

(2015) 05 RAJ CK 0132

Rajasthan High Court (Jaipur Bench)

Case No: Civil Writ Petition Nos. 7215/2010, 2279/2013, 13209/2008, 13267/2008, 5771/2009, 3235/2010, 5790/2010, 8542/2010, 11464/2010, 13044/2010, 14149/2010, 14987/2010, 16532/2010, Civil Contempt Petition No. 251/2011, Civil Writ Petition Nos. 4964/20

Vimal Kumar Jain and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision: May 22, 2015**Acts Referred:**

- Administrative Tribunals Act, 1985 - Section 14
- Constitution of India, 1950 - Article 14, 226

Hon'ble Judges: Veerender Singh Siradhana, J**Bench:** Single Bench

Advocate: R.N. Mathur, Virendra Lodha, and Ashok Gaur, Senior Advocates, Purvi Mathur, Jai Lodha, Ashwani Jaiman, Babulal Gupta, Ankul Gupta, H.V. Nandwana, Anuroop Singhi, Tanveer Ahmed, Manish Parihar, Sanjay Khan, Gaurav Sharma, A.K. Bajpai, V. Shah, Kapil Bardh

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Veerender Singh Siradhana, J.

The batch of writ applications and contempt petitions involves a common question of law and facts, and therefore, the writ applications have been taken up for final adjudication, at this stage, with the consent of the learned counsel for the parties, by this common order.

2. The petitioners are aggrieved of the downgrading assessments and remarks in their Annual Performance Appraisal Reports (for short, "APARs"), for different periods in the instant case at hand i.e. SBCWP No. 2279/2013 (Smt. Geeta Singh v. State of Raj.), the relevant period is w.e.f. 2001-2002 to 2008-2009.

3. It is pleaded case of the petitioners that the copies of the APARs were made available in the Month of December, 2012, in response to application(s) under the Provisions of Right to Information Act, 2005, and it was only thereafter the fact of downgraded APARs, by the authorities, without recording any reason plausible and acceptable, surfaced to their knowledge. The fact of downgrading of the APARs, in comparison to the previous year, was never ever communicated to the petitioners.

4. Mr. R.N. Mathur, learned Sr. Counsel, reiterating the pleaded facts and grounds of the writ application, strenuously argued that the petitioners were never communicated of the down-gradation in the APARs. Thus, they were deprived of representation against such down gradation in time much less the relevant time, when such down gradation was resorted to. This act of the State-respondents is an indicative of gross violation of the principles of natural justice, and therefore, the down gradation deserves to be ignored and set aside. Moreover, the downfall from the previous year, recorded in the APARs, is an unreasonable and unjustified and not provided with reasons by the authorities concerned. There cannot be a fall in the qualities of an officer for a limited period and any such entry indicating a down fall, for a short period, in the performance can safely be presumed to be for bias and oblique motives, and therefore, deserves to be ignored on that count alone.

5. According to the learned counsel, even the communication of downgraded remarks, at this belated stage, cannot be permitted for the delay in communicating the remarks for it adversely affects the petitioners in their service career for promotion to higher scale, grade and post in the service and for appointment in Indian Administrative Services/Indian Forest Services/Indian Police Services.

6. Promotion, from State Administrative Services to Indian Administrative Services, is governed by Indian Administrative Services (Appointment By Promotion), Regulations, 1955 (for short, "Regulations of 1955"). Regulation 5 of the Regulations of 1955 contemplates that the list of eligible candidates is to be drawn on the basis of seniority, arranged by the select committee on the basis of merit. The candidates in the category of "outstanding" are accorded preference and are placed on top in the select list followed by the candidates in the category of "very good" and "good". Those categorized in the category below good are not included in the select list. Thus, the criteria, for promotion to Indian Administrative Service predominantly, is based on merit and the gradation given in an APARs. Though entire service record is also seen as per mandate of Regulation 5 and Regulation 7 of the Regulations of 1955.

7. If there is a delay in communication, the adverse remarks lose all importance and deserves to be struck down on that count alone keeping in view the very object underlying for maintenance of a confidential report for assessing the performances, character, conduct and qualities of every member of the service. Ordinarily it must be done within two months of the close of the year be it financial year or calendar year specified by the Government. Emphasizing upon the object of making and

communication of adverse remarks, as has been held by the Hon"ble Apex Court of the land, the learned counsel submits that it provides the Officer concerned an opportunity to improve his performance, conduct and character as the case may be. Further, the adverse remarks are not to be understood in terms of punishment but an advice to the Officer concerned for he can act in accordance with the advice and improve his service career. In case of inordinate delay, the whole object will be lost.

8. Learned counsel for the petitioners have further submitted that since the APARs provide the basic and vital inputs for various purposes, all the employees are expected to undertake the duty of filling out the APAR forms with a high sense of responsibility and within the time schedule, as has been observed by the Hon"ble Apex Court of the land in a catena of cases. To fortify the submissions, reliance has also been placed on the time schedule as provided by Annexure "A" of the Rajasthan Civil Services (Performance Appraisal Report), Instructions, 2008, wherein the earlier instructions of 1976, have been reiterated.

9. Referring to circular dated 23rd September, 2010 and 22nd February, 2013, the learned counsel would submit that adherence to the time schedule has been insisted from the authorities concerned, therefore, delay in communication of the entries in itself is sufficient to allow the claim of the petitioners. According to the learned counsel for the petitioners Reporting Officer is not required to form an opinion or arrive at a conclusion on insufficient data or hearsay as contemplated under the Instructions of 2008. Clause No. 11(5) of the Instructions, details out the procedure for recording adverse remarks, which has not been followed. The responsibility of "reviewing officer", as contemplated under Clause 12 of the Instructions of 2008 was observed in breach. To buttress his submissions, the learned counsel has placed reliance on the opinion of the Hon"ble Apex Court of the land in the case of [U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others](#), (1996) 1 AD 885 : AIR 1996 SC 1661 : (1996) 1 JT 641 : (1996) 1 SCALE 624 : (1996) 2 SCC 363 : (1996) 1 SCR 1118 : (1996) 1 UJ 636 , [State of U.P. Vs. Yamuna Shanker Misra and another](#), AIR 1997 SC 3671 : (1997) 4 JT 1 : (1997) 2 LLJ 1 : (1997) 3 SCALE 80 : (1997) 4 SCC 7 : (1997) SCC(L&S) 903 : (1997) 2 SCR 371 : (1997) AIRSCW 1951 : (1997) 3 Supreme 187 , : [Dev Dutt Vs. Union of India \(UOI\) and Others](#), (2008) 117 FLR 1024 : (2008) 7 JT 463 : (2008) 7 SCALE 403 : (2008) 8 SCC 725 : (2008) 2 SCC(L&S) 771 : (2008) 3 SLJ 244 and [Sukhdev Singh Vs. Union of India \(UOI\) and Others](#), (2013) 4 ABR 1138 : (2014) 1 AD 227 : AIR 2013 SC 2741 : (2013) 137 FLR 907 : (2013) 8 JT 270 : (2013) LabIC 2925 : (2013) 2 LLN 578 : (2013) 171 PLR 823 : (2013) 6 SCALE 490 : (2013) 9 SCC 566 : (2014) 1 SCC(L&S) 279 : (2013) 4 SCT 129 : (2013) AIRSCW 3801 .

10. Reliance has also been placed on the opinion of the Coordinate Bench of this Court in the case of Prem Prakash Bidyasar v. State of Rajasthan and Ors.: WLR 1996 (Raj.) 197 , [Satya Narayan Kumawat Vs. The State of Rajasthan](#), (2014) LabIC 2259 : (2014) 3 WLN 402 . Judgment dated 29th January, 2014 in SBCWP No. 16640/2010 (Virendra Mehta v. State and Anr.), and the opinion dated 18th October, 2006 in

SBCWP No. 9881/2005(R.P. Shrivastava v. State of Raj. and Ors.), has also been relied upon.

11. Mr. H.V. Nandwana, Advocate, adopting the arguments of his colleagues, in addition, vehemently argued that the very object of making of adverse remarks would be lost if they are communicated to the Officer concerned after an inordinate delay. That apart, all Reporting Officers, Reviewing Officers and Accepting Officers, have demitted office either because of retirement or otherwise. To reinforce his submissions, reliance has been placed on the opinion in the case of State of Haryana (supra), para No. 13 and 14: Tek Chand v. The High Court of Judicature for Rajasthan at Jodhpur: RLR 1993(2) 91, para No. 12 and 13, and the Instructions regarding the Annual Performance Appraisal, 1976.

12. Assailment is also based on the violation of the Circular issued by the State Governed bearing No. F.13(5-1) DOP/ACR/96(3/98) dated 3.4.1998, which reads thus:

"Circular No. F.13(5-1)DOP/ACR/96(3/98) dated 3.4.1998

It has been observed that the APARs of the State Service Officers are sometimes downgraded by Reviewing/Accepting Authorities, without giving any reasons or jurisdiction and it becomes difficult to properly defend such cases in the courts. The Supreme Court has also recently held that proper reasons must be recorded while downgrading the APAR rating of Reportee Officer. Accordingly it has been decided that the Reviewing/Accepting Authorities should invariably record detailed reason/jurisdiction, if APARs of the Reportee Officers are downgraded by them."

13. It is further urged that non-communication of the adverse APARs being in violation of cardinal principles of natural justice, and therefore, alternative remedy cannot be pleaded a bar to invoke the writ jurisdiction under Article 226 of the Constitution of India. Reliance has been placed on the opinion of the Hon"ble Supreme Court in the case of [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#), AIR 1999 SC 22 : (1998) 7 JT 243 : (1998) 5 SCALE 655 : (1998) 8 SCC 1 : (1998) 2 SCR 359 Supp : (1998) AIRSCW 3345 : (1998) 8 Supreme 176 .

14. The judgments, referred to and relied upon, would be prospective in operation, as argued by the Additional Advocate General, has been countered stating that the law laid down by the Hon"ble Supreme Court is normally assumed to be law from inception. To fortify the submission, support is sought from the opinion of the Hon"ble Supreme Court in the case of [B.A. Linga Reddy Vs. Karnataka State Transport Authority](#), (2015) 1 ACC 148 : (2015) 1 RCR(Civil) 336 : (2015) 1 SCJ 233 .

15. In response to the notice of the writ application, the State-respondents have filed their reply repelling the contentions.

16. Mr. Rajendra Prasad, learned Additional Advocate General, appearing on behalf of the State-respondents, has also filed written brief on behalf of the State-respondents while resisting the claim of the petitioners in the writ

applications. According to the learned counsel, the petitioners have projected a challenged to downgrading of ACRs: (a) for downgrading from previous year, and (b) for downgrading by Higher Authority in the same year.

17. Learned counsel would further submit that the petitioners are not entitled for the relief and the ACRs cannot be ignored while considering their candidature for promotion in the All India Service from State Service. Raising preliminary objections as to the very maintainability of the writ applications for directly approaching this Court, without first availing of the remedy before the forum provided under the Administrative Tribunals Act of 1985 (for short, "Act of 1985"), as well as for not addressing a representation; the learned counsel submits that the writ applications deserves to be dismissed at the very threshold.

18. Relying upon the provisions of Section 14 of the Act of 1985, which defines the jurisdiction of the Central Administrative Tribunal, the learned counsel insisted that the matters concerning recruitment to All India Service, which is the subject matter of the writ applications, is recruitment to All India Service, and therefore, is within the exclusive jurisdiction of the Central Administrative Tribunal. Placing reliance on the verdict of the Hon"ble Apex Court of the land in the case of [L. Chandra Kumar Vs. Union of India and others](#), AIR 1997 SC 1125 : (1997) 83 CLT 815 : (1997) 92 ELT 318 : (1997) 228 ITR 725 : (1997) 3 JT 589 : (1997) 3 SCALE 40 : (1997) 3 SCC 261 : (1997) SCC(L&S) 577 : (1997) 2 SCR 1186 : (1997) 105 STC 618 : (1997) AIRSCW 1345 : (1997) 3 Supreme 147 , learned counsel has asserted that no direct writ application is maintainable, of the nature preferred by the petitioners.

19. Repelling the reference made to the case of the R.P. Shrivastava (supra), the learned counsel submits that the case referred was a case of alternative remedy whereas in the instant batch of writ applications, it's a question of want of jurisdiction. Hence, the opinion in the case aforesaid is of no help to the petitioners.

20. It is further submitted that reliance placed by the learned counsel for the petitioners on the opinion of the Hon"ble Apex Court of the land in the case of U.P. Jal Nigam, Dev Dutt and Sukhdev Singh (supra), in support of their submissions, is of no help for the reason that the Hon"ble Supreme Court in the case of Dev Dutt (supra), has specifically observed that a new facet of principle of natural justice was laid down. Therefore, the requirement to communicate every ACRs, was not a necessary requirement of principle of natural justice, prior to the declaration of law as propounded in the case of Dev Dutta (supra) and finally affirmed in the case of Sukhdev Singh (Supra). The State-respondents on the basis of existing procedures and the known principles of natural justice did not communicate the downgraded ACRs. The new dimension to the principles of natural justice as propounded in the case of Dev Dutt (supra), is bound to have future application and it is not intended to upset the existing lawful situation in various services.

21. Countering the contentions based on the verdict of the Hon'ble Apex Court of the land in the case of U.P. Jal Nigam's case (supra), the learned counsel submits that the Hon'ble Supreme Court itself did not treat it of universal application and confined it to the U.P. Jal Nigam.

22. Be that as it may, the position having been clarified in the case of Dev Dutt (supra), it will be prospective application. Moreover, assuming application of proposition propounded in the case of U.P. Jal Nigam ((supra) after 1996, the State Government issued circular in the year 1998 making it clear that the downgraded ACRs are not to be communicated. The validity of circular has not been impugned by the petitioners. Even otherwise, having learned about the fact that the Government would not communicate the downgraded ACRs, the petitioners did not make any demand of their own ACRs at the relevant time to ascertain as to whether there is any downgrading of ACRs. Detailing out the cause of action with reference to the disputed years of APARs in a tabular form, the learned counsel would further submit that the writ applications suffer with the vice of delay and laches. The petitioners being aware of the existing right did not avail of any legal remedy, and therefore, at a belated stage, there cannot any grievance for non-communication of the APARs.

23. The fact of non-communication of the adverse APARs does not render the report as invalid, and therefore, cannot be ignored as would be evident from the ratio decidendi of the judgment as referred to and relied upon. The petitioners at the most have a right to make a representation against the downgraded ACRs and nothing more. Therefore, the prayer and request for ignoring the APARs is not sustainable in the eye of law. The petitioners now are aware of the adverse APARs and at the most they can be permitted to make a representation.

24. Furthermore, a downgraded ACR is the final report and not the stages in the process of assessment. Therefore, the report which is finally accepted is the report which has to be considered and no downgrading can be assumed on the basis of reports made by the reviewing or accepting authorities.

25. Though, the learned counsel for the petitioners undertook to submit the written submissions but the same have not been filed whereas the counsel for the State-respondents has furnished the copy of the written brief, with a copy in advance to the learned counsel for the petitioners. However, Mr. Harsh Vardhan Nandwana, Advocate, furnished written submissions on 14th May, 2015.

26. I have heard the learned counsel for the parties and perused the materials available on record as well as gave my thoughtful consideration to the rival submissions.

27. The preliminary objections raised by the learned Additional Advocate General, at the outset sounded very attracted but on a close scrutiny it is found that the subject matter of the writ applications is the downgrading of APARs by the State-respondents and the service record is maintained by the State-respondents.

28. By now, it is well settled law that the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India in a given case although may entertain a writ petition on the ground of availing of alternative remedy, but the said rule cannot be said to be of universal application. Moreover, identical controversy has already been raised, considered and adjudicated upon by a Coordinate Bench of this Court as would be reflected from the cases, as referred to and relied upon i.e. Prem Prakash Bidyasar, Satya Narayan Kumawat and Virendra Mehta (supra), as aforesaid. Thus, the preliminary objections raised, are hereby rejected.

29. The adverse entries made in the APARs though may be relating to years 2000-2001 but their effect on the services was realised only when the petitioners were declined promotion or grant of higher scale owing to the adverse entries in the APARs in the year 2007, as would be evident from the admitted facts, as detailed out in the writ application and the written brief, furnished by the learned counsel appearing on behalf of the State-respondents, which reads thus:

30. In the case of U.P. Jal Nigam (supra), a two Judge Bench of Hon"ble Supreme Court held that the downgrading by the Review/Accepting authority in comparison to the previous grading, without notice or opportunity of hearing to the employee concerned, is illegal. A contrary view was expressed in the case of [Union of India \(UOI\) and Another Vs. Major Bahadur Singh](#), (2006) 108 FLR 146 : (2005) 10 JT 127 : (2005) 9 SCALE 459 : (2006) 1 SCC 368 : (2006) SCC(L&S) 959 , of the same Bench Strength. However, subsequently, in the case of Dev Dutt (supra), another opinion of the same Bench Strength considered the issue of communication of adverse APARs to the Government employee. Revisiting the previous opinions, the Hon"ble Supreme Court concluded that every entry of APARs should be communicated to the employee concerned, within reasonable period, whether it is "fair", "good" or "very good" entry.

31. In the case of [Abhijit Ghosh Dastidar Vs. Union of India \(UOI\) and Others](#), (2009) 16 SCC 146 , a three Judge Bench approving the reasoning in the case of Dev Dutt (supra) under paragraph 8, held thus:

"8. 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."

32. A reference was made to a three Judge Bench of the Hon"ble Supreme Court in the case of Sukhdev Singh (supra), keeping in view the conflict of opinions. The Hon"ble Supreme Court in the case of Sukhdev Singh (supra) approved the opinion and reasoning in the case of Dev Dutt (supra) and Abhijit Ghosh Dastidar (supra), holding 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. Firstly, the communication of every entry in the ACR, to the concerned employee, would help him to work harder and achieve more that helps him in improving his work and give better results. Secondly and equally important, on being made aware of the entry in the ACR, the concerned employee if feels dissatisfied may avail off the remedy of representation for upgradation of the remarks entered in the ACR. Thirdly, communication of every entry in the ACR would bring transparency in recording of the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. Thus, the earlier views expressed were held not to be good law.

33. It is trite law that an officer entrusted with duty to write the APARs, has a public responsibility. The "Reporting Officer" is expected to write the reports objectively, fairly and dispassionately, as has been observed by the Hon"ble Apex Court of the land in the case of State of U.P. v. Yamuna Shanker Misra and another (supra), holding thus:

"The Officer entrusted with the duty to writ confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an over all assessment of the performance of the Subordinate officer. It should be founded upon facts or circumstances. Before forming an opinion to be adverse, the Reporting Officers writing confidential should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behavior, integrity or conduct/corrupt proclivity. If, despite being given such opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him."

34. In the case of [Union of India and others Vs. E.G. Nambudiri](#), AIR 1991 SC 1216 : (1991) 62 FLR 850 : (1991) 2 JT 285 : (1991) LabIC 1256 : (1991) 2 LLJ 594 : (1991) 1 SCALE 783 : (1991) 3 SCC 38 : (1991) 2 SCR 451 : (1991) 2 SLR 675 : (1991) 2 UJ 303 , under paragraph 10 the Hon"ble Supreme Court, held thus:

"10. There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence *aliunde* before the court to justify its action."

35. In the case of [M.A. Rajasekhar Vs. State of Karnataka and Another](#), (1996) 6 AD 790 : (1996) 7 JT 708 : (1996) 6 SCALE 377 : (1996) 10 SCC 369 : (1996) 4 SCR 729 Supp : (1997) 1 SLJ 45 , the Hon"ble Supreme Court, reiterating the settled position of law and the object of making adverse remarks while assessing the competence of an officer on merits and performance of an officer concerned so as to grade him to various categories as outstanding, very good, good, satisfactory and average etc., observed thus:

"5. It was found that his integrity was not doubted and his work also in all those respects was found to be satisfactory. Under those circumstances, the remark that he "does not act dispassionately when faced with dilemma" must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in

dilemma and lacked objectivity, in such circumstances, he must be guided by the authority as to the manner in which he acted upon. Since this exercise has not been done by the respondents, it would be obvious that the above adverse remark was not consistent with law."

36. A Coordinate Bench of this Court in the case of Satya Narayan Kumawat (supra), while examining similar controversy with reference to adherence to the instructions, held thus:

"14. This Court had an occasion to examine the instructions regarding Annual Performance Appraisal, 1976 in [Richhpal Singh Vs. State of Rajasthan and Another](#), (1992) 2 WLC 669 : (1992) 2 WLN 566 . While following the principles laid down by Hon'ble Apex Court in [State of Haryana Vs. P.C. Wadhwa, IPS, Inspector General of Police and Another](#), AIR 1987 SC 1201 : (1987) LabIC 901 : (1987) 1 LLJ 529 : (1987) 1 SCALE 799 : (1987) 2 SCC 602 : (1987) 2 SCR 1030 : (1987) 2 SLJ 162 : (1987) 2 UJ 233 , this Court held that even if the administrative instructions issued by the Government are not having statutory force, they must be substantially complied with. The Government which had issued the instructions and the officers, who are bound to act in conformity with the administrative instructions. Those, whose actions are the actions of the Government, must be held to be bound by these administrative instructions. The administrative authorities, which declare that their actions will be governed by certain standards must adhere to those standards. Arbitrary departure from such instructions will vitiate the action taken by such authorities. Faced with the problem of non adherence to such instructions especially in the context of the cases where positive reports given by the Reporting Officers are down graded or are recorded in the negative form by Reviewing/Accepting Officer, the Government has issued a circular on 3.4.1998, which is worth reproduction:--

It has been observed that the APARS of the State Service Officers are sometimes downgraded by Reviewing/Accepting authority, without giving any reasons or justifications and it becomes difficult to properly defend such cases in Courts. The Supreme Court has also recently held that proper reasons must be recorded while down grading the APAR rating of a Reportee Officer. Accordingly it has been decided that the Reviewing/Accepting authorities should invariably record detailed reasons/justifications if APARs of the Reportee Officers are downgraded by them.

15. Instructions issued by Department of Personnel, Government of Rajasthan, in the year 2008, provide that while commenting upon the remarks made by reporting officer, the reviewing authority should not form an opinion or arrive at conclusion on insufficient data or hearsay. In Clause No. 11(5) of the Instructions, a detailed procedure has been provided for recording adverse remarks, which has not been followed. Clause 12 thereof refers to responsibility of reviewing officer and at its out set it has been stated in clause (1), but that too has not been followed."

37. From the pleadings of the parties and materials available on record, it is evident that there is no reference to any advisory or memos given to petitioners at any point

of time in past to improve their performance. Remarks made by the reviewing authority and accepting authority downgrading them as per assessment made by the "reporting officer", was done without any notice to the petitioners with reference to the reasons for the proposed remarks.

38. In the case of Sukhdev Singh (supra), a three Judge Bench reiterating the view in the case of Dev Dutt (supra), held thus:

"7. A three Judge Bench of this Court in [Abhijit Ghosh Dastidar Vs. Union of India \(UOI\) and Others](#), (2009) 16 SCC 146 followed [Dev Dutt Vs. Union of India \(UOI\) and Others](#), (2008) 117 FLR 1024 : (2008) 7 JT 463 : (2008) 7 SCALE 403 : (2008) 8 SCC 725 : (2008) 2 SCC(L&S) 771 : (2008) 3 SLJ 244 . 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 noncommunication 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."

39. For the reasons and discussions aforesaid, the writ applications succeed and are hereby allowed. The downgrading from the APARs of the petitioners and

downgrading at the level of the "reporting authority", "reviewing authority" and "accepting authority", stand expunged. The downgrading from previous year is to be ignored while considering the candidature of the petitioner(s) for promotion/higher scale, as the case may be.

40. A copy of this order be placed in each of the file.

41. However, in the facts and circumstances of the case, there shall be no order as to costs.