

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 31.07.2009

CORM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE.T.S.SIVAGNANAM

W.P.No.29365 of 2003

B.Manivannan ... Petitioner

Versus

1. The Senior Administrative Officer  
Sugarcane Breeding Institute  
(Indian Council of Agricultural Research)  
Coimbatore □ 641 007.

2. The Director  
Sugarcane Breeding Institute  
(Indian Council of Agricultural Research)  
Coimbatore □ 641 007.

3. The Registrar  
Central Administrative Tribunal  
High Court Campus  
Chennai □ 600 104. Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the 3rd Respondent / Tribunal relating to its order dated 09.04.2002 in O.A.No.879 of 2002 and quash the same.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.M.T.Arunan, SCCG-R1&R2

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O R D E R

T.S.SIVAGNANAM J.

The above Writ Petition has been filed to quash the order passed by the 3rd Respondent Tribunal dated 9.4.2002 in O.A.No.879 of 2002.

2. The Petitioner herein is the Applicant before the Tribunal. The original application was filed to set aside the order passed by the 1st Respondent herein dated 31.07/ 2.08.2002 denying promotion / advance increment to the Applicant for the period from 1.1.1987 to 31.12.2001 and consequently direct the 2nd Respondent herein to treat the applicant having been promoted to various higher grades namely grade T5 w.e.f. 1.1.1991, grade T6 w.e.f. 1.1.2001 and grant all consequential monetary and other attendant benefits including arrears of salary and other service benefits.

3. In the original application the Applicant stated that he is working as Documentation Assistant in the 1st Respondent Institute which is a constituent of Indian Council for Agricultural Research. The Applicant was served with a Memorandum dated 27.11.1986 about certain discrepancies in the Library for which the Applicant submitted his reply on 11.12.86. On the basis of the compliant lodged by the then Director Dr.K.Mohan Naidu, who was the Reviewing Officer for the Applicant, CBI filed a charge sheet against the Applicant in the Court of the Chief Judicial Magistrate, Coimbatore in CC.Nos.14 to 18 of 1991 and the Applicant was arrayed as A1 in all the five criminal cases for alleged offences under Sections 120B r/w. 420 r/w. 511 IPC, 420 r/w. 511 IPC, 477A, 408 IPC. The Applicant further submitted that the Criminal Court acquitted the Applicant in all the 5 cases by an order dated 30.4.2002. The Applicant had sent a written complaint about the then Director Dr.K.Mohan Naidu to the Union Minister and one Dr.B.K.Tripathi, Assistant Director General, ICAR was appointed as Enquiry Officer by order dated 24.08.1984 to enquire into the allegations against Dr.Mohan Naidu. The Applicant has further submitted that the said Dr.K.Mohan Naidu had threatened the Applicant in the presence of officials that he would take vindictive action against him.

4. It is further submitted that the Applicant received the proforma on 21.08.1997 for his 5 yearly assessment promotion forms for the period from 15.1.1981 to 30.6.1986 and also the proforma for the Annual Assessment Form for the period 1987 to 1998 and the same were not submitted to Dr.K.Mohan Naidu since he would not give a fair report as Reviewing Officer. The Applicant by representation dated 18.7.1995 sought for change of Reviewing Officer for writing his Annual Assessment / 5 yearly assessment promotion form. The said representation was returned on 21.08.1995 stating that the observation made by the Central Administrative Tribunal in O.A.No.511 of 1990 against the then Director Dr.K.Mohan Naidu cannot be made applicable in other cases. (O.A.No.511 of 1990 was filed by the Applicant to quash the suspension order passed by the then Director Dr.K.Mohan Naidu. The Tribunal in another order passed in O.A.No.567 of 1990 held that no further proceedings can take place against the charge memo issued to the Applicant dated 1.6.1990 and 28.07.1990 so long as Dr.K.Mohan Naidu remains as the Director). Accordingly, the Applicant was advised to submit his report without further delay. The Applicant also sent a representation on 23.11.1995 to the President of ICAR.

5. The Applicant would further submit that Dr.K.Mohan Naidu was relieved from the post of Director w.e.f. 12.05.1994 and the then Director cannot act as Reviewing Authority of the Applicant and he cannot demand blank forms from the Institute. After Dr.B.K.Thripathe joined as Director in the year 1997, the Applicant, vide letter dated 18./19.01.1998, submitted all his annual assessment forms for the period 1.4.1989 to 31.03.1997 and also the 5 yearly assessment promotion forms. The Applicant has further stated that he is due for promotion for every 5 years i.e. 1981-86, 1987-91, 1992-96 and 1997-2001.

6. The Applicant had filed O.A.No.259 of 1999 challenging the office memorandum dated 26/27.11.1998 insofar as it failed to consider the 5 yearly assessment reports submitted by the Applicant during the period 15.01.1981 and 30.06.1986. The Tribunal by order dated 1.4.1999 directed the Respondents to consider the request of the Applicant for assessment expeditiously, without forcing them to approach the Tribunal again. The said order was not implemented and the Applicant had been repeatedly approaching the Authorities.

7. It is further submitted that the 1st Respondent by proceedings dated 30.07.1999 furnished 5 yearly assessment promotion forms for the period 1.7.1986 to 30.06.1991 and 1.7.1991 to 30.06.1996. The Applicant submitted the filled up forms on 12.08.1999. However, no action was taken and the matter was kept pending, inspite of the Applicant's representations. For the period of next 5 yearly assessment / promotion between 1996-2001 the Applicant submitted another

representation on 10.06.2002, requesting for the 5 yearly assessment form for the period 1.7.1996 to 30.06.2001 and the same were furnished on 8.6.2002. The forms were filled up by the Applicant and submitted on 8.6.2002 itself.

8. It is further submitted that the DPC was convened on 29.07.2002 to consider the applicant's case for the 5 yearly assessment promotion for the periods 1981 to 1986, 1987 to 1991, 1992 to 1996 and 1997 to 2001. The Applicant has further stated that an expert member was placed in the DPC at the instance of the then Director Dr.K.Mohan Naidu and the member also belongs to the same Community. In spite of the Applicant's request for an opportunity for presenting personally before the assessment committee, the same was denied. The DPC passed two orders, both dated, 31.07/01.08.2002 and by the first order it has granted promotion to the Applicant from grade T3 to T4 Documentation Assistant w.e.f. 1.1.87 and by the second order, for the remaining period i.e. from 1.1.1987 to 31.12.2001 the Assessment Committee did not recommend for promotion or for advance increments. The Applicant submits that the Annual Assessment Forms of the Applicant for the period between 1987 and 1997, wherein the Applicant filled part one, were not placed before the DPC. The Applicant has further stated that he met the 2nd Respondent in person on 1.8.2002 and came to know that the earlier Director Dr.K.C.Alexander had transmitted the Applicant's forms to the then Director Dr.K.Mohan Naidu who seems to have given "below average" report against the Applicant.

9. The Applicant further submits that till 31.07.2002, the Respondents did not communicate any adverse remarks and therefore the same cannot be relied upon to deny promotion / assessment. The Applicant has contended that un-communicated adverse remarks should not be relied upon by the DPC for denying promotion and by doing so, there is violation of principles of natural justice. The Applicant has also extensively made remarks against the then Director Dr.K.Mohan Naidu with a view to establish malafide and vindictive action.

10. The Respondents 1 and 2 denied the allegations made by the Applicant in their reply statement, inter alia, contending that the Applicant has not returned the CCRs along with the self assessment portion and blank forms were sent to the Reviewing Officer for necessary review as per ICAR Rules. The Respondents denied the allegation that such blank forms were sent at the instance of the then Director Dr.K.Mohan Naidu. The Respondents further stated that the applicant has not given the Annual Assessment Report Form duly filling the part - 2 and a reminder was sent to him on 22.05.1995. Since the forms were not received from the Applicant, blank forms for the years 1989-1990, 1990-91, 1991-92, 1992-93 and 1993-94 were handed over to his reporting Officer on 18.07.1995 as per DGs order dated 9.3.1995. The Respondents further denied his submission of the Annual Assessment Forms by the Applicant for the years from 1.4.1989 to 31.03.1997.

11. The Respondents would submit that the Applicant had filed contempt application No.65 of 1999 before the Tribunal for non consideration of his promotion and a reply was submitted to the Tribunal that his promotion cannot be considered for want of integrity certificate and pending criminal proceedings. The Respondents also denied the allegations made against the expert member in the DPC. Regarding the personal appearance before the Assessment Committee, the Respondents stated that the said provision has been dispensed with in respect of technical personnel belonging to category 1 and 2 vide ICAR letter dated 23.9.1983.

12. The Respondents by placing reliance on Rule 174 (12) of P & T Manual Vol. III M.H.A. : O.M.No.51/7/68-Estt. (A) dated 19.9.1969 and D.P. & A.R.O.M.No.51/3/74-Estt. A dated 22.5.1975, stated that the grading of officers, being done on the basis of the general remarks in the report, should not also be communicated even it is adverse. The Respondents further submitted that the Applicant has not given his self assessment portion and as per the Rule, only the adverse entries regarding performance of work, defects, faults, deficiencies and quality of work need be

communicated. The adverse entries are communicated only for giving official an opportunity to improve his ability in work and represent for expunging the remarks. Therefore, it is submitted that in the case on hand the question of communication of adverse entries does not arise. The Respondent further submitted that the order dated 31.07/02.08.2002 issued by the Respondents is correct and without exhausting the Appellate remedy the original application has been filed which has to be rejected as pre-mature. The Respondents have also pointed out the various occasions on which the Applicant has approached the Tribunal. The Respondents further submitted that the grading of the officer, done on the basis of general remarks in the report, should not also be communicated even if it happens to be adverse and prayed for dismissal of the O.A.

13. The Applicant filed a rejoinder to the reply statement stating that the receipt of the annual assessment forms for the years from 1.4.1989 to 31.03.1997 was admitted by the Respondents in paragraph 5 of the Reply Statement filed by the Respondents in O.A.No.380 of 1999. The Applicant further submitted that the Respondents committed an error in giving wrong figure in Column No.2 of the tabulated statement in paragraph 12 of the Reply Statement. The Applicant would further contend that the existence of adverse remark is not denied by the Respondents and if that be so it should be communicated to him. The Applicant pointed out the discrimination meted out to him by denying personal appearance before the Assessment Committee / DPC held on 29.07.2002 when it was provided for 3 other technicians. The Applicant further submitted that Mr.Mohan Naidu has no jurisdiction to function as Review Authority on 24.08.1995 and 21.05.1996 as he was relieved from the post on 12.05.1994 itself.

14. The Tribunal dismissed the original application by order dated 9.4.2003, stating that the Applicant is not entitled for personal appearance before the Assessment Committee and such procedure is envisaged only in respect of professionals of ICAR and not technical personnel, like the applicant. The Tribunal further held that the Applicant was found fit to be promoted to T4 grade w.e.f. 1.1.1987 and he also received consequential pay benefits and the Tribunal cannot sit as an Appellate Authority and scrutinize the findings of the DPC and the DPC is at liberty to frame its own procedure. The Tribunal further held that the Applicant, having accepted the promotion, cannot now question the very same promotion. The Tribunal held that the Applicant is estopped from finding fault with the action of the Department having failed to submit the assessment forms duly filled in at proper time. As regards the allegations regarding malafides, the Tribunal did not take notice of the same since the concerned person has not been impleaded.

15. This order dated 9.4.2003 of the Tribunal is challenged in the present Writ Petition, interalia reiterating the grounds relating to non communication of the adverse remarks and the allegations regarding malafides and the various orders passed by the Tribunal from time to time in the original applications filed by the Applicant. The Applicant further submitted that the Tribunal ought to have given a finding on the adverse remarks relating to the period 1997 to 2001 and the promotion earned related to earlier period i.e. prior to 1987 and acceptance of promotion to T4 grade w.e.f. 1.1.1987 cannot be held to be an estoppe.

16. The Respondents have filed a Counter Affidavit in the above Writ Petition and reiterated the stand taken before the Tribunal. As regards the non communication of adverse entries, the Respondents once again placed reliance on Rule 174 (12) of P & T Manual Vol. III.

17. We have heard the Learned Counsel on either side and carefully perused the materials placed on record.

18. Though the pleadings in the original application, reply statement and Affidavits are voluminous, the question of law required to be decided in the present Writ Petition lies in a narrow campus in

view of the factual position and the law laid down by the Hon<sup>ble</sup> Supreme Court.

19. The grievance of the Applicant before the Tribunal was denial of promotion/ advance increment for the period from 1.1.1987 to 31.12.2001 and for a consequential relief of promotion to grade T-5 w.e.f. 1.1.1991 and T-6 from 1.1.2001. It is admitted on either side that the DPC, which met on 29.07.2002, passed two orders both dated 31.7/1.8.2002 in the same file No.F.No.14-2/2002-Estt. By the 1st order, the DPC granted promotion to the Applicant from grade T3 to grade T4 w.e.f. 1.1.1987. There is no complaint made by the Applicant in respect of this promotion. In the 2nd order of the DPC, for the period from 1.1.1987 to 31.12.2001, the DPC did not recommend the Applicant for promotion or for advance increment. It is this proceeding which is the subject matter of challenge before the Tribunal. Therefore, prima-facie, we are satisfied that there can be no estoppel against the Applicant to challenge the adverse remarks relating to the period 1987-2001 and the promotion granted to T-4 grade w.e.f. 1.1.87 cannot be put against the applicant to prevent him from challenging the rejection of his claim for promotion from 1.1.1987 to 31.12.2001 to the grade T-5 w.e.f. 1.1.1981 and grade T-6 from 1.1.2001.

20. Having held so, the next question to be decided is as to whether the Respondents are bound to communicate the adverse entries and whether non communication of such entries would amount to violation of the principles of natural justice.

21. The Respondents in their Counter Affidavit filed in the above Writ Petition as well as in the Reply Statement filed before the Tribunal, with regard to communication or non communication of the adverse entries have relied upon Rule 174 (12) of P & T Manual Vol. III M.H.A. : O.M.No.51/7/68-Estt. (A) dated 19.9.1969 and D.P. & A.R.O.M.No.51/3/74-Estt. A dated 22.5.1975. The Rule which came to be introduced during 1969 / 1975, was to the effect that, only such of the adverse entries as are accepted by the Counter Signing Authority, if any, need be communicated. The Rule also speaks about the manner and method of communication and the purpose behind the same. The grading of officers, being done on the basis of general remarks in the report, should not also be communicated, even if it is adverse.

22. As rightly pointed out by the Applicant, the existence of adverse entries / remarks is not disputed by the Respondents. At this juncture, it is relevant to refer to the recent Judgment of the Hon<sup>ble</sup> Supreme Court in (2008) 2 SCC (L & S) 771, Dev Dutt vs. Union of India and others, wherein the Hon<sup>ble</sup> Supreme Court considered the question as to whether all entries are to be communicated to the employee or only the adverse entry. The Hon<sup>ble</sup> Supreme Court has held in para Nos. 10, 13, 17 and 41 of its Judgment as follows:

"10. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable."

"13. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non communication

of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry."

"17. In our opinion, every entry in the ACR 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 v. Union of India* that Arbitrariness violates Article 14 of the Constitution."

"41. 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. "

23. In view of the above Judgment of the Hon'ble Supreme Court, not only the adverse remarks, but every entry for the ACR of a public servant must be communicated to him within a reasonable period, the stand taken by the Respondents that the grading of the officer done on the basis of several remarks in the report, need not be communicated to him, even if it is adverse, is liable to be out-rightly rejected. The non communication of the adverse entries has resulted in violation of the principles of natural justice and the Applicant has been denied reasonable opportunity to submit his representation against such entries. Therefore, the Respondents are bound to communicate the adverse entries recorded against the Petitioner which were taken note of by the DPC while considering his eligibility for promotion for the period from 1.1.1987 to 31.12.2001.

24. In the instant case, the Departmental Promotion Committee/Assessment Committee by order dated 31.7./02.08.2002, after perusal of the applicant's service records recommended neither promotion nor advancement increments to the petitioner. Thus, it is clear that certain entries which are contained in the applicant's service records have formed the basis for the decisions arrived at by the Departmental Promotion Committee for not recommending promotion or advancement increment to the petitioner. As held by the Hon'ble Supreme Court in *Dev Dutt's case* cited supra, the communication of the entries are with a view to grant an opportunity for the employee to submit his representation against such entry, so that he would not be eliminated from being considered for promotion or for other financial upgradation. It is not the case of the respondents that there are no adverse entries. But they have taken a stand regarding the non communication of the same, by relying on Rule 174, referred above. This, in our view, is not sustainable, in view of the clear dictum laid down by the Hon'ble Supreme Court in the above referred case.

25. The applicant was not given any opportunity to submit his representation to such adverse entries which were placed for consideration before the Departmental Promotion Committee. Thus depriving him of an opportunity of making a representation against such adverse entries. Hence, the order passed by the Departmental Promotion Committee as well as the order passed by the Tribunal are against the interest of the applicant and running contrary to the dictum laid down by the Hon'ble Apex Court and hence the same are liable to be set aside and accordingly the same are set aside.

26. In view of the above, we find that the order of the Tribunal calls for interference and accordingly, the same is set aside with a direction to the Respondents to communicate all entries relating to the Applicant within 4 weeks from the date of receipt of the copy of this order. On being communicated, the Applicant may make his representation against such entries within a period of 4 weeks from the date of receipt of such entries and a decision shall be taken on the representation within a period of 4 weeks from the date of submission of a representation by the applicant and the applicant shall be considered for promotion by the DPC to grade T-5 w.e.f. 1.1.1991 and T-6 w.e.f. 1.1.2001 with all consequential monetary and other attendance benefits including arrears of salary and other service benefits.

27. With the above directions the Writ Petition is allowed. No costs.

(E.D.R.J.) (T.S.S.J.)

31-07-2009

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Internet:Yes

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To

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Pre Delivery Order in  
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