

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR.

Jaipur, the 10th day of August, 2011

REVIEW APPLICATION NO.20/2011

IN

TRANSFERRED APPLICATION NO.6/2009
[CWP No.7639/2007]

CORAM :

HON'BLE MR. JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Naresh Kumar Khemani
S/o Shri H.C.Khemani,
R/o C-132, Gole Market, Jawahar Nagar,
Jaipur, presently holding the post of
Associate Professor,
National Institute of Ayurveda,
Jaipur.

... Applicant

Versus

1. National Institute of Ayurveda,
Madhav Vilas Palace,
Amer Road, Jaipur, through
Its Director.
2. Mahesh Chander Sharma,
Director,
National Institute of Ayurveda,
Madhav Vilas Palace,
Amer Road, Jaipur, through
Its Director.

... Respondents

ORDER
PER HON'BLE MR.ANIL KUMAR

Anil Kumar

The applicant has filed this Review Application for review of the order dated 1.8.2011 (Ann.RA/1), passed by this Tribunal in TA No.6/2009 [CWP No.7639/2007], whereby the said TA has been dismissed.

2. The applicant has stated that this Tribunal vide order dated 1.8.2011 (Ann.RA/1) dismissed the TA mainly on the following grounds :

- i) None-communication of the below benchmark entries in ACRs to the applicant is not violative of any law or circular on the subject.
- ii) The applicant has already been appointed as Professor vide order dated 4.2.2011.
- iii) Learned counsel for the applicant could not show any rule, order or circular by which the ACRs which were below the bench mark required to be communicated.

3. The applicant has further stated that the position of law is well settled by the Hon'ble Supreme Court in its judgement dated 12.5.2008 (Ann.RA/2) in Civil Appeal No.7631/2002 [**Dev Dutt v. Union of India & Ors.**] [SCC (L&S) 2008 Vol.2 page 771] that ; "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 of India.

4. That the Hon'ble Supreme Court reiterated its stand in its judgement dated 22.10.2008 (Ann.RA/3) in **Abhijith Gosh Dastidar v. Union of India**, Civil Appeal No.6277/2008 [SCC (L&S) 2010 Vol.1 Page 959] that; "Non-communication of entries in the ACR of a public servant whether he is Civil, Judicial, Police or any other service (other than the Armed

Arul Kumar

Forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution of India.

5. That the Principal Bench of this Tribunal has also passed many orders on the basis of above settled position of law.

6. That the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) after taking into consideration the judgements passed by Hon'ble Apex Court issued the Memorandum No.21011/1/2005-Estt.(A)(Pt.II) dated 14.5.2009 with the stipulation that communication of below benchmark grading in ACRs is necessary and has made a time bound provision for its review. Besides, in any promotion where benchmark has been prescribed, below benchmark grading is always adverse and the same should be communicated well within the time framed or be ignored at the time of consideration and in the matter of the applicant grading as 'good' is adverse for the purpose of promotion. Thus, the view taken by this Tribunal is against the facts as well as against the orders passed by the Hon'ble Apex Court from time to time.

7. Thus, the review applicant has prayed that, in view of the position stated hereinabove, this Review Application may be allowed and the order dated 1.8.2011 (Ann.RA/1), passed in TA 6/2009, may be reviewed and after recalling the same the matter may be heard on merit again.

8. We have carefully gone through the contents of the Review Application and we are not inclined to accept the contentions mentioned therein. The DPC met on 26.9.2006 for considering the candidature of the applicant. The law, which has been quoted by the applicant, is of the year 2008 and of the subsequent years. Therefore, the ratio/law laid down by the Hon'ble Apex Court in the year 2008 could not have been applied by the respondents for the DPC held on 26.9.2006. The DOPT Circular No.21011/1/2005-Estt.(A)(Pt.II) dated 14.5.2009 was

Anil Kumar

also issued keeping in view the judgement of the Hon'ble Supreme Court dated 12.5.2008 in the case of Dev Dutt v. Union of India (Civil Appeal No.7631 of 2002). This circular has no retrospective effect. Para (v) of the said circular states as follows :

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

However, the DOPT further, vide their Circular No.21011/1/2010-Estt.A dated 27.4.2010, on the subject; 'ACRs with below benchmark grading considered in past DPCs', in Para-2 & 3, states that;

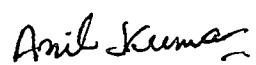
"2.....When the petitions in SLP (Civil) No.15770/2009, now converted to Appeal Civil No.2872 of 2010 (Union of India v. A.K.Goel & Ors.) were called for hearing, the Supreme Court has taken note of the apparent conflict between the decisions of the Hon'ble Court in Dev Dutt case on one hand and the judgements of Supreme Court in Satya Narain Shukla v. UOI [2006 (9) SCC 69] and K.M.Mishra v. Central Bank of India & 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 Larger Bench.

3. In the light of the Orders issued by Hon'ble Supreme Court in the aforesaid S.L.P. (Civil) No. 15770/2009, Union of India vs. A.K. Goel & Ors., all Ministries / Departments are advised that wherever 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."

9. In view of the position explained hereinabove, since the matter of communicating entries has been referred to the Larger Bench in view of the conflicting decisions of the Hon'ble Supreme Court in view of Dev Dutt case on one hand and the judgements of Supreme Court in Satya Narain Shukla v. UOI [2006 (9) SCC 69] and K.M.Mishra v. Central Bank of India & Ors. [2008 (9) SCC 120] on the other hand and also in view of the fact that the

Anil Kumar

DPC was convened on 26.9.2006 for considering the candidature of the applicant, which is prior to the judgement of the Hon'ble Supreme Court in the case of Dev Dutt, we are of the opinion that there is no merit in this Review Application and hence the same is dismissed by circulation.



(Anil Kumar)
Member (A)



(Justice K.S.Rathore)
Member (J)

vk