

Abhijit Ghosh Dastidar vs Union Of India & Ors on 22 October, 2008

Bench: J.M. Panchal, P. Sathasivam, K.G. Balakrishnan

ITEM NO.3

COURT NO.1

SECTION IX

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).26556/2004

(From the judgement and order dated 27/07/2004 in WP No. 9723/2003 of The
HIGH COURT OF BOMBAY)

ABHIJIT GHOSH DASTIDAR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for c/delay in filing counter affidavit, and prayer for interim relief)

Date: 22/10/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE MR. JUSTICE J.M. PANCHAL

For Petitioner(s) Mr. Sanjay Parekh, Adv.
Mr. Jitin Sahni, Adv.
Mr. A.N. Singh, Adv.
Mr. Gaurav Tyagi, Adv.
M/s. M. Saxena, Adv.
Ms. Anitha Shenoy, Adv.

For Respondent(s) Mr. Ashok Bhan, Adv.
Mrs. Varuna Bhandari Gugnani, Adv.
Mr. B.K. Prasad, Adv.
For Mr. V.K. Verma, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

The appeal is allowed in terms of the signed order.

No costs.

(R.K.DHAWAN)
COURT MASTER

(VEERA VERMA)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6227 OF 2008
(Arising out of S.L.P. (C) NO. 26556 OF 2004)

Abhijit Ghosh Dastidar

.... Appellant

Versus

Union of India & Ors.

.... Respondent(s)

ORDER

- 1) Leave granted.
- 2) The appellant was Post Master General during the relevant period and was

eligible to be promoted to the Higher Administrative Grade of Indian Postal Service Group-A and to be posted as Chief Post Master General. His claim for promotion was considered by the D.P.C. on 15.12.1999 and again on 28.02.2001. The appellant was not found eligible for promotion to the Higher Administrative Grade-A. He filed an Original Application before the Central Administrative Tribunal (hereinafter referred to as "CAT") at Patna alleging that he was not considered for promotion for the reason that there were two entries in his C.R. i.e. one on 22.09.1997 and another on 08.02.1998. It was pointed out that the CAT, Patna Bench by order dated 27.05.2002 directed the authority not to take note of "the order of caution dated 22.09.1997" and "the order of adverse remarks dated 09.06.1998" for the period 01.04.1997 to 13.10.1997 while considering the appellant for promotion. In the light of the said order, the appellant contended that these two adverse entries should not have been considered by the D.P.C. He further contended that through out the period he was given entry of "good". The respondent-Department alleged that the appellant was not considered for promotion as he was not having the benchmark of "very good". According to the

appellant, the adverse entries namely "good" were not communicated. The said aspect ought not to have been considered while considering his promotion. In support of the above claim, he relied on the decision of this Court in Dev Dutt vs. Union of India & Ors., 2008 (7) Scale 403.

3) Pursuant to the direction of the CAT, Patna Bench on 09.09.2002 review of D.P.C. was held and the appellant was not found suitable for promotion. In March, 2003, there was a regular D.P.C. and the appellant was found fit for promotion with the same entries and accordingly promoted to Higher Administrative Grade Group-A and later retired from service.

4) It is not in dispute that the CAT, Patna Bench passed an order recommending the authority not to rely on the order of caution dated 22.09.1997 and the order of adverse remarks dated 09.06.1998. In view of the said order, one obstacle relating to his promotion goes. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

5) Learned counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion on 28.08.2000. Therefore, the appellant also be deemed to have been given promotion from 28.08.2000. Since the appellant had retired from service, we make it clear that he is not entitled to any pay or allowances for the period for which he had not worked in the Higher Administrative Grade Group-A, but his retrospective promotion from 28.08.2000 shall be considered for the benefit of re-fixation of his pension and other retrial benefits as per rules.

6) The appeal is allowed to the above extent. No costs.

.....CJI.

(K.G. BALAKRISHNAN)J. (P. SATHASIVAM)
.....J. (J.M. PANCHAL) NEW DELHI;

OCTOBER 22, 2008.