

SUPREME COURT OF INDIA

Prabhu Dayal Khandelwal

Vs.

Chairman, U.P.S.C. & Ors.

C.A.No.8006-8007/2003

(Jagdish Singh Khehar and Adarsh Kumar Goel, JJ.,)

23.07.2015

ORDER

Jagdish.Singh Khehar,J.,

1. The claim of the appellant-Prabhu Dayal Khandelwal was to be considered for promotion from the post of Commissioner of Income Tax to that of Chief Commissioner of Income Tax. 55 vacancies in the cadre of Chief Commissioner of Income Tax arose in the year 2000-2001, and a further 46 vacancies arose during the year 2001-2002.
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.
3. The appellant raised a challenge against the action of the respondents/authorities, in superseding his claim for promotion to the post of Chief Commissioner of Income Tax, by filing O.A. No.290 of 2001, before the Central Administrative Tribunal, Calcutta Bench, on the ground that uncommunicated Annual Confidential Reports could not be taken into consideration, to defeat his claim for promotion. The pointed contention of the respondent, in this behalf was, that all the three Annual Confidential Reports in which he had been graded as “good” (detailed above) had not been communicated to him. The Administrative Tribunal accepted the prayer made by the appellant and accordingly passed the following directions:-

“19. In view of the above, we find merit in both the applications. We, therefore, allow both the applications. Since the appellants have not been found unfit for promotion in the over all assessment of the DPC meeting held on February 5 and 6, 2001, we direct all the respondents viz. Secretary, Deptt. of Revenue, Chairman CBDT, Member CBDT and Chairman, UPSC to reconsider the cases of both the applicants by holding the meeting of Review DPC on urgent basis on the basis of our above observations keeping in view the assessment made by the DPC in the meeting held on February 5 and 6, 2001 and to recommend their case within a period of three weeks from the date of receipt of this order to the competent authority for further necessary action including grant of all the consequential benefits to the applicants from the date their immediate juniors have been granted as a result of recommendations of the DPC meeting held on February 5 and 6, 2001 within a further period of three weeks and communicate the final order to the applicants within a week thereafter.”

4. The aforesaid order passed by the Administrative Tribunal, was assailed by the Union Public Service Commission, as also, the Union of India, before the High Court of Calcutta, by filing separate writ petitions. The High Court accepted the prayer made by the Union Public Service Commission as well as the Union of India while disposing of W.P.C.T. No.772 of 2002 and W.P.C.T. No.803 of 2002, vide its order dated 20.12.2002. Dissatisfied with the above order, the appellant-Prabhu Dayal Khandelwal has approached this Court, through the instant civil appeals.

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 others*, (2009) 16 SCC 146, wherein a three-Judge Division Bench of this Court, held as under:-

“7. It is not in dispute that 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.

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 Others*], 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.”

6. The aforesaid position of law has again been affirmed by this Court in *Sukhdev Singh v. Union of India and Others*², wherein another three-Judge Division Bench of this Court, has concluded as under:-

“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 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.”

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, uncommunicated 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 by 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 uncommunicated 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.

10. In case the appellant is found to be entitled for promotion to the post of Chief Commissioner of Income Tax, he shall be promoted to the said post, with effect from the date of his entitlement. In such an eventuality, he shall also be entitled to all arrears of salary,

as would have been payable to him, if he had been promoted as Chief Commissioner of Income Tax at the right time. Simultaneously, he would be entitled to revision of his retiral benefits.

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.

12. To the extent indicated above, the appeals are allowed.

Judgment Referred.

¹(2008) 8 SCC 0725

²(2013) 9 SCC 0566