

GAHC010015982014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5129/2014

RANAPRATAP BEZBARUAH
S/O SRI JOY CHARAN BEZBARUAH, BIRUBARI ROAD, RUPNAGAR, GHY-32

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY ITS SECY. PWDROADS GOVT. OF ASSAM, DISPUR, GHY-6

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
PWDROADS
DISPUR
GHY-6

3:THE COMMISSIONER AND SPECIAL SECY. TO THE GOVT. OF ASSAM
PWD BandNH
DISPUR
GHY-6

4:THE SELECTION BOARD
CONSTITUTED UNDER THE ASSAM ENGINEERING PWD SERVICE RULES
1978 FOR PROMOTION TO THE RANK OF EXECUTIVE ENGINEER
PWD C FOR THE YEAR 2002
DISPUR
GHY-6
REP. BY THE SECY.
PWD AS THE CHAIRMAN

5:THE SELECTION BOARD
CONSTITUTED UNDER THE ASSAM ENGINEERING PWD SERVICE RULES
1978 FOR PROMOTION TO THE RANK OF EXECUTIVE ENGINEER
PWD C FOR THE YEAR 2003
DISPUR

GHY-6
REP. BY THE SECY.
PWD AS THE CHAIRMAN

Advocate for the Petitioner : MR.U K NAIR Sr.Adv.

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18-06-2024

Mr. M.P. Sharma, learned counsel for the petitioner as well as Mr. R. Dhar, learned senior Govt. Advocate appearing for all the respondents.

2. At the outset the learned counsel for the petitioner has submitted that during the pendency of the writ petition, the petitioner has superannuated on 30.04.2020.

3. By referring to the ACR of the petitioner for the year 2000-2001 and 2001-2002, it is submitted that at the relevant point of time, the petitioner was serving in the PWD as an Assistant Executive Engineer since 10.03.1992. The reporting/ recording authority by an endorsement dated 29.05.2001 had rated the petitioner as 'outstanding' with a further remark that he was capable of handling multiple projects at a time.

4. The accepting authority accepted the proposed remark by the Reporting officer as 'Very Good'. The said remark was signed by the Secretary, PWD by an endorsement dated 05.06.2001. In the ACR for the year 2001-02,

the Reporting/ Recording authority was the Addl. Director (Bldg. Design) in the office of the Chief Engineer, PWD Building, whereby vide an endorsement dated 02.05.2002, the general opinion of the authority in respect of the petitioner was graded as 'outstanding'.

5. The same authority i.e. the Addl. Director (Bldg. Design), PWD was also the accepting authority and by an another endorsement dated 05.06.2002, the remarks of the accepting authority was accepted as 'Very Good'.

6. As per the endorsement by the Reporting/ Recording authority remark for the petitioner was given as 'Very Efficient and Capable'. The said remark was given by the Addl. Director (Bldg. Design), PWD. However, the same authority i.e. Addl. Director (Bldg. Design), by his endorsement dated 02.05.2002, as the Reviewing authority, graded the petitioner as 'outstanding'. However, the Secretary, PWD Department by an endorsement dated 05.06.2002 gave a remark as an accepting authority to the effect 'accepted as Very Good'.

7. The learned counsel for the petitioner by referring to the minutes of the Selection Board meeting held on 19.06.2002 for promotion from Assistant Executive Engineer to the rank of Executive Engineer, PWD (C), had taken ACR of 5 years. As per the submissions made by the learned counsel for the petitioner, based on the criteria of outstanding and very good, respective marks were allotted to the petitioner i.e. $4+3+4+3+3=17$. It is submitted that in the last two ACRs of the year 2000-2001 and 2001-2002, the petitioner was given 3 marks each in view of his grading as 'Very good' whereas he was granted 4 marks in the ACR for the year 1999-2000 where his grading was

'Excellent' and he was given 4 marks. Accordingly, it is submitted that the Reporting/ Recording authority had given a remark of 'Excellent' to the petitioner and when the accepting authority accepted the said remark as 'Very Good', the said non-communication of the remark of 'Very good' had deprived him of the consideration of his candidature for promotion, as he scored less marks.

8. The petitioner projects that he got the copies of the relevant ACRs only through RTI reply dated 03.05.2014 and 12.05.2014 and despite issuance of an advocate's notice dated 15.05.2014, as the grievance of the petitioner was not addressed, the present writ petition has been filed under Article 226 of the Constitution of India.

9. In support of his submissions that the ACR is required to be communicated, the learned counsel for the petitioner has placed reliance on the following cases: (1) *Sanjeev Ranjan v. Union of India and ors.*, WP(C) 2762/2011 decided on 14.03.2020, (2) *I.A. Khan v. Union of India*, (2014) 6 GLR 342, (3) *Sukhdev Singh v. Union of India and ors.*, (2013) 9 SCC 566 and (4) *Dev Dutt v. Union of India and ors.*, (2008) 8 SCC 725.

10. Opposing the prayer made in this writ petition, the learned standing counsel for the PWD has submitted that on a perusal of the ACR for the year 2000-01 and 2001-02, in all the relevant entries the Reporting/ Recording authority had never given a remark of 'Outstanding' to the petitioner and therefore, the final opinion of grading the petitioner as 'Outstanding' was rectified by the Accepting authority by accepting the proposal of the Reporting

officer as 'Very good'. Accordingly, it is submitted that there is no error or mistake in part of the respondent authorities and that the petitioner was given a grading what was apparent from the contents of the ACR of the two relevant years. Accordingly, it is submitted that the petitioner has not been able to make out any point and the petition is liable to be dismissed.

11. The law regarding communication of the ACR was well settled by the pronouncement of the Supreme Court of India in the case of *Dev Dutt v. Union of India and ors.*, (2008) 8 SCC 725.

12. In the case of *Dev Dutta (supra)*, the Supreme Court of India, on elaborate and detailed consideration of the matter and also taking into consideration the decision of the Supreme Court of India in the case of *U.P. Jal Nigam and others v. Prabhat Chandra Jain and Others*, (1996) 2 SCC 363, and the principles of natural justice as laid down in the case of judgments including *A.K. Kraipak & Ors. Etc v. Union of India & Ors.*, (1969) 2 SCC 262 and other cases, concluded that every entry in the ACR of a public servant must be communicated to him within a reasonable period whether it is poor, fair, average, good or very good entry. The said decision was approved by 3 Judge Bench of the Supreme Court of India in the case of *Sukhdev Singh v. Union of India and ors.*, (2013) 9 SCC 566, by holding that the view taken in the case of *Dev Dutta (supra)* that every entry in the ACR of a public servant must be communicated to him within a reasonable period which is legally sound and helps in achieving objectives.

13. It was held that firstly, 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. Secondly, and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied to the same. Communication of the entry enables him/ her to make representation of the remarks entered into the ACR. Thirdly, communication of every entry in the ACR means transparency and recording of the remarks related to a public servant and the system becomes more confirming to the principles of natural justice. Accordingly, it was held that every entry in the ACR whether be poor, fair, average, good or very good must be communicated to him/ her within a reasonable period.

14. The same principles has been followed in the two decisions of the Coordinate Bench of this Court in the case of *Sanjeev Ranjan v. Union of India and ors.*, WP(C) 2762/2011 decided on 14.03.2020 as well as in the case of *I.A. Khan v. Union of India*, (2014) 6 GLR 342.

15. Taking note of the submission made by the learned Addl. senior Govt. Advocate it is seen from the affidavit filed by the respondent nos.1 and 2 through Phanindra Nath Patowary, Under Secretary to the Govt. of Assam, PWRD (Est-B Branch), that the ACR points of the petitioner is as follows:

YEAR	1997-98	1998-99	1999-2000	2000-01	2001-02	Total
ACR	Outstanding	Very Good	Outstanding	Very Good	VG	

Points	4	3	4	3	3	17

16. Therefore, it is admitted by the respondents that on being awarded grade of 'Outstanding' in the ACR for the year 1997-98 and 1999-2000, the petitioner was awarded four points whereas the mark of 'Very Good' earned in the ACR for the year 1998-99, 2000-01 and 2001-02 earned him 3 points and the total marks awarded to the petitioner was 17.

17. In para-9 of the affidavit-in-opposition, it has been mentioned that in the ACR format there is no column for grading of the ACR for the reporting authority. In this case in hand as already stated herein before the reporting/ recording authority had given a remark of outstanding. The Secretary to the Govt. of Assam, PWD department by his note dated 05.06.2001 has stated that he had "accepted as proposed by the reporting officer as Very good".

18. The Reporting/ Recording officer did not give a report on the grading of "Very Good" to the petitioner. In column no.(k)(a)(ii) against the column designation, the Reporting/ Recording authority has mentioned 'outstanding- capable of handling multiple projects at the time'. The ACR for the year 2000-01, the Recording authority, in column 1(a)(ii) for the ACR has similar endorsement of 'Very efficient and capable'. However, the reviewing authority had graded the petitioner as 'outstanding'. However, the assessment authority had stated 'accepted as Very good'. Therefore, the endorsement of the superior authority is not found sustainable.

19. At this stage, the learned Addl. Senior Govt. Advocate has submitted that the Departmental Promotion Committee which is known as 'Selection Board' by its minutes dated 19.06.2002, had undertaken the exercise of promotion. It was submitted that from the said date till this writ petition was filed on 22.09.2014, the petitioner was happy with this position and in the meanwhile he got two promotions to the post of Executive Engineer in 2007 and Superintending Engineer in 2016. However, after waiting for almost 12 years from the date of meeting of the Selection Board the petitioner had approached this Court by filing this petition. Accordingly, it is submitted that the writ petition is liable to be dismissed on the ground of delay and laches.

20. We don't find that the said ground to be fatal for the petitioner because in the writ petition he has projected that he had submitted two RTI applications dated 05.04.2014 and 10.04.2014 and in response to the same, he has received RTI reply dated 03.05.2014 and 12.05.2014 respectively. In this case, rule was issued by order dated 26.09.2014. The respondents did not take a preliminary issue of the writ petition to be barred by the limitation. As indicated above, this writ petition was filed on 22.09.2014, the matter has come up for hearing, a little less than 10 years after the institution. Therefore, at this stage, the Court is not inclined to non-suit the petitioner on the ground of the writ petition being vitiated by delay and laches.

21. The Court is also unable to accept the submission made by the learned Addl. Senior Govt. Advocate that the accepting authority had taken into consideration the entry made in the ACR for the year 2000-01 and 2001-02 and

grading of 'Very Good' was awarded on the strength of entries made by the Reporting/ Recording authority. It is the stand of the respondent nos.1 and 2 that the Recording/ Reporting authority could not have granted the petitioner in grading of 'outstanding'. Even in such a situation when the accepting authority had given a remark of 'Very Good'. Accordingly, the ratio in the case of *Dev Dutt (supra)* and *Sukhdev Singh (supra)*, even the said communication ought to have been communicated to the petitioner.

22. Accordingly, the Court is of the considered opinion that the non-communication of the remark 'Very good' entered in the ACR of the petitioner for the year 2000-01 and 2001-02 is not sustainable as it is contrary to the law laid down by the Supreme Court of India in the case of *Dev Dutt (supra)* and *Sukhdev Singh (supra)*.

23. In the present case in hand, the petitioner has been able to demonstrate that the grading of 'Very Good' had resulted in his earning of three marks in the minutes of the Selection Board held on 19.06.2002, whereas on earning the remark of 'Outstanding' by the petitioner had four marks in the preceding ACR as elaborated hereinbefore. Accordingly, the petitioner is found to have suffered because of the non-communication of remark of 'Very Good' in the ACR of the year 2000-01 and 2001-02, which prevented him to file a representation at proper time before the concerned authorities.

24. Resultantly, it was held that the Selection Board could not have

denied promotion to the petitioner by relying on the un-communicated ACR having grading of 'Very Good'. It was also held that had the petitioner been given an opportunity of timely communication of the remarks made in the ACR, he would have represented against the said remark. The said opportunity was lost by the petitioner. In the meanwhile, the petitioner has superannuated on 30.04.2020 as Additional Chief Engineer, PWD Building and National Highway.

25. Accordingly this writ petition stands allow with the following corrections:

(i) The concerned respondent authorities are directed to constitute a review DPC/ Selection Board to consider the eligibility of the petitioner for promotion on and from the date his juniors were promoted.

(ii) The said exercise of constituting a Review Selection Board for considering the case of the petitioner for promotion shall be completed within an outer period of 3(three) months from the date of furnishing of a certified copy of the order before the Secretary of the Govt. of Assam, PWD.

26. There shall be no order as to cost.

JUDGE

Comparing Assistant