

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (SB) No. 166 of 2014**

Dr. Ravindra Pal Singh Negi. .... Petitioner

Versus

State of Uttarakhand & others. .... Respondents

Mr. M.C. Pant and Mr. Kishore Kumar, Advocates for the petitioner.  
Mr. B.D. Kandpal, Deputy Advocate General for the State of Uttarakhand / respondents.

**JUDGMENT**

**Coram: Hon'ble K.M. Joseph, C.J.  
Hon'ble V.K. Bist, J.**

**Dated: 30<sup>th</sup> April, 2015**

**K.M. JOSEPH, C.J. (Oral)**

Petitioner has approached this Court seeking the following reliefs:

- “1. Issue writ rule or direction in the nature of certiorari quashing the order dated 07.08.2013 by which the case of the petitioner for promotion for the post of Joint Director is rejected by the D.P.C. ignoring the seniority and good service record of the petitioner, after calling the entire records from the respondents.
2. Issue writ rule or direction in the nature of mandamus directing the respondents to review the DPC held on 07.08.2013 and consider the case of the petitioner for promotion on the basis of his eligibility and merit along with all consequential benefits on the promoted post of Joint Director.
3. Issue writ rule or direction in the nature of mandamus directing the respondents to treat the un-communicated Good / Satisfactory entries as upgraded to excellent and correct the same in view of law laid down by the apex court in the case of Devi Dutt vs. Union of India and grant all consequential benefits including promotion to the petitioner on the post of Joint Director Medical.”

2. Briefly put, the case of the petitioner is as follows:

Petitioner was directly appointed as Medical Officer in 1991. Petitioner filed a representation in 2012 for being considered for promotion to the post of Joint Director. Thereafter, petitioner filed a writ petition, which was disposed of with a direction to hold D.P.C. The order of the Court was submitted by the petitioner before the opposite party. Petitioner was given notional promotion to the post of Grade-I (Specialist Cadre) in the pay scale of Pay Band – 3, ₹ 15,600-39,100 with Grade Pay of ₹ 6,600/- w.e.f. 25.07.2007. It is mentioned that the pay-scale, which was given to the petitioner by the respondents by the aforesaid order, he was getting the same pay-scale even prior to his promotion order. Thereafter, petitioner was promoted to the post of Senior Medical Officer in the pay scale of Pay Band – 3, ₹ 15,600-39,100 with Grade Pay of ₹ 7,600/- vide order dated 18.09.2013. Petitioner filed a contempt petition, wherein a compliance report was filed. Thereafter, petitioner moved an application under the Right to Information Act and the information was supplied to the petitioner. Now, the petitioner is before us.

3. A counter affidavit has been filed on behalf of respondent No. 1, wherein it has been, *inter alia*, stated as follows:

“11. That in compliance of the order dated 08.07.2013 passed by this Hon’ble Court the D.P.C. for promotion to the post of Joint Director (Specialist sub-cadre) was held on 07.08.2013, in which the name of petitioner was considered, but he was not found fit. The 10 years A.C.R. of petitioner as produced before the D.P.C. is being reproduced as under:

Sen-iority No.	Office-rs Name	Description of last 10 years A.C.R.										Total secured numbe-rs
		2001 -02	2002 -03	2003 -04	2004 -05	2005 -06	2006 -07	2007 -08	2008 -09	2009 -10	2010- 11	
329 A	Dr. Ravin-dra Pal Singh Negi	Good (fair)	Very Good	Good (fair)	Very Good	Good	Good (fair)	(adv-erse) Not com-mun-icate-d	Good (fair)	Good	Good	
		5/10	8/10	5/10	8/10	5/10	5/10		5/10	5/10	5/10	51/90 Aver-age 5.66

12. That since A.C.R. of the petitioner for the year 2007-08 was adverse, and was not communicated to him, therefore, this entry was not looked into, and only 9 years A.C.R. was seen, but he could not be promoted to the post of Joint Director (Specialist sub-cadre) as he got only 5.66 average annual marks, which was less than 06 average annual marks as provided in Rule 4(5) of the Uttarakhand Procedure of Selection for Promotion in the State Services (Outside the Purview of the Public Service Commission) on the basis of 'Seniority' and 'Merit' Subject to the Rejection of Unfit, Rules, 2013."

4. Petitioner has filed a rejoinder affidavit, wherein he contends that there is violation of the dictum of the Hon'ble Supreme Court in the case of **Devi Dutt vs. Union of India & others**, reported in **(2008) 8 SCC 725**.

5. We have heard the learned counsel for the petitioner and the learned Deputy Advocate General for the State.

6. The learned counsel for the respondents, after getting instructions, does not dispute that the entries were not communicated.

7. In such circumstances, the adverse entries, which are not communicated to the petitioner, must be communicated; petitioner must be given an opportunity to represent against the same; a decision must be taken thereon; and the D.P.C. must be convened thereafter. Accordingly, the writ petition is disposed of as follows:

i. The order dated 07.08.2013, rejecting the case of the petitioner for promotion as Joint Director, will stand quashed.

ii. We notice that the entries for the years 2003-2004, 2005-2006, 2006-2007, 2008-2009 & 2009-2010 should have been communicated and his representation should have been considered; but, that was not done. We allow the petitioner three weeks' time from today to represent against the entries for the aforesaid years, as they appear in the counter affidavit, and the said representation will be made to respondent No. 2, i.e. Director

General, Medical Health & Family Welfare. Respondent No. 2 will consider the said representation and take a decision thereon in accordance with law within a period of one month from the date of receipt of the representation. Thereafter, a review D.P.C. will be held to consider the case of the petitioner for promotion to the post of Joint Director on the basis of the decision taken by respondent No. 2 on the representation. The review D.P.C. will be held within a period of three months from the date of decision on the representation.

**(V.K. Bist, J.)**  
30.04.2015

**(K.M. Joseph, C. J.)**  
30.04.2015

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