

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

Writ Petition (S/S) No. 1520 of 2015

Smt. Khasti Devi Almiya

... Petitioner

Vs

State of Uttarakhand & another

... Respondents

Mr. Ramesh Chandra Joshi, learned counsel for the petitioner.

Mr. N.P. Sah, Standing Counsel, present for the State of Uttarakhand.

**Hon'ble Sudhanshu Dhulia, J. (Oral)**

1. The petitioner before this Court is a Junior Assistant in the Collectorate, Almora. Her promotion to the next higher post of Senior Assistant has been denied and the Junior Assistants, below the petitioner in seniority, have been promoted. Aggrieved, the petitioner has challenged the promotion before this Court by filing present writ petition.

2. Admittedly as per the Rules, governing the service condition of the petitioner, known as Uttarakhand (Outside the Purview of Public Service Commission) Selection Procedure for Promotion under the State Service Rules, 2013, where criteria for promotion is *seniority-cum-merit* and only such candidates are liable to be considered who have put in six years of regular service and for the last five years of service, at least, in four years, they have received either "Good" or "Very Good" entries in their Annual Confidential Report (*in short* "ACR"). In the present case, the ACR entries of the petitioner for the past five years are as under:-

<b>Sl. No.</b>	<b>Year</b>	<b>Entry</b>
1.	2009-10	Satisfactory
2.	2010-11	Satisfactory
3.	2011-12	Good
4.	2012-13	Good
5.	2013-14	Very Good

3. The case of the petitioner, however, is that since the entire promotion depends upon the service record, therefore, even though "Satisfactory" entry in the ACR may not be an

adverse entry. The same was liable to be communicated to her in view of the decision of Hon'ble Apex Court in ***Dev Dutt Vs Union of India*** reported in **2008 (8) SCC 725** followed by three judges Bench of Hon'ble Apex Court in ***Sukhdev Singh Vs Union of India & others*** reported in **2013 (9) SCC 566**. The Hon'ble Apex Court also followed the above referred judgments in the latest decision in ***Prabhu Dayal Khandelwal Vs Chairman, UPSC & others*** (Civil Appeal No(s) 8006-8007/2003 decided on 23.07.2015) wherein the Hon'ble Apex Court held that every ACR entry must be communicated to the person concerned within a reasonable period. The relevant portion of the judgment reads as under:-

“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.”

7. In the above view of the matter, we are satisfied that the impugned order passed by the High Court, deserves to be set aside, inasmuch as, the claim of the appellant could not be ignored by taking into consideration, uncommunicated Annual Confidential Reports for the years 1995-1996, 1996- 1997 and 1998-1999, wherein the appellant was assessed as “good”. In the absence of the aforesaid entries, it is apparent, that the remaining entries of the appellant being “very good”, he would be entitled to be considered fit for the promotion, to the post of Chief Commissioner of Income Tax, on the basis of the then prevailing DoPT guidelines, and the remaining valid Annual Confidential Reports.”

4. Admittedly the case of the petitioner before this Court is that the ACR entries for the year 2009-10 and 2010-11 have not been communicated to her. Consequently, such entries could not be relied upon as that would be in clear violation of the ratio of the Hon'ble Apex Court in the above cited decisions. Therefore, the promotion of the petitioner has wrongly been denied to her, as the denial of the promotion is on the basis of non-communicated entries of the previous years. The entries of ACR have been communicated to the petitioner after the recommendation of the Departmental Promotion Committee.

5. Considering the above admitted position as well as decisions of the Hon'ble Apex Court (referred above), the writ petition stands allowed.

6. On 11.01.2017, this Court directed the respondents to keep one post of Senior Assistant vacant. Under the aforesaid circumstance, the respondent-authority is hereby directed to promote the petitioner on the post of Senior Assistant, with effect from the date these promotions were earlier made, subject to any other ineligibility with the petitioner which has not been brought before this Court.

**(Sudhanshu Dhulia, J.)**

28.02.2017

Aswal