

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/1150/2011**Jabalpur, this Wednesday, the 04th day of March, 2020**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER****HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Manoj Ratiram Nagdeve, S/o Ratiram Nagdeve, aged about 47 years,
Physical Education Teacher (PET), Jawahar Navoday Vidyalaya,
Waraseoni, Balaghat (M.P.) – 481001

-Applicant**(By Advocate – Shri Vijay Tripathi)****V e r s u s**

1. Union of India through its Secretary, Ministry of Human Resources & Development, (Education Department), New Delhi – 110001.

2. Commissioner, Navoday Vidyalaya Samiti, Department of Secondary Education & Higher Education, Government of India, Indira Gandhi Stadium, IP Estate, New Delhi – 110001.

3. Joint Commissioner, (Administration & Grievance Cell) Navoday Vidyalaya Samiti, Head Quarter – A/28, Kailash Colony, New Delhi – 110001.

4. Deputy Commissioner, Navoday Vidyalaya Samiti, Regional Office, Bhopal (M.P.) – 462001.

5. Principal, Jawahar Navoday Vidyalaya, Waraseoni, Balaghat (MP) – 481001

-Respondents**(By Advocate – Shri Praveen Namdeo)***(Date of reserving order : 26.03.2019)*

ORDER**By Navin Tandon, AM.**

The applicant is aggrieved that he has been granted senior scale w.e.f. 11.01.2008 instead of 20.10.2004.

2. The undisputed facts of the case are as under:

2.1 The applicant was initially appointed as Physical Education Teacher (PET) vide order dated 20.10.1992.

2.2 The respondents – Jawahar Navoday Vidyalaya (JNV) has a Time Bound Upgradation Scheme for teaching staff wherein “Selection Scale of Pay” is granted after 12 years of service.

2.3 He was granted senior scale w.e.f. 11.01.2008 vide order dated 24/29.01.2008 (Annexure A-1).

2.4 In response to his representation dated 15.01.2009, the respondents communicated on 12.02.2009 (Annexure A-3) that the case of the applicant was considered by the DPCs held on 20.07.2005, 25.05.2006 and 29.06.2007 and found that his performance was below the benchmark. Subsequently, when his case was considered and found fit by the DPC, he has been given the benefit of senior scale by the DPC as per rules.



2.5 He had approached this Tribunal in Original Application No.417/2011, wherein this Tribunal vide order dated 26.05.2011 (Annexure A-5) had directed the respondents to pass a speaking order on his representation. Accordingly, the respondents vide order dated 14.11.2011 (Annexure A-2) communicated that “Average” performance is not taken as adverse remarks as it is regarded a routine and undistinguished one. Therefore, it was not communicated to the applicant as it was not adverse remarks as per rules and procedures followed at that time. It has been further mentioned that, “Below Benchmark” grading was not communicated prior to the year 2008-09. As such, the DPC did not commit any violation in the procedure adopted by it nor it has any malafide towards the applicant.

3. It is the case of the applicant that he was never communicated any downgrading or adverse ACRs. Thus, the applicant cannot be deprived to get the benefit of upgradation on the ground of uncommunicated ACRs. The case of **Gurdiyal Singh Fizzi vs. State of Punjab and others**, (1979) 2 SCC 368 has been relied upon, wherein it has been held that uncommunicated adverse CRs should not have been taken into consideration by the DPC to adjudge the suitability of the employee for promotion.

4. The applicant has sought for the following reliefs:



“7. RELIEF SOUGHT

It is therefore prayed that this Hon’ble Tribunal may kindly be pleased to :

- (i) Summon the entire relevant record from the respondents for its kind perusal;
- (ii) Set aside the order dated 24/29.1.2008 Annexure A/1, to the extent the applicant has been granted senior pay scale w.e.f. 11.1.2008 instead of 20.10.2004.
- (iii) Set aside the order dated 14.11.2011 Annexure A-2.
- (iv) Direct the respondents to provide the benefit of Senior Scale of Pay to the applicant w.e.f. 20.10.2004 with all consequential benefits including the arrears of pay;
- (v) Any other order/direction may also be passed.
- (vi) Award cost of the litigation to the applicant.”



5. The respondents, in their reply, have reiterated what has already been communicated to the applicant in communication dated 12.02.2009 (Annexure A-3) and 14.11.2011 (Annexure A-2). They have further mentioned that since there was no un-communicated adverse CR as such, the law laid down by the Hon’ble Supreme Court in the case of **Gurdiyal Singh Fizzi** (supra) is not applicable in the facts and circumstances of the case in hand.

6. Heard arguments of both the parties and perused the pleadings available on record. Arguments of the learned counsels were mostly along the lines of the written pleadings.

7. Learned counsel for the applicant relied upon the judgment of Hon'ble Supreme Court in the case of **Abhijit Ghosh Dastidar vs. Union of India and others**, (2009) 16 SCC 146, wherein it has been held that uncommunicated entries of the performance reports, which are below benchmark, should not be taken into consideration.



FINDINGS

8. The Hon'ble Supreme Court in the matters of **Dev Dutt vs. Union of India and others**, (2008) 8 SCC 725 had held 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 v. Union of India, (1978) 1 SCC 248 that arbitrariness violates Article 14 of the Constitution.”

9. Further, in **Sukhdev Singh vs. Union of India and others**, (2013) 9 SCC 566, three judges Bench of Hon'ble Supreme Court has held as under:

“8. In our opinion, the view taken in Dev Dutt vs. Union of India and others, (2008) 8 SCC 725 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.”



10. In a recent judgment in **Anil Kumar vs. Union of Indian and others**, (2019) 4 SCC 276, the Hon’ble Supreme Court considered the judgment of **Dev Dutt** (supra), **Sukhdev Singh** (supra) and **Abhijit Ghosh Dastidar** (supra) and held as under:

“18. Hence, we are of the view that the appellant should be granted an opportunity, within a period of four weeks from today to submit his representation in respect of the ACRs for the years concerned where he did not fulfil the benchmark for financial upgradation. Upon the submission of his representation, the respondents shall consider it and communicate the outcome to the appellant within a period of two months thereafter. Based on that decision, the case of the appellant for financial upgradation shall be considered afresh. In the event his ACRs for the relevant period are upgraded, the case for financial upgradation shall be determined within a period of three months thereafter.

19. We also direct that in the event that the ACRs for the relevant period are upgraded, the case of the appellant for promotion to the post of Senior Deputy Secretary/Controller of Administration shall be considered afresh by the Departmental Promotion Committee expeditiously. This exercise shall be carried out with reference to the date on which his junior in service came to be promoted.

20. In the event that the case of the appellant is considered favourably, he would be entitled to all consequential benefits which flow from the financial upgradation and upon the grant of regular promotion to the post of Senior Deputy Secretary.”

11. We find that the present case is squarely covered by the judgment of Hon’ble Supreme Court in **Anil Kumar** (supra) and, therefore, we dispose of this Original Application by directing the respondents to communicate the ACRs of the relevant period, which were below benchmark to the applicant, within four weeks from the date of receipt of certified copy of this order. On receipt of such ACRs, the applicant may submit his representation within four weeks, which should be considered and outcome be communicated to the applicant within two months thereafter. In the event of ACRs of the relevant period being upgraded, grant of senior scale to the applicant should be considered afresh by the Departmental Promotion Committee expeditiously.

12. Accordingly, the Original Application is disposed of in the above terms. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-

