

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.845/2010**

% **Date of Decision: 09.02.2010**

Union of India ..... Petitioners  
Through Ms. Reeta Kaul, Advocate.

Versus

Ravinder Singh ..... Respondent  
Through Nemo

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

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| 1. <i>Whether reporters of Local papers may be allowed to see the judgment?</i> | YES |
| 2. <i>To be referred to the reporter or not?</i>                                | NO  |
| 3. <i>Whether the judgment should be reported in the Digest?</i>                | NO  |

**ANIL KUMAR, J.**

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The petitioner/Union of India through Secretary, Ministry of Water Resources and Ors. have challenged the order dated 13<sup>th</sup> October, 2009 passed in OA No. 588/2009 titled Sh. Ravinder Singh Vs. Union of India & Ors. directing the petitioners to communicate to the respondent his ACRs which may be below bench mark and considered by the DCPs held in July, 2007 and April, 2008 and permitted the respondent to make a representation against such reports. The Central Administrative Tribunal, Principal Bench further directed the petitioners that in case his ACRs are upgraded commensurating with the bench mark, then to held a review DPC and to consider the

respondent for the post of Member, Central Water Commission.

The respondent after his appointment in Central Water Engineering (Group-A) was promoted as Deputy Director/Executive Engineer and later on was promoted as Director/Superintending Engineer and was also promoted to the grade of Chief Engineer.

The respondent had filed an OA under Section 19 of Administrative Tribunal Act, 1986 challenging downgrading of his ACRs for six years from 2001 to 2007 as null and void and that he be treated as 'very good' in consonance with the bench mark and to promote the respondent along with his juniors from the date his immediate juniors were promoted.

The Tribunal, after considering the pleas and contentions of the parties and relying on (2008) 8 SCC 725 Dev Dutt Vs. Union of India had held that since the ACRs of the respondent for the period 2000-2001 to 2006-2007 were below the bench mark of 'very good' for promotion, the entries in his ACR became adverse entries as such entries eliminated promotion of the respondent and the respondent became entitled for intimation of the same.

While relying on Dev Dutt (Supra), it was held that an entry in the ACR, which adversely affects the promotion of an employee should be communicated to him, so as to afford him opportunity of making representation against it. Relying on the office memorandum dated 10-

11<sup>th</sup> September, 1987 in the said decision, it was held that it contemplates communication of adverse entries only and not “good” entry.

In *Dev Dutt (Supra)* the Apex Court had held communication of entries is giving the opportunity to represent against them is particularly important on higher post which are in a pyramidal structure where often principal of elimination is followed in selection of promotion, and even a single entry can destroy 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. In the said case, Supreme Court evolved a new principal of natural justice holding that fairness and transparency in public administration require that all entries (whether poor, fair, average, good, or very good) in the ACR of a public servant, whether in Civil, Judicial, Police or any other said service (except military) which can be construed as adverse must be communicated to him within a reasonable period so that he can make a representation for its up-gradation. This rule prevails even if there may be no rule/GO requiring communication of entry, or even if there is a rule/GO prohibiting it because principals of non arbitrary needs it in all state action as envisaged by article 14 of the Constitution which requires such communication and Article 14 overwrites all Rules and such other

orders.

The Tribunal has relied on the ratio of Dev Dutt Vs. Union of India and has directed the respondent to communicate to the respondent such ACRs which may be below bench mark and considered by DPCs held in July, 2007 and April, 2008. If the ACRs of the respondent are below the bench mark, the respondent is entitled for the communication of the said ACRs and the decision of the Tribunal cannot be faulted on any of the grounds raised by the petitioners.

In fact, no cogent ground has been raised by the petitioner against the order of the Tribunal based on the decision of the Apex Court and in the circumstances, there is no scope to interfere with the order of the Tribunal in the present facts and circumstances.

The writ petition is without any merit and it is therefore, dismissed.

**ANIL KUMAR, J.**

**February 9, 2010**

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**MOOL CHAND GARG, J.**