(2014) 02 AHC CK 0045

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 50733 of 2012

Union of India		APPELLANT
	Vs	
Saroj Kumar		RESPONDENT

Date of Decision: Feb. 27, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2014) 104 ALR 662 : (2014) 142 FLR 426 : (2014) 3 UPLBEC 2093

Hon'ble Judges: Arvind Kumar Mishra-I, J; Arun Tandon, J

Bench: Division Bench

Advocate: Ashok Singh, Advocate for the Appellant; Ashish Srivastava, Birendra Singh, P.K. Shahi, U.N. Sharma and M.C. Chaturvedi, Advocate for the Respondent

Final Decision: Allowed

Judgement

Arun Tandon and Arvind Kumar Mishra-I, JJ.
Heard Sri R.B. Singhal, Additional Solicitor General assisted by Sri Ashok Kumar Singh, Advocate on behalf of Union of India and Sri M.C. Chaturvedi, Advocate on behalf of respondent No. 1. Respondent Nos. 2, 3 and 4 are proforma respondents and are not represented. The Union of India seeks quashing of the order of the Central Administrative Tribunal, in so far as, it after quashing the order dated 23.3.2011 has directed that case of original applicant namely Saroj Kumar be considered for promotion on the post of Senior Administrative Grade with effect from the date, when juniors to the original applicant namely, Praveen Kumar and S.C. Dastidar, were promoted by ignoring the uncommunicated adverse A.C.Rs. in the light of the law laid down by the Principal Bench of the tribunal in the case of H.S. Acharya v. Union of India and others. Three months time has been permitted for the purpose.

2. Facts in short leading to the present writ petition are as follows:

Saroj Kumar (respondent No. 1) was appointed after selection through Civil Services Examination and was allotted Indian Defence Accounts Service. On 12th January, 1996 he was promoted on the post of Junior Administrative Officer. He was provided selection grade with effect from 6th June, 2000.

3. Because of the character roll entries, he was not provided promotion by the Departmental Promotion Committee (hereinafter referred to as "D.P.C.") under the Assured Career Progression Scheme. Again, D.P.C. in its meeting held on 22.3.2006 did not find respondent No. 1 suitable for promotion in the Senior Administrative Grade because of his having not achieved the required A.C.R. criteria and the requisite bench mark.

4. Not being satisfied Saroj Kumar (respondent No. 1) filed a representation dated 11.5.2006 against his non-selection and thereafter, filed Original Application No. 640 of 2006 before the Central Administrative Tribunal, Allahabad. This Original Application was decided under order dated 18.9.2008 requiring the authority concerned to decide the claim of applicant i.e., respondent No. 1 in the light of the judgment of the Apex Court in the case of Dev Dutt Vs. Union of India (UOI) and Others, .

5. In compliance to the order of the Tribunal, the annual entries-pertaining to the year 1999-2000, 21.6.2000 to 31.3.2001 and 2001-02 were communicated to the petitioner. On 12.6.2009 Saroj Kumar (respondent No. 1) filed his representation against the entries so communicated.

6. We may record that in all the three aforesaid entries respondent No. 1 was credited as "good" while the bench mark for promotion was fixed as Very good".

7. The representation made by respondent No. 1 Saroj Kumar for upgradation of his A.C.Rs. was rejected vide order dated 22.1.2010 and it was held that he was rightly not promoted by D.P.C. Against rejection of the representation, respondent No. 1 filed Original Application No. 490 of 2010 challenging the order dated 22.1.2010. This Original Application was allowed vide order dated 27.4.2010. The order dated 22.1.2010 was set aside and the matter was remanded to the competent authority to consider the representation against the entries afresh.

8. We may record that at this stage, the Tribunal did not deem it fit and proper to direct the consideration of the claim of the respondent No. 1 for promotion by the D.P.C. after ignoring the entries of 1999-2000, 21.6.2000 to 31.3.2001 and 2001-02 (hereinafter referred to as "uncommunicated entries"). The Union of India was not satisfied with the order and, therefore, it filed Writ Petition No. 8357 of 2011. The writ petition was dismissed by High Court vide order dated 21.2.2011 after recording that sufficient reasons had not been recorded in the order rejecting the representation. It was also held that there should be some material on record or its reference with some details to indicate that the Reviewing Officer and the Competent Authority considering the representation

had reasons to believe the allegations in such complaints. The High Court directed the competent authority to reconsider the representation of the applicant/respondent No. 1. This order has also been permitted to become final between the parties.

9. We may record that the High Court also did not direct that the claim of the respondent No. 1 for promotion be reconsidered by D.P.C. ignoring the un-communicated entries.

10. The representation of the respondent No. 1 Saroj Kumar was reconsidered in the light of the directions issued by the Tribunal and by the High Court as noticed above. The representation of the respondent No. 1 was again rejected vide order dated 23.3.2011. Against this order of the competent authority, respondent No. 1 preferred Original Application No. 658 of 2011. The reliefs prayed for in the Original Application read as follows:

(a) This Hon''ble Tribunal may be pleased to quash the impugned order dated 23.3.2011 (Annexure A-1 to the Original Application) passed by the Respondent No. 3.

(b) This Hon''ble Tribunal may be pleased to direct the respondents to review D.P.C. held on 21.2.2006 and promote the Applicant as Senior Administrative Grade w.e.f. their juniors i.e., Respondent Nos. 6 and 7 have been promoted.

(c) This Hon''ble Tribunal may be pleased to direct the respondents to consider the applicant for further consequential promotions for the date the juniors have been promoted.

(d) This Hon''ble Tribunal may be pleased to direct the respondents to pay the entire arrears of difference of salary on promotion as Senior Administrative Grade w.e.f. the date of juniors and also the pay of the applicant may also be consequently fixed at the appropriate stage.

(e) Any other relief which this Hon''ble Tribunal may deem fit and proper in the facts and circumstances of the case may be given in favour of the applicant.

(f) Award the costs of the Original Application in favour of the applicant.

11. The Tribunal in the order impugned has recorded its reasons in paragraph 3 for granting the relief, which reads as follows:

It is evident that Accepting Officer referred to certain complaints while accepting the report and downgraded the applicant as good. It is also evident that the Accepting Officer has not given any opportunity of hearing to the applicant.

12. In paragraph 5, the Tribunal went on the hold that the Accepting Officer, who downgraded the entry of one year had already retired.

13. The Tribunal after quashing the order dated 23.3.2011 has proceeded to direct the D.P.C. to reconsider the case of the applicant for promotion on the post in the Senior Administrative Grade with effect from the date juniors to him i.e., Saroj Kumar have been so promoted. A direction has been issued that the A.C.R. of the applicant for the preceding years be considered ignoring the un-communicated adverse A.C.Rs. entries in the light of law laid down by the Principal Bench of the Tribunal in the case of H.S. Acharya v. Union of India and others within 3 months.

14. Sri R.B. Singhal, Advocate on behalf of the petitioner contended that in compliance to the order of the High Court dated 21.2.2011, the competent authority had passed an order dated 23.3.2011 dealing with each and every issue raised by petitioner in the matter downgrading of his assessment by the Accepting Authority as "good" as well as in the matter of his being upgraded as "outstanding". He submits that except for recording that the order of the competent authority dated 23.3.2011 has not been made in the light of directions of the Tribunal or in the light of the judgment of Dev Dutt"s case (supra) no reasons have been assigned as to which part of the order is bad for the said reasons.

15. The tenor of the order of the Tribunal suggests that it had formed the opinion that uncommunciated A.C.Rs. even if categorized as "good", could not have been taken into consideration for bye passing the claim of the applicant/respondent No. 1 for promotion as communication of such "good" entries is also essential in light of the judgment of the Apex Court in the case of Dev Dutt (supra) referred to above. It is with reference to this part of the judgment in the case of Abhijit Ghosh Dastidar Vs. Union of India (UOI) and Others, , the Tribunal has directed to ignore the uncommunicated entries in A.C.R. and reconsideration of the claim of the respondent No. 1 from the date persons junior to him have been promoted by D.P.C.

16. Counsel for the petitioners submits that the issue with regards to non-communication of the A.C.Rs. of the relevant period noted above, which were categorized as "good" had lost all its efficacy when admittedly these entries in terms of the earlier order of the Tribunal dated 18.9.2008 passed in Original Application No. 640 of 2006 had been communicated vide letter of the competent authority dated 12.6.2009 and further since the representation made by the applicant/respondent No. 1 having been rejected in the matter of upgradation of his A.C.R. This order was subject-matter of challenge in the Original Application No. 490 of 2010 and thereafter, in the Writ Petition No. 8357 of 2011. He, therefore, submits no direction could have been issued for the claim of respondent No. 1, for promotion being considered by the Review D.P.C. ignoring the A.C.Rs., which were not communicated earlier but, had subsequently been communicated and against which representation filed by respondent No. 1, had been rejected. The Tribunal should have examined the merits of the order rejecting the representation. The general observation made in the order that the same is not in conformity with the earlier judgment of the Tribunal or law laid down in the case of Dev Dutt (supra), is not supported by any reasons vis-a-vis the order impugned before the Tribunal. He also submits that the relief of consideration of claim of the respondent No. 1 for promotion ignoring the

uncommunicated A.C.Rs. even after, due communication and subsequent rejection of the representations as noticed above is in excess of the relief prayed for in the original application and, therefore, unsustainable in the eyes of law.

17. M.C. Chaturvedi, Advocate on behalf of respondent No. 1 submits before us that Saroj Kumar had been throughout contending before the Tribunal that his claim for promotion as Administrative Officer Grade, had to be considered ignoring the uncommunicated A.C.Rs. as had been laid down in the case of Abhijit Ghosh Dastidar (supra). He submits that in the order passed by the Tribunal in Original Application No. 490 of 2010, which stood affirmed with the dismissal of Writ Petition No. 8357 of 2011 filed by the Union of India, there was a specific direction to consider the representation of the respondent in the light of the judgment of Dev Dutt''s case (supra). He submits that Dev Dutt''s case mandates communication of even ''good'' entries to the Officer concerned and in absence thereon the uncommunicated entries could not have formed the basis for supersession of the applicant.

18. M.C. Chaturvedi, Advocate took the Court through the directions issued by the Three Judge Bench of Apex Court in the case of Abhijit Ghosh, Dastidar (supra) for uncommunicated entries being ignored in the matter of promotion (specifically to paragraph 6). The Court has been informed that the Supreme Court in the case of Sukhdeo Singh v. Union of India has laid down that uncommunicated entries are to be ignored. The Supreme Court has reiterated what has been held in the case of Abhijit Ghosh Dastidar (supra) in paragraph 5. He, therefore, submits that in the facts of the case, the Court may not interfere with the directions of the Tribunal, in as far as, it directs consideration of the claim of respondent No. 1 after ignoring the uncommunicated entries, even if, they are ''good''.

19. We have heard the Counsels for the parties and examined the records of present petition.

20. We at the very outset may record that in view of the law laid down in the case of Dev Dutt (supra) since approved by the Apex Court in the case of Sukhdeo Singh (supra) it is now well settled that all A.C.Rs. even if, categorized as ''good'' must be communicated to the incumbents concerned. Now communication of the ACR within reasonable time, even if assumed as ''fair'', ''average'', ''good'' or ''very good'' may work adversely against an incumbent in two ways:

(a) if the entry had been communicated, he would know about the assessment of the work and conduct by his superiors, which will help him to improve his work in future; and

(b) he would have an opportunity of making a representation against the entry if, he feels he has unjustified being downgraded.

21. The Apex Court had gone on to hold that non-communication of A.C.R. entries is arbitrary and, therefore, violative of Article 14 of the Constitution of India. We may also

record that the Apex Court has further gone to hold that it would be conducive to fairness and transparency in public administration and would result in fairness to public servant if, even good entries are communicated to the public servant. The Supreme Court in paragraph 5 of its judgment in the case of Sukhdeo Singh (supra) has referred to the judgment in case of Abhijit Ghosh Dastidar v. Union of India and has gone on to hold that only communicated entries can be taken into consideration in the matter of promotion. Consideration of non-communicated entries even if ''good'' would be arbitrary.

22. The issue in the facts of this case is not with regards to non-communication of entries and its Consideration in the matter of promotion. The proceedings have traveled much ahead as already notice above.

23. It is apparently clear that subsequent to order of Central Administrative Tribunal dated 19.9.2008, the uncommunicated good entries were made known/available to Saroj Kumar under the letter of Controller of Finance and Accounts dated 12.6.2009. He was also offered an opportunity to make his representation against the entries, so communicated. The applicant Saroj Kumar did file a, representation challenging the entry and for upgradation of the same as ''outstanding'' in the relevant years. This representation was rejected vide order dated 22.1.2010. This led to filing of another Original Application No. 490 of 2010. The Tribunal under order dated 27.4.2010 allowed the original application after recording that order on the representation was not a reasoned order and directed reconsideration of representation in the light of Dev Dutt''s case 2013 (137) FLR 907 (SC) : JT 2013 (8) 270.

24. The Union of India was not satisfied and, therefore, it approached the High Court. The High Court recorded reasons for upholding the judgment of the Tribunal. It was held that if the Accepting Authority was to refer to certain complaints for downgrading the applicant then, there must be some material on record or its reference with some details to indicate that the Accepting Authority had reasons to believe the allegations in such complaints and it is in this background that the High Court had refused to interfere with the order of the Tribunal.

25. We may record that the Tribunal under its order dated 27.4.2010 as well as the High Court while dismissing the writ petition on 21.2.2011 had not directed the consideration of the claim of the respondent No. 1 Saroj Kumar for promotion after ignoring the uncommunicated good entries through Review D.P.C.

26. Saroj Kumar accepted the order of the Tribunal dated 27.4.2010, inasmuch as, he did not challenge the same any further. Saroj Kumar was also a party before the High Court in the writ petition filed by Union of India against the order dated 27.4.2010.

27. If Saroj Kumar wanted his claim for promotion to be considered ignoring the uncommunicated A.C.Rs., he should have challenged the order of the Tribunal dated 27.4.2010. The observations made by the High Court while upholding the order of the

Tribunal dated 27.4.2010 necessarily lead to the conclusion that the representation of respondent No. 1 Saroj Kumar against the adverse entries had to be decided by recording cogent reasons and by referring to the materials as may be available afresh.

28. In the facts of the case, we further find that in original application made by Saroj Kumar giving rise to the present writ petition, there was no prayer for his claim for promotion being considered ignoring the uncommunicated A.C.Rs. On the contrary, he had prayed for quashing of the order rejecting his representation against the A.C.Rs. and thereafter, for reconsideration of his claim for promotion.

29. So far as the merits of the order rejecting the representation against the adverse entries is concerned, we find that the Tribunal has not recorded any reasons for disagreeing with the conclusions drawn by the competent authority in its detail order, which was supported by reasons. The Tribunal appears to have been swayed by the fact that uncommunicated entries could not be taken into consideration in the matter of promotion of respondent No. 1. But the Tribunal lost sight of the fact that in between the parties much water had flown since then.

30. The merits of the order impugned in the Original Application rejecting the representation of respondent No. 1 against the A.C.R. entry and refusing to upgrade the same did need examination on the basis of material on record. In the totality of the circumstances on record, we are inclined to hold that the Tribunal is not justified in either quashing the order dated 23.3.2011 or in issuing the direction that the claim of Saroj Kumar be considered for promotion ignoring the uncommunicated entries of A.C.R. in the facts of the case. The order of the Tribunal dated 16.1.2012 is hereby set aside. The Original Application No. 658 of 2011 stands restored to its original number. The Tribunal may proceed to examine the merits of the order rejecting the representation afresh after affording opportunity of hearing to the parties in the light of observations made herein above. The exercise may be completed preferably within 4 months from the date a certified copy of this order is produced before the Tribunal.

The writ petition is allowed.