
(2021) 12 PAT CK 0001

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 2706 Of 2021

Union Of India

APPELLANT

Vs

Dr. Arvind Kumar

RESPONDENT

Date of Decision: Dec. 2, 2021

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: Vikash Jain, J; Anjani Kumar Sharan, J

Bench: Division Bench

Advocate: P.K. Verma, Dr. Anand Kumar, M. P. Dixit, S.K. Dixit, S.K. Chaubey, Swastika

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioners and learned counsel appearing on behalf of the respondent.

2. By way of filing the present writ petition, the petitioners challenges the order dated 14.02.2020, passed by learned Central Administrative Tribunal

(hereinafter referred to as "the Tribunal"), Patna Bench, Patna in M.A. No.50/391/2019, arising from O.A. No.-051/00215/2017, whereby the

Tribunal has allowed the O.A. and directed to conduct a review D.P.C. of the respondent/applicant and if found fit, to grant him retrospective

promotion from the year 2007 and 2011 respectively since his APAR for the year 2003-04 and 2004-05 has been upgraded in 2011 by following the

ratio laid down by the Hon'ble Supreme Court in the matter of Dev Dutt, reported in (2008) 8 SCC 725 as also in the case of Dr. T.N. Wary

(O.A. No.284 of 2010, Central Administrative Tribunal, Guwahati Bench).

3. Pleadings being complete, with consent of both parties, this writ petition has been heard for final disposal at this stage itself. No order is required to be passed in I.A. No.1 of 2021.

4. The short facts of the case according to the petitioners are that:

(i) The respondent/applicant joined IRMS on 01.04.1998. For the purpose of consideration for promotion in the Junior Administrative Grade (JAG) for

officers of IRMS, a Board (DPC) was constituted in the year 2007. The bench mark for promotion to JA Grade was "Good" as defined in

Railway Board's Letter No.2002/SCC/3/1 dated 03.06.2002 and 30.09.2002. A senior scale officer of IRMS was to be considered for promotion

to JA Grade on completion of five years service in that Grade under the Dynamic Assured Career Progression Scheme (DACPS). The previous

year's ACR (APAR) of the respondent/application for the year 2003-04 was "average" and "not fit". Similarly, the ACR for the year

2004-05 was "average" and "not fit for promotion". The ACR for the year 2005-06 was "good". Both the aforesaid adverse

remarks of the year 2003-04 and 2004-05 (Part-I and Part-II) were duly communicated and conveyed to the respondent/applicant vide ECR Letter

No.

ADM/ACR/Remark/03 dated 02.12.2005. The respondent/applicant responded by submitting his representation against the aforesaid ACR which was

considered by the accepting authority and found to be unsatisfactory, which decision was conveyed to the respondent/applicant vide letter of even No.

dated 29.06.2006 with the following observation:-

"Hence I agree with the adverse remarks recorded in the ACRs for the period 2003-04 and 2004-05".

On receipt of the aforesaid decision, the respondent/applicant preferred an appeal before the General Manager/ECR. The appeal was decided by the

GM holding as follows:

"I have gone through the records and I am constrained to direct that adverse entries shall remain".

(ii) The DPC for promotion of JA Grade for IRMS Senior Scale Officers met on 11.05.2007 and found the respondent/applicant not suitable on the

basis of the performance reflected in his ACRs. Again in the year 2008, the DPC met on 27.02.2008 and considered the case of the

respondent/applicant, but found him not suitable for promotion to JA Grade.

Again in the year 2009, the DPC met on 04.02.2009 and found the respondent not suitable for promotion to JA Grade.

(iii) The respondent went on study leave w.e.f. 27.01.2006 and remained on leave till 04.01.2009 and joined on 05.01.2009. Therefore, in absence of

ACRs for the years 2006-07, 2007-08 and 2008-09, his ACRs of the previous years of 2003-04, 2004-05 and 2005-06 were considered in the DPC of

2007-08 and 2009 as aforesaid. Again in the year 2010, the DPC met on 04.02.2010 and found the respondent "not suitable" for promotion to JA

Grade.

(iv) The Government of India came up with a scheme for grant of promotion in the year 2009 known as "Dynamic Assured Career Progression

Scheme" (DAPC) vide GOI notification dated 07.01.2009, which in terms of the scale extended upto Senior Administrative Grade (SAG) in the

Railway. Under this scheme a bench mark was prescribed for the purposes of considering suitability of a candidate in granting promotion as reflected

from the Annual Confidential Report (ACR) which nomenclature was later on modified as "Annual Performance Assessment Report" (APAR).

Earlier only adverse remarks given in the ACRs were to be communicated to the officer reported upon for submission of representation, if any, but

other remarks which were not adverse were not communicated. In view of the advent of a bench mark for considering suitability in promotion, an

issue arose that a candidate can be held unsuitable even without communicating such remark to him and giving an opportunity to represent for its

review. The matter went to the Apex Court and was considered by the Hon^{ble} Supreme Court in the case of Dev Dutt (supra) and it was held

vide its judgment dated 12.05.2008 that not only adverse but all other good remarks should also be communicated so as to give opportunity to the

candidate to represent and improve upon their performance. The DOPT vide its OM No.21011 dated 13.04.2010 issued necessary directions for the

said purpose.

(v) In view of the said OM, it appears that the respondent was given an opportunity to represent, oblivious of the fact that he was already earlier given such an opportunity with respect to the said ACRs and his representation had been rejected, the appeal against which was also rejected. Apparently, the respondent represented on 25.10.2010 with respect to the same ACRs of the year 2003-04-05 without disclosing the facts that he had earlier represented which had been rejected and his appeal was also rejected by the GM/ECR. His application was considered and the adverse remark for the year 2003-04 and 2004-05 Part-I and Part-II were upgraded from average to good, very good and fit for promotion vide order of the GM/ECR dated 17.01.2011. After said upgradation, the respondent's candidature was also considered by the DPC in its next meeting held in the year 2012 and he was given promotion w.e.f. 21.11.2012 vide order dated 10.01.2013.

(vi) Thereafter the respondent/applicant after taking the said promotion w.e.f. 21.11.2012, submitted a representation on 25.10.2016 before the Railway Authority for antedating his date of promotion in the JAG Grade w.e.f. the year 2007 instead of 2011 and further for promotion in the selection grade w.e.f. 2012 instead of 2016. Evidently, the respondent/applicant got the promotion in selection grade subsequently in the year 2016 and whereafter he submitted the aforesaid representation which was considered and rejected vide order dated 23.03.2017 on the sole ground that "the same is not admissible in terms of DOPT OM dated 24.08.2015."

(vii) Being aggrieved by order dated 23.03.2017, the respondent filed OA No.215 of 2017 before the Tribunal contending that he was similarly placed as one Dr. T.N. Wary (supra) whose case had been allowed by Guwahati Bench. The Patna Bench of the Tribunal considered the case of the respondent/applicant and by a detailed order dated 06.06.2019 rejected the same. The respondent/applicant preferred a writ petition against the aforesaid order before the Patna High Court vide CWJC No.20058/2019, which was heard on 26.09.2019. This Court on the basis of alleged claim of the respondent/petitioner that the case of Dr. T.N. Wary (supra) was comparable at par with that of the petitioner remitted the matter back to the Tribunal to decide afresh in the light of the Court's observation. The relevant part of the order is reproduced below:

“We find from the impugned order that the Tribunal has noticed this aspect, yet while recording the findings in paragraph 4 to 6 of the impugned judgement has only referred to the office memo. Dated 24.8.2015 without referring to the impact of the judgement in the case of Dr. T.N. Wary. This, in our opinion, amounts to non-consideration of a relevant material which touches perversity.”

(viii) The matter was revisited by the Tribunal, Patna Bench and by a short order dated 14.02.2020 allowed similar relief as was allowed in the case of

Dr. T.N. Wary (supra) without examining the facts and issues as to whether the case of the applicant was comparable at par with that of the case of

Dr. T.N. Wary (supra) or not.

5. The arguments of the petitioners with respect to Dr. T.N. Wary (supra), whose facts have been enumerated in the judgment of Guwahati Bench of

the Tribunal dated 07.09.2011 passed in OA No.284/2010, are that he had approached the Tribunal, Guwahati Bench for his claim for promotion from

JAG to SAG Grade under the DACP Scheme as his name did not figure in the promotion list issued on 19.10.2009 whereas it ought to have been

placed at serial no.5. He had represented on 22.10.2009 before the Railways but there was no decision conveyed to him and hence an OA

No.35/2010 was filed before the Tribunal, Guwahati Bench, which was disposed of vide order dated 16.02.2010 directing the Railway to consider his

representation. Pursuant thereto, the Railways vide letter dated 08.06.2010 communicated to the applicant Dr. T.N. Wary (supra) a copy of his ACR

of year ending 2006 in which a remark of “Good” had been given. In light of the Government of India notification, the minimum bench mark for

promotion to the Senior Administrative Grade (SAG) was “very good”™. Apparently, as the said remark of “Good”™ was not an adverse

remark, therefore, it was earlier never communicated to him. But in terms of the Government of India notification dated 07.01.2009 even the below

bench mark was required to be communicated, the same was accordingly, communicated. On receipt of the said communication, Dr. T.N. Wary

(supra) submitted a representation for upgrading the remark. While the matter was still under consideration before the authorities, he preferred the

said OA No.284/2010 for appropriate direction. While the matter was still pending, the GM NF Railway reviewed his case and upgraded the remarks

in his ACR of 2006 from "Good" to "Very Good" vide order dated 02.08.2011. Consequently, Dr. T.N. Wary (supra) was considered and

promoted to SAG Grade vide order dated 29.08.2011 with effect from the same day. As Dr. T.N. Wary (supra) felt aggrieved that he ought to have

been given promotion w.e.f. 19.10.2009 when his juniors had been considered and given promotion, his case was not considered owing to below bench

marks which had never been communicated to him earlier. Thus, OA No.284/2010 was finally disposed of on 07.09.2011 with a direction to the

Railway to hold the review DPC in light of the Hon^{ble} Supreme Court Rulings given in the case of Dev Dutt Vs. Union of India (supra) and to

consider the case of the applicant with effect from the date on which his immediate juniors got promoted w.e.f. 19.10.2009 and to assign seniority.

6. It is submitted that against the aforesaid order, the Union of India preferred WPC No.4130/2012 before the Guwahati High Court on the ground

that the DACP notification dated 07.01.2009 for review of uncommunicated ACR below bench mark would affect in future and not in case of

concluded DPC and hence no retrospective effect can be given to the granted promotion. The High Court rejected the writ against which an SLP (C)

No.3566/2017 was preferred by the Union of India before the Hon^{ble} Supreme Court, which was dismissed vide order dated 20.02.2017.

7. It is further submitted that from perusal of the aforesaid facts as found in the case of Dr. T.N. Wary (supra), it would be apparent that it is entirely

different and contrary to the facts of the case of the respondent/applicant. Evidently, in the case of Dr. T.N. Wary (supra), there was no adverse

remark nor there was any remark in the ACR finding him "not fit for promotion" as is there in the case of the respondent/applicant. Secondly, in

case of Dr. T.N. Wary (supra), admittedly the below bench mark remark of Good was never communicated to him earlier so as to give him any

opportunity to represent and pray for its review. On the contrary in case of the respondent/applicant, the adverse remarks were duly communicated to

him and against which he had also represented before the competent authority who had passed an order finding his explanation not satisfactory and

thus rejected his prayer which was also communicated to him and against which he also preferred an appeal before the GM/ECR which was also

considered and rejected. Thus, the case of the respondent/applicant is neither comparable nor at par with that of Dr. T.N. Wary (supra) so as to

enable him to claim the same benefit and relief as allowed to Dr. T.N. Wary (supra).

8. The Tribunal has reviewed the said order and passed the impugned order dated 14.02.2020 in OA No.215/2017, whereby and whereunder the

Tribunal directed the petitioner to conduct a review DPC and grant retrospective promotion to the respondent/applicant from the year 2007 and 2011

respectively in the light of upgraded APAR for the year 2003-04 and 2004-05, without considering the following facts by the learned Tribunal:

(a) That the respondent/applicant was firstly considered for promotion to JAG along with his batch mate in the JAG/IRMS panel approved on

06.06.2007 on the basis of 5 years APARs considered upto March 2006 and was found unfit by DPC on the basis of his performance. He was again

considered successive JAG/IRMS panels approved on 27.03.2008 on the basis of 5 years APARs considered upto March, 2006, on 21.03.2009 again

considered on the basis of 5 years APARs upto March, 2008 and 05.04.2010 on the basis of 5 years APARs considered upto March, 2009

respectively, but the respondent/applicant was found unfit by the DPCs on the basis of his performance in all the above panels.

(b) The respondent/applicant was once again considered in the JAG/IRMS panel approved on 21.11.2012, in which APARs for the year ending

March, 2006 to March, 2010 were considered. APAR for the year ending March, 2003, March, 2004, March, 2005 (I & II) and March, 2006 were

considered in lieu of APARs of March, 2007, March, 2008 and March, 2009 as the officer was on study leave from 27.01.2006 to 01.01.2009. In the

meanwhile, DOPT issued instructions dated 13.04.2010 wherein it was stipulated that if an employee is to be considered for promotion in a future

DPC and his ACP prior to the period 2008-09, which would be reckonable assessment of his fitness in such future DPCs contain final grading which

are 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 ACT for his representation, if any within 15 days of such communication. Accordingly, below bench mark APARs of applicant for the period of March, 2003, March, 2004 and March, 2005 (I & II) and 2006 were communicated to him. The decision of the competent authority on the representation against the above APARs is as under:

Marâ€™™ 2003 â€™" upgraded from â€™~Goodâ€™™ to â€™~Very Goodâ€™™
Marâ€™™ 2004 â€™" Upgraded from â€™~Average/Not Fit to â€™~Goodâ€™™

Marâ€™™ 2005 (pt.I) â€™" Upgraded from â€™~Average/Not Fit to â€™~Very Goodâ€™™

Marâ€™™ 2005 (pt.II) â€™" Upgraded from â€™~Average/Not Fit to â€™~Goodâ€™™

Marâ€™™ 2006 â€™" Grading retained as â€™~Goodâ€™™.â€™

On the above basis, the respondent/applicant was found â€™~Fitâ€™™ by the DPC for promotion to SA Grade.

(c) The respondent/applicant was later on promoted to selection grade under DACP Scheme w.e.f. 21.11.2016 on completion of 4 years service in

JAG. It is pertinent to mention here that the ratio laid down in the matter of Dev Dutta (supra) based on which the case of Dr. T.N. Wary (supra)

was allowed, was concerned with the specific matter, where APARâ€™™s/ACR below bench mark was never communicated to Dr. Wary, as it was

treated adverse. The Supreme Court has settled the law on this aspect in the cases reported as Dev Dutt (supra) and Abhijit Ghosh Dastidar vs.

Union of India & Ors., (2009)16 SCC 146.

9. Dealing with the issue of non communication of ACRs, the Supreme Court in case of Dev Dutt (supra) has observed:

â€™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.â€

Further:-

â€œ45. 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 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.â€

10. Subsequently, a Bench of three Honourable Judges of the Supreme Court in the case of Abhijit Ghosh Dastidar (supra) has observed:

â€œ4. it is not in dispute that the CAT, Patna Bench passed an order recommending the authority not to rely on the order of caution dated 22.09.1997

and the order of adverse remarks dated 09.06.1998. In view of the said order, one obstacle relating to his promotion goes. Coming to the second

aspect, that though the benchmark â€œevery goodâ€ is required for being considered for promotion admittedly the entry of â€œgoodâ€ was not

communicated to the appellant. The entry of â€œgoodâ€™ should have been communicated to him as he was having â€œevery goodâ€ 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."

11. Thus, the principle as laid down by the Supreme Court in Dev Dutt (supra) makes it incumbent upon the concerned authorities to communicate all

ACRs to a public servant in order to enable him to make a representation against them, if so advised. It also gives directions to consider such a

representation in a fair manner within a reasonable period by placing the same before an authority higher than the one who gave the original entry,

thereby, emphasising upon the principles of transparency and fairness in public administration.

12. The Supreme Court in the case of Abhijit Ghosh Dastidar (supra) went a step further by holding that non-communication of entries in the ACR

being violative of Article 14, should not be considered for promotion to the next higher grade.

13. It is submitted on behalf of the petitioners that the case of the present respondent/applicant is quite different from Dr. Wary's case. In the

matter of the respondent/applicant, he was properly communicated with regard to adverse remarks in the ACR for the year 2003-04 and 2004-05, he

made representation on 10.02.2006 before the Railway authorities for upgradation against his adverse remarks, which was duly considered and

rejected on 29.06.2006 and thereupon he filed an appeal dated 30.07.2006, which was also rejected with the order mentioning that "I have gone

through the record and am constrained to direct that adverse entry shall remain." Learned counsel for the petitioners submitted that DOPT Circular

dated 13.04.2010 does not suggest re-communication of already communicated adverse ACRs, in which the representation had already stood rejected.

14. Learned Senior Counsel for the petitioners further submits that in spite of adverse ACRs of 2003-04, 2004-05 made and communicated to the

respondent/applicant vide letter dated 19.10.2006, the applicant suppressing this fact again represented before the G.M., E.C.R., vide letter dated 25.10.2010 for upgradation of ACRs for the year 2003-04 and 2004-05 and thereupon the Railway authorities by overlooking the above facts upgraded the adverse entries in ACRs of the respondent/applicant from "Average" to "Good" and "Very Good" and communicated to the respondent vide letter dated 17.01.2011. Thereupon the respondent/applicant has been allowed promotion in JAG and S.G., even though the earlier representation and appeal had already been rejected by the G.M., E.C.R. Thus, the respondent/applicant is not entitled for promotion with retrospective effect.

15. Learned counsel appearing on behalf of the respondent/applicant submits that he was found unfit by the DPC before 17.01.2011, which was not the subject matter before the learned Tribunal in OA No.215 of 2017 but now the petitioners have raised this issue in the writ petition only to mislead this Court, which is neither concerned with the relief prayed before the Tribunal in said OA No.215 of 2017 nor has any relation to the order passed by the learned Tribunal which is impugned herein. The issue before the Tribunal was whether after the upgradation of APARs grading vide order dated 17.01.2011, the respondent is entitled to get retrospective promotion in the same manner as was granted to Dr. T. N. Wary.

16. It is further submitted by learned counsel for the respondent that the case of the respondent and Dr. T.N. Wary (supra) is quite similar and based on identical question of law. APAR grading of Dr. T.N. Wary (supra) was also below bench mark before 2011, which was upgraded only in the year 2011 and thereafter he was promoted vide order dated 29.08.2011 prospectively instead of retrospectively. APAR grading (below bench mark) of the respondent was admittedly upgraded on 17.01.2011 and he was also promoted to Junior Administrative Grade (JAG) w.e.f. 21.11.2012, hence it is clear that both were promoted prospectively after their APARs grading upgraded.

17. It is submitted that Dr. T.N. Wary (supra) was also considered earlier by the DPC for promotion to Senior Administrative Grade (SAG) on the basis of his performance recorded in his APARs for the period from 2003-04 to 2007-08 and 2004-05 to 2008-09, but the DPC found him unfit. The

present respondent was also considered by the DPC for promotion to JAG but on the basis of his performance recorded in his APARs for the period

2003-04 and 2004-05 (Part-I & II), the respondent was also found unfit by the DPC. Dr. T.N. Wary (supra) thereafter filed OA No.284 of 2010

before the CAT, Guwahati for antedating promotion which was allowed on 07.09.2011 and which was also upheld by the Hon^{ble} Apex Court.

Learned counsel for the respondent further submits that while he was under study leave at Chandigarh, he was communicated below bench mark

grading for the year 2003-04 and 2004-05 (Part-I & II) through letters dated 30.11.2005 and 02.12.2005 against which he submitted representation on

10.02.2006 which was rejected on 29.06.2006 without any disclosed reason but with the same letter dated 29.06.2006, he was directed to submit

appeal to the General Manager against this order within six months and, accordingly, he submitted an appeal to the General Manager on 30.07.2006

but no order on his said appeal has been communicated to him till date. The petitioners/Railways has enclosed the order dated 19.10.2006 showing

disposal of his appeal dated 30.07.2006 without serving the same.

18. Learned counsel for the respondent further submits his Annual Confidential Report for the year 2003-04 and 2004-05 were graded as

“Average” and on that basis he was denied promotion to the Junior Administrative Grade from the year 2007 and 2011 respectively. After his

representation in view of Railway Board order dated 30.09.2010, the General Manager, ECR vide his order dated 19.10.2010 as contained in

Annexure R/3, the “Average” grading was expunged and upgraded to “Good” and “Very Good” for both the years vide order dated

17.01.2011. It is further submitted that the respondent and one Dr. T.N. Wary (supra) both have been disallowed retrospective promotion from due

date on account of said adverse grading in the Annual Confidential Report in view of Department of personnel and Training Officer Memorandum

dated 13.04.2010 which restricts retrospective promotions according to the petitioners. The said OM has been issued pursuant to the instructions of

DOP& T and in compliance of the judgments rendered by the Supreme Court as noted above. It cannot be interpreted to mean that an employee, who

had below benchmark ACRs prior to the declaration of law, upon upgradation of those ACRs would be entitled to consideration for promotion in future on that basis alone. Such an interpretation would defeat the very purpose of the benefit intended to be given. The fact that below benchmark ACRs are upgraded pursuant to a representation made in that behalf goes to show that the concerned authority recognizes and subsequently corrects an erroneous assessment made by it in the first instance. To restrict the benefit of such an admitted correction for the purpose of future DPCs would deprive the concerned employee of valuable rights. It is an admitted position that the respondent was considered unfit for promotion on 3 different occasions and thereby deprived of legitimate promotion for 3 years. The benefit thus accrues to him from the date he was first denied promotion on the basis of the erroneous assessment.

19. Learned counsel for the respondent further submits that after upgradation of the said Annual Confidential Report, the petitioners herein have considered his promotion to the post of Junior Administrative Grade and accordingly he was accorded the said promotion w.e.f. 21.11.2012 vide order dated 10.01.2013 although the same should have been granted from the year 2007. It is further submitted that the respondent was further granted Selection Grade from the year 2016 which should have been given to him from the year 2011. It is submitted that the respondent and Dr. T.N. Wary (supra) both have been disallowed retrospective promotion from due date on account of said adverse grading in the Annual Confidential Report. It is also submitted by learned counsel for the respondent that the Tribunal has rightly passed the order because the cases of the respondent and Dr. T.N. Wary (supra) were similar on facts.

20. After hearing the parties and on perusal of the records, it appears that in the present case the respondent was properly communicated with regard to adverse remarks in the ACR for the year 2003-04 and 2004-05, he made representation on 10.02.2006 before the Railway authorities for upgradation against his adverse remarks, which was duly considered and rejected on 29.06.2006 and thereupon he filed an appeal dated 30.07.2006, which was also rejected. The principle as laid down by the Hon^{ble} Supreme Court in Dev Dutt (supra) makes it incumbent upon the concerned

authorities to communicate all ACRs to a public servant in order to enable him to make a representation against them, if so advised. It also gives directions to consider such a representation in a fair manner within a reasonable period by placing the same before an authority higher than the one who made the original entry, thereby emphasising upon the principles of transparency and fairness in public administration. The Supreme Court in the case of Abhijit Ghosh Dastidar (supra) went a step further by holding that non-communication of entries in the ACR being violative of Article 14, should not be considered for promotion to the next higher grade. The learned Tribunal has not considered the admitted fact that the adverse entry of the respondent/applicant has been communicated to him. Thereafter he filed representation which was also rejected. Thereafter he filed appeal which was also dismissed.

21. Learned counsel for the respondent /applicant relies on the judgment passed by the High Court of Delhi in case of Union of India Vs. V.K.

Vashisht, (W.P.(C) 5036/2012). In my opinion, this judgment is not applicable in the present case because in W.P.(C) No.5036/2012, the ACR of the respondent/applicant had not been served to him, but in the present case, the ACR has been served/communicated to respondent/applicant.

22. The matter of Dev Dutt (supra), based on which the case of Dr. T.N. Wary (supra) was allowed, was concerned with the specific matter where

APARs/ACR below Bench Mark was never communicated to Dr. Wary, as it was treated adverse. Learned Tribunal has not considered this fact in

the matter of the respondent/applicant. He was properly communicated with regard to adverse remarks in the ACR for the year 2003-04 and 2004-05.

Learned Tribunal did not examine the fact in case of the respondent vis. a vis. that of Dr. T.N. Wary (supra)

23. Having considered the facts aforesaid, the order dated 14.02.2020, passed by learned Central Administrative Tribunal, Patna Bench, Patna in

M.A. No.50/391/2019, arising from O.A. No.-051/00215/2017 is set aside.

24. The writ petition is allowed.