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PANKAJ PRAKASH

v.

UNITED INDIA INSURANCE CO LTD & ANR

(Civil Appeal Nos. 5340-5341 of 2019)

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JULY 10, 2019

**[DR DHANANJAYA Y. CHANDRACHUD AND
INDIRA BANERJEE, JJ.]**

C *Service Law: Promotion – Annual Performance Appraisal Report (APAR) – Communication of – Held: Every entry in ACR of a public servant must be communicated to him/her within a reasonable period – Legitimate grievance can be made in respect of non-communication of the entries – On facts, in a writ petition by employee challenging the non-disclosure of entries in APAR for 2010-2011 and 2011-2012 due to which the employee was unable to submit a representation at the material time, the High Court erred in holding that absent an adverse entry or an entry below the benchmark, the failure to communicate did not result in an actionable grievance – Thus, the order of the High Court set aside.*

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Allowing the appeals, the Court

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HELD: 1.1 The law laid down by the two-judge Bench of this Court in **Dev Dutt's case* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period, has been reaffirmed by three judges in ***Sukhdev Singh's case*. The judgment is declaratory in nature. The Union of India had also issued Office Memoranda on 14.05.2009 and 13.04.2010 seeking compliance by all Ministries and Departments. Moreover, on 19.10.2012, a specific communication was also addressed to public sector insurance companies. Even independent of these communications, the respondent was duty bound to comply with the law laid down by this Court. They cannot urge that the decision having been implemented from 2013-14, it has no application for the earlier years. [Paras 8, 9] [946-C, F-H]

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1.2 For the normal channel, the appellant secured 64.45 marks against the cut-off of 68.98 for promotion from Scale III to

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Scale IV. For one of the years under consideration (2011-12) for the promotional exercise for 2014-15, the appellant was graded a “B”, while for the subsequent two years, he was graded an “A”. Consequently, the fact that the appellant was given a lower grading for 2011-12 would materially affect whether or not he should be promoted from Scale III to Scale IV for the year in question. The non-communication of the entries is, thus, a matter in respect of which a legitimate grievance can be made by the appellant. [Paras 12, 13] [947-F-H]

1.3 The promotional exercise of 2014-15 has been completed. The appellant has since been promoted in 2018. The ends of justice would be made if a direction is issued to the respondent to consider the representation, if any, that may be submitted by the appellant in respect of the grading which was assigned to him for the relevant years which were taken into consideration during the promotional exercise for 2014-15. [Para 14] [948-A-B]

1.4 It is directed that that within a period of one month from the date of receipt of a certified copy of this order, the respondent would communicate to the appellant the uncommunicated entries in the APARs for the years which were taken into account for the promotional exercise of 2014-15, to which, it would be open to the appellant to submit his objections and representation to the respondent within the stipulated period. The representation would be considered and thereafter, based on the result of the decision, the competent authority would take a decision on whether any modification in the decision for promotion from Scale III to Scale IV for 2014-15 in respect of the appellant is warranted. In order to ensure that this exercise is carried out fairly, it is directed that the competent authority would ensure that the representation that is submitted by the appellant is placed before an authority at a sufficiently senior level to obviate any bias or injustice. [Para 15] [948-C-F]

Dev Dutt v Union of India* (2008) 8 SCC 725 : [2008] 8 SCR 174 ; *Sukhdev Singh v. Union of India* (2013) 9 SCC 566 : [2013] 5 SCR 1004 – relied on.

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Case Law Reference

[2008] 8 SCR 174 relied on Para 4

[2013] 5 SCR 1004 relied on Para 4

B CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5340-5341 of 2019

From the Judgment and Orders dated 06.10.2016 and 17.01.2017 of the High Court of Judicature at Allahabad, Lucknow Bench in Writ Petition No. 7631 (S/B) of 2016 and in Review Application No. 103173 of 2016 respectively

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Dr. Manish Singhvi, Sr. Adv., Romil Pathak, Shailja Nanda Mishra, Ashwani Bhardwaj, Advs. for the Appellant.

P. P. Malhotra, Sr. Adv., Vineet Malhotra, Mohit Paul, Yasir Rauf, Shubhendu Kaushik, Ms. Sunaina Paul, Advs. for the Respondents.

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The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J

1. Leave granted.

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2. The dispute in the present case arises from the appellant's claim for promotion from Scale III to Scale IV in the services of the respondents. The year of promotion is 2014-2015.

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3. The grievance of the appellant is that the entries in his Annual Performance Appraisal Report¹ for 2010-11 and 2011-12 were not disclosed, as a result of which he was unable to submit a representation at the material time. The appellant had the following gradings in the APARs:

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(i)	2010-2011	“C”
(ii)	2011-2012	“B”
(iii)	2012-2013	“A”
(iv)	2013-2014	“A”

4. Relying on the two-judge Bench decision of this Court in *Dev Dutt v Union of India*² and the subsequent decision of the three-judge

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¹ “APAR”

Bench in *Sukhdev Singh v Union of India*³, the appellant contended that the failure to communicate the entries for 2010-11 and 2011-12 is contrary to the law laid down by this Court. Moreover, it has been submitted that on 14 May 2009 and 13 April 2010, the Union of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) had issued directions for implementation of the decision in *Dev Dutt (supra)*. Thereafter, on 19 October 2012, the Union of India in the Ministry of Finance (Department of Financial Services) had drawn the attention of public sector insurance companies to the earlier Office Memorandum dated 14 May 2009 seeking immediate compliance. In this background, it has been submitted that the High Court of Judicature at Allahabad, which was moved by the appellant in proceedings under Article 226, was in error in coming to the conclusion that absent an adverse entry or an entry below the benchmark, the failure to communicate did not result in an actionable grievance. The High Court dismissed the writ petition by its judgment dated 6 October 2016 as well as the review petition by its judgment dated 17 January 2017. The present proceedings were instituted assailing the judgments of the High Court.

5. In the counter affidavit filed on behalf of the respondent, it has been stated that following a circular dated 18 March 2014, all public sector insurance companies have disclosed APARs since appraisal year 2013-14. It has been submitted that in consequence, there was no necessity to disclose the APARs to the appellant for the relevant years (2010-11 and 2011-12).

6. Adopting the line of submission which has been set out in the counter affidavit, Mr P P Malhotra, learned senior counsel appearing on behalf of the respondents, submitted that in terms of the Promotion Policy for Officers – 2006⁴, promotions from Scale III to Scale IV are based on (i) a written test; (ii) the work record; and (iii) seniority. It was submitted that in the present case the appellant failed to fulfill the cut-off for promotion of 68.98 marks, as disclosed to him on 9 September 2014.

7. Dr. Manish Singhvi, learned senior counsel appearing on behalf of the appellant, submitted that the defence which has been set out on behalf of the respondent has no substance since, following the law laid

² (2008) 8 SCC 725

³ (2013) 9 SCC 566

⁴ Annexure P-1

A down by this Court in *Dev Dutt (supra)*, all entries in the APARs are
required to be communicated. Non-communication of the entries, in the
present case, is a matter of prejudice since the communication dated 9
September 2014 indicates that, in appraising his work record, the appellant
was given 40.15 marks out of a maximum of 45. This indicates that the
B uncommunicated entries for 2010-11 and 2011-12 have weighed against
him.

8. While assessing the rival submissions, we must, at the outset,
note that the law laid down by the two-judge Bench of this court in *Dev
Dutt (supra)* has been reaffirmed by three judges in *Sukhdev Singh
C (supra)*. In *Sukhdev Singh (supra)*, this Court held:

“8. In our opinion, the view taken in *Dev Dutt* [*Dev Dutt v. Union
of India*, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] 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
D 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
E 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—
F poor, fair, average, good or very good—must be communicated to
him/her within a reasonable period.”

9. The Union of India had also issued Office Memoranda on 14
May 2009 and 13 April 2010 seeking compliance by all Ministries and
Departments. Moreover, on 19 October 2012, a specific communication
was also addressed to public sector insurance companies. Even
G independent of these communications, the respondent was duty bound
to comply with the law laid down by this Court. They cannot urge that
the decision having been implemented from 2013-14, it has no application
for the earlier years. The judgment of this Court is declaratory in nature.

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10. Learned senior counsel appearing on behalf of the respondent, while placing reliance on the disclosure made to the appellant on 9 September 2014, submitted that even if a communication were to be made, no difference would result in the ultimate outcome. Mr. Malhotra urged that the promotion for 2014-15 depended on the APARs for 2011-12, 2012-13 and 2013-14.

11. The relevant part of the communication dated 9 September 2014 provides thus:

“1. The marks secured by you in the Promotion Exercise 2014-15 is as under:

	Normal Channel	Fast Track	C
Written Test	20.1	26.81	
Work Record (WR)	40.15	35.69	
Seniority	4.2	N/A	
Interview	N/A	16	D
Total	64.45	78.5	

2. The cut-off marks for promotion (Scale III to IV) is as under:

Normal Channel	68.98	E
Fast Track	84.14"	

12. The above communication indicates that for the normal channel, with which we are concerned, the appellant secured 64.45 marks against the cut-off of 68.98 for promotion from Scale III to Scale IV.

13. Admittedly, for one of the years under consideration (2011-12) for the promotional exercise for 2014-15, the appellant was graded a “B”, while for the subsequent two years, he was graded an “A”. Consequently, the fact that the appellant was given a lower grading for 2011-12 would materially affect whether or not he should be promoted from Scale III to Scale IV for the year in question. The non-communication of the entries is, therefore, a matter in respect of which a legitimate grievance can be made by the appellant, particularly having regard to the position in law laid down in *Dev Dutt (supra)* and *Sukhdev Singh (supra)*.

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A 14. The next question to consider is the substantive relief which should be granted to the appellant. The promotional exercise of 2014-15 has been completed. The appellant has since been promoted in 2018. The ends of justice would be made if a direction is issued to the respondent to consider the representation, if any, that may be submitted by the appellant in respect of the grading which was assigned to him for the relevant years which were taken into consideration during the promotional exercise for 2014-15.

15. We issue the following directions:

- C (i) Within a period of one month from the date of receipt of a certified copy of this order, the respondent shall communicate to the appellant the uncommunicated entries in the APARs for the years which were taken into account for the promotional exercise of 2014-15;
- D (ii) Within a period of two months from the date of receipt of the above, it would be open to the appellant to submit his objections and representation to the respondent;
- E (iii) The representation shall be considered within a period of three months from the date of receipt of the representation;
- E (iv) Thereafter, based on the result of the decision, the competent authority shall take a decision on whether any modification in the decision for promotion from Scale III to Scale IV for 2014-15 in respect of the appellant is warranted; and
- F (v) In order to ensure that this exercise is carried out fairly, we direct that the competent authority shall ensure that the representation that is submitted by the appellant is placed before an authority at a sufficiently senior level to obviate any bias or injustice.

G 16 The impugned judgments and orders of the High Court are set aside. The appeals are allowed in the above terms. There shall be no order as to costs.