

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 612 of 2011

Wednesday, this the 06th day of March, 2013

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

B. Sudhakaran, S/o K.Bahuleyan, aged 56 years,
 Technical Officer, Centre for Development of Advanced
 Computing (C-DAC for short), Vellayambalam
 Trivandrum, residing at Skylark
 Powdikonam P.O, Trivandrum – 695 587.

..... **Applicant**

(By Advocate – Mr. R Sreeraj)

V e r s u s

1. Union of India, represented by the
 Secretary to Government of India,
 Department of Information Technology
 New Delhi.
2. The Director General,
 C-DAC Corporate Office,
 Near District Industries Centre,
 Agriculture College Campus,
 Shivajinagar, Pune – 411 005.
3. The Head Corporate HRD,
 C-DAC Corporate Office,
 Near District Industries Centre,
 Agriculture College Campus,
 Shivajinagar, Pune – 411 005
4. The Executive Director,
 C-DAC, Government of India,
 P.B.No. 6520, Vellayambalam,
 Trivandrum – 695 033.

..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 25.02.2013, the Tribunal on

06-03-13 delivered the following:



O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant is a Technical Officer in the C-DAC who is overlooked in the matter of promotion as Senior Technical Officer time and again. His representations to the respondents have not evoked any positive response. Hence, this Original Application is filed for the following reliefs:-

- “I) To declare that the denial of promotion to the applicant as Senior Technical Officer with effect from the date of promotion of his juniors is illegal, arbitrary, irrational, unjust and unreasonable and that the same violates Articles 14, 16 and 21 of the Constitution of India.
- II) To direct the respondents to hold a review select committee in respect of the applicant which would consider the case of the applicant, without taking into account the un-communicated grading below the prescribed mark for being screened in for consideration for promotion as Senior Technical Officer, if any, and making its own assessment on the basis of the entries in the CRs and if otherwise found fit for promotion, the applicant shall be accordingly promoted to the post of Senior Technical Officer with effect from the date of promotion of his juniors with all consequential benefits.
- III) Such other relief as may be prayed for and this Tribunal may deem fit to grant.
- IV) Grant the cost of this Original Application.”

2. The applicant contended that the denial of promotion to him as Senior Technical Officer is illegal and arbitrary. As per Hon'ble Supreme Court's orders, no supersession in promotion is allowed. In Dev Dutt Vs. Union of India – AIR 2008 SC 2513, the Hon'ble Supreme Court reiterated that any entries in the ACRs which are not communicated cannot be taken as adverse. Any entry in the ACR below the prescribed bench mark amounts to an adverse entry and the same needs to be communicated to the employee as held by the Hon'ble Supreme Court in the above said case. Respondents are bound to communicate to the applicant any entry in his ACR which is below the prescribed bench mark for him to be screened in for consideration for his



promotion. The DPC should not be guided merely by the overall grading if any that may be recorded in the ACRs but should make its assessment on the basis of the entries in the confidential records as per DOP&T guidelines dated 10.3.1989. The Hon'ble Supreme Court in *Abhijith Ghosh Dastidar Vs. Union of India & Ors* in Civil Appeal No. 6227 of 2008 held that non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces) has civil consequences because it may affect his chances for promotion. Therefore, the Hon'ble Supreme Court directed that non-communication of entries of 'good' in that case where the bench mark was 'very good' should not be taken into consideration for considering the applicant therein for promotion to the higher grade. The Principal Bench in a number of OAs has held that un-communicated remarks in ACRs cannot be used for denying promotions to the employees.

3. The respondents contested the OA. It was submitted that the applicant's ACR grading from 2006-07, 2007, 2008, 2009, 2010 were 'very good', 'very good', 'very good', 'good' and 'very good' respectively. His juniors got promotion due to the higher grading in their ACRs. The C-DAC is an autonomous financially self sustaining society which has its own policy and is not following Government of India norms fully for promotion. As the applicant had not met the minimum criteria in ACR grading for consideration, he was screened out. The employee is informed only in cases of any adverse entry. The applicant's representations pertain to a decision on policy matter; therefore his case has been referred to headquarters for

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clarification. In the ACRs of the applicant there were no adverse entries to be communicated. As per the existing policy of the Centre only adverse comments in the ACRs need to be communicated. All the ACRs of the applicant except for the year 2009 were graded as 'very good' and there is no need for communicating the same as per rules followed by C-DAC. The selection for promotion consists of two elements namely screening and interview. The minimum residency period is five years for all grades below Group A post. As the applicant did not meet the minimum criteria in the ACR grading for consideration, he was screened out.

4. We have heard the learned counsel for the parties and perused the records.

5. The applicant was screened out as he did not meet the minimum criteria in ACR grading for consideration for promotion. Though he did not meet the minimum criteria in ACR, the same was not communicated to him as per rules followed by C-DAC. This stand of the respondents is against the law declared by the Hon'ble Supreme Court in Dev Dutt Vs. Union of India (supra). As held by the Hon'ble Supreme Court if only adverse entries need to be communicated it would become arbitrary and illegal since it may adversely effect the incumbents chances of promotion or to get some other benefit. The Hon'ble Supreme Court held further as under:-

"19. 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,

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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 up gradation. 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 (supra)* that arbitrariness violates Article 14 of the Constitution.

20. Thus, it is not only when there is a bench mark 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.

24. 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.

25. In the present case, the action of the respondents in not communicating the 'good' entry for the year 1993-94 to the appellant is in our opinion arbitrary and violative of natural justice, because in substance the 'good' entry operates as an adverse entry (for the reason given above).

36. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice."

6. In view of the settled law as above the respondents are bound to communicate every entry in the ACR of the applicant. Government of India has issued necessary instructions in this regard. C-DAC is an autonomous financially self sustaining society having its own promotion policy but its

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promotion policy should comply with the declared law of the land. Non-communication of any entry in the ACR which may adversely affect the employee is arbitrary, illegal and against the principles of natural justice. The last promotion given to the applicant was in March, 2006. On completion of the required five year's residency period the applicant is eligible to be considered for further promotion. In the year 2011 the applicant has been screened out based on his ACR gradings which were not communicated to him. Non-communication of entry in the ACR of the applicant which is below the prescribed mark for him to be screened in for consideration of promotion cannot be justified. Hence, it is ordered as under:-

Copies of all the ACRs of the applicant which were considered by the screening committee for his promotion as Senior Technical Officer should be made available to the applicant within a period of two months from the date of receipt of a copy of this order. If the applicant is aggrieved about any entry in the ACRs he may represent against the same to the respondents within a further period of one month. On receipt of the representation, if any, from the applicant the respondents shall consider the same and dispose of the representation by a speaking order which shall be communicated to him within a further period of one month. The selection committee shall consider in its meeting to be held in the year 2013 the case of the applicant taking due note of the representation as well as the decision of the respondents thereon.

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7. The Original Application is disposed of as above. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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