

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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**ORDERS OF THE BENCH**

**Date of Order: 07.09.2012**

OA No. 272/2010

Mr. Surendra Singh, proxy counsel for  
Mr. M.S. Gupta, counsel for applicant.  
Mr. Ashish Kumar, counsel for respondents.

Additional Affidavit  
filed  
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Learned counsel for the respondents submits  
that they are not able to produce the record for want of  
availability.

Learned counsel appearing for the applicant  
seeks time to file certain documents. Time as prayed for  
is granted.

Put up the matter on 14.09.2012 for hearing.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*K.S. Rathore*  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

14-09-2012

O.A. No. 272/2010

Mr. Surendra Singh, proxy counsel for  
Mr. M.S. Gupta, counsel for applicant.  
Mr. Ashish Kumar, counsel for respondents

Heard.

O.A. is disposed of by a  
separate order on the separate  
sheets for the reasons recorded  
therein.

*Anil Kumar*  
[Anil Kumar]  
Member (A)

*K.S. Rathore*  
[Justice K.S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 14<sup>th</sup> day of September, 2012

ORIGINAL APPLICATION No.272/2010

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)**  
**HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Jitendra Kumar Sharma  
s/o Shri Om Prakash Sharma,  
r/o 36/1, Staff Quarters,  
Rashtriya Military School,  
Ajmer, presently working as  
Assistant Master (Maths),  
Rashtriya Military School,  
Ajmer.

.. Applicant

(By Advocate : Shri Surendra Singh)

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Director, M-15, General Staff Branch, Integrated Head Quarter of MOD (Army), P.O. New Delhi.
3. Dy. Chief of Army Staff (I S and T), General Staff Branch, Integrated Head Quarter of MOD (Army), P.O. New Delhi.
4. Director General of Military Training/MT-15, General Staff Branch, Integrated H.Q. of MOD (Army), New Delhi.
5. Smt. S.Gayathri, Assistant Master (Maths), Rashtriya Military School, Bangalore.

.....Respondents

(By Advocate : Shri Ashish Kumar)

**ORDER (ORAL)**

The present OA is directed against the orders dated 8<sup>th</sup> June, 2009 and 8<sup>th</sup> July, 2009 respectively and the applicant has prayed that these orders be quashed and set-aside and respondents be directed to promote the applicant as Master Gazetted (Group-B) w.e.f. the date his junior Smt. S. Gayathri has been promoted.

2. It is stated by the respondents in their reply that applicant has rightly been superseded as the entry in his ACR was below the benchmark.

3. The learned counsel appearing for the applicant stated on oath that there is no communication with regard to below benchmark remarks in the ACR. It is also stated that no opportunity has been provided to the applicant to represent against the grading of below benchmark in view of the judgment rendered by the Hon'ble Supreme Court in the case of Dev Dutt vs. Union of India and others, reported in (2008) 2 SCC (L&S) 771 wherein the Hon'ble Supreme Court held that whether an entry is adverse or not, depends upon its actual impact on employee's career and not on its terminology. So even a 'good' entry can be adverse in the context of eligibility for promotion. Further held that all grading whether 'very good' 'good' 'average' or 'poor' required to be



communicated to the employees working in Government Offices, Statutory Bodies, Public Sector Undertakings, or other State instrumentalities where constitutional obligations and principles of natural justice and fairness apply. Further, observed that grading to be communicated within a reasonable period so that employee concerned gets an opportunity of representation for improvement of his grading.

4. It is not disputed by the learned counsel for the respective parties that the judgment rendered by Hon'ble Supreme Court in the case of Dev Dutt (supra) has been referred to the Larger Bench of the Hon'ble Supreme Court and the same is under consideration. In view of this fact, it is evident that the matter is sub-judice before the Hon'ble Supreme Court.

5. In pursuance to the judgment of the Hon'ble Supreme Court in the case of Dev Dutt, the Department of Personnel and Training, Government of India issued OM No.21011/1/2005-Estt. (A) (Pt-II) dated 14.5.2009 and in Para 2(v), the following decision has been taken:-

“(v) The new system of communicating entries in the APAR shall be made applicable prospectively only with effect from the Reporting period 2008-09 which is to be initiated after 1<sup>st</sup> April, 2009.”



6. The Department of Personnel and Training, Government of India further issued OM No. 21011/1/2010-Estt. A dated 27.4.2010, which is reproduced as under:-

"The undersigned is directed to state that this Department has issued O.M. of even number dated 13-4-2010 that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPC contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. The representation is to be decided by the Competent Authority as per provisions of Para 2 of aforesaid O.M.

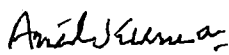
2. The Hon'ble Supreme Court in their judgment dated 12.5.2008 in Civil appeal No.7631 of 2002 (Dev Dutt vs. Union of India) has held that the 'good' entry in the ACR of the Appellant which had not been communicated to him and considered in a past DPC which found him unfit for promotion, should be communicated for representation and if upgradation is allowed by the Competent Authority, he should be considered for promotion retrospectively by the DPC. When the petitions in SLP (Civil) No.15770/2009, now converted to Appeal Civil No.2872 of 2010 (Union of India v. A.K.Goel and Ors.) were called for hearing, the Supreme Court has taken note of the apparent conflict between the decisions of the Hon'ble Court in Dev Dutt case on one hand and the judgments of Supreme Court in Satya Narain Shukla vs. UOI (2006 (9) SCC 69 and K.M.Mishra vs. Central Bank of India and ors. (2008 (9) SCC 120 on the other hand and by their order dated 29.3.2010, the Hon'ble Court has referred these appeals to a Large Bench.

3. In the light of the Orders issued by the Hon'ble Supreme Court in the aforesaid S.L.P. (Civil No. 15770/2009, Union of India vs. A.K.Goel and Ors., all Ministries/Departments are advised that whenever petitions have been filed in the Courts to grant relief on

the basis of the aforesaid decision of the Supreme Court in Dev Dutt case, the latest orders of the Supreme Court in A.K.Goel case may be brought to the notice of the Court.

7. In view of the aforesaid, since the matter is sub-judice before the Hon'ble Supreme Court, the present OA is disposed of subject to the final outcome of the reference made to the Large Bench of the Hon'ble Supreme Court and parties shall proceed as per the verdict of the Hon'ble Supreme Court on the issue.

8. With these observations, the OA stands disposed of with no order as to costs.

  
(ANIL KUMAR)  
Admv. Member

  
(JUSTICE K.S.RATHORE)  
Judl. Member

R/