

ANIL KUMAR

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v.

UNION OF INDIA AND ORS.

(Civil Appeal No. 888 of 2019)

JANUARY 21, 2019

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**[DR. DHANANJAYA Y CHANDRACHUD AND  
HEMANT GUPTA, JJ.]**

*CSIR Recruitment & Promotions Rules for Administrative Staff, 1982 – Claim for financial upgradation and promotion – Appellant was aggrieved by the rejection of his claim for financial upgradation and promotion by the Council for Scientific and Industrial Research (CSIR) – Appellant contended that the failure to communicate the Annual Confidential Reports (ACRs) in which he had failed to meet the benchmark violated the O.Ms issued by the Department of Personnel and Training – CAT rejected the said contention and upheld the rejection by the CSIR – Order of the CAT was affirmed by the High Court – On appeal, held: Both the CAT and the High Court were in error in coming to the conclusion that CSIR being an autonomous entity and having adopted the O.Ms of the Department of Personnel and Training with effect from a specified date, the appellant could not make a grievance of the non-communication of the ACRs for the relevant period – In Dev Dutt v. Union of India & Ors., it was held that fairness in public administration and transparency require that all entries in the Annual Confidential Reports (ACRs) of a public servant must be communicated within a reasonable period in order to enable the employee to make a representation for upgradation and a failure to communicate would be arbitrary – In instant case, the failure to communicate the ACRs deprived the appellant of the opportunity to submit his representation in the matter of financial upgradation – Subsequently, appellant was furnished with opportunity to submit his representation for regular promotion, but it was not considered – CSIR being an autonomous body do have certain administrative privileges, but it cannot claim a privilege not to comply with the judgment of the Supreme Court – CSIR was bound to follow the principles laid down in Dev Dutt's case – Thus, appellant granted an opportunity to submit his representation in respect of the ACRs for the concerned years*

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- A *where he did not fulfil the benchmark for financial upgradation – Service Law.*

**Council for Scientific and Industrial Research (CSIR)** notified the eligibility of the appellant for grant of financial upgradation with effect from 10 May 2011. However, the name of B the appellant did not appear in the list of officers for financial upgradation. The ACRs of the appellant were below the benchmark required for certain years namely 2003-2004, 2008-2009 and 2009-2010. The gradings were communicated to the appellant on 9 July 2014 to which he submitted a representation for regular promotion, but it was not considered. The appellant C was neither granted a financial upgradation nor was he promoted as a part of the exercise of regular promotion to the higher post. Central Administrative Tribunal did not find any substance in the appellant's grievance. Writ petition filed by the appellant before the High Court was also rejected. Hence, the present Appeal.

- D **Allowing the appeal, the Court**

**HELD:** 1. In *Dev Dutt vs. Union of India & Ors.* a two Judge Bench of this Court held that fairness in public administration and transparency require that all entries in the Annual Confidential Reports of a public servant must be E communicated within a reasonable period in order to enable the employee to make a representation for upgradation. The view of the Court was that non-communication of entries in the ACRs has civil consequences since it may affect the chances of the employee for promotion and other benefits. A failure to F communicate would be arbitrary. This Court held that these directions would apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State, in addition to government servants. [Para 13] [526-B-D]

2. A three Judge Bench of this Court has in *Sukhdev Singh G vs. Union of India & Ors.* affirmed the correctness of the view taken in *Dev Dutt* noting that an earlier three Judge Bench in *Abhijit Ghosh Dastidar vs. Union of India & Ors.* had adopted the same principle. [Para 14] [526-D-E]

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3. In view of the Supreme Court judgments, both the Tribunal and the High Court were in error in coming to the conclusion that CSIR being an autonomous entity and having adopted the O.Ms of the Department of Personnel and Training with effect from a specified date, the appellant could not make a grievance of the non-communication of the ACRs for the relevant period. [Para 16] [527-B]

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4. The failure to communicate the ACRs deprived the appellant of the opportunity to submit his representation in the matter of financial upgradation. Subsequently, the appellant was furnished with an opportunity to submit his representation before his case was taken up for regular promotion, but his representation was not considered. [Para 17] [527-C]

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5. The appellant did not have the benefit of submitting his representation when the Screening Committee took up the case for financial upgradation. CSIR by reason of its autonomy may have certain administrative privileges. No authority can, however, claim a privilege not to comply with a judgment of this Court. Once the law was enunciated in Dev Dutt's case, all instrumentalities of the State were bound to follow the principles laid down by this Court. CSIR was no exception. [Para 18] [527-D-E]

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6. The appellant has since retired from service on 30 September 2014. The grant of MACP benefit is not a matter of right and it is after the Screening Committee finds that the officer meets the benchmark that an upgradation can be granted. Hence, this Court is of the view that the appellant should be granted an opportunity, to submit his representation in respect of the ACRs for the concerned years where he did not fulfil the benchmark for financial upgradation. Upon the submission of his representation, the respondents shall consider it and communicate the outcome to the appellant. Based on that decision, the case of the appellant for financial upgradation shall be considered afresh. In the event his ACRs for the relevant period are upgraded, the case for financial upgradation shall be further determined and the case of the appellant for promotion to the post of Senior Deputy Secretary/ Controller of Administration shall be considered afresh by the Departmental Promotion Committee expeditiously. [Paras 19, 20, 21 and 22] [527-F-H; 528-A-B]

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A *Dev Dutt v. Union of India & Ors. (2008) 8 SCC 725 : [2008] 8 SCR 174 ; Sukhdev Singh v. Union of India (2013) 9 SCC 566 : [2013] 5 SCR 1004 : Abhijit Ghosh Dastidar v. Union of India & Ors. (2009) 16 SCC 146 – relied on.*

B	<u>Case Law Reference</u>		
	[2008] 8 SCR 174	relied on	Para 13
	[2013] 5 SCR 1004	relied on	Para 14
	(2009) 16 SCC 146	relied on	Para 14

C CIVIL APPELLATE JURISDICTION : Civil Appeal No.888 of 2019.

From the Judgment and Order dated 13.07.2016 of the High Court of Punjab and Haryana at Chandigarh in CWP No.13390 of 2016.

D D.N. Goburdhun, Prashant Chaudhary, R.K. Singh, Syed Jafar Hussain, Advs. for the Appellant.

Jayesh K. Unnikrishnan, Vijay Pratap Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

E **DR. DHANANJAYA Y. CHANDRACHUD, J.**

1. Leave granted.

F 2. The appellant was aggrieved by the rejection of his claim for financial upgradation by the Council for Scientific and Industrial Research (“CSIR”) with effect from 10 May 2011. He was also aggrieved by not being promoted to the post of Senior Controller of Administration / Senior Deputy Secretary in Pay Band-4 i.e. Rs.37,400 – 67,000 with a grade pay of Rs. 8700 in respect of vacancies for 2013-2014 under the CSIR Recruitment & Promotion Rules for Administrative Staff, 1982.

G 3. He moved the Central Administrative Tribunal, Chandigarh. The Tribunal did not find any substance in his grievance for the reason that he did not fulfil the benchmark of “Very Good” for financial upgradation. The Tribunal was of the view that CSIR is an autonomous body and that the circulars issued by the Union of India would not *ipso facto apply*.

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4. The grievance of the appellant was that the failure to communicate the Annual Confidential Reports in which he had failed to meet the benchmark violated the O.Ms issued by the Department of Personnel and Training. A

5. The Tribunal rejected that contention holding that since CSIR had adopted the requirement of conveying the ACRs from a particular date in the future, the decision could not be questioned. On the issue of promotion, it has been held that this involved a selection on the basis of performance in service and in the interview and since the Departmental Promotion Committee had graded the appellant as “good”, he was not considered for promotion. This view of the Central Administrative Tribunal was challenged before the High Court of Punjab and Haryana. B

6. By a judgment dated 13 July 2006, the writ petition filed by the appellant was dismissed. C

7. The first grievance of the appellant was that he was entitled to financial upgradation under the MACP scheme adopted by CSIR. It is not in dispute that the benchmark prescribed was “Very Good” for financial upgradation to the grade pay of Rs. 7600/- and above. CSIR, by its letter dated 30 December 2013, notified the eligibility of the appellant for the grant of financial upgradation with effect from 10 May 2011. Similarly, by its circular dated 6 February 2014, CSIR issued an All India Final Seniority List of Common Cadre Officers as on 1 January 2014. The name of the appellant stood at Serial No. 2 in the category of Deputy Secretary/Controller of Administration. D

8. On 9 May 2014, CSIR declared the result of the exercise conducted by the Screening Committee which met on 21 April 2014. The name of the appellant did not appear in the list of officers for financial upgradation from 10 May 2011. E

9. The ACRs of the appellant were below the benchmark required for certain years namely 2003-2004, 2008-2009 and 2009-2010. F

10. The gradings were eventually communicated to the appellant on 9 July 2014 to which he submitted a representation and appeared for the interview for regular promotion for 2013-2014. The grievance is that the representation was not considered. When the panel for the post of Senior Deputy Secretary/Senior Controller of Administration for 2013-2014 was notified, officers junior to the appellant were empaneled for promotion. G

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- A 11. The appellant was neither granted a financial upgradation nor was he promoted as a part of the exercise of regular promotion to the higher post.
12. The High Court affirmed the view of the Tribunal and rejected the writ petition filed by the appellant.
- B 13. In *Dev Dutt vs. Union of India & Ors.*<sup>1</sup> a two Judge Bench of this Court held that fairness in public administration and transparency require that all entries in the Annual Confidential Reports of a public servant must be communicated within a reasonable period in order to enable the employee to make a representation for upgradation. The
- C view of the Court was that non-communication of entries in the ACRs has civil consequences since it may affect the chances of the employee for promotion and other benefits. A failure to communicate would be arbitrary. This Court held that these directions would apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State, in addition to government servants.
- D 14. A three Judge Bench of this Court has in *Sukhdev Singh vs. Union of India & Ors.*<sup>2</sup> affirmed the correctness of the view taken in *Dev Dutt* (supra) noting that an earlier three Judge Bench in *Abhijit Ghosh Dastidar vs. Union of India & Ors.*<sup>3</sup> had adopted the same principle.
- E 15. The three Judge Bench in *Sukhdev Singh* (supra), held thus:
- “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
- <sup>1</sup> (2008) 8 SCC 725
- <sup>2</sup> (2013) 9 SCC 566
- H <sup>3</sup> (2009) 16 SCC 146

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.”

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16. In view of the above statement of law, both the Tribunal and the High Court were in error in coming to the conclusion that CSIR being an autonomous entity and having adopted the O.Ms of the Department of Personnel and Training with effect from a specified date, the appellant could not make a grievance of the non-communication of the ACRs for the relevant period.

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17. The failure to communicate the ACRs deprived the appellant of the opportunity to submit his representation in the matter of financial upgradation. Subsequently, the appellant was furnished with an opportunity to submit his representation before his case was taken up for regular promotion, but his representation was not considered.

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18. The appellant did not have the benefit of submitting his representation when the Screening Committee took up the case for financial upgradation. CSIR by reason of its autonomy may have certain administrative privileges. No authority can, however, claim a privilege not to comply with a judgment of this Court. Once the law was enunciated in *Dev Dutt's case* (supra), all instrumentalities of the State were bound to follow the principles laid down by this Court. CSIR was no exception.

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19. The appellant has since retired from service on 30 September 2014.

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20. The grant of MACP benefit is not a matter of right and it is after the Screening Committee finds that the officer meets the benchmark that an upgradation can be granted.

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21. Hence, we are of the view that the appellant should be granted an opportunity, within a period of four weeks from today to submit his representation in respect of the ACRs for the concerned years where he did not fulfil the benchmark for financial upgradation. Upon the submission of his representation, the respondents shall consider it and communicate the outcome to the appellant within a period of two months thereafter. Based on that decision, the case of the appellant for financial upgradation shall be considered afresh. In the event his ACRs for the relevant period are upgraded, the case for financial upgradation shall be determined within a period of three months thereafter.

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- A 22. We also direct that in the event that the ACRs for the relevant period are upgraded, the case of the appellant for promotion to the post of Senior Deputy Secretary/Controller of Administration shall be considered afresh by the Departmental Promotion Committee expeditiously. This exercise shall be carried out with reference to the date on which his junior in service came to be promoted.
- B 23. In the event that the case of the appellant is considered favourably, he would be entitled to all consequential benefits which flow from the financial upgradation and upon the grant of regular promotion to the post of Senior Deputy Secretary.
- C 24. The appeal is, accordingly, allowed and the judgment of the High Court shall stand set aside.
25. Pending application(s), if any, shall stand disposed of.
26. No order as to costs.

Ankit Gyan

Appeal allowed.