

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 455 of 2010

This the 12th day of December, 2011

**Hon'ble Mr. Justice Alok Kumar Singh , Member-J
Hon'ble Mr. S.P. Singh, Member-A**

Subedar Ram, Aged about 54 years, S/o late Brahm Deo Ram, R/o Village Tapani, Post Jainaupur, District Ballia, presently working as Principal, Jawahar Navodaya Vidyalaya, Sonikpur, District Barabanki.

.....Applicant

By Advocate : Sri A. Moin

Versus.

1. Union of India, through Secretary, Department of Human Resources Development, Department of Education, New Delhi.
2. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi through its Commissioner.
3. Joint Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.
4. Assistant Commissioner (E-II), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.
5. Deputy Commissiner, Navodaya Vidyalaya Samiti, Regional Office, Lekhraj Panna Complex, 3rd Floor, E-II, Sector II, Vikas Nagar, Lucknow.
6. G.S. Siddhu, Assistant Commissioner, Navodaya Vidyalaya Samiti, Regional Office, 18, Sangram Colony, Mahaveer Marg, 'C' Scheme, Jaipur.

.....Respondents

By Advocate : Sri Ankit Srivastava for Sri Anurag Srivastava

O R D E R (Oral)

By Justice Alok K Singh, Member-J

This O.A. has been filed for the following relief(s):

"(i) to quash order dated 12.7.2010 passed by respondent no.4 as contained in Annexure A-1 to the O.A.

(ii) to direct the respondents to promote the applicant as Asstt. Commissioner Grade Rs. 15600-39100/-

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w.e.f. 22.4.2010 i.e. the date of junior's promotion with all consequential benefits including arrears of pay.

- (ii) *To pay the cost of this application.*
- (iii) *Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."*

2. The applicant's case is that he was initially appointed as Principal in Navodaya Vidyalaya Samiti (in short NVS) in June, 1992. The next promotional avenue for the applicant was the post of Assistant Commissioner. 75% of the posts are to be filled from amongst the Principals with three years of regular service in the Grade and Bench mark prescribed for promotion as 'Very Good'. It is said that according to para 6.2.1 of Government of India's orders the DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for five preceding years. It is said that the final seniority list of Principal of NVS was issued on 31.12.2008 on All India Basis in which the name of the applicant finds place at sl. No. 15 (wrongly typed as 50 in para 4.8 of the O.A.). It is said that the DPC met on 3.3.2010 for considering the promotion of Principals to the post of Assistant Commissioner for eight vacancies in which 20 persons were considered including the applicant. The Bench mark for promotion was 'Very Good'. The applicant was rated as unfit as shown in the minutes of DPC (Annexure A-4). Thereafter the applicant submitted a detailed representation for redressal of his grievance, which was rejected on 12.7.2010 (Annexure A-1). After seeking the information under Right to Information Act, 2005, the applicant came to know that the service record of the applicant for the period from 2004-05 to December, 2008 was considered and the relevant Grading in all Confidential Reports for all years was 'Very Good' except in the year 2006-07 which was only 'Good'. It is further said that the Grading 'Good' was treated to be adverse by the DPC, even though the said entry was never communicated to him. The Hon'ble Supreme Court has categorically held that non-communication of the entries in the ACRs of a public servant has civil consequences because it

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affects his chance for promotion and other benefits and accordingly non-communication would be arbitrary and as such is violative of Article 14 of the Constitution of India. It is also said that the employee concerned be deemed to have been given promotion with immediate effect from the date the junior was given promotion with all consequential benefits.

3. The respondents have contested the O.A. by filing a detailed Counter Reply wherein they have not denied the contention that the applicant was found unsuitable on account of the aforesaid entry pertaining to the year 2006-07. Similarly, it has also not been said that this entry was ever communicated to the applicant.

4. In the Rejoinder Reply, the averments made in the Original Application have been reiterated.

5. We have heard the learned counsel for the parties and perused the material on record.

6. At the outset, learned counsel for the applicant submits that in similar matter involved in O.A. no. 400 of 2010 (Bahadur Singh Vs. Union of India & Others), this Tribunal had already taken a view in favour of the applicant in the backdrop of the preposition of law laid down by Hon'ble Supreme Court in the case of Dev Dutt Vs. Union of India & Others reported in 2008 (7) SCALE 403 and also in the case Abhijit Ghosh Dastidar Vs. Union of India & Others (SLP © 26556 of 2004 decided on 22.10.2008) (consisting of three Judges) wherein the ratio laid down in the case of Dev Dutt has been upheld.

7. As far as proposition of law in the aforesaid case is concerned, learned counsel for the respondents has nothing to say substantial, but he submits that in any case the applicant has only a right to be considered for promotion and has no right to have a direction from the Court/Tribunal for his promotion. Thus, the entire controversy involved in the present O.A. hinges on the legal point that if some Bench mark was provided for promotion for example 'Very Good' and if the officer/official secures some

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entry below the Bench mark such as 'Good' and the same has not been communicated, then whether non-communication of such entries of ACRs has any civil consequences affecting the chance of his promotion or get other benefits. The law laid down in the case of Dev Dutt (supra) has been reiterated by Hon'ble Supreme Court in the case of Abhijit Ghosh Dastidar (supra). The relevant extract of the aforesaid judgment is as under:

"The appellant was Post Master General during the relevant period and was eligible to be promoted to the Higher Administrative Grade of Indian Postal Service Group 'A' and to be posted as Chief Post Master General. His claim for promotion was considered by the DPC on 15.12.1999 and again 28.2.2001. The appellant was not found eligible for promotion to the Higher Administrative Grade-A. he filed an Original Application before the Central Administrative Tribunal (hereinafter referred to as 'CAT') at Patna alleging that he was not considered for promotion for the reason that there were two entries in his CR i.e. one on 22.9.1997 and another on 8.2.1998. It was pointed out that the CAT, Patna Bench by order dated 27.5.2002 directed the authority not to take note of " the order of caution dated 22.9.1997" and "the order of adverse remarks dated 9.6.1998" for the period 1.4.1997 to 13.10.1997 while considering the appellant for promotion. In the light of the said order, the appellant contended that these two adverse entries should not have been considered by the DPC. He further contended that through out the priod he was given entry of "Good". The respondent-Department alleged that the appellant was not considered for promotion as he was not having the bench mark of 'Very Good'. According to the appellant, the adverse entries namely 'Good' were not communicated. The said aspect ought not to have been considered while considering his promotion. IN support of the above claim, he relied on the decision of this Court in Dev Dutt Vs. Union of India & Ors. 2008 (7) Scale 403.

3. Pursuant to the direction the CAT, Patna Bench on 9.9.2002, review of DPC was held and the appellant was not found suitable for promotion. In March, 2003, there was a regular DPC and the appellant was found fit for promotion with the same entries and accordingly promoted to Higher Administrative Grade Group A and later retired from service.
4. It is not in dispute that the CAT, Patna Bench passed an order recommending the authority not to rely on the order of caution dated 22.9.1997 and the order of adverse remarks dated 9.6.1998. In view of the said order, one obstacle relating to his promotion

goes. Coming to the second aspect, that though the benchmark 'Very Good' is required for being considered for promotion admittedly the entry of 'Good' was not communicated to the appellant. The entry of 'Good' should have been communicated to him as he was having 'Very Good' in the previous year. In those circumstances, in our opinion, 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), it has civil consequences because it may affect his chance for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries 'Good' if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

5. Learned counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion on 28.8.2000. Therefore, the appellant also be deemed to have been given promotion from 28.8.2000. Since the appellant had retired from service, we make it clear that he is not entitled to any pay or allowances for the period for which he had not worked in the Higher Administrative Grade Group A, but his retrospective promotion from 28.8.2000 shall be considered for the benefit of re-fixation of his pension and other retiral benefits as per rules.
6. *The appeal is allowed to the above extent. No costs."*

8. As far as non-communication of entry below the Benchmark i.e. "Good" is concerned, it is said that concededly in the present case there is only one such entry pertaining to the year 2006-07, which was not communicated to the applicant and it also appear that on account of this very reason the applicant could not be recommended for promotion in question by the DPC. Here, it is relevant to mention that ultimately the applicant has been promoted by means of order dated 30.8.2011. But the learned counsel for the applicant emphasizes that in view of the aforesaid preposition of law, he is entitled to get promotion from the date his juniors were given promotion i.e. 22.4.2010. He also submits that in this way the

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order by which the representation of the applicant was rejected is also liable to be quashed.

9. In view of the above, we do not have any reason to take a different view what we have already taken in the above case of Bahadur Singh (O.A. No. 400 of 2010) decided on 21.7.2011 in which after considering the aforesaid preposition of law laid down in the case of Dev Dutt and Abhijit Ghosh Dastidar (supra) the relevant relief(s) were granted by directing the respondents to convene a Review DPC for consideration the claim of the applicant for promotion to the post of Assistant Commissioner ignoring the un-communicated ACRs of the aforesaid period within a specified time schedule.

10. Finally, therefore, in view of the foregoing discussion, we hereby allow this O.A. The impugned order dated 12.7.2010 is hereby set-aside. The respondents are directed to convene a Review DPC within four months from today and consider the claim of the applicant in accordance with the relevant rules for promotion to the post of Assistant Commissioner (Grade Rs. 15600-39100) w.e.f. 22.4.2010 i.e. the date of junior was given promotion including arrears of pay, if any, without taking into consideration the un-communicated ACR for the year 2006-07. No order as to costs.

S.P.Singh

(S.P. Singh)
Member-A

Alok Kumar Singh

(Justice Alok K Singh)
Member-J

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