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**(2014) 12 GUJ CK 0082**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 12360 of 2014**

Western Railway and Others

APPELLANT

Vs

Girish Sundhiya and Others

RESPONDENT

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**Date of Decision : 18-12-2014**

**Acts Referred:**

**Citation : (2015) LabIC 1148**

**Hon'ble Judges : V.M. Sahai, Acting C.J.; R.P. Dholaria, J**

**Bench : Division Bench**

**Advocate : Ravi Karnavat, Advocates for the Appellant; M.S. Rao, Advocates for the Respondent**

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## **Judgement**

V.M. Sahai, Actg. C.J.

1. We have heard Mr. Ravi Karnavat, learned advocate for the petitioners and Mr. M.S. Rao, learned advocate for the respondent. This petition has been filed by the petitioners-original respondents challenging the order of the Central Administrative Tribunal dated 01.04.2014, by which the Tribunal has directed the petitioners-original respondents to convene a review DPC and to consider the case of the present respondent-original applicant for granting promotion to the post of AEN by ignoring the ACRs of the present respondent for the years 2004-05 and 2005-06 and to consider the ACRs for the appropriate period, in accordance with the rules, to consider promotion of the respondent-original applicant against the reserved quota for the selection process initiated on 13.2.2009 and has further issued direction that the entire exercises shall be completed within a period of three months.

2. The present respondent-original applicant was working as Senior Section Engineer (Drawing) (belonging to SC category) in the Railways. When the petitioners' DPC met in the year 2009 for considering the promotion to the post of Assistant Engineer, the ACRs for the purpose of promotion of the last five years was to be considered by the DPC namely; from the years 2004-05 to

2008-09.

3. It is not disputed by the present respondent that the Reporting Officer had given "Good" grading to the present respondent in the ACR for the year 2004-05, but the Reviewing Officer downgraded it to "Average". However, for the year 2005-06, the Reporting Officer reported "Average" entry and some adverse remarks were passed and the Reviewing Officer confirmed the same. The entry of "Average" for the year 2004-05 was never communicated to the present respondent, which was in violation of the Apex Court's decision as downgrading entry by the Reviewing Officer was required to be communicated. The law in this regard has been settled by the Apex Court in the case of Sukhdev Singh Vs. Union of India (UOI) and Others, . Para-8 of the Apex Court's decision is extracted below:

"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 up-gradation 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."

4. Since the entry of each year is required to be communicated as per decision of the Apex Court which was not done so, therefore, the present respondent was deprived from making any representation with regard to downgrading of entry by the Reviewing Officer. So far as the entry of 2005-06 is concerned, the present respondent did make a representation and his representation against the adverse entry was pending before the Authority and was not decided prior to which the DPC was held. Therefore, the Tribunal has directed the petitioners-original respondents not to consider the said two entries for the years 2004-05 and 2005-06 and to constitute a Review Committee for considering promotion of the present respondent under the reserve quota for the selection process initiated on 13.02.2009.

5. The aforesaid facts have not been disputed in the writ petition. Therefore, we are of the considered opinion that the Tribunal did not commit any illegality in issuing a direction to the petitioners-original respondents for constituting a Review DPC and keeping out the entries for the years 2004-05 and 2005-06. We do not find any illegality in the impugned order passed by the Tribunal. Therefore, this petition fails and is, accordingly, dismissed.

6. At this juncture, learned counsel for the petitioners has submitted that there were four posts of Assistant Engineer, wherein three posts have been filled by the petitioners-original respondents and one post is Vacant. In view of the above position, the petitioners shall consider the case of the present respondent against the said vacant post, if he is otherwise held to be qualified by Review DPC. In view of the aforesaid directions, the time allowed by the Tribunal is extended for a period of two months from today for the petitioners-original respondents to comply with the order passed by the Tribunal within the aforesaid period. We make it clear that this period of two months shall not be extended any further.