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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

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**OA No. 060/00315/2014**

**Date of decision- 30.04.2015**

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)  
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

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Krishan Kumar S/o Late Sh. Pawan Kumar, aged 41 years, working as AE O/o SDO Electricity (OP), Sub Division No. 6, Sector 20, Chandigarh.

**...APPLICANT**

**BY ADVOCATE :** Sh. Rohit Seth

**VERSUS**

1. Union of India through the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
2. Union Territory, Chandigarh through its Advisor, U.T. Chandigarh.
3. Home Secretary-cum-Secretary, Department of Personnel, Chandigarh Administration, U.T. Secretariat, Sector 9, U.T, Chandigarh.
4. Finance Secretary-cum-Secretary, Engineering Department, U.T. Secretariat, Sector 9, U.T. Chandigarh.
5. Chief Engineer, Union Territory, Chandigarh.
6. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

**...RESPONDENTS**

**BY ADVOCATE:** Sh. Deepak Agnihotri, counsel for respondent no. 1.  
Sh. Arvind Moudgil, counsel for respondent no. 2 to 5.  
Sh. B.B. Sharma, counsel for respondent no. 6.

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**ORDER (ORAL)**

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-**

The applicant has assailed the order dated 25.03.2014 conveyed to him on 28.03.2014 (Annexure A-1) whereby his claim for promotion from the post of AE to AEE has been rejected by the Departmental Promotion Committee held on 14.01.2014 declaring him 'unfit' on the ground of having not met the bench mark of 'very good' by securing at least 12 marks, based upon his down graded entries in his ACR.

2. The facts are not in dispute that the applicant was due for promotion to the post of AEE on the basis of seniority. Accordingly, his case was considered along with other eligible persons by the Departmental Promotion Committee in its meeting held on 14.01.2014 wherein he was declared unfit on the basis of down graded assessment in ACR for the relevant year.

3. The star argument put forth by the learned counsel for the applicant is that the below bench mark ACR for 01.04.2012 to 31.03.2013, where he was graded 'Average', was never communicated to him and was placed before the DPC for declining him promotion. The ACR for the period from 01.04.2009 to 12.11.2009 is missing. The applicant is entitled to be conveyed the adverse ACR or below bench mark to enable him to make a representation against the same to

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justify its upgradation. Despite there being a judicial pronouncement in favour of the applicant, the impugned order was passed which is illegal, arbitrary and is bad in eyes of the law.

4. He submitted that there is a fixed criteria for securing the marks based upon the ACR and if there was any adverse entry or below bench mark in the ACR, same could have been communicated to him, that he could make a representation to the concerned authority in terms of the judicial pronouncement by the Hon'ble apex court in the case of **Devdutt Vs. Union of India and others**, (2008) 8 SCC 725. To support his arguments, he also placed reliance upon the judgment passed by the Hon'ble Supreme Court in case of **Union Territory of Chandigarh Vs. Rajesh Kumar Basandhi**, 2004 (1) SCT 680.

5. The respondents have filed detailed reply wherein they did not dispute the fact the he was awarded 'Average' remark for the year 01.04.2012 to 31.03.2013 and based thereupon, he had scored only 11.09 marks as against the 12 marks, required for fulfilling the prescribed Bench mark marks resulting to declaring him as 'unfit'. The relevant para of the written statement reads as under:-

"4(3) That the contents of this sub para needs no comments being matter of record. It is respectfully submitted that the applicant was promoted to the post of Assistant Engineer against share quota of AMIE-Degree qualified on 13.11.2009 and attained eligibility for further promotion to the post of Assistant Executive Engineer as on 13.11.2013 and considered for such promotion by

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the DPC on 14.01.2014 in which the committee has declared him 'unfit' for promotion to the post of Assistant Executive Engineer for not fulfilling the prescribed bench mark of 'Very Good' and attained only 11.09 marks as against 12 marks required for fulfilling the prescribed bench mark during the last five years Annual Confidential Reports. Remaining Engineers at Serial No. 7 to 9 and 12 have been promoted vide order dated 25.03.2014 as AEE whereas sealed cover procedure has been adopted against the Assistant Engineer at Serial No. 11. However, the applicant was declared 'Unfit' for promotion due to non fulfillment of prescribed bench mark as explained in the foregoing paragraphs.

6. Sh. Arvind Moudgil, learned counsel for respondent nos. 2 to 5 has reiterated what has been stated in the written statement but he admitted that adverse entry was not communicated to the applicant.

7 We have heard the learned counsel for the parties and carefully perused the pleadings available on record.

8. At the outset, it is admitted by the respondents, as alleged by the applicant that the applicant was not afforded an opportunity to make a representation against the adverse entry as same was not conveyed to him. It is admittedly a fact that whenever the case of the applicant was considered by the DPC for promotion to the post of AEE along with other eligible persons, he was not found eligible keeping in view that ACR grading from 01.04.2012 to 31.03.2013, was 'average' only. Therefore, in our considered opinion, the below bench mark available with the respondents, has been used for considering his case for promotion behind his back and without following principle of

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natural justice as well as observation and findings given by the Hon'ble apex court in the case of **Devdutt Vs. Union of India and others**, (2008) 8 SCC 725 as non conveying of these below bench mark has adversely affected his case and denied him an opportunity to make efforts to improve his efficiency in the working.

9. This point is no more res-integra-in view of the judgment passed by the Hon'ble apex Court in the case of Devdutt Vs. Union of India (Supra). Relevant part from Devdutt case is quoted herein below:

***"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 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. "***

10. This view was subsequently approved by the three Judges Bench in the case of **Abhijit Ghosh Dastidar v. Union of India 2009(16) SCC 146** where the lordships held as under:-

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"Learned counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion was 28.08.2000. Therefore, the appellant also be deemed to have been given promotion from 28.08.2000. 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 28.08.2000 shall be considered for the benefit of re-fixation of his pension and other retiral benefits as per rules."

11. This issue has, in fact, been referred to a Larger Bench by the Supreme Court of India in case of **Union of India v. A.K. Goel and others**, (C.A. 2872 of 2010) which was also decided on 20.11.2013. The observation in this judgment showed that the reference arose out of a perceived conflict of the judgment in Dev Dutt's case (supra) and another two judgments, but it was opined that the view expressed by the three Judges Bench in **Sukhdev Singh v. Union of India and others**, 2013(9) SCC 566, squarely dealt with the issue and affirmed the view expressed in Dev Dutt's case (supra) wherein the lordships have held that communication of the entries helps a public servant in achieving threefold objects- (i) to enable a public servant to improve his work and give better result, (ii) to enable him to make a representation for up gradation of the remarks entered in the ACR, if

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he feels dissatisfied, and (iii) to bring transparency in the recording of the remarks relating to public servant. Suffice it to state here that by now the settled law of the land is that every entry in ACR has to be communicated to an employee.

12. In view of the legal position aforesaid, we are of the considered view that the impugned order does not sustain in the eyes of law and as such, the same is quashed and set aside, accordingly. The matter is remitted back to the respondents with a direction to convey the below bench mark ACR to the applicant for the relevant years and the applicant may be provided a liberty to submit a representation to the Competent Authority, who on receipt thereof may examine his case and thereafter pass a reasoned and speaking orders in accordance with law and rules. Let the above exercise be carried out within a period of two months from the date of receipt of a certified copy of this order.

13. In terms of these directions as above, this O.A. stands disposed of with no orders as to the costs.

**(UDAY KUMAR VARMA)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 30.04.2015.**

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