utmost circumspection.

6. It is not in dispute that the petitioner is working on the post of Assistant Sub-Inspector and his case for promotion from the post of Assistant Sub-Inspector to the post of Sub-Inspector was considered in the year 2013, however, he was not found fit for promotion on the ground of entry "x" (C) in his ACR, which is apparent from the order dated 21.12.2015 (Annexure P/6) and when the petitioner made representation, his representation has been rejected on the ground that entry "x" (C) is not adverse entry and further it has been held that there is no provision for correction in the grade allotted to him.

7. The law on the point is no longer indispute and well settled. Their Lordships of the Supreme Court in the matter of Dev Dutt Vs. Union of India and others, (2008) 8 SCC 725 have held every entry in ACR (whether poor, fair, averge, good or very good) must be communicated to him/her within a reasonable period. It was observed 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 vs. Union of India*, (1996) 2 SCC 363 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.

22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

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 concerned authority, and the concerned authority 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.

41. 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 military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication

would be arbitrary, and as such violative of Article 14 of the Constitution."

8. The correctness of proposition of law laid down by the Supreme Court in the matter of *Dev Dutt* (supra) was doubted and ultimately, the matter was referred to the larger Bench and three-Judge Bench of the Supreme Court in the matter of *Sukhdev Singh Vs. Union of India and others*, (2013) 9 SCC 566 have held that the view taken in the matter of *Dev Dutt* (supra) is correct. It was observed

as under:- "8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR poor, fair, average, good or very good-must be communicated to him/her within a reasonable period."

9. The judgment of Sukhdev Singh (supra) was followed by the Supreme Court recently in the matter of Prabhu Dayal

Khandelwal Vs. Chairman, Union Public Service Commission and others, (2015) 14 SCC 427 .

10. Thus, in the light of proposition of law laid down by the Supreme Court in the matter of Dev Dutt (supra) as approved in the matters of Sukhdev Singh and Prabhu Dayal Khandelwal (supra), it is quite vivid that every entry in the ACR (whether it is a poor, fair, average, good or very good) must be communicated to a public servant within a reasonable period. The entry "average" "x" is definitely adverse entry which the petitioner has been graded and he is entitled to make representation against entry "x" (C) which has been recorded in his ACRs. Any entry less than "excellent/outstanding" is adverse because that makes the chances of promotion to the higher post. By no strength of imagination it can be held that entry of "average" graded to the government servant is not adverse entry. Any provision in Standing Operational provision cannot make the entry nonadverse to the government servant which is adverse to the government servant.

11. Since the petitioner has been graded "x" (C), then he is entitled to make representation to respondent No.2 and respondent No.2 is duty bound to consider his representation for upgradation. Respondent No.2 has held that there is no

provision for correction in the grade. If the petitioner is entitled for entry "A" or "B", then definitely by virtue of law laid down by the Supreme Court in the matter of Dev Dutt (supra) as reiterated in Sukhdev Singh (supra) the petitioner is entitled for upgradation and the order passed by respondent No.2 holding that there is no provision for upgradation of entry is also bad. If the government servant has been graded "average" or "good", he is entitled to be considered for higher grade by making representation to the competent authority.

12. In the matter of Gurdial Singh Fijji Vs. State of Punjab, (1979) 2 SCC 368 , Their Lordships of the Supreme Court have held that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it 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 the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified.

13. Therefore, the order dated 15.6.2016 (Annexure P/1) passed by respondent No.2 holding that entry "x" (C) is not adverse entry and entry "x" (C) cannot be upgraded in absence of any provision is contrary to law and accordingly, it is hereby quashed. Respondent No.2 is directed to consider the case of the petitioner for upgradation of entry in the ACRs in accordance with law as per material placed by the petitioner. The petitioner is at liberty to make additional representation showing that he is entitled for upgradation. If the petitioner is upgraded, the respondents shall convene the review DPC for consideration the name of the petitioner for promotion on the post of Sub-Inspector in accordance with law.

14. The writ petition is allowed to the extent indicated hereinabove. However, it is made clear that this Court has not expressed any opinion on merits of the case. No order as to cost(s).