

**Union of India Vs. Rasika Chaube**

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**Court :** Delhi

**Decided On :** Sep-05-2013

**Judge :** S.Ravindra Bhat

**Appellant :** Union of India

**Respondent :** Rasika Chaube

**Advocate for Def. :** Mr. V.S.R. Krishna

**Advocate for Pet/Ap. :** Mr. Rajeeve Mehra, Mr. Amrit Pal Singh, Ms. Shruti Aggarwal, Mr. Kartikey Mahajan

**Judgement :**

\$~2 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % DECIDED ON:

05. 09.2013 + W.P. (C) 5453/2013 CM APPL.12193, 12195/2013 UNION OF INDIA ..... Petitioner Through: Mr. Rajeeve Mehra, ASG with Mr. Amrit Pal Singh, CGSC, Ms. Shruti Aggarwal and Mr. Kartikey Mahajan, Advocates. versus RASIKA CHAUBE ..... Respondent Through: Mr. V.S.R. Krishna, Advocate. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT) 1. The present petition is directed against the order of the Central Administrative Tribunal (for short C.A.T.) issuing the respondent/petitioner herein, directions that she ought to be considered for promotion to Junior Administrative Grade (JAG) in the Defence Accounts Service, in 1995. The C.A.T., by the impugned order, allowed

the petition and issued the directions sought for; it held that a review DPC was warranted on the basis of the established facts and circumstances.

2. The respondent (hereafter referred to as applicant) is a 1986 batch Defence Accounts Service official. At the relevant point of time, i.e., in 1995, her case for consideration for promotion to the JAG was considered along with W.P.(C)5453-13 Page 1 other eligible officers. She was assessed as Very Good; the others were reported to be Outstanding. Consequently, her name was placed at Sl. No.5 in the panel. The applicant stated, during the course of proceedings, before the C.A.T. that she had accessed the ACR gradings for the relevant year 1991-92 and 1993-94 by invoking the provisions of the Right to Information Act, 2005. On the basis of those replies given to her queries, which were to the effect that there was a drop in her performance at the relevant time, she made representations to the higher officer who had recorded the ACRs.

3. Her complaint was that the Reviewing and Accepting Authorities had downgraded the ACRs from Outstanding to Very Good. It was also her case that for one year, the ACR was declared to be non est. In view of these facts which apparently had not been communicated to her, at the relevant time, - she made representations to the higher authorities which accepted the appeal, remedied the shortcomings and restored the ACRs which meant that the Reporting Officers observations of Outstanding prevailed. For the period 1.4.1994 to 31.3.1995, the ACR was declared non est. On the basis of further representations, DPC was held again. This time too, the petitioner was not given any relief. As regards the period declared non est in line with prevailing instructions, DPC considered the performance of the year 1989-90. As regards the other period for which the ACR had been restored, the DPC was of the view that since this area was not covered by any instructions issued by the Do PT, no relief could be given to her despite restoration of the ACR by the competent authority.

4. The Tribunal by the impugned order accepted the petitioners grievance and held that after hearing the parties and considering the materials on record including the decisions cited before it:

14. Apart from the minor difference between the present case and Dev Dutts case (supra), in both cases, there were adverse effects on the applicant/appellant. In the present case, while the applicant was superseded by three of his junior colleagues, in Dev Dutts case (supra), the Appellant was not even considered for promotion. In Dev Dutts case W.P.(C)5453-13 Page 2 (supra), the Apex Court has, therefore, directed the respondent to communicate the Good entry given to the appellant to enable him to make a representation to the Competent Authority and if his entry was upgraded, to give him promotion retrospectively by the DPC. In the present case, the Competent Authority has already, on the representation of the applicant who came to know about her supersession, in reply to her query under the Right to Information Act, 2005, upgraded her as Outstanding but the DPC refused to consider her case on the arbitrary ground that the DOP&T has not issued any instructions for the purpose.

15. In our considered view, the stand taken by the DOP&T that in the absence of instructions, the Competent Authority could not have considered the request of the Applicant for expunction of the grading given to her in the earlier ACRs which are not adverse, cannot stand the test of law in the face of the aforesaid judgment of the Apex Court in Dev Dutts case as well as the Right to Information Act, 2005 providing more transparency in governance. With the introduction of the aforesaid Act, the significance of any instructions by the DOP&T to communicate the entries has been substantially reduced. Today, the copies of the entire ACRs can be obtained under the aforesaid Act and representations can be given by the Government servants and they are to be considered by the Competent Authority as a matter of right of the employee.

5. Learned ASG urges that even though the Tribunal has applied the ratio in Dev Dutt v. Union of India & Ors. (2008 (8) SCC 72) which has been further reiterated later in Sukhdev Singh v. Union of India & Ors., Civil Appeal No.5892/2006 decided on 23.04.2013, the fact remains that the substantive rights of the applicant had to be determined on the basis of the DoPTs instructions. Since no such instructions had been issued, the mere upgradation or restoration of an ACR could not give any practical benefit to officials such as the respondent. It was also urged that the correctness of the view taken in Dev Dutts case has been questioned and

the matter referred to a Larger Bench for its final decision. This Court has considered the submissions of the parties. The ruling in *Dev Dutts* case in fact affirmed the previous ruling in *U.P. Jal Nigam & Ors. v. Prabhat Chandra Jain & Ors.*, (1996) 2 SCC 363. In both those decisions, Supreme Court had indicated that a drop in performance level of an employee had to be necessarily communicated at the relevant time to enable the official W.P.(C)5453-13 Page 3 concerned to seek departmental or administrative redress as that would in all likelihood protect his or her chance for upward career progression. This view has been assimilated in further rulings by various High Courts and again reiterated in *Sukhdev Singhs* case (*supra*). In *Sukhdev Singhs* case, the Court observed as follows:

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.

6. This Court is of the opinion that having conceded to the applicants request for revisiting the original ACR gradings which resulted in administrative injustice to her, the further view taken by the Departmental Promotion Committee - and sought to be tenaciously argued before the Tribunal and later today before this Court - that in the absence of any Do PT instructions the said benefit would remain ineffective, is stated to be rejected. What essentially the Union seems to be urging in these proceedings is that even though it is its duty to do proper justice and is in fact so done while upgrading the ACR upon representation of the employee who deserves it, it would yet not give full effect and further benefit to the employee due

to its own lack of communication/or failure to issue the necessary instructions. The palpable arbitrariness of this argument is writ large. That such an argument can even be made before the Courts much less countenanced, has to be highlighted as an example of sheer obduracy.

7. W.P.(C)5453-13 In view of the above discussion, the Court is of the opinion that there is no Page 4 infirmity in the approach or directions issued by the C.A.T. and the impugned order. The same is accordingly affirmed. The Writ Petition is, therefore, dismissed. S. RAVINDRA BHAT, J NAJMI WAZIRI, J SEPTEMBER 05 2013 /vks/ W.P.(C)5453-13 Page 5

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