

Union Of India Anr vs Mrs. Amrita Raj And Ors on 16 January, 2023

Author: V. Kameswar Rao

Bench: V. Kameswar Rao, Anoop Kumar Mendiratta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 3818/2018 & CM APPL. 15144/2018,
CM APPL. 15146/2018 and CM APPL. 40867/2018
UNION OF INDIA ANR.

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Through: Mr. Kirtiman Singh, CGSC wi
Mr. Waize Ali Noor, Mr. Mad
Bajaj, Ms. Kunjala Bhardwaj
Ms. Shreya Mehra
Ms. Durgeshnandini, for UOI

versus

MRS. AMRITA RAJ AND ORS. Respon
Through: Mr. O.P.Kalshian, Advocate for

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA
ORDER

% 16.01.2023 CM APPL. 15146/2018 (for placing additional documents on record) For the reasons stated in the application, the same is allowed and the additional documents are taken on record. Application disposed of.

W.P.(C) 3818/2018

1. This writ petition has been filed by Union of India / Engineer-in- Chief, Integrated Headquarters of MoD (Army) challenging the order dated May 30, 2016 passed by the Central Administrative Tribunal („Tribunal for short) in OA No.1754/2012 whereby the Tribunal has allowed the Original Application filed by the respondent No.1 in this petition and directed the petitioners to do the following:-

(1) The respondents shall communicate the below benchmark Annual Confidential Reports („ACR , for short) to the applicant, i.e., for the years 1998-99 and 1999-2000 within a period of one month providing opportunity of fifteen days to the applicant to represent against the below benchmark gradings.

(2) On receipt of representation from the applicant, the competent authority would

take a decision on the question of upgradation or otherwise of the ACR gradings within one month. (3) In the event, the below benchmark ACRs are upgraded, the applicant shall be considered for promotion by the review DPC within one month thereafter and all service benefits including further consideration for promotion to the post of Chief Architect with effect from the date respondent No.5 was empanelled / promoted.

2. The case of the respondent No.1 was for quashing the proceedings of the Departmental Promotion Committee („DPC , for short) dated November 17, 2003 whereby respondent No.2 herein was promoted to the grade of Senior Architect and further brought on the panel for promotion to the post of Chief Architect, with a further prayer that a review DPC be held on a year-to-year basis and not to take into account the uncommunicated downgraded entries in the ACRs considered by the DPC. It was further prayed that her seniority be restored in the grade of Senior Architect for her further consideration for promotion to the post of Chief Architect.

3. The facts, as noted from the record are that the respondent No.1 was appointed as Deputy Architect (Group-A) through selection by UPSC on November 30, 1991 and was appointed as such in Military Engineering Services. She was promoted as Architect on regular basis. On the basis of her seniority and eligibility, she was required to be considered for promotion to the post of Senior Architect. As per the instructions, the benchmark prescribed for promotion to the post of Senior Architect is „Very Good grading in the five years preceding the date an officer is due for promotion. The DPC considered all the eligible candidates for promotion to the grade of Senior Architect for the vacancy year 2004-05 on November 17, 2003. On the basis of the assessment, DPC promoted as many as 12 Architects, including respondent No.2 Upinder Kaur. The respondent No.1 was not recommended for promotion having been found „unfit . As the respondent No.1 was not promoted to the post of Senior Architect, she was not considered for empanelment as Chief Architect against the vacancies for the years 2008-09 and 2009-10. The respondent No.2 was considered for empanelment to the grade of Chief Architect and was accordingly included in the panel approved for promotion notified on February 08, 2010. On October 17, 2011, respondent No.1 had represented against her non- inclusion in the panel for promotion to the grade of Senior Architect, in terms of DPC minutes dated November 17, 2003.

4. The case set up by the respondent No.1 in the Original Application was that, she was ignored on the basis of below benchmark gradings in her ACRs. The representation of the respondent No.1 was rejected vide communication dated December 21, 2011 relying upon DoP&T OM dated April 13, 2010 wherein it is stated that prior to the reporting period 2008-09, only adverse remarks in the ACRs were required to be communicated.

5. The case of the petitioners before the Tribunal was that the respondent No.1 was found unfit for promotion to the post of Senior Architect. It was also stated that as the below benchmark ACR was not required to be communicated prior to 2008-09, and based on her ACR s, the DPC has not found her fit.

6. The respondent No.2 herein had also opposed the Original Application before the Tribunal. The Tribunal after relying upon the judgments of the Supreme Court in *Dev Dutt v. Union of India & Ors.* (2008) 8 SCC 725, *Sukhdev Singh v. Union of India & Ors.* (2013) 9 SCC 566 and *Abhijit Ghosh Dastidar v. Union of India & Ors.* (2009) 16 SCC 146 has by holding in paragraph 11 as under, allowed the Original Application with the directions, which we have already reproduced above.

"11. Even though the DOP&T issued office memorandum dated 13.04.2010 for communication of the ACRs for the reporting period 2008-09 onwards, however, from the dictum of the judgments of the Apex Court and of this Tribunal noticed by us hereinabove, we are of the considered opinion that non-communication of the ACRs has adversely affected the claim of the applicant for her consideration for promotion to the post of Senior Architect. The applicant had secured three „very good“ ACRs and only for two years her grading was „good“. She required at least four „very good“ gradings to earn promotion to the post of Senior Architect. Non-communication of below benchmark ACRs violates the right of the applicant for her consideration for promotion. If out of the two below benchmark ACRs, even if the ACR for one year is upgraded, the applicant would earn the promotion."

7. Mr. Kirtiman Singh, learned counsel appearing for the petitioners would, at the outset submit that, after the Tribunal has rendered the impugned judgment, the petitioners herein have upgraded the ACR of the respondent No.1 for the years 1998-99 and 1999-2000 but in terms of the guidelines issued by DoP&T dated April 13, 2010, which clearly stipulates that the same shall have a prospective effect i.e., w.e.f 2008-09, the action of the respondents not communicating the below benchmark ACR for the years 1998-99 and 1999-2000 which had a bearing for non-selection of the respondent No.1 to the post of Senior Architect, the Tribunal could not have given further directions for considering her case by way of a review DPC for the post of Senior Architect. He submits that if the directions given by the Tribunal are allowed to stand, then the same will have wide repercussions inasmuch as those cases of promotions which have attained finality wherein below benchmark ACR has not been communicated would also come before the Court seeking a similar benefit. He submits, if this Court allow the present petition then the upgraded ACRs of the respondent No.1 for the years 1998-99 and 1999-2000 shall become otiose / redundant / infructuous. In support of his submissions, Mr. Kirtiman Singh has relied upon the following judgments:-

(i) *P.S. Sadasivaswamy v. State of Tamil Nadu* (1975) 1 SCC 152;

(ii) *Malcom Lawrence Cecil D'Souza v. Union of India & Ors.* (1976) 1 SCC 599;

(iii) *Union of India and Ors. v. Mohd. Ramzan Khan* (1991) 1 SCC 588;

(iv) *Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.* (1993) 1 SCC 727;

(v) *U.P. Jal Nigam & Ors. v. Prabhat Chandra & Ors.* (1996) 2 SCC 363;

(vi) P.R. Deshpande v. Maruti Balaram Haibatti (1998) 1 SCC 507;

(vii) Mafatlal Industries Ltd. & Ors. v. Union of India and Others (1997) 5 SCC 536;

(viii) Dev Dutt v. Union of India & Ors. (2008) 8 SCC 725;

(ix) Union of India and Ors. v. Chaman Rana (2018) 8 SCC 798.

8. On the other hand, Mr. O.P. Kalshian, learned counsel appearing for the respondents would submit that, part of the impugned order dated May 30, 2016 of the Tribunal having been implemented by the petitioners and the ACRs having been upgraded, the petitioners cannot deny the other part of the directions given by the Tribunal in the impugned judgment. He states that the Tribunal has strictly followed the ratio of the judgments of the Supreme Court in Dev Dutt (supra) followed by Sukhdev Singh (supra) and Abhijit Ghosh Dastidar (supra) and as such, there is no illegality in the order. He also relies upon the following judgments in support of his contention, wherein according to him, the benefit of the judgment of the Supreme Court in Dev Dutt (supra) has been granted in favour of the employees.

(i) Union of India v. Rasika Chaube, W.P.(C) No.5453/2013;

(ii) Rukhsana Shaheen Khan v. Union of India, C.A. No.32/2013;

(iii) Union of India v. A.K. Saxena IDAS, W.P.(C) No. 5371/2014;

(iv) Prabhu Dayal Khandelwal v. Chairman, UPSC, C.A Nos. 8006- 8007/2003;

(v) Union of India & Anr. v. V.S. Arora & ors., W.P.(C) No. 5042/2002.

9. Having considered the submissions made by learned counsel for the parties, at the outset, we may state that the petitioner was not granted promotion to the post of Senior Architect, in terms of the DPC held on November 17, 2003. The said DPC had recommended promotion of the respondent No.2 to the post of Senior Architect. Concedingly, the respondent No.1 had not challenged her non-promotion on any ground. It was only when the respondent No.2 was empanelled on February 08, 2010 for a further higher post of Chief Architect. It was only after one and a half years, on October 17, 2011 that the respondent No.1 made a representation to the petitioners against her non-promotion as Senior Architect on the ground that the below benchmark ACR s have been considered. Surely, the challenge to her non-promotion by way of a representation on any ground, that too, in the year 2010 was highly belated. It appears that the said representation was made in view of the judgment of the Supreme Court in Dev Dutt (supra). No doubt, the Supreme Court has stated that the below benchmark ACR need to be communicated to the Officer to enable him / her make representation, but the fact remains, the respondent No.1 had not initially challenged her non-promotion even on the ground that the DPC has taken into account below benchmark ACR during the DPC held on November 17, 2003. The challenge was highly belated and the Tribunal could not have gone into the issue whether the below benchmark ACR s were required to be taken

into consideration by the DPC held on November 17, 2003 and should have dismissed the Original Application being barred by limitation. Regrettably, the Tribunal proceeded to consider a stale claim on merit and allowed the Original Application in the manner referred to in paragraph 1 above. The same is clearly untenable.

10. Though, Mr. Kirtiman Singh and Mr. Kalshian have referred to many judgments in support of their submissions, we find that the issue in question is no more res-integra in view of the judgment of the Supreme Court in the case of Union of India v. Chaman Rana (supra) wherein the Supreme Court was considering a case with the facts, where the respondents were superseded in the years 1996 and 2000 respectively. Both of them were subsequently promoted on November 28, 1997 and June 16, 2003 as Second-in-Command and Commandant respectively. Subsequently, both of them submitted several representations for promotion from the date of supersession. Orders rejecting the representations, along with reasons, were duly communicated to them more than once. After the pronouncement in Sukhdev Singh (supra) affirming Dev Dutt (supra), separate writ petitions were filed by them on September 25, 2016. A common plea taken was that the entry „good“ in their ACRs for the relevant years was an adverse remark in view of the benchmark of „very good“. Since the adverse entry had not been communicated to them, it could not be taken into consideration, requiring reconsideration of their case for promotion from the date of supersession.

11. The case set up by the appellant before the Supreme Court was that the writ petition ought to have been dismissed on the ground of delay and laches. Specific objection had been taken in the counter affidavit including the cascading effect that it would have had upon those promoted prior to the respondents, which would lead to administrative chaos. Mere filing of representations or a subsequent judgment, could not be sufficient justification to entertain such belated claims, de-hors the facts of a case. It was contended that the High Court ought not have given directions to consider their candidature with retrospective effect. The respondents had contended otherwise.

12. The question which arose before the Supreme Court was about the applicability of the law as declared in Dev Dutt (supra) and affirmed in Sukhdev Singh (supra) to the respondents in the facts and circumstances of that case. The Supreme Court has in paragraphs 7 to 16 has held as under:-

"7. Likewise, the respondent Gulshan Kumar Sharma was considered for promotion as Commandant in the years 2000-2001 and 2001-2002 by the DPC but was superseded as he failed to secure the benchmark. He represented on 25.10.2001 and was informed on 09.01.2002 that he had failed to secure the benchmark. The cause of action to approach the Court for grant of relief had accrued to the respondent but he again represented on 18.03.2002. An order of rejection along with reasons was again communicated to him on 01.09.2004. After he was promoted as Commandant on 16.06.2003, instead of approaching the Court, he again represented on 04.05.2005, followed by another representation on 08.01.2007. A reasoned order of rejection was again communicated to him on 17.04.2008. This was followed by further representation on 11.08.2009 which was again rejected on 02.09.2009 allegedly communicated on 01.01.2016. A further representation dated 03.08.2015 was also rejected on 27.11.2015. The writ petition then came to be instituted.

8. Manifestly, the cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on Dev Dutt (supra) be considered, the cause of action based thereon accrued on 12.05.2008. There has to be a difference between a cause of action and what is perceived as materials in support of the cause of action. In service matters, especially with regard to promotion, there is always an urgency. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financial burden on the government that would follow by such orders of promotion.

9. As far back as in P.S. Sadasivaswamy vs. The State of Tamil Nadu, (1975) 1 SCC 152, considering a claim for promotion belated by 14 years, this Court had observed that a period of six months or at the utmost a year would be reasonable time to approach a court against denial of promotion and that it would be a sound and wise exercise of discretion not to entertain such claims by persons who tried to unsettle the settled matters, which only clog the work of the court impeding it in considering genuine grievances within time in the following words :-

"2..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

10. Mere repeated filing of representations could not be sufficient explanation for delay in approaching the Court for grant of relief, was considered in Gandhinagar Motor Transport Society vs. State of Bombay, A.I.R. 1954 Bombay 202, by Chief Justice Chagla, observing as follows :-

"(2)..... Now, we have had occasion to point out that the only delay which this Court will excuse in presenting a petition is the delay which is caused by the petitioner pursuing a legal remedy which is given to him. In this particular case the petitioner did not pursue a legal remedy. The remedy he pursued was extra-legal or extra-judicial. Once the final decision of government is given, a representation is merely an appeal for mercy or indulgence, but it is not pursuing a remedy which the law gave to the petitioner..."

11. The appellant, in its counter affidavit before the High Court, had specifically taken the objection that the claim was highly belated, and that any direction for a retrospective consideration would have a destabilising effect in unsettling the settled position which would lead to complete chaos apart from other administrative consequences. The High Court failed to consider the objection. In *Union of India vs. M.K. Sarkar*, (2010) 2 SCC 59, this Court observed as follows:-

"16. A court or tribunal, before directing „consideration of a claim or representation should examine whether the claim or representation is with reference to a „live issue or whether it is with reference to a „dead or „stale issue. If it is with reference to a „dead or „stale issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration...."

12. In *Dev Dutt* (supra), the DPC was held on 16.12.1994. The appellant therein, aggrieved by his supersession moved the High Court with utmost expedition leading to the pronouncement by the Single Judge on 21.08.2001 and by the Division Bench on 26.11.2001. The appeal was instituted before this Court in the year 2002. If that were not sufficient to distinguish the case of the respondents, reference may also be made to the observations in paragraph 36 as follows:

"36. 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."

13. The High Court erred in placing absolute reliance on *Dev Dutt* (supra) and *Sukhdev* (supra) without noticing the fact situation of the respondents. In *Union of India and another vs. Major Bahadur Singh*, (2006) (1) SCC 368, it was observed:-

"9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy

discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments...."

14. A subsequent pronouncement by this Court could not enthuse a fresh lease of life, or furnish a fresh cause of action to what was otherwise clearly a dead and stale claim. In *State of Uttaranchal vs. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179, it was observed that :-

"29.... Not for nothing, has it been said that everything may stop but not the time, for we are all slaves of time.

There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

15. The observations with regard to the modus operandi of the representation syndrome to revive what are clearly dead and stale claims as discussed in *C. Jacob vs. Director of Geology and Mining*, (2008) 10 SCC 115, and the caution to be exercised by the Court are also considered apposite in the facts of the present case.

16. In the facts and circumstances of the present case, any direction to consider retrospective promotion of the respondents at such a belated passage of time of over 17 to 20 years, would virtually bring a tsunami in the service resulting in administrative chaos quite apart from the financial implications for the Government. The order of the High Court is therefore held to be unsustainable and is set aside."

13. The case in hand is covered by the above decision of the Supreme Court. As stated above, the direction to consider retrospective promotion of the respondents and if upgraded, to consider the respondent No.1 for promotion by the review DPC and also to consider her for the post of Chief Architect with effect from the date respondent No.2 was empanelled and promoted, could not have been given by the Tribunal, that too after a period of 13 years i.e. the period between the date of DPC and the date of the order, which surely would result in administrative chaos, apart from obvious financial implications on the Government. This we say so, even if the petitioners after the impugned judgment has upgraded the ACR s of the respondent No.1.

14. Following the ratio of the Judgment of the Supreme Court in the above case, the necessary conclusion has to be that the impugned Judgment dated May 30, 2016 of the Tribunal is liable to be set aside. It is ordered accordingly. The writ petition is allowed. No costs. CM APPLs. 15144/2018 and 40867/2018 Dismissed as infructuous.

V. KAMESWAR RAO, J ANOOP KUMAR MENDIRATTA, J JANUARY 16, 2023/ak