

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH**

**OA NO.640/2006**

Allahabad, this the 18th day of September, 2008

**HON'BLE SHRI JUSTICE M. VENKATESWARA REDDY, MEMBER (J)  
HON'BLE SHRI SHAILENDRA PANDEY, MEMBER (A)**

Saroj Kumar  
s/o Shri E.Saroj  
r/o 3-A, Tagore Road  
Phool Bagh, Kanpur.

... Applicant

(By Advocate: Shri M.K. Sharma)

Versus

Union of India & 6 Others  
(As per memo of parties in the OA).

.. Respondents

(By Advocate: Sh. R.C.Shukla for Sh. S.C.Mishra on behalf of R-1 and  
Sh. S.Chaturvedi for Respondent No.2 (UPSC))

**ORDER (Oral)**

**BY JUSTICE M. VENKATESWARA REDDY, MEMBER (J):**

Aggrieved by the action of the Departmental Promotion Committee (DPC) in not empanelling him for promotion to the Senior Administrative Grade (SAG) of the Indian Defence Accounts Service, the applicant has approached this Tribunal.

2. It is the plea of the applicant that <sup>at</sup> ~~any~~ no point of time were any adverse remarks communicated to him and he was hoping that he would get a promotion in his own turn but he was deprived of the same. The stand of the 1<sup>st</sup> Respondent in his counter is that the DPC adopted the guidelines contained in the Departmental of Personnel and Training Office Memorandum No.22011/5/86-Estt (D) dated 10.04.1989, as amended from time to time, uniformly in respect of all Junior Administrative Grade (JAG) officers for adjudicating their fitness or otherwise for promotion to the SAG of the IDAS. It is further stated that in terms of the guidelines, the benchmark for

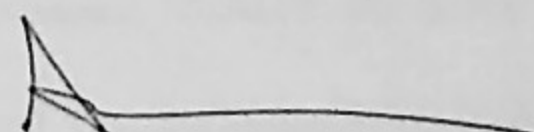


promotion to the SAG of the IDAS is 'Very Good', and that in terms of the DoP&T O.M. No.22011/9/98-Estt. (D) dated 09.09.1998 read with subsequent O.M. No.22011/9/98-Estt.(D) dated 16.06.2000- an officer attaining at least 4 bench mark gradings out of 5 ACRs considered be assessed as fit for promotion. The applicant was adjudicated as 'Unfit' by the DPC, as his ACR's for the period 1999-2000 to 2003-04 did not meet the required benchmark.

3. During the pendency of the present application, the Hon'ble Apex Court pronounced a Judgement in Dev Dutt v. Union of India & Ors., JT 2008 (7) SC 463 wherein, it was held as under:

"19. In our opinion, **every entry in the A.C.R.** 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** (supra) that arbitrariness violates Article 14 of the Constitution."

"45. 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."

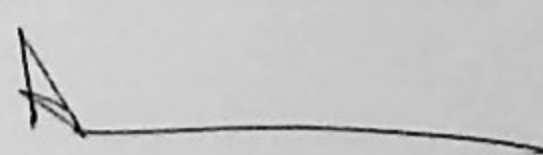




4. When questioned about the retrospective application of the Judgement, the learned counsel for the applicant has brought to our attention, the Full Bench (5 members) decision of this Tribunal (Principal Bench) rendered in Ashok kumar Aneja vs. Union of India and Others (OA No.24/2007) dated 7<sup>th</sup> May, 2008 wherein it is laid down that past cases where decisions have been taken by the DPC and supercession brought about, are not to be permitted to be reopened. But where such decisions have already been subjected to challenge before the Tribunal or where the decision of the DPC had been arrived at only on or after 07.05.2007, such restrictions may not be applicable.

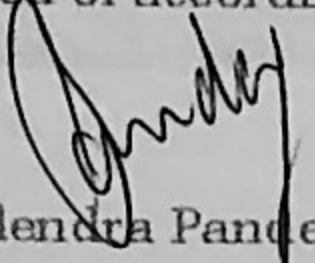
5. At this stage, the learned counsel for the 2<sup>nd</sup> Respondent, wanted to argue at length as to the retrospective application of the decision of the Supreme Court. At this juncture, the learned counsel for the 1<sup>st</sup> Respondent has stated that if the matter is remitted back to the 1<sup>st</sup> Respondent, it would consider the case of the applicant as well as applicability of the decision of the Apex Court in Dev Dutt's case (supra).

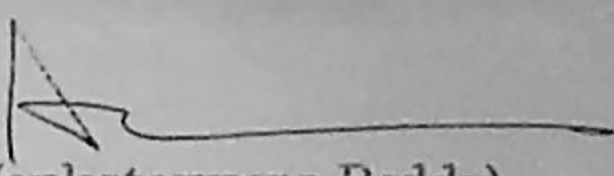
6. In view of the above concession given by the 1<sup>st</sup> Respondent's counsel, we are of the opinion that the retrospectivity of the application of Judgement need not to be gone into here, keeping it open to the respondents to consider the same. Thus, in view of the submissions made by the counsel for the 1<sup>st</sup> Respondent, without expressing our opinion on the merits of the case, the matter is remitted back to the 1<sup>st</sup> Respondent to consider the matter afresh in view of the judgment of the Hon'ble Supreme Court in **Dev Dutt's case** (supra). It is also clarified that the 1<sup>st</sup> Respondent is entitled to



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go into the question of the retrospective application. The OA is disposed of accordingly. No costs.

  
(Shailendra Pandey)  
Member (A)

  
(Justice M. Venkateswara Reddy)  
Member (J)

/nsnrsp/