REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5892 OF 2006

SUKHDEV SINGH ... APPELLANT(s)

Versus

UNION OF INDIA AND OTHERS ... RESPONDENT(s)

O R D E R

While granting leave on December 12, 2006, a two Judge Bench (S.B. Sinha and Markandey Katju, JJ.) felt that there was inconsistency in the decisions of this Court in *U.P. Jal Nigam and others vs. Prabhat Chandra Jain and others*[1], and *Union of India and another vs. Major Bahadur Singh*[2] and consequently, opined that the matter should be heard by a larger Bench. This is how the matter has come up for consideration before us.

2. The referral order dated December 12, 2006 reads as follows:

> **"The appellant herein was appointed as Deputy Director of Training on or about 13.11.1992. He**

1 (1996)2 SCC 363

2 (2006)1 SCC 368

attended a training programme on Computer Applied Technology. He was sent on deputation on various occasions in 1997,1998 and yet again in 2000. Indisputably, remarks in his Annual Confidential Reports throughout had been "Outstanding" or "Very good". He, however, in two years i.e. 2000-2001 and 2001-2002 obtained only "Good" remark in his Annual Confidential Report. The effect of such a downgrading falls for our consideration. The Union of India issued a Office Memorandum on 8.2.2002 wherein the Bench mark for promotion was directed to be "Very Good"in terms of clause 3.2 thereof. It is also not in dispute that Guidelines for the Departmental Promotion Committees had been issued by the Union of India wherein, inter alia, it was directed as follows:

"".....6.2.1(b) The DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for five preceding years irrespective of the qualifying service prescribed in the Service/Recruitment Rules. The 'preceding five years' for the aforesaid purpose shall be decided as per the guidelines contained in the DoP & T O.M No.22011/9/98-Estt.(D), dated 8.9.1998, which prescribe the Model Calendar for DPC read with OM of even number, dated 16.6.2000.(If more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year}."

The question as to whether such a downgradation of Annual Confidential Report would amount to adverse remark and thus it would be required to be communicated or not fell for consideration before this Court in U.P. Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Ors. - (1996) 2 SCC 363 in the following terms:

" We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both have a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the

personal file of the officer concerned and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise, they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

Several High Courts as also the Central Administrative Tribunal in their various judgments followed the decision of this Court in U.P. Jal Nigam(supra), inter alia, to hold that in the event the said adverse remarks are not communicated causing deprivation to the employee to make an effective representation there against, thus should be ignored. Reference may be made to 2003(1) ATJ 130, Smt. T.K.Aryaveer Vs.Union of India & Ors, 2005(2) ATJ, Page 12, 2005(1) ATJ 509-A.B. Gupta Vs. Union of India & Ors. and 2003(2) SCT 514- Bahadur Singh Vs. Union of India & Ors.

Our attention, however, has been drawn by the learned Additional Solicitor General appearing for the respondents to a recent decision of this Court in Union of India & Anr. Vs. Major Bahadur Singh - (2006) 1 SCC 368 where a Division Bench of this Court sought to distinguish the U.P. Jal Nigam(supra) stating as follows:

"8. As has been rightly submitted by learned counsel for the appellants U.P. Jal Nigam case has no universal application. The judgment itself shows that it was intended to be meant only for the employees of U.P.Jal Nigam only."

With utmost respect, we are of the opinion that the judgment of U.P.Jal Nigam(supra) cannot held to be applicable only to its own

> **employees. It has laid down a preposition of law. Its applicability may depend upon the rules entirely in the field but by it cannot be said that no law has been laid down therein. We, therefore, are of the opinion that the matter should be heard by a larger Bench.**

3. Subsequent to the above two decisions, in the case of *Dev Dutt vs. Union of India and others*[3] , 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*[1] and principles of natural justice exposited by this Court from time to time particularly in *A.K. Praipak vs. Union of India*[4]; *Maneka Gandhi vs. Union of India*[5]; *Union of India vs. Tulsi Ram Patel*[6]; *Canara Bank vs. V.K. Awasthy*[7] and *State of Maharashtra vs. Public Concern for Governance Trust*[8] concluded that every entry in the ACR of a public service must be communicated to him within a

3 (2008)8 SCC 725
4 (1969)2 SCC 262
5 (1978)1 SCC 248
6 (1985)3 SCC 398
7 (2005)6 SCC 321
8 (2007)3 SCC 587

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[3] 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 upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.**
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> **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 pyramidical 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.**
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> **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[3] particularly paragraphs 17, 18, 22, 37 & 41 as quoted above. We approve the same.

7. A three Judge Bench of this Court in *Abhijit Ghosh Dastidar vs. Union of India and others*[9] followed

9 **(2009)16 SCC 146**

Dev Dutt[3]. In paragraph 8 of the Report, this Court with reference to the case under consideration held as under:

> **"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."**

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.

9. The decisions of this Court in *Satya Narain Shukla vs. Union of India and others*[10] and *K.M. Mishra vs. Central Bank of India and others*[11] and the other decisions of this Court taking a contrary view are declared to be not laying down a good law.

11. Insofar as the present case is concerned, we

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1 0 **(2006) 9 SCC 69**

1 1 **(2008) 9 SCC 120**

are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law.

11 I.A. No. 3 of 2011 for intervention is rejected. It will be open to the applicant to pursue his legal remedy in accordance with law.

.....J.
(R.M. LODHA)

.....J.
(MADAN B. LOKUR)

.....J.
(KURIAN JOSEPH)

NEW DELHI
APRIL 23, 2013.
ITEM NO.102 COURT NO.4 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5892 OF 2006

SUKHDEV SINGH **Appellant (s)**

VERSUS

UNION OF INDIA & ORS. **Respondent(s)**

(With appln(s) for Intervention/Impleadment and office report)

Date: 23/04/2013 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s)
Mr. Ansar Ahmad Chaudhary,Adv.

For Respondent(s) **Mr. Mohan Parasaran, SG**
Mr. D.L. Chidananda, Adv.
Mr. Asgha G. Nair, Adv.
Mr. S.N. Terdal, Adv.

Mr. Harinder Mohan Singh ,Adv
Ms. Shabana, Adv.

UPON hearing counsel the Court made the following
O R D E R

Civil Appeal is dismissed with no order as to costs. I.A. No. 3 of 2011 is rejected.

Pending application(s), if any, stands disposed of.

(Pardeep Kumar) **(Renu Diwan)**
Court Master **Court Master**

[SIGNED REPORTABLE ORDER IS PLACED ON THE FILE]