



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A./350/872/2014

Heard on 10.07.2019
Date of Order: 5.9.19

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

(1) Shri Dulal Chandra Pramanik, S/o late Debendra Nath Pramanik, aged about 43 years, working as Technician Gr. I under SSE/(TL)/SRC, S.E.Rly, Kharagpur, residing at Vill. & P.O. Bhopur, Dist. Purba Midnapur, Pin 721151.

(2) Shri Hemant Kumar Giri, s/o Late D.D.Giri, aged about 39 years, working as Sr. Technician, Under SSE/H.T./Pump, S.E.Rly/Kharagpur, residing at IDBI Bank Building (Home of Arun Kumar Gupta), Malancha Road, P.O. Kharagpur, Dist. Paschim Midnapur, Pin 721304.

.....Applicants

Vrs.

- i) Union of India through the General Manager, S.E.Rly., Garden Reach, Kolkata 700043.
- ii) The Chairman, Railway Board, Rail Bhawan, New Delhi 1.
- iii) The Sr. Divisional Personnel Officer, S.E.Rly., Kharagpur, P.O. & P.S. Kharagpur, Dist. Paschim Midnapore 721301.
- iv) The Sr. Divisional Electrical Engineer (ELS) S.E.Rly, Santragachi, PO Jagacha, Dist. Howrah.
- v) D.Satya Sai
- vi) Gunrudas Mondal
- vii) Sourav Roy
- viii) Shymal Ghosh
- ix) Dilip Kumar Paul
- x) Jakir Hossain
- xi) Biswas Ranjan Jana

Sl. No. (v) to (xi) all working under Sr. DEE/TRS/Santragachi/S.E.Rly/Kharagpur 721301.

.....Respondents.

For the Applicant(s): Mr. C.Sinha, Counsel

For the Respondent(s): Mr. D.Choudhury, Mr A.P.Deb, Counsel

ORDER

Bidisha Banerjee, Member (J):

This application has been preferred by 2 applicants to seek the following reliefs:

"i) Panel dated 11.11.2013 published by Divisional Personnel Office cannot be tenable in the eye of law and as such same may be quashed.

ii) An order do issue directing the respondents to redraw the panel strictly on the basis of merits secured by the candidates in the written test.

iii) leave may granted to file this Original application jointly under Rule 4(5)(a) of the CAT Procedure Rule 1987."

2. The case of the applicants is as under:

Pursuant to a notification dated 19.12.2005 (Annexure-A/1), the applicants, while serving as Technician Grade-I, participated at selection for the post of Jr. Engineer, Gr.II and came out successful. The applicants figured at Sl. Nos. 15 and 5 respectively, in the panel published on 22.02.2008 (Annexure-A/4 to the O.A.). After completion of training, they were posted as Jr. Engineer, Gr.II in the S.E.Railways at Kharagpur Division. However, the said selection was challenged by a group of unsuccessful candidates, in O.A. Nos. 336/2008 and 2199/2010, which O.As. were disposed of vide order dated 24.02.2012 with the direction as under:

".....we have no hesitation to quash the amended Clause (2) of Sub-para (j) of Para 219(g) of IREM dated 16.11.1998. The respondents are directed to re-draw the panel strictly according to merit only. Keeping in view of the decision of the Hon'ble Apex Court in M.Ram Jayram's case referred to above and while doing so they shall act on the basis of marks secured by the candidates in the written test already held. Such action is to be taken and published the result within a period of 6 months from the date of

communication of this order. Till then the private respondents may continue in their present post."

Respondents challenged the above order before the Hon'ble High Court in WPCT No. 332/2012, which was dismissed by the Hon'ble High Court on 24.06.2013 as having no merit.

Review Petition filed as RVW 227/2013 with CAN 11724 of 2013 was also dismissed on 13.06.2014. Subsequently, SLP preferred by the respondents also stood dismissed on 06.03.2017.

Pursuant to the order of this Tribunal dated 24.02.2012, a revised panel was issued on 11.11.2013 (Annexure-A/6) wherein the applicants did not find place and, consequently, they were reverted back to the post of Technician, Gr-I.

The grievance of the applicants is that the order of the Tribunal "to redraw the panel strictly according to merit only" and "to act on the basis of marks secured by the candidates in the written test", have not been duly complied with in true letter and spirit. The main assertion of the applicants is that they had secured higher marks in the written examination than the candidates, who have been enlisted in the revised panel and, therefore, they should figure above such candidates. They have further averred that the marks on ACR, Educational Qualification and Service Record ought not to have been computed towards 'merit' while preparing panel.

3. The facts of the case are not in dispute even after that the order of the Tribunal panel was redrawn on the basis of merit in written test as well as marks on ACR, Educational Qualification and Service Record, but not on Seniority.

However, repelling the arguments advanced by the applicant that marks on ACR ought not to have been computed, respondents would submit that this Tribunal in its order dated 24.02.2012 had directed the respondents to "redraw the panel strictly according to merit" keeping in view the decision of the Hon'ble Apex Court in M.Ramjayram's case. Hon'ble High Court vide its order dated 24.06.2013 in WPCT No. 332/2012 upheld the order of this Tribunal, and that neither the order of the Tribunal nor the judgment passed by the Hon'ble Apex in M.Ramjayram case posed any bar to take into consideration the marks on ACR. The respondents have clarified that marks allotted for "seniority" was excluded, and, accordingly, they have redrawn the merit list for 16 candidates according to the order of this Tribunal. The respondents have thus claimed to have scrupulously followed the ratio and the law laid down by the Hon'ble Apex in M.Ramjayram case while implementing the order of the Tribunal dated 24.02.2012. Respondents have further argued that the SLP(C) No. 844/2015 filed by the similarly situated candidates was dismissed vide order dated 06.03.2017.

Therefore, the issue that boils down in the present O.A. is whether marks on ACR, Educational Qualification and Service Record ought to be considered to adjudge merit of a candidate appearing for selection to the post of Jr. Engineer-II.

4. We discern that the direction in the earlier round, in O.A. 336/2008, was rendered having discussed the rules of selection (219 (g) of IREM), Board's orders and implications of the decision in Ram jayram's case, threadbare. Hence, we need not reproduce the same in this O.A. order. However, we find it would be profitable to quote some extracts of the said order, which are as under:

"9. Subsequently the issue was raised before the Central Administrative Tribunal, Chandigarh Bench and the orders passed by the said Bench on 28.11.2001 was challenged before the Hon'ble High Court at Punjab and Haryana at Chandigarh and while deciding the Civil Petition No. 4746-CAT of 2002 the Hon'ble High Court decided the issue on 09.04.2008 wherein it has been observed by the Hon'ble High Court are as under:-

"The relevant clauses of Rule 219 are (g), (i) and (j) which read as under:-

"219. Procedure to be adopted by Selection Board

(a) to (f) xx xx xx xx

(g) Selection should be made primarily on the basis of overall merit (not legible) but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below:-

	Maximum Marks	Qualifying Marks
(i) Professional ability	50	30
(ii) Personality, address, Leadership and academic Qualification	20	—
(iii) A record of service	15	—
(iv) Seniority	15	—

NOTE:

(iii) The item 'record of service' should also take into consideration the performance of the employee is essential Training Schools/Institutes apart from the examining CRs and other relevant records.

(iv) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be less than 35 marks and the candidates must secure 60% marks in written test for the propose of being called in viva-voce test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination.

(h) xx xx xx xx

(i) For general posts i.e., those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments, the selection procedure should be as under:-

- (iii) All eligible staff irrespective of the department in which they may be working who satisfy the prescribed conditions of eligibility and volunteer for the post should be subjected to a selection which should consist of both written test and viva-voce test: and
- (iv) The Selection Board should call for viva-voce test all candidates who secure not less than 60% marks in the written test. The final panel should be drawn up on the basis of marks obtained in the written and viva-voce test in accordance with the procedure for filling selection posts.
- (j) The names of the selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility."

It is further mentioned that:-

"It may be noticed that 15 marks were allocated for seniority in Rule 219(g) of the Railway Manual but such marks were set aside by the Hon'ble Supreme Court in N.Ramjayaram v. General Manager, South Central Railway, AIR 1996 SC, 3195 wherein it was held that the selection is required to be done on the basis of the criteria laid down under Rule 219(g) of the Railway Manual. The selection should be made primarily on the basis of overall merit but for guidance of Selection Board the factors to be taken into account and the relative weightage were laid down therein. It was found that weightage of 15% for seniority was illegal. The relevant extract from the aforesaid judgment of Hon'ble Supreme Court reads as under:-

"The Selection is required to be done on the basis of the criteria laid down under Rule 219(g) of the Railway Manual. Selection should be made primarily on the basis of overall merit but for guidance of Selection Board the factors to be taken into account and the relative weightage laid down was as under:-

"Rule 219(g) of the Indian Railway Manual states selection should be made primarily on the basis of overall merit but for guidance of Selection Board the factors to be taken into account and their relative weightage are laid down as below:-

	Maximum Marks	Qualifying Marks
(iii)	Professional ability	50
(iv)	Personality, Leadership and Academic qualification	20
(v)	Record of service	15
(vi)	Seniority	15

In this case since the contesting respondents are not from the same unit but of different units, Rule 320 stands excluded, weightage of 15 marks for seniority given to the respondents obviously is illegal. Therefore, there is force in the contention of the applicant that this non-selection tantamount to arbitrary exercise of power on the part of respondent

Nos. 1 and 2. We set aside the order of the CAT, Hyderabad made in O.C.No. 1039/92 dated March 21, 1995. The respondents are directed to consider the selection according to rules and make appointment according to law."

xxx xxx xxx xxx

12. In view of what has been discussed above, we have no hesitation to quash the amended Clause (2) of Sub-para (i) of Para 219(g) of IREM dated 16.11.1998. The respondents are directed to re-draw the panel strictly according to merit only. Keeping in view of the decision of the Hon'ble Apex Court in M.Ram Jayram's case referred to above and while doing so they shall act on the basis of marks secured by the candidates in the written test already held. Such action is to be taken and published the result within a period of 6 months from the date of communication of this order. Till then the private respondents may continue in their present post.

13. The O.A. is accordingly allowed. No order as to cost. "

We, from records, decipher that such grading in ACR carries marks. For an example "Outstanding" carries 5 marks, "Very Good" 4 marks, "Good" carries 3 marks and so on. An "Outstanding" for 3 consecutive years would fetch 15 marks maximum under "Record of Service" while 1 "Outstanding" and 2 "Very Good" would fetch 13.

5. Placing the said figures, it was argued by Ld. Counsel for the applicant that the order as extracted above made it imperative for the respondents to redraw panel "strictly on merit", which 'merit' cannot include marks on ACR etc. as the Rule 219(g) does not lay down that the ACR/Record of service would carry qualifying marks, alike "seniority". If marks on "seniority" cannot be computed as held in Ram Jayram case, marks on ACR and Record of Service can also not be computed. Hence merit should be wholly on aggregate of written test and viva (whenever applicable) and not on marks on ACR, which can only serve as a guiding factor for the selection board and not for computation.

The panel that was finally drawn up on 13.12.2013 (Annexure-A/6 to the

O.A.) consisted of the following persons:

1. *Padha Lochan Behera (SC)*
2. *D.Satya Sai*
3. *Dipankar Das*
4. *Gurudas Mondal*
5. *Sourav Roy*
6. *Shyamal Ghosh*
7. *Dilip Kr. Paul*
8. *Jakir Hossain*
9. *Biswa Ranjan Jana*
10. *Subrata Mondal (SC)*

The last selected UR scored 58 in aggregate out of 80. The score of applicant, Dulal Ch.Pramanik, was much less. The individual scores being as under:

SELECTION TO THE POST OF JUNIOR ENGINEER (MECHANICAL) INTERMEDIATE APPRENTICE MECHANIC IN KHARGAON WORKSHOP														
S. No.	R. No.	NAME	COMM.	DESIGNATION	REV. NO.	COD	MARKS	Prof. Mark	EQ	ACR	SR S	TOTAL	WORKING UNIT	
						E	100	50	10	15	5	80		
1	684	Uttam Kumar Karmaker	UR	Techn. Gr-II	6701	B	109	84.0	42.00	9	12	3	66.00	PSTC/KGP
2	423	Subhasish Roy	UR	Techn. Gr-III	18319	B	133	80.5	41.75	9	12	3	64.25	DY.CHE(CAV)/KGP
3	143	Dipankar Shaha	UR	Techn. Gr-III	56134	B	109	78.0	39.00	8	13	3	65.00	DY.CHE(WAN)/KGP
4	462	Tanmay Kanti Bhattacharjee	UR	Techn. Gr-III	52499	A	149	83.0	41.50	8	10	3	62.50	DY.CHE(PUR)/KGP
5	356	Shivendran Thakuri	UR	Techn. Tech. II	57121	B	115	78.0	39.00	9	11	3	62.00	PSTC/KGP
6	004	JA.Govinda Pati	UR	Techn. Gr-II	16175	A	101	82.0	41.00	9	5	3	62.00	DY.CHE(CAV)/KGP
7	406	Sisir Karmaker	UR	Techn. Gr-II	17123	A	122	79.5	39.75	8	11	3	61.75	DY.CHE(WAN)/KGP
8	225	Krushna Das	SC	Techn. Gr-II	1109	A	99	77.0	39.50	8	12	3	61.50	DY.CHE(PUR)/KGP
9	116	Debananda Sarker	UR	Techn. Tech. II	57071	C	073	74.5	37.25	9	12	3	61.25	PSTC/KGP
10	425	Sutti Kumar Maiti	UR	Techn. Gr-II	16511	A	145	72.0	36.00	8	12	3	61.00	DY.CHE(PUR)/KGP
11	074	Barco Kumar Mitra	UR	Techn. Gr-II	31416	C	104	75.5	37.75	8	11	3	58.75	DY.CHE(WAN)/KGP
12	028	Amrit Kumar Jena	UR	Techn. Gr-II	16135	B	065	70.5	35.25	9	11	3	58.75	DY.CHE(PUR)/KGP
13	176	Isharden Chowdhury	UR	Techn. Gr-II	30239	C	110	74.0	37.00	9	10	3	59.00	DY.CHE(CAV)/KGP
14	131	Dhruba Das	UR	Techn. Gr-III	32359	C	040	69.0	34.50	9	12	7	58.50	DY.CHE(WAN)/KGP
15	179	Hilmarchu Samanta	UR	Techn. Gr-III	18383	A	103	69.0	34.50	B	12	3	56.50	DY.CHE(WAN)/KGP
16	031	Ami Sen	UR	Techn. Gr-III	33452	B	008	68.0	32.00	9	12	3	58.00	DY.CHE(CAV)/KGP
17	240	Kumar Ranjeet Das	UR	Techn. Tech. II	12611	A	113	69.5	34.75	8	12	3	54.75	PSTC/KGP
18	224	Kritibas Mandal	UR	Techn. Gr-II	62681	C	058	73.5	36.75	9	11	3	55.75	DY.CHE(PUR)/KGP
19	075	Basujoye Pramanik	SC	Techn. Gr-II	19121	A	025	64.5	32.25	9	11	3	54.50	DY.CHE(PUR)/KGP
20	418	Soumen Kanti Kistu	SC	Techn. Gr-II	12375	B	132	71.0	35.50	8	12	3	53.50	DY.CHE(WAN)/KGP
21	102	Chinmoy Sarks	SC	Techn. Gr-II	10267	B	049	65.5	33.25	9	11	4	54.50	DY.CHE(PUR)/KGP
22	369	Santik Kumar Maiti	SC	Techn. Gr-II	51101	C	032	68.5	36.75	6	11	3	54.50	DY.CHE(PUR)/KGP
23	020	Abijay Sarker	SC	Techn. Gr-II	13098	C	008	63.0	31.50	9	9	3	52.50	DY.CHE(WAN)/KGP
24	120	Debasish Mazumder	SC	Techn. Gr-II	46691	A	063	65.5	33.25	8	9	2	52.50	DY.CHE(WAN)/KGP
25	220	Khele Ram Raneda	SC	Techn. Gr-II	52561	B	037	60.5	30.25	8	11	3	50.50	DY.CHE(WAN)/KGP

W.M(P)/KGP/W
W.M(CAV)/KGP/W

W.M(CAV)/KGP/W

CMT/KGP/W

W.M(KGP/W)

6. In the aforesaid backdrop, we would observe that in WPCT No. 332/2012,

cited by the applicant's side, Hon'ble High Court on 24.06.2013 held as under:

"This writ petition has been filed challenging the judgement and order dated 24th February, 2012 passed by the Central Administrative Tribunal, Calcutta Bench in O.a.336 of 2008 whereby and whereunder the said learned Tribunal finally disposed of the aforesaid application along with another application being O.A. 2199 of 2010 by directing the respondent authorities namely, the petitioners herein to redraw the panel strictly according to the merit only upon considering the relevant records and also considering the various decisions of the Hon'ble Supreme Court.

We do not find any error and/or infirmity in the aforesaid direction of the learned Tribunal."

Thus, Hon'ble High Court has aptly clarified the ambiguity, if any, in this Tribunal's decision by including "upon considering the relevant records".

Review against the order dated 24.06.2013 was dismissed on 13.06.2014 and SLP on 06.03.2017.

7. We would further observe that this issue whether marks on ACR have to be computed towards 'merit' in this particular selection is no more *res integra*.

Instances are galore where marks on ACR and Record of Service have been computed to adjudge merit, a few instances would be as under:

- (1) O.A. 164 of 2008 decided by Hyderabad Bench on 23.07.2009.
- (2) W.P.(C) No. 4335/2011, rendered by the Hon'ble High Court at Delhi on 18.07.2013.
- (3) O.A. 592.2011 by Calcutta Bench, on 05.04.2019.
- (4) O.A. 8 of 2008 by Hyderabad Bench, on 13.08.2008.
- (5) O.A. 571 of 2009 decided by Allahabad Bench, 04.10.2018

The decisions supra imply that marks on ACR ought to be computed to adjudge merit of candidates in terms of IREM para 219 (g)

8. 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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XXX

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 Appal 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 applicants have 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 them 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 them ineligible for promotion.

9. In so far as there was no specific bar imposed by either the Tribunal or the Hon'ble High Court, and the decision of Hon'ble High Court being far from ambiguous or ambivalent, the rules of selection being such that marks on ACR has to be given due weightage in absence of any specific bar to compute the marks, we direct the respondents to redraw panel wholly on the basis of marks in written examination, ACR etc. as provided in para 219 (g) of IREM and its modified version and RBE 113/2009, but in view of the clear mandate in the decisions cited supra that all entries whether 'good' or "adverse" has to be communicated to the incumbents before being acted upon to their prejudice, the respondents, given that ACR/record of service carry marks, shall communicate all the relevant ACRs that were considered at the selection, seek representation, consider the representation in accordance with law to discern whether gradings are required

to be upgraded and, if upgraded, to review and recalculate the marks on ACR, Record of Service etc. and redraw the panel strictly in accordance with law.

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

11. O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

RK