

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman(A)

Claim Petition No. 20/N.B./D.B./2014

Chandra Singh Imlal, presently posted as Sub Divisional Magistrate, Khatima, District, Udham Singh Nagar, Uttarakhand.

.....Petitioner

Versus

1. State of Uttarakhand through its Secretary Revenue Department, Secretariat, Dehradun.
2. Chief Revenue Commissioner/ Chairman, Board of Revenue, Dehradun..
3. Secretary Karmik Department, Government of Uttarakhand, Dehradun..
4. District Magistrate of Udham Singh Nagar, Uttarakhand.
5. District Magistrate of District Chamoli, Uttarakhand.

.....Respondents.

Present: Sri I.D.Paliwal, Ld. Counsel
for the petitioner.

Sri V.P.Devrani, Ld. A.P.O.
for the Respondents.

JUDGMENT

DATED: OCTOBER 09, 2017

(Hon'ble Mr. D.K.Kotia, Vice Chairman (A))

1. The petitioner has filed the present claim petition for seeking the following relief:-

“(a)That in view of the facts and grounds as mentioned above the petitioner prays, that this Hon'ble Tribunal/ Court may graciously be pleased to quash the impugned annual confidential reports to that

extent of 1997-98, 1998-99, 1999-2000, 2001-02----- which were downgraded by the accepting authorities from outstanding to very good, good or good to satisfactory, without recording any reasons or without giving any findings in the annual confidential records.

(b) To issue order or direction to the authorities concerned to give notional promotion to the petitioner treating him eligible/ suitable incumbent for giving promotion from the post of Tehsildar to the post of Deputy Collector, against the selection year 2004-05 instead of selection year 2012-13.”

- 2.1 The petitioner belongs to the Revenue Department of the Government of Uttarakhand and he was confirmed as Tahsildar on 28.06.2004.
- 2.2 As confirmed Tahsildar, the petitioner became eligible for promotion to the post of Deputy Collector. The criterion for promotion is merit and the promotions are made in consultation with the Uttarakhand Public Service Commission (for short the Commission).
- 2.3 The State Government sent a proposal to the Commission for promotion from the post of Tahsildar to the post of Deputy Collector in 2006. The name of the petitioner was also included in the list of eligible candidates. The Commission after holding the meeting of the DPC recommended promotion to 16 candidates and on the basis of the recommendation of the Commission, the promotion order of 16 officers was issued on 01.03.2007 against the vacancies of promotion quota for the years 2005-06 and 2006-07. The name of the petitioner was not there in the list of promotions made on 01.03.2007 as he was not recommended by the Commission.
- 2.4 Thereafter, the State Government issued another promotion order in 2012 and in this list also, the name of petitioner was not there.
- 2.5 It is pertinent to mention here that the Commission has devised a formula to ascertain the “merit” which is the criterion for the promotion and the same is reproduced below:-

प्रेषक,
सचिव,
उत्तराखण्ड लोक सेवा आयोग,
हरिद्वार।

सेवा में,
प्रमुख सचिव,
उत्तराखण्ड शासन,
कार्मिक विभाग,
देहरादून।

हरिद्वार : दिनांक 12 सितम्बर, 2006

विषय— आयोग के क्षेत्रान्तर्गत पदों पर “योग्यता” के आधार पर प्रोन्नति द्वारा चयन में प्रक्रिया एवं मापदण्डों के निर्धारण के संबंध में।

महोदय,

कृपया उपर्युक्त विषय का सन्दर्भ ग्रहण करने का कष्ट करें। इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि आयोग के क्षेत्रान्तर्गत पदों पर “योग्यता/श्रेष्ठता के आधार पर प्रोन्नति द्वारा चयन हेतु सेवा नियमावलियों में “योग्यता के मापदण्ड के सम्बन्ध में स्पष्ट दिशानिर्देश न होने के कारण मा10 आयोग द्वारा सम्यक विचारोपरान्त निम्नलिखित प्रक्रिया अपनाये जाने का निर्णय लिया गया है:—

1. ज्येष्ठता के आधार पर पदोन्नति के जो मापदण्ड निर्धारित हैं वे योग्यता /श्रेष्ठता के आधार पर प्रोन्नति के मामलों में भी लागू होंगे। चयन वर्ष से पिछले 05 वर्ष तक यदि किसी अभ्यर्थी की प्रतिकूल प्रविष्टि है तो उसे पदोन्नति हेतु अनुपयुक्त माना जायेगा।
2. पदोन्नति हेतु शासन से प्राप्त पात्रता सूची में शामिल अभ्यर्थियों की चयन वर्ष से पिछले 10 वर्ष की वार्षिक गोपनीय चरित्र प्रविष्टि देखी जायेगी।
3. यदि किसी वर्ष की गोपनीय चरित्र प्रविष्टि अप्राप्त बतायी गयी है, तो उसका औचित्यपूर्ण कारण भी दर्शित होना चाहिए तथा सम्बन्धित वर्ष की सत्यनिष्ठा प्रमाणित होने का प्रमाण—पत्र सक्षम अधिकारी द्वारा दिया गया रिकार्ड पर उपलब्ध होना चाहिए। यदि किसी वर्ष की गोपनीय चरित्र प्रविष्टि अप्राप्त बतायी गयी है, किन्तु उसका कोई औचित्यपूर्ण कारण दर्शित नहीं किया गया है और न ही सम्बन्धित वर्ष की सत्यनिष्ठा प्रमाणित होने का प्रमाण— पत्र सक्षम अधिकारी द्वारा दिया गया रिकार्ड पर उपलब्ध है, तो ऐसे अभ्यर्थी का नाम “पात्रता सूची” से हटा दिया जायेगा।
4. 10 वर्षों की अवधि के अन्तर्गत जितने वर्षों की गोपनीय चरित्र प्रविष्टि अप्राप्त होगी तथा उनकी अप्राप्ति के विषय में औचित्यपूर्ण कारण दर्शित होगा, ठीक उतने ही पिछले वर्षों की गोपनीय चरित्र प्रविष्टियों को विभागीय प्रोन्नति समिति द्वारा आंकलन किया जायेगा।

(उदाहरणार्थ— यदि किसी अभ्यर्थी के 10 वर्षों(वर्ष 1990 से 2000 के मध्य) में से किन्हीं दो वर्षों की गोपनीय चरित्र प्रविष्टि अप्राप्त है और उनकी

अप्राप्ति का औचित्यपूर्ण कारण दर्शित है तो उसकी ठीक पिछले दो वर्षों अर्थात् 1989 तथा 1988 की गोपनीय चरित्र प्रविष्टि का ही आंकलन किया जायेगा न कि किन्हीं भी दो वर्षों का)

5. यदि एक वर्ष में एक से अधिक गोपनीय चरित्र प्रविष्टि अंकित है तो उन सभी को एक मानते हुए उस वर्ष की गोपनीय चरित्र प्रविष्टि का आंकलन विभागीय प्रोन्नति समिति द्वारा किया जायेगा।

6. गोपनीय चरित्र प्रविष्टियों में दी गयी श्रेणियों के लिए निम्न प्रकार से अंकों का निर्धारण किया जायेगा—

1. उत्कृष्ट	—03 अंक
2. अतिउत्तम	—02 अंक
3. उत्तम	—01 अंक
4. सन्तोषजनक/अच्छा	शून्य अंक
5. प्रतिकूल	(—) 01 अंक घटाया जायेगा

7. पदोन्नति हेतु न्यूनतम मानक 15 अंक होंगे और अंकों का आगणन पिछले 10 वर्षों की प्रविष्टियों के आधार पर किया जायेगा।

8. यदि दो या अधिक अभ्यर्थियों को बराबर अंक प्राप्त होते हैं तो परस्पर वरिष्ठता के आधार पर चयन किया जायेगा।

9. आवश्यकता पड़ने पर विभागीय प्रोन्नति समिति साक्षात्कार भी ले सकती है। कृपया उपरोक्तानुसार अवगत होने का कष्ट करें।

भवदीय

(सी०एम०एस० बिष्ट)
सचिव।

2.6 When the petitioner was not promoted in 2007 and 2012 according to the formula of merit as above in Paragraph 2.5, he approached the Government under the Right to Information Act, 2005 and came to know for the first time on 07.08.2013 that his Annual Confidential Reports (ACRs) for four years were as under:-

1997-98

“अति उत्तम” by the Reporting Officer and “उत्तम” by the Accepting Officer.

1998-99

“उत्कृष्ट” by the Reporting Officer and “अच्छा” by the Accepting Officer.

1999-2000

“उत्कृष्ट” by the Reporting Officer and “अति उत्तम” by the Accepting Officer.

2001-2002

“उत्कृष्ट” by the Reporting Officer and “अति उत्तम” by the Accepting Officer.

- 2.7 The contention of the petitioner is that ACRs of above mentioned four years have never been communicated to him and, therefore, he did not get any opportunity to represent against the same.
- 2.8 The petitioner submitted a representation to the Government (Annexure: A 11) for non-communication of ACRs and also in respect of downgrading of his ACRs resulting in the adverse effect on marks for the purpose of ascertainment of “merit” as per the formula of the Commission (reproduced in paragraph 2.5 of this order) but the same remained undecided.
- 2.9 The petitioner was, however, promoted to the post of Deputy Collector in 2013 on the basis of the recommendations of the Commission for the vacancies of the promotion quota pertaining to the year 2012-13 when he was found fit for the promotion in accordance with the Commission’s formula of “merit”.
3. Respondents have opposed the claim petition and it has been stated in their joint written statement that according to the “Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 only the प्रतिकूल वार्षिक प्रविष्टी (Adverse Annual Entry) is required to be communicated to the employees. Since the petitioner had not been given any Adverse Annual Entry, the entries need not be communicated to the petitioner. As there is no Adverse Remark in any annual entry of the petitioner, no annual entry was communicated to the petitioner as per the said rules.
4. The petitioner has also filed the rejoinder affidavit and the same averments have been reiterated and elaborated in it which have been stated in the claim petition and the supplementary affidavit.
5. We have heard both the parties and perused the record.

6. The learned Counsel for the petitioner and learned A.P.O. on behalf of the respondents have argued on the same lines which have been stated in paragraphs 2 and 3 of this order.
7. The issue of non-communication of non-adverse ACRs and downgrading of ACRs has been dealt with by the Hon'ble High Court at Nainital and the Hon'ble Supreme Court and the law has been laid down in this respect. We would now like to take up the leading case-laws pertaining to this issue.
8. In the case of **Sukhdev Singh Vs. Union of India (UOI) and Ors.(2013)9 SCC 566, the three judges bench** has held as under:----

“3.....in the case of **Dev Dutt v. Union of India and Ors.** (2008) 8 SCC 725, this Court had an occasion to consider the question about the communication of the entry in the ACR of a public servant (other than military service). A two Judge Bench on elaborate and detailed consideration of the matter and also after taking into consideration the decision of this Court in U.P. Jal Nigam (1996)2 SCC 363 and principles of natural justice expounded by this Court from time to time particularly in A.K. Praipak v. Union of India (1969) 2 SCC 262; Maneka Gandhi v. Union of India (1978) 1 SCC 248; Union of India v. Tulsi Ram Patel (1985) 3 SCC 398; Canara Bank v. V.K. Awasthy (2005) 6 SCC 321 and State of Maharashtra v. Public Concern for Governance Trust (2007) 3 SCC 587 concluded that every entry in the ACR of a public service must be communicated to him within a reasonable period whether it is poor, fair, average, good or very good entry. This is what this Court in paragraphs 17 & 18 of the report in Dev Dutt (2008) 8 SCC 725 at page 733:

In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) Had the entry been

communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its up-gradation. **Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India (supra) that arbitrariness violates Article 14 of the Constitution,**

Thus it is not only when there is a benchmark but in all cases that **an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice.** Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

4. Then in paragraph 22 at page 734 of the report, this Court made the following weighty observations:

It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

5. In paragraphs 37 & 41 of the report, this Court then observed as follows:

We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

In our opinion, **non-communication of entries in the Annual Confidential Report of a public servant**, whether he is in civil, judicial, police or any other service (other than the military), certainly **has civil consequences because it may affect his chances for promotion** or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

6. We are in complete agreement with the view in Dev Dutt (2008) 8 SCC 725 particularly paragraphs 17, 18, 22, 37 & 41 as quoted above. We approve the same.

7. 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 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.”

9. Apart from the paragraphs which have been quoted in **Sukhdev Singh** judgment above, it would also be appropriate to quote paragraph 12 also from the judgment of **Dev Dutt Vs. Union of India and Others**:-

“12. Learned Counsel for the respondent submitted that under the Office Memorandum 21011/4/87 [Estt.'A'] issued by the Ministry of Personnel/Public Grievance and Pensions dated 10/11.09.1987, only an adverse entry is to be communicated to the concerned employee. It is well settled that no rule or government instruction can violate Article 14 or any other provision of the Constitution, as the Constitution is the highest law of the land. **The aforesaid Office Memorandum, if it is interpreted to mean that only adverse entries are to be communicated to the concerned employee and not other entries, would in our opinion become arbitrary and hence illegal being violative of Article 14. All similar Rules/Government Orders/Office Memoranda, in respect of all services under the State, whether civil, judicial, police, or other service (except the military), will hence also be illegal and are therefore liable to be ignored.**”

10. The Hon'ble Supreme Court in the case of **Prabhu Dayal Khandelwal Vs. Chairman, UPSC and Others** 2015 (14) SCC 427 decided on 23.07.2015 has held as under:-

“2. It is not a matter of dispute, that the benchmark for promotion to the post of Chief Commissioner of Income Tax, under the prevailing DoPT guidelines was "very good". In other words only such of the Commissioners of Income Tax, whose service record was "very good" would be treated as satisfying the "merit" component in the process of selection. When the claim of the Appellant arose for consideration, the five Annual Confidential Reports which were liable to be taken into consideration were, for the years 1995-1996 to 1999-2000. of the aforesaid Reports, in three the Appellant was graded as "good" (for the years 1995-1996, 1996-1997 and 1998-1999), and in the remaining two he was graded as "very good" (for the years 1997-1998 and 1999-2000). On account of the fact, that the Appellant did not satisfy the benchmark stipulated in the DoPT guidelines, he was not considered fit for promotion, to the post of Chief Commissioner of Income Tax.

5. In so far as the issue of non-consideration of the claim of the Appellant is concerned, we are satisfied that the proposition of law relevant for the controversy in hand, was declared upon by this Court in **Abhijit Ghosh Dastidar v. Union of India and Ors. (2009) 16 SCC 146**, wherein a three-Judge Division Bench of this Court, held as under:

“8. 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 Annual Confidential Report 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 of promotion or getting 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 [Dev Dutt v. Union of India and Ors. (2008) 8 SCC 725] 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.

7. In the above view of the matter, we are satisfied that the impugned order passed by the High Court, deserves to be set aside, inasmuch as, the claim of the Appellant could not be ignored by taking into consideration, un-communicated Annual Confidential Reports for the years 1995-1996, 1996-1997 and 1998-1999, wherein the Appellant was assessed as "good". In the absence of the aforesaid entries, it is apparent, that the remaining entries of the Appellant being "very good", he would be entitled to be considered fit for the promotion, to the post of Chief Commissioner of Income Tax, on the basis of the then prevailing DoPT guidelines, and the remaining valid Annual Confidential Reports.

8. On the issue, whether the representations filed by the Appellant against the Reports for the years 1995-1996, 1996-1997 and 1998-1999 need to be taken to their logical conclusion, we are of the view, that since almost two decades have passed since the aforesaid Annual Confidential Reports were recorded, it would be too late in the day to require the Authorities to adjudicate upon the representations made by the Appellant as against the un-communicated Annual Confidential Reports.

9. In the above view of the matter, we are satisfied, that the Respondents ought to be directed to reconsider the claim of promotion of the Appellant, to the post of Chief Commissioner of Income Tax, for the vacancies which arose during the years 2000-2001 and 2001-2002 on the basis of the

communicated reports for the years 1997-1998 and 1999-2000, within a period of three months from today. Ordered accordingly.

11. In case the Appellant is found suitable for promotion, this order should not be taken as permitting the authorities, to interfere with the promotions already made. Suffice it to state, that to accommodate the Appellant, it shall be open to the authorities to create a notional post, for giving effect to the instant order."

11. The Division Bench of Hon'ble High Court at Nainital in the case of Jeewan Chandra Joshi writ petition (SB) No. 95 of 2016 decided on 17.06.2016 has also held as under:-

"2. Briefly put the case of the petitioner is as follows:

Petitioner was appointed as Assistant Engineer in the year 1982; promoted as Executive Engineer in the year 2010 and given notional promotion in 2004 as such. Subsequently, he was promoted as Superintendent Engineer w.e.f. 31.05.2013 and notionally promoted as such w.e.f. 24.06.2010. Though there was a DPC held in the year 2009, the petitioner could not be selected. A DPC, however, was held on 05.01.2016 and it recommended four persons and the four persons were promoted by order dated 25.02.2016. Subsequently, it came to know that two junior persons, namely, the respondent nos. 3 & 4 have been recommended for promotion, but petitioner was not recommended. He came to know from the DPC that he has been placed in the second category of 'good' in terms of Rule 4(v) of the Procedure for Promotion Rules, 2013. Petitioner, on coming to know about the facts, filed an application under the Right to Information Act for copy of the ACRs of 05 years. According to him, he was rated 'very good' for four reporting years. For the year 2010-11, though the Superintending Engineer, which was reporting officer, rated as 'outstanding', but the reviewing authority downgraded it by two steps, namely, 'good' without recording any reason. The petitioner filed representation

claiming promotion, disregarding the adverse entry in view of judgment of Hon'ble Supreme Court in the case of 'Dev Dutt Vs. Union of India and others', reported in (2008) 8 SCC 725. Not meeting the desired response, petitioner is before us.

4. According to Mr. Vinjay Kumar, Advocate who appears for the respondent no. 3, who has been promoted pursuant to DPC and who is admittedly junior to the petitioner, there is no challenge to the adverse entry and the petitioner should represent against the adverse entry. Furthermore, he submitted that Dev Dutt,s case (Supra) does not say anywhere that if there is an adverse entry, without doing anything about it, a person can seek relief.

5. Per contra, Mr. Manoj Tewari, learned senior Counsel appearing for the petitioner would rely on the decision of Hon'ble the Supreme Court in the case of 'Prabhu Dayal Khandelwal Vs. Chairman, UPSC and others', reported in 2015 (6) Supreme 692 wherein Hon'ble Supreme Court interalia has held as follows:

“7.In the above view of the matter, we are satisfied that the impugned order passed by the High Court, deserves to be set aside, inasmuch as, the claim of the appellant could not be ignored by taking into consideration, un-communicated Annual Confidential Reports for the years 1995-1996, 1996-1997 and 1998-1999, wherein the appellant was assessed as “good”. In the absence of the aforesaid entries, it is apparent, that the remaining entries of the appellant being “very good”, he would be entitled to be considered fit for the promotion, to the post of Chief Commissioner of Income Tax, on the basis of the then prevailing DoPT guidelines, and the remaining valid Annual Confidential Reports.”

6. We notice that it is a case, where the petitioner challenged his non-recommendation of promotion on the basis of the un-

communicated remarks. The Tribunal granted relief and it was set-aside by the High Court, which was interfered by the Hon'ble Supreme Court and the Hon'ble Supreme Court held in paragraph no. 7 as above, which we have already adverted to. No doubt, Mr. Vinay Kumar, learned counsel appearing for respondent no. 3 relied on paragraph 8 of the above judgment, which reads as follows:

“8. On the issue, whether the representations filed by the appellant against the Report for the years 1995-1996, 1996-1997 and 1998-1999 need to be taken to their logical conclusion, we are of the view, that since almost two decades have passed since the aforesaid Annual Confidential Reports were recorded, it would be too late in the day to require the Authorities to adjudicate upon the representations made by the appellant as against the un-communicated Annual Confidential Reports.”

7. But, we must notice that the Hon'ble Supreme court has actually proceeded on the basis that if there is non-communication, adverse remarks will be liable to be ignored in the matters of promotion.

9. Mr. Pradeep Joshi, learned Standing Counsel for the State would submit that in this case, a counter affidavit has been filed on behalf of the State and there is no dispute that the entry was not communicated. In the light of this, we would think that there must be a review DPC held and, depending on the result of the review DPC the orders of promotion will either stand or be liable to be revised.

10. Accordingly, we dispose of the writ petition as follows:

We direct the first respondent to constitute a review DPC and the review DPC will consider the case of the petitioner for promotion and as far as un-communicated remarks are concerned, a decision will be taken in the light of the judgment of Hon'ble Apex Court in '**Dev Dutt Vs. Union of India and others**',

reported in (2008) 8 SCC 725, '**Sukhdev Singh vs. Union of India and ors.**', reported in 2013 (9) SCC 566 and '**Prabhu Dayal Khandelwal Vs. Chairman, UPSC and others**', reported in 2015 (6) Supreme 692 in accordance with law, and the orders of promotion of the respondents will be subject to the decision of the review DPC. The review DPC shall be held and be culminated on or before 31.07.2016."

12. Again, the **Division Bench of Hon'ble High Court at Nainital in the case of Amar Nath Singh Bisht Vs. State of Uttarakhand and Ors. Writ Petition (SB) No. 101 of 2016** decided on 02.09.2016 has also held as under:-

"2. Very briefly put, the complaint of the petitioner relates to his not being recommended for promotion to the post of Chief Engineer Level-II. The issue raised is, essentially, covered in favour of the petitioner by virtue of the judgment of this Court passed in Writ Petition (S/B) No. 95 of 2016 **Jeewan Chandra Joshi v. State of Uttarakhand**. In other words, this is a case, where certain entries in ACR were not communicated to the petitioner. Respondent No. 3 represented by Sri Vinay Kumar stands promoted pursuant to the recommendation of DPC. Respondent No. 3 is junior to the petitioner; equally is the 4th respondent junior to the petitioner. Though served (affidavit of service is filed), the 4th respondent does not appear.

3. In such circumstances, we follow the judgment passed in Writ Petition (S/B) No. 95 of 2016 Jeewan Chandra Joshi v. State of Uttarakhand, about the applicability of which, no dispute has been raised by the respondents. **The writ petition is allowed....."**

- 13.1 In the case-laws described in paragraphs 8 to 12 above, the law is laid down. It is now settled legal position that every annual entry of an employee is to be compulsorily communicated and an opportunity must be provided to the employee to represent against it.

- 13.2 In the case in hand, admittedly the entries for the years 1997-98, 1998-99, 1999-2000 and 2001-2002 were not communicated to the petitioner and, therefore, he could not get an opportunity to represent against the same.
- 13.3 It is also clear that the annual entries of the petitioner were downgraded by the Accepting Authority without giving any reasons.
- 13.4 The non-communication and downgrading of the ACRs have adversely affected the petitioner's chances for promotion and non-communication of ACRs is arbitrary and as such violative of Article 14 of the Constitution.
- 13.5 By not communicating ACRs to the petitioner and thereby not providing opportunity to the petitioner to make a representation against these entries, there is violation of the principle of fairness, which is the soul of natural justice.
- 13.6 In view of the judgments described in paragraphs 8 to 12 of this order, the "Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 which provides communication of ACR only when it is adverse, becomes arbitrary and hence illegal being violative of Article 14 of the Constitution and, therefore, liable to be ignored.
- 13.7 As there is no dispute and it is admitted by the respondents that annual entries in respect of the year 1997-98, 1998-99, 1999-2000 and 2001-2002 were not communicated to the petitioner but these annual entries were considered by the DPC which adversely affected his chances for promotion, we are of the opinion that the promotion of the petitioner should be reconsidered and a review DPC must be held.
- 13.8 For the reasons stated above, we pass the following order.

ORDER

State respondents are directed to hold a review DPC to consider the case of the petitioner for promotion from the date of his entitlement. As far as un-communicated annual entries are concerned, a decision will be taken in the light of the judgments of the Hon'ble Supreme Court in Dev Dutt Vs.

Union of India and others reported in (2008) 8 SCC 725, Sukhdev Singh Vs. Union of India and Ors. reported in 2013 (9) SCC 566 and Prabhu Dayal Khandelwal Vs. Chairman, UPSC and others reported in 2015 (14) SCC 427. The holding of review DPC and thereafter decision by the respondents on it will be taken within a period of three months from today. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

(D.K.KOTIA)
VICE CHAIRMAN (A)

DATE: OCTOBER 09, 2017
DEHRADUN

VM