

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.3754/2012

Monday, this the 12th day of October 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B. K. Sinha, Member (A)

Vijay Prasad
Section Officer
QMG Branch/ Q-1 (A)
Room No.339, A Wing
Sena Bhawan, New Delhi-11

..Applicant

(Mr. Krishan Kumar, Advocate for Mr. Padma Kumar S, Advocate)

Versus

1. Union of India through Secretary
Ministry of Defence
South Block No.11
2. Joint Secretary (Training) &
Chief Administrative Officer
Ministry of Defence
E Block Hutments
DHQ PO, New Delhi-11
3. Secretary
Union Public Service Commission
Shahjahan Road
Dholpur House, New Delhi-69
4. Secretary
DoP&T
North Block
New Delhi-1
5. Mr. Ravindra Kumar, SO
Through
Office of JS (Trg) & CAO/P-1
Ministry of Defence
E Block, D.H.Q. PO, New Delhi -11
6. Mr. Mohammed Abdul Rahim, SO
Through
Office of JS (Trg) & CAO/P-1
Ministry of Defence
E Block, D.H.Q. PO, New Delhi -11

7. Mr. Chandan Kumar Jha, SO
Through
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E Block, D.H.Q. PO, New Delhi -11
8. Ms. Anjum Siddiqui, SO
Through
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9. Mr. Sanjeev Kumar Verma, SO
Through
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10. Mr. Sushil Choudhary, SO
Through
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11. Mr. Prakash Kumar Choudhary, SO
Through
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Ministry of Defence
E Block, D.H.Q. PO, New Delhi -11
12. Mr. Pravin Kumar Das, SO
Through
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Ministry of Defence
E Block, D.H.Q. PO, New Delhi -11
13. Mr. A Arumugham, SO
Through
Office of JS (Trg) & CAO/P-1
Ministry of Defence
E Block, D.H.Q. PO, New Delhi -11
14. Mr. Atul Kumar, SO
Through
Office of JS (Trg) & CAO/P-1
Ministry of Defence
E Block, D.H.Q. PO, New Delhi -11
15. Mr. Arun Kumar Arun, SO
Through
Office of JS (Trg) & CAO/P-1

Ministry of Defence
E Block, D.H.Q. PO, New Delhi -11

16. Mr. Srikanth Sharma, SO
Through
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E Block, D.H.Q. PO, New Delhi -11
17. Mr. Ranesh Kumar, SO
Through
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E Block, D.H.Q. PO, New Delhi -11
18. Mr. Satyadeo Kumar, SO
Through
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19. Mr. Ramesh Chandra Sahoo, SO
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20. Mr. Shyamkishor Yadav, SO
Through
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21. Mr. Sanjay Kumar Jha, SO
Through
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22. Mr. Niranjana Lal Goyal, SO
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23. Mr. Narendra Singh, SO
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24. Mr. Saurabh Bhardwaj , SO
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25. Mr. Ashok Kumar, SO
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26. Mr. Sanjay Prasad Suman, SO
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27. Mr. Shardindu Kumar Jha, SO
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28. Mr. Manor Kumar Sharma, SO
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29. Mr. Dwarka Nath, SO
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30. Mr. Sanjeev Kumar, SO
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31. Mr. Manish Kumar, SO
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32. Mr. Hemant Kumar, Asstt
Through
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33. Mr. Ravindra Thakur, SO
Through
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E Block, D.H.Q. PO, New Delhi -11
34. Mr. Birendra Singh, SO
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E Block, D.H.Q. PO, New Delhi -11
35. Mr. Ashish Vaish, SO
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36. Mr. K. Udaya Bhanu, SO
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37. Mr. Rupesh Kumar, SO
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38. Mr. Ajay Kumar, SO
Through
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39. Mr. Arvind Kumar, SO
Through
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40. Mr. Surrinder Singh Rana, SO
Through
Office of JS (Trg) & CAO/P-1
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41. Mr. Neeraj Kumar, SO
Through
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E Block, D.H.Q. PO, New Delhi -11
42. Mr. Chandra Bhanu Choudhary, SO
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43. Mr. Jitendra Kumar, SO
Through
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..Respondents

(Mr. Tanvir Ahmed Ansari, Advocate for respondent Nos. 1 and 2,
Mr. Satyendra Kumar, Advocate for Mr. R V Sinha, Advocate for
respondent No.3 – Nemo for other respondents)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The short issue raised by the applicant in the present Original Application is that his Annual Confidential Reports (ACRs) below benchmark should have been communicated to him to enable him to make representation for upgradation of the same. The prayer reads thus:-

“(a) This Hon’ble Tribunal may be pleased to quash and set aside the impugned Order dated 30.8.2012 and direct the respondents to allow the applicant to make a representation and a further direction to dispose of the representation on merit within a time frame.

(b) This Hon’ble Tribunal may also be pleased to direct respondent no.3 to reassess the select list position based on the modified set of ACRs in case the Applicants’ ACRs get upgraded as above.

(c) Any other relief which this Hon’ble Tribunal may be pleased to pass under the facts and circumstances of the case.”

2. The salient grounds espoused in the Original Application are:

- a) The applicant was never informed about the grading in his ACRs for the period 2003-04 to 2007-08.
- b) It was on account of grading in un-communicated ACRs that the applicant was relegated in his promotion to the next higher post.
- c) The rejection of the request of applicant for an opportunity to make representation against the grading in ACRs is arbitrary.
- d) In view of O.M. No.21011/1/2010-Estt. A dated 13.4.2010, the gradings in ACRs are required to be communicated to an official.

3. On the other hand, in the counter reply filed on behalf of respondent No. 3, it has been explained that the applicant participated in the Limited Departmental Competitive Examination for appointment to the post of Section Officer for the years 2006, 2007 and 2008 conducted by the Union Public Service Commission in December 2010, and on qualifying the exam, he was appointed to the post of Section Officer w.e.f. 30.9.2011. It has further been explained in the said reply that the gradings in ACRs of the applicant for the period 2003-04 to 2007-08 were 'Good', which is the benchmark grading for promotion to the post of Section Officer, thus the same were not required to be communicated to him.

4. We heard the learned counsels for the parties and perused the record.

5. Initially there was a provision for communication of adverse remarks in the ACRs to an employee and there was no law regarding communication of grading in the ACRs. The principle was initially propounded by the Hon'ble Supreme Court in **Dev Dutt v. Union of India & others**, (2008) 8 SCC 725 wherein it was ruled that any grading having adverse impact on promotional prospects need to be treated as adverse and need to be

communicated to an employee to enable him to make a representation against the same. The law so declared has been reiterated by the Apex Court in a recent judgment in **Sukhdev Singh v. Union of India & others** (Civil Appeal No.5892/2006) decided on 23.4.2013. Relevant excerpt of said judgment reads thus:

“7. A three Judge Bench of this Court in *Abhijit Ghosh Dastidar vs. Union of India and others* followed *Dev Dutt*. In paragraph 8 of the Report, this Court with reference to the case under consideration held as under:

"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 chances 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."

8. In our opinion, the view taken in *Dev Dutt* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - poor, fair, average, good or very good - must be communicated to him/her within a reasonable period.

9. The decisions of this Court in *Satya Narain Shukla vs. Union of India and others* and *K.M. Mishra vs. Central Bank of India and others* 11 and the other decisions of this Court taking a contrary view are declared to be not laying down a good law.

11. Insofar as the present case is concerned, we are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law.

11 I.A. No. 3 of 2011 for intervention is rejected. It will be open to the applicant to pursue his legal remedy in accordance with law.”

6. In implementation of the judgment in **Dev Dutt’s** case (supra), the Department of Personnel & Training could issue an O.M. in the year 2009, i.e., O.M. No. 21011/1/2005-Estt. (A) (Pt.II) dated 14.5.2009 wherein it was provided that only the ACRs for the period 2008-09 onwards were required to be communicated in terms of the law declared by the Apex Court. The O.M. read thus:-

“1. The existing provisions in regard to preparation and maintenance of Annual Confidential Reports inter alia provide that only adverse remarks should be communicated to the officer reported upon for representation, if any. The Supreme Court has held in their judgment, dated 12.05.2008 in the case of *Dev Dutt v. Union of India* (Civil Appeal No.7631 of 2002) that the object of writing the confidential report and making entries is to give an opportunity to the public servant to improve the performance. The 2nd Administrative Reforms Commission in their 10th Report has also recommended that the performance appraisal system for all services be made more consultative and transparent on the lines of the PAR of the All India Services.

2. Keeping in view the above position, the matter regarding communication of entries in the ACRs in the case of civil services under the Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government-

(i) The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR).

- (ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment,
- (iii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.
- (iv) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observation contained in the report leading to assessment of the officer in terms of attributes work output, etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.
- (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.
- (vi) The Competent Authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation.
- (vii) The Competent Authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the Competent Authority and the final grading shall be communicated to the officer

reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section.

3. All Ministries/Departments are requested to bring to the notice of all the offices under them for strict implementation of the above instructions.”

7. In view of the aforementioned O.M., the grading below benchmark for the year 2008-09 onwards were required to be communicated. Subsequently, the Department of Personnel & Training issued another O.M. No.21011/1/2010-Estt. A dated 13.4.2010 in terms of which if an employee was to be considered for promotion after the said date, his all the ACRs graded below benchmark were required to be communicated to him to enable him to make a representation against the same, within fifteen days.

The O.M. reads thus:

“Below bench-mark gradings in ACRs prior to the reporting period 2008-2009 and objective consideration of representation by the Competent Authority against remarks in the APAR or for upgradation of the final grading.- Prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any, to be considered by the Competent Authority. The question of treating the grading in the ACR which is below the bench-mark for next promotion has been considered in this Department and it has been decided 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 DPCs contain final grading which are the below the bench-mark 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. It may be noted that only below bench-mark ACR below bench-mark ACRs of other year.

2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the Competent Authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the

Competent Authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the Competent Authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing Officer if they are still in service on the points raised in the representation vis-à-vis the remarks/gradings given by the in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the Competent Authority does not give specific reasons for upgrading the below bench-mark ACR/APAR grading at par with the bench-mark for next promotion.”

8. In the present case once in paragraph 3 of the reply filed on behalf of respondent Nos.1 and 2 it has been categorically submitted that none of the ACRs of the applicant for the relevant period were below benchmark, there was no question to communicate the same to him.

9. In the wake, the Original Application is bereft of merit and is accordingly dismissed. No costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

October 12, 2015
/sunil/