

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 133/2018 (D.B.)**

Mr.Kanhaiyya s/o Babulal Bhade, aged  
About 62 Years, Occupation: Retired, R/o Plot  
No.42 Gawande Layout, Baba Farid Nagar,  
Zingabai Takli, Nagpur, Tahsil & District-  
Nagpur (Maharashtra)

**Applicant.**

**Versus**

- 1) The State of Maharashtra Revenue & Forest  
Department, Mantralaya Mumbai-440032  
through its Secretary
- 2) Principal Chief Conservator of Forest  
Maharashtra State, Van Bhavan,  
Ramgiri Road, Civil Lines Nagpur .
- 3) Additional Principal Chief Conservator of  
Forest, Human Resource Management &  
Administration, Maharashtra, Van Bhavan  
Ramgiri Road, Civil Lines, Nagpur.
- 4) Chief Conservator of Forest ( Territorial)  
Nagpur Circle, Nagpur (Maharashtra State)
- 5) Deputy Conservator of Forest Nagpur  
Division, Nagpur ( Maharashtra State)
- 6) Deputy Conservator of Social Forestry  
Wardha Division, Wardha.

**Respondents**

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Ku.K.K.Pathak, Ld. Counsel for the applicant.  
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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**Coram:-Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 2<sup>nd</sup> December 2022.**

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**JUDGMENT**

**Per :Member (J).**

**Judgment is reserved on 15<sup>th</sup> November, 2022.**

**Judgment is pronounced on 2<sup>nd</sup> December 2022.**

Heard Ku.K.K.Pathak, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the respondents.

2. Case of the applicant is as follows.

The applicant was appointed as Forester in 1972-73. An offence was registered against him alleging drunken, rash/negligent driving. On 27.09.1985 he was placed under suspension. Suspension was revoked on 14.03.1991. For the period of suspension his ACRs were not communicated. He was acquitted on 24.12.1999. By order dated 01.01.2004 period of his suspension was regularised and directed to be treated as duty period. G.R. dated 08.06.1995 (Annexure A-7) stipulating the policy of time bound promotion to Group 'C' and Group 'D' employees became applicable w.e.f. 01.01.1994. As per Clause 52 of G.R. dated 01.02.1996 (Annexure A-6) uncommunicated ACRs could not have been taken into

consideration for denying time bound promotion. The applicant was promoted as Range Forest Officer in 2004. By order dated 03.02.2007 (Annexure A-8) first time bound promotion was given to the applicant w.e.f. 02.05.2000 and not w.e.f. 01.01.1994. He made representations whereupon correspondence ensued. By order dated 27.04.2000 (Annexure A-11) benefit of first time bound promotion was extended to similarly placed employees from an earlier date. The applicant retired on superannuation on 30.09.2009. Against the order dated 13.03.2013 declining first time bound promotion w.e.f. 01.01.2006, the applicant preferred appeal (Annexure A-12) before respondent no.3 which was rejected on 07.04.2014. The applicant then filed O.A.No.829/2014 (Annexure A-14) before this Bench which was allowed by order dated 13.02.2017, the impugned orders were quashed and the question of grant of time bound promotion was directed to be reconsidered in the light of the **Sukhdeo Singh Vs. Union of India (2013) 9 SCC 566.** The applicant then made a representation dated 06.03.2017 (Annexure A-15) that he be given an opportunity of hearing before passing any order. In response to the representation the applicant received the communication dated 18.03.2017 (Annexure A-16) that for the years 1991-92, 1992-93, 1993-94 and 1994-95 his ACRs were Average (B-). The applicant

submitted a reply (Annexure A-17) that none of the aforesaid ACRs was communicated to him. The applicant was then communicated his ACRs for the years 1984-85 as Average (B-) to which the applicant gave a detailed reply. While considering grievance of the applicant G.Rs. dated 01.11.2011 and 13.02.2014 (Annexure A-20 collectively) were not taken into account. The uncommunicated ACRs were taken into account to deny time bound promotion to the applicant by the impugned orders dated 24.08.2017 (Annexure A-1) and 29.08.2017 (Annexure A-2). Hence, this O.A.

3. In their reply at pp.162 to 172 respondents 4 and 5 have averred as follows. As per the prevalent practice ACRs for suspension period of the applicant were not written. Relevant ACRs of the applicant were taken into account which were below the benchmark. Only after guidelines were issued by G.R. on 01.02.1996 practice of communicating ACRs started. This G.R. cannot have retrospective application.

Para 2 of G.R. dated 13.02.2014 which reads as under lays down the procedure to be followed -

२. २०११ - १२ व त्यापुढील वर्षांचे संपूर्ण गोपनीय अहवाल संबंधित अधिकारी / कर्मचारी यांना उघड करून त्याविरुद्ध अभिवेदन करण्याची संधी देण्याची तरतूद यापूर्वीच दिनांक ०१.११.२०११ च्या शासन निर्णयान्वये देण्यात आली आहे. आता

देवदत्त प्रकरणातील निर्णयाच्या अनुषंगाने पूर्वलक्ष्मी प्रभाव देण्याची बाब हाताळताना केंद्र शासनाने दिनांक १३.०४.२०१० रोजी जे आदेश निर्गमित केले आहेत, त्यानुसार राज्य शासनाच्या दिनांक ०१.११.२०११ च्या शासन निर्णयास पुढील प्रमाणे सुधारणा करण्यात येत आहे. केंद्र शासनाचे देवदत्त प्रकरणातील न्यायालयीन निर्णयास पुढील देण्याबाबतचे दिनांक १३.०४.२०१० चे आदेश विचारात घेऊन त्या आदेशांच्या धर्तीवर याबाबत यापुढे खालीलप्रमाणे कार्यवाही करण्यात यावी.

- (अ) यापुढे कोणत्याही प्रकरणांमध्ये निवडसूची तयार करताना २०११-१२ पूर्वीचे ज्या वर्षाचे गोपनीय अहवाल विचारात घेतले जाणार असतील, अशा गोपनीय अहवालापैकी ज्या गोपनीय अहवालातील अंतिम प्रतवारी पदोन्नतीच्या पात्रतेपर्यंत न पोहोचणारी (**Below Benchmark**) असेल असे गोपनीय अहवाल पदोन्नतीच्या विचारात घेण्यापूर्वी अशा गोपनीय अहवालांच्या प्रती संबंधित अधिकारी / कर्मचारी यांना उपलब्ध करून देण्यात याव्यात.
- (ब) असे करताना फक्त पदोन्नतीच्या पात्रतेपर्यंत न पोहोचणारे व पदोन्नतीसाठी विचारात घेण्यात येणारे गोपनीय अहवालच कळविण्यात यावेत. इतर वर्षाचे पदोन्नतीच्या पात्रतेपर्यंत न पोहोचणारे गोपनीय अहवाल कळविण्याची आवश्यकता नाही.

This procedure was followed before passing the impugned orders.

4. In his rejoinder the applicant has raised a contention that by G.R. dated 27.12.1968 (Annexure A-21) it was stipulated-

2. ***Such reports, which are adverse, should be communicated to Govt. servants concerned by the competent authority within two months from the date of receipt of the confidential Reports from the subordinate offices.***

G.R. dated 27.12.1968 was considered in the judgment (Annexure A-22) by the Hon'ble Bombay High Court.

5. We have set out the chronology. By order dated 13.02.2017 passed in O.A.No.829/2014 this Tribunal directed reconsideration of case of the applicant with regard to grant of time bound promotion in the light of what is held in Devdatta and Sukhdeo (Supra). Thereafter, by letter dated 18.03.2017 ACRs of 1991-92, 1992-93, 1993-94 and 1994-95 were communicated to the applicant. By letter dated 30.07.2017 ACR of 1984-85 was communicated to him. ACRs of these five years were relevant since for the period of suspension there were no ACRs. Copies of these ACRs were communicated to the applicant by following the procedure stipulated in para 2 of G.R. dated 13.02.2014 which we have quoted above.

6. It was contended by Advocate Smt.Pathak for the applicant that G.R. dated 13.02.2014 was not applicable in this case since the applicant had retired in 2009 on superannuation. There is no merit

in this submission. Said G.R. does not state that it shall not apply to retired employees. It *inter alia* lays down the procedure to be adopted in the event of initial non communications of ACRs and how this defect can be cured by belated communication of ACRs having a bearing on the career/ benefits of the employee.

7. In the impugned order dated 24.08.2017 (Annexure A-1) it is stated-

**3. In light of Hon'ble Supreme Court judgments cited by Hon'ble MAT, the State Government has issued G.R.No. न्यायप्र-२०१३/ प्रक १२६/२०१३/तेरा dated 13/02/2014 to decide the matters where the ACRs were not communicated to the concerned Government Servant. The procedure to deal with such matters has been given in para 2 of this G.R.**

**4. I have considered the representations of Shri.K.B.Bhade and I have also gone through the relevant records and the judgments passed by Hon'ble Supreme Court in Dev-Dutt and Sukhdev Singh matters. To test the eligibility of Shri.K.B.Bhade with effect from 1/10/1994, five ACRs prior to 1/10/1994 shall be required in terms of G.R No. SRV-1089/3654/C.No 12/89/12 dated 28/3/1990. However the final grading in the ACRs for each of the years**

***1991-92, 1992-93, 1993-94, 1994-95 is "Average'(B-). Shri.K.B.Bhade was under suspension from 27/9/1985 to 14/03/1991, therefore, his ACRs were not written for the period. Therefore to consider fifth ACR as stated above, the ACR for the period 1984-85 becomes essential.***

Order dated 24.08.2017 shows that ACR for 1984-85 was upgraded to "good (B)". However, ACRs for 1991-92, 1992-92, 1993-94 and 1994-95 which were Average i.e. (B-) remained so and were not thought fit to be upgraded. Before undertaking such exercise which culminated in passing of the impugned order dated 24.08.2017 representation of the applicant was considered and procedure stipulated in para 2 of G.R. dated 13.02.2014 was followed. For these reasons we do not find any infirmity in the impugned orders. This conclusion of ours received support their ***"Anil Kumar Vs. Union of India and Others"*** judgment dated 21.01.2019 delivered by Hon'ble Supreme Court in Civil Appeal No.888 of 2019. In this case the appellant was aggrieved by the rejection of his claim for financial upgradation. His ACRs for certain years were below the required benchmark. These were not communicated to him. In this factual scenario it was observed-



*A three Judge Bench of this Court has in [Sukhdev Singh vs. Union of India & Ors.](#)<sup>2</sup> affirmed the correctness of the view taken in *Dev Dutt (supra)* noting that an earlier three Judge Bench in [Abhijit Ghosh Dastidar vs. Union of India & Ors.](#)<sup>3</sup> had adopted the same principle.*

*The three Judge Bench in *Sukhdev Singh (supra)*, held thus:*

*“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 2 (2013) 9 SCC 566 3 (2009) 16 SCC 146 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.”*

It was held that the failure to communicate ACRs deprived the appellant of the opportunity to submit his representation in the matter of financial upgradation. The appellant had since retired from service.

In this factual backdrop following directions were issued-

***Hence, we are of the view that the appellant should be granted an opportunity, within a period of four weeks from today to submit his representation in respect of the ACRs for the concerned years where he did not fulfil the benchmark for financial upgradation. Upon the submission of his representation, the respondents shall consider it and communicate the outcome to the appellant within a period of two months thereafter. Based on that decision, the case of the appellant for financial upgradation shall be considered afresh. In the event his ACRs for the relevant period are upgraded, the case for financial upgradation shall be determined within a period of three months thereafter.***

***We also direct that in the event that the ACRs for the relevant period are upgraded, the case of the appellant for promotion to the post of Senior Deputy Secretary/Controller of Administration shall be considered afresh by the Departmental Promotion Committee expeditiously. This exercise shall be carried***

***out with reference to the date on which his junior in service came to be promoted.***

***In the event that the case of the appellant is considered favorably, he would be entitled to all consequential benefits which flow from the financial upgradation and upon the grant of regular promotion to the post of Senior Deputy Secretary.***

8. Perusal of order dated 24.08.2017 shows that before said order was passed an opportunity of hearing was given to the applicant, he had availed it by making a representation, said representation was duly considered and thereafter, except ACR of 1984-85, no other ACR was found fit for upgradation. This procedure was as per para 2 of G.R. dated 13.02.2014. This being the factual position the O.A. is liable to be dismissed. It is accordingly dismissed with no order as to costs.

(M.A.Lovekar)  
Member (J)

(Shree Bhagwan)  
Vice Chairman

Dated – 02/12/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman &  
Court of Hon'ble Member (J) .  
Judgment signed on : 02/12/2022.  
and pronounced on  
Uploaded on : 02/12/2022.