

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00591/2010

Jabalpur, this Friday the 3rd day of August, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Uma Shanker Rastogi, Aged about 57 years
S/o Late Shri Ramji Rastogi, Divisional Forest Officer
(Production), Raisen, District Raisen
R/o E/7 Surendra Garden, Bhopal 462043

-Applicant

(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

1. Union of India, through its Secretary Ministry of Environment & Forest, CGO Complex Lodhi Road, New Delhi 110003
2. Union of India, Through its Secretary, Ministry of Personnel & Public Grievances (Department of Personnel & Training) (DOP&T) New Delhi 110003
3. State of Madhya Pradesh, through its Principal Secretary Department of Forest, Mantralaya, Vallabh Bhawan, Bhopal 462004
4. Principal Chief Conservator of Forest M.P. Satpura Bhawan Bhopal 462004
5. Shri Jagdish Chandra, Divisional Manager, Forest Development Corporation, Th. Principal Chief Conservator of Forest M.P. Satpura Bhawan Bhopal 462004
6. Shri Anil Kumar Khare, IFS, Th. Principal Chief Conservator of Forest M.P. Satpura Bhawan, Bhopal 462004

7. Mohanlal Meena IFS, Conservator of Forest Th. Principal Chief Conservator of Forest M.P. Satpura Bhawan, Bhopal 462004

8. Ms. Archana Shukla, IFS Conservator of Forest Th. Principal Chief Conservator of Forest M.P. Satpura Bhawan, Bhopal 462004

9. Shri A.K. Bhugaokar AFS, Dy. Conservator of Forest Th. Principal Chief Conservator of Forest M.P. Satpura Bhawan, Bhopal 462004

- Respondents

(By Advocate –**Shri S.K. Mishra for respondents Nos.1 & 2 and Shri Anshul Mishra proxy counsel of Shri Vijay Pandey for respondents Nos.3 & 4**)

(Date of reserving the order:12.02.2018)

ORDER

By Navin Tandon, AM:-

The applicant, who belongs to Indian Forest Service, of Madhya Pradesh cadre, is aggrieved by non-grant of selection grade of Rs.14300-400-18300 with effect from 22.5.2006/27.9.2008 when it was given to his juniors.

2. This is the third round of litigation. Earlier the applicant had filed Original Application No.167 of 2009 against non-grant of selection grade of Rs.14300-400-18300 with effect from 27.9.2008. He had also filed another Original Application No.171 of 2009 against communication of adverse entries in his annual confidential report for the year ending March,2006. Both these Original Applications were

clubbed together and were decided vide order dated 04.08.2009

(Annexure A-3), relevant paragraphs of which read thus:

“(2). We have heard both sides & perused the pleadings.

(3). Vide OA No.167/09, applicant challenges notification dated 27th Sept.2008 whereby 11 officials were granted pay scales of Rs.14300-18300 ignoring his claim. He also seeks direction to the respondents to grant selection grade in aforesaid pay scale w.e.f. 1.1.07 with all consequential benefits.

(4) Vide OA No.171/09, applicant has challenged validity of adverse ACR for the year ending March 2006. He not only seeks expunction of he adverse remarks but also claims consequential benefits.

(5) In reply filed by the State of M.P. and respondents 2-5 in OA No.171/09 it has been stated that during pendency of present OA, adverse remarks for the period ending March 2006 had been expunged vide order dated 13 April 2009, copy of which has been placed as Annexure R/2-1.

(6). In view of above, as far as the relief claimed in OA No.171/09 is concerned, the same stands fully granted as the adverse remarks have been expunged in its entirety. Since aforesaid remarks were made the basis for denying him pay scale of Rs.14300-18300, while others were granted said scale vide order dated 27.9.08, the respondents No.2&3 are required to undertake a review DPC and consider applicant's claim for grant of said scale ignoring his adverse ACR ending March 2006, which in any case stand expunged.

(7) Aforesaid exercise shall be undertaken within a period of 3 months from the date of receipt of this order

(8) OAs are disposed of. No costs”.

3. In compliance with the above direction, the respondents convened a review DPC, which considered the case of the applicant in

its meeting held on 07.12.2009. The DPC in its minutes dated 07.12.2009 (Annexure A-5) examined the case of the applicant on the criterion that overall performance during the last five years should be 'very good'; integrity should not be doubtful; and that there should not be any adverse report in any particular year. The review DPC found the applicant unfit for grant of selection grade on the basis of his overall performance in the ACRs.

4. The claim of the applicant in this Original Application is that the DPC and review DPC have committed error of law in considering irrelevant ACR of subsequent year to 2006-07 whereas the consideration should have been confined to preceding five years from the year of consideration i.e. 2006 and 2007.

4.1 The applicant has further contended that the official respondents while considering his case have committed an error in not communicating the ACRs, which became a reason to deprive the applicant from selection grade and promotion, which is contrary to the settled principles of law laid down in the matters of **Dev Dutt Vs. Union of India**, (2008)8 SCC725.

4.2 The applicant has also placed reliance on the decision of Hon'ble High Court of Madhya Pradesh at Jabalpur in Writ Petition No.9087 of 2006 (**Atul Kumr Jain Vs. Indian Oil Corportion Ltd. & others**) decided on 23.02.2010 (Annexure A-7), wherein the petitioner had challenged his supersession in the year 2004-2005. The Hon'ble High Court after relying on the decision of **Dev Dutt** (supra) allowed said Writ Petition in terms of the directions in the matter of **Dev Dutt** (supra).

5. In this Original Application the applicant has prayed for the following reliefs:

“8(i) Summon the entire relevant record including the ACR dossiers of the parties herein, who were considered by the DPC and review DPC and also DPC and review DPC proceedings form the respondents for its kind perusal.

(ii) Upon holding that the action of respondents in not considering and granting selection grade to the applicant from 22.05.2006/27th September 2008 is arbitrary and unjust, command the respondents to grant the petitioner selection grade from the date the private respondents herein granted with all the consequential benefits including arrears of pay.

(iii) Any other order/orders which this Hon'ble Court deems fit and proper.

(iv) Cost of the petition may also kindly be awarded.”

6. The official respondents Nos. 3 and 4, in their reply, have submitted that in terms of the orders passed by this Tribunal the claim

of the applicant seeking selection grade was reviewed by holding a review DPC dated 07.12.2009. The DPC considered the preceding 5 years confidential report of the applicant for the purpose of release of selection grade. As per rules the bench mark fixed by the DPC for getting the benefit of selection grade was 'very good' and the performance of the applicant was not in accordance with the said benchmark, therefore, the DPC did not find the applicant suitable to be extended the benefit of selection grade. The applicant had obtained the following grading in his confidential reports:

Sr. No.	Name of officer and allotment Year	2002	2003	2004	2005	2006	2007	2008
1)	Shri U.S. Rastogi	Good	V. Good	Good	V. Good	Good	Good	Good

6.1 The respondents have stated that in the present matter the review DPC had considered the case of the applicant for the grant of selection grade w.e.f. 01.01.2007 and the judgment in the matters of **Dev Datt** (supra) was delivered on 12.05.2008 and, therefore, the said judgment cannot be retrospectively made applicable to the DPC considering the case of the applicant.

6.2 The respondents have further contended that the case of the applicant was reconsidered by the DPC conducted on 10.12.2008. The

applicant was again not found fit by the DPC as the benchmark obtained by the applicant was not in accordance with the minimum required standard fixed by the DPC.

6.3 The respondents have also contended that the adverse ACR of the applicant for the year ending March 2006 was not the only impediment but was one of the impediments in rejecting the claim of the applicant seeking selection grade.

7. The applicant in his rejoinder has submitted that prospective ruling is applicable only when Hon'ble Supreme Court prescribes a cut off date, otherwise the judgment of Hon'ble Supreme Court is applicable in all pending cases.

7.1 The applicant has further contended that the respondents have committed an error in treating the applicant as 'Good' officer for the years 2002, 2004, 2006, 2007 and 2008, whereas the applicant ought to have been treated as 'very good'/'outstanding' for the said years.

8. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed

therewith. We have also perused the ACRs of the applicant annexed by him along with his rejoinder.

9. At the outset we may observe that we do not find any substance in the contention raised by the respondents-State of M.P. that the verdict of decision in the case of **Dev Dutt** (supra) is not applicable in the instant case. In the instant case the review DPC was held on 27.9.2008 and the applicant's case was further reconsidered by the DPC conducted on 10.12.2008 i.e. much after the decision dated 12.05.2008 in the matters of **Dev Dutt**(supra). Further, we are also fortified in our view by the decision of Hon'ble Madhya Pradesh High Court in the matters of **Atul Kumar Jain**(supra) where the petitioner had challenged his supersession in the year 2004-2005 and the Hon'ble High Court relying on the decision of **Dev Dutt** (supra) allowed the Writ Petition in terms of the directions in the matter of **Dev Dutt** (supra).

10. On perusal of ACRs of the applicant, we find that in his ACR for the year ending March 2003 the applicant has been given 'very good' grading, which has been concurred by the reviewing authority. For the year 2003-2004, he has been rated as 'Good', which has been

concurred by reviewing authority. For the year 2004-2005, he has been rated as 'Very Good', which has been concurred by reviewing authority. For the year 2005-2006 his ACR has been written in two parts. For the period September 2005 to March 2006 he has been given 'below average' grading by the reporting officer. However, the reviewing authority has graded the applicant as "Grade 'A' /Good which has been concurred by the accepting authority. For the year 2006-2007, he has been given 'average' grading by the reporting officer, while the reviewing authority has stated that 'overall performance of the officer was good. His work done was of good quality'. Accordingly, the reviewing authority had graded the applicant as 'Good', which has been concurred by the accepting authority. For the year 2007-2008, he has been rated as 'Good', which has been concurred by reviewing & accepting authority.

11. The contention of the respondents is that DPC considered the preceding 5 years confidential report of the applicant for the purpose of release of selection grade. As per rules the bench mark fixed by the DPC for getting the benefit of selection grade was 'very good' and the performance of the applicant was not in accordance with the said

benchmark, therefore, the DPC did not find the applicant suitable to be extended the benefit of selection grade.

12. In the matters of **Dev Dutt** (supra), the Hon'ble Supreme Court while considering whether good entry in the ACR which adversely affected the appellant's promotion ought to have been communicated to him to afford him an opportunity of making a representation against it, held thus:

“(9). In the present case the benchmark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have “very good” entry for the last five years. Thus in this situation the “good” entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the *effect* which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a “good” entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

(10). Hence, in our opinion, the “good” entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-1994 should be upgraded from “good” to “very good”. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the “good” entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the “good” entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the “good” entry was

arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable”.

13. Similarly, in the matters of **Abhijit Ghosh Dastidar Vs. Union of India**, (2009) 16 SCC 146 also, the appellant therein was not considered by the DPC on the ground that he was not having the benchmark of ‘very good’ whereas adverse entry namely ‘good’ were not communicated to him. Relying upon the decision in the matters of **Dev Dutt** (supra) the Hon’ble Supreme Court held that entry of ‘Good’ should have been communicated to him as he was having ‘very good’ in the previous year and non-communication of the entry in the ACR of a public servant has a civil consequences because it affects his chances of promotion or get other benefits. Such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. With the aforesaid observation it has been further held that the appellant therein shall also be deemed to have been given promotion from the date his immediate junior was promoted. However, it has been made clear that he would not be entitled for any pay or allowances for the period for which he had not worked in the higher Administrative Grade Group-A.

14. A larger Bench of the Hon'ble Supreme Court in the matters of **Sukhdev Singh Vs. Union of India and others**, AIR 2013 SC 2741, on reference by a Bench consisting of two Hon'ble Judge of Supreme Court, has affirmed the view taken in the matters of **Dev Dutt** (supra) and held that every entry in ACR – poor, fair, average, good or very good must be communicated to him/her within a reasonable period and further held that the decision of the Hon'ble Supreme Court in the matters of **Satya Narain Shukla Vs. Union of India and others**, (2006) 9 SCC 69 and **K.M.Mishra Vs. Central Bank of India and others**, (2008) 9 SCC 120, and other decisions of the Hon'ble Supreme Court taking a contrary view, are declared to be not laying down a good law.

15. The principles of law laid down by Hon'ble Supreme Court in the aforesaid judgments is squarely applicable in the facts of the present case, as admittedly in the present case also the name of the applicant was not recommended by the DPC for grant of selection grade as most of his ACRs for the relevant period were 'good' i.e. below the prescribed bench mark of 'very good' and his juniors were granted the benefit of selection grade, as per recommendations of the DPC.

16. Since in the ACRs of the applicant for the years 2002, 2004, 2006, 2007 and 2008 he has been graded as 'good', the applicant was found to be not fulfilling the required bench mark of 'very good' fixed by the DPC as per rules. Therefore he could not have been declared as "fit" by the Selection Committee. However, if this is the only reason, then all the ACRs which were below the prescribed bench mark of 'very good' grading have to be treated as adverse ACRs in view of the judgment of Hon'ble Supreme Court in the case of **Dev Dutt** (supra) wherein their Lordships have held that "*every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry*". In the matters of

Abhijit Ghosh Dastidar Vs. Union of India, (2009) 16 SCC 146, their lordships have further held 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 annual confidential report 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 of promotion or getting 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 (Dev Dutt’s case) 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*”.

17. Thus, in view of the aforementioned settled position of law, the applicant’s ACR for the years 2002, 2004, 2006, 2007 and 2008

which had 'Good' grading and was not communicated to him as 'adverse' giving the opportunity to the applicant to represent against it, should not have been considered by the Selection Committee for making overall assessment in his case for grant of selection grade.

18. Accordingly, we direct the respondent-State of Madhya Pradesh that the 'Good' entry for the years 2002, 2004, 2006, 2007 and 2008 be communicated to the applicant within a period of one month from the date of receipt of a copy of this order and the applicant may make a representation, if he so chooses, against the said entries within one month thereafter, and if submitted, the said representation shall be decided by the respondent-State of Madhya Pradesh within a period of two months thereafter. If his entries are upgraded, the applicant shall be considered for grant of selection grade retrospectively by a review selection committee within three months thereafter and if the applicant is found fit for grant of selection grade, he should be given all consequential benefits. Thus, the OA is allowed to the extent indicated above. No costs.

(Ramesh Singh Thakur)
Judicial Member
rkv

(Navin Tandon)
Administrative Member