

(2008) 07 MP CK 0043

Madhya Pradesh High Court

Case No: None

R.T. Panthare

APPELLANT

Vs

The State of Madhya Pradesh
and Another

RESPONDENT

Date of Decision: July 7, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14, 309

Citation: (2008) 4 MPHT 197

Hon'ble Judges: Sanjay Yadav, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Sanjay Yadav, J.

The sole issue which comes up for consideration in the present petition is whether the petitioner is entitled for the communication of remarks recorded in his Annual Confidential Roll even when these remarks are not adverse, though at some point of time in the service career the same may come in his way in career progression.

2. The facts in nutshell leading to cropping up to aforesaid issue may be noted first. The petitioner was initially appointed in the Sub-ordinate Accounts Service Cadre on 28-6-1973 and was subsequently confirmed in the cadre with effect from 1-8-1979. The promotion from the Subordinate Accounts Service is to that of Accounts Officer/Treasury Officer in the Madhya Pradesh Accounts Service. It is the case of the petitioner that though eligible for being promoted as Accounts Officer/Treasury Officer, he was superceded by order dated 15-6-84 when his junior was recommended by the Departmental Promotion Committee which held its meeting on 12-11-83. Being aggrieved the petitioner preferred a writ petition before this Court vide M.P. No. 3791/85 which was transferred to and decided by the Madhya

Pradesh Administrative Tribunal on 21-1-1-94, in T.A. No. 1753/88. The Tribunal negatived the claim put forth by the petitioner on the ground that the petitioner did not fulfill the required criteria, viz., majority of 5 reports should be at least "good" (better than average) and the reports of last two years should be good (better than average) and since the petitioner was having average to his credit, i.e., "C" grade, he was not found suitable for promotion. The Tribunal, however, afforded an opportunity to the petitioner to approach the department against the awarding of grade "C". The petitioner taking cue from the aforesaid direction preferred a representation, however, the same was not entertained on the ground that no case is made out for review of grading of Annual Confidential Reports of the year 1980 to 1983, vide order dated 6-3-96, Annexure-A-1.

3. Criticizing the aforesaid order it is urged on behalf of the petitioner that the promotions to the post of Accounts Officer/Treasury Officer are governed by the Rules framed under Article 309 of the Constitution, [known as, Madhya Pradesh Accounts Service (Recruitment and Conditions of Service) Rules, 1965] and the same is on the basis of merit and seniority. It is contended that the assessment of merit is on the basis of yardstick adopted by the Departmental Promotion Committee. Learned Counsel for the petitioner placing reliance on the proceedings of the Departmental Promotion Committee held on 12-11-1983, points out the yardstick of merit adopted is: (i) majority of five reports should be at least "good" (better than average) and the last two years" reports should be "good" (better than average). It is submitted that since bench mark was fixed by the Departmental Promotion Committee for assessing merit, any grading below the yardstick ought to have been treated as adverse to the effect that the same was coming in way of career progression and should have been communicated, enabling the petitioner to have an opportunity to represent against the same for its upgradation, and unless such opportunity is given, the same should not have been taken into consideration. To bring home his submissions the learned Counsel for the petitioner places reliance on judgments of the Apex Court in the case of *Dev Dutt v. Union of India and Ors.* AIR 2008 SCW 3486; [State of U.P. Vs. Yamuna Shanker Misra and another,](#) and [Hav. Gambhir Singh Chahar Vs. Union of India \(UOI\) and Others,](#).

4. Contradicting the submissions put forth on behalf of the petitioner, it is submitted by learned Counsel for the State that there is no provision to communicate the entries, including the grading recorded in the Annual Confidential Report which are not adverse. It is submitted that the criteria fixed by the Departmental Promotion Committee for assessing the merit that the majority of the five reports should be at least "good" (better than average) and last two years" reports should be "good" (better than average) does not tantamount that the bench mark for the assessment of merit was only "good". It is contended that even a person having average recorded in the Annual Confidential Report are eligible subject of course to the stipulation contained in the yardstick fixed by the Departmental Promotion Committee. Reliance placed on the case of [Union of India \(UOI\) and Another Vs.](#)

Major Bahadur Singh, .

5. Considered the rival submissions put forth by the learned Counsel to the parties. The legal position in respect of the issue as to whether an employee is entitled for communication of remarks/grading recorded in Annual Confidential Roll even when the same are not adverse has come to be settled. Recently the Apex Court in the case of Dev Dutt (supra) after considering the catena of judgments was pleased to hold that every entry must be communicated to the employee concerned so that he may have an opportunity of making a representation against it if he is aggrieved. Their Lordships were of the following opinion:

14. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, noncommunication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry.

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. 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.

45. 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.

6. Thus in view of the law as laid down by the Apex Court in the of Dev Dutt (supra) the present petition is allowed and the respondents are directed to communicate to the petitioner "average" entry of the period from 1980 to 1983 within a period of 15 days from the date of communication of this order and the petitioner is permitted to make a representation against the same within the period of 15 days. The

respondents are further directed to decide the representation given by the petitioner within a period of 15 days from the date of receiving the same and if the entries of the relevant years are upgraded then the respondents are directed to consider the claim of the petitioner for promotion to the post of Accounts Officer/Treasury Officer in the Madhya Pradesh Accounts Service from the date when his junior was considered, by holding a review Departmental Promotion Committee. The said exercise of holding a review Departmental Promotion Committee be completed within a period of 30 days and if the petitioner is found suitable then all consequential benefit be granted to the petitioner. The petition is allowed to the extent above. No order as to cost.