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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 350/1172 of 2014

IN THE MATTER OF:

BIMLENDU KUMAR SINGH, aged about 40 years, son of Late Balaram Singh, residing at Quarter No. C-105, Type-II, Central Government Quarters, Tollygunge, Kolkata-700040 and working as Accountant in the Regional Pay & Accounts Office, Ministry of Commerce, 1, Council House Street, Kolkata-700001;

...Applicant

-Versus-

1. **UNION OF INDIA** service through the Secretary, Ministry of Commerce and Industries, Government of India, Department of Commerce, 531, Udyog Bhawan, New Delhi- 110011;
2. **THE CONTROLLER GENERAL OF ACCOUNTS**, Government of India, Ministry of Finance, Department of Expenditure, "G" Wings, 7th Floor, Lok Nayak Bhavan, Khan Market, New Delhi- 110003;

3. **THE SENIOR ACCOUNTS OFFICER,**
Regional Pay & Accounts Office, Ministry
of Commerce, 1, Council House Street,
Kolkata- 700001;

...Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1172/2014

Date of order : 26.9.19

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

**BIMALENDU KUMAR SINGH
VS.
UNION OF INDIA & OTHERS**

For the applicant : Mr. P.C. Das, counsel.

For the respondents : Mr. L.K. Chatterjee, counsel
Mr. M.K. Ghara, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:-

"a) To quash and/or set aside the impugned speaking order dated 15.10.2013 issued by the Accounts Officer (Administration) whereby and whereunder they have rejected the claim of the present applicant on the ground that since the applicant was found unfit by the then Departmental Promotion Committee and due to average grading in his CR (Confidential Report) for the year 2001-05, the applicant cannot be given such benefit being Annexure A-8 of this original application and further directed the respondents to give all promotional benefits including ACP and MACP in favour of the applicant along with all financial benefits;

b) To pass an appropriate order directing upon the respondent authority to modify the order of promotion of the applicant being No.31/2011-12 dated 31.05.2011 to the extent that the applicant's promotion to the post of Accountant shall be given effect to with effect from 2007 instead of 31.05.2011 along with all consequential benefits accordingly;

c) To pass an appropriate order directing upon the respondent authority to antedate your applicant's promotion to the post of Accountant with effect from 2007 instead of 31.05.2011 by modifying the office order No.41/2011-12 dated 31.05.2011 along with all consequential benefits;

d) To deal and/or dispose of the representation preferred by your applicant before the concerned authority dated 30.03.2012 in respect of grant of promotion to the post of Accountant with effect from 2007 instead of 31.05.2011 in favour of the applicant with all consequential benefits."

2. The case of the applicant is as under:-

The applicant who is working as Accountant in the Regional Pay and Accounts Office, Ministry of Commerce, Kolkata, had earlier filed a case before this Tribunal i.e. O.A.No.1191/2013 praying for antedating his promotion to the post of Accountant w.e.f. 2007 instead of 31.05.2011. The said O.A. was disposed of on 26.09.2013 with a direction upon the respondents to consider and dispose of his representation within three months from the date of receipt of a copy of that order. Pursuant to the said order, a speaking order was issued by the respondent authority i.e. the Accounts Officer(Administration) whereby and whereunder the claim of the applicant was rejected on the ground that since he was found unfit by the then Departmental Promotion Committee due to average grading in his Confidential Report(CR) for the year 2004-05. The applicant filed a contempt petition No.CPC.350/139/2014(O.A.1191/2013) which was disposed of on 15.05.2014 with liberty to the applicant to file a fresh O.A. challenging the speaking order. Accordingly the applicant has filed the present O.A. seeking the aforesaid reliefs.

3. Per contra the respondents have filed their written reply stating as under:-

Consequent upon completion of 5 years of regular service as Lower Division Clerk on 01.01.2003 in terms of Central Civil Accounts Service (Group 'C') Recruitment Rules, 2000, the applicant's case for promotion as Accountant for the vacancy of respective year was submitted to the O/o CGA in the year 2003, 2004, 2005 and 2011. In

the year 2006, 2007, 2008, 2009 and 2010, his promotion case was not submitted to the O/o CGA as he was found 'unfit' by the then Departmental Promotion Committee due to average grading in his CR (Confidential Report) for the year 2004-05. Ultimately in pursuance of CGA's O.M.No.A-11020/I/2011-12/MFCGA(A)/NGE/33 dated 13.05.2011 and Office Order No.41/2011-12 read under Lr.No.I(21)PAO/A/2011-12/270 dated 31.05.2011, the applicant was promoted as Accountant w.e.f. 31.05.2011. Hence, the plea of the applicant for grant of promotion as Accountant w.e.f. the year 2007 instead of 31.05.2011 is not feasible in terms of Rule 5(2) of Central Civil Accounts Service (Group 'C') Recruitment Rules, 2000.

4. We heard the ld. counsel for both sides and perused the materials available on record.

5. It appears that the applicant could not be given promotion as Accountant w.e.f. 2007 as the applicant was found 'unfit' by the then Departmental Promotion Committee due to average grading in his CR (Confidential Report) for the year 2004-05. In Para 6.15 of the reply the respondents have stated that *"It may also be the fact that 'Accepting' Authority of CR communicated the same earlier but for unforeseen circumstances the applicant did not receive it."* Therefore, it is an admitted fact that the applicant was not communicated the adverse C.R. or given an opportunity to make representation against such adverse remarks.

6. In regard to non-communication of ACRs and its consideration for promotion, in **Dev Dutt Vs. Union of India, Civil Appeal No. 7631 of 2002**, the Hon'ble Apex Court held as under:

"36. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

37. Originally there were said to be only two principles of natural justice: (1) the rule against bias and (2) the right to be heard (*audi alteram partem*). However, subsequently, as noted in A.K. Kraipak's case (*supra*) and K.L. Shephard's case (*supra*), some more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons *vide* S.N. Mukherji vs. Union of India AIR 1990 SC 1984. In *Maneka Gandhi vs. Union of India* (*supra*) (*vide* paragraphs 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

38. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to

fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

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47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

49. With these observations this appeal is allowed. No costs.

(emphasis added)

In Sukhdev Singh Vs. Union of India, Civil Appeal No. 5892 of

2006, Hon'ble Apex Court's (Three Judge) view was this:

"6. We are in complete agreement with the view in Dev Dutt particularly paragraphs 17, 18, 22, 37 & 41 as quoted above. We approve the same.

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 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."

(emphasis added)

The applicant has heavily relied on the decision of the Hon'ble Apex Court in **Dev Dutt Vs. Union of India, Civil Appeal No. 7631 of 2002**, and **Sukhdev Singh Vs. Union of India, Civil Appal No. 5892 of 2006**, to contend that the respondents ought to have given him opportunity to represent against the adverse gradings in the ACRs if at all marks on ACR was to be computed towards merit, that would make him ineligible for promotion.

7. In so far as there is categorical assertion that "the applicant's case for promotion as Accountant for the vacancy of respective year was submitted to the O/o CGA in the year 2003, 2004, 2005 and 2011. In the year 2006, 2007, 2008, 2009 and 2010, his promotion case was not submitted to the O/o CGA as he was found 'unfit' by the then Departmental Promotion Committee due to average grading in his CR (Confidential Report) for the year 2004-05" and in view of the decision cited supra, we direct the respondents to communicate all the relevant ACRs that were considered at the selection/DPC, within 4 weeks from receipt of a copy of this order, seek representation, consider the representation in accordance with law to discern whether gradings are required to be upgraded and, if upgraded, to review and place the matter for appropriate consideration through a review DPC and issue orders within 4 months thereafter.

8. In the event some employees need to be reverted, the respondents shall proceed upon due notice to all such individuals likely to be affected.

The present O.A. accordingly stands disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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