



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWPOA No.5738 of 2019

Decided: 24th March, 2026

Vikrant Bonsra

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting? **Yes**

For the petitioner: Mr. Sunil Mohan Goel, Senior Advocate with Mr. Ashok K. Tyagi and Mr. Abhinav M. Goel, Advocates.

For the respondents: Mr. Rupinder Singh Thakur, Additional Advocate General, for respondents No.1 to 3. None for respondent No.4.

Respondents No.6 is proceeded against *ex-parte* vide order dated 27.09.2021.

Respondents No.5, 7 to 9 are deleted from the array of parties vide order dated 30.03.2021.

Jiya Lal Bhardwaj, Judge (*Oral*)

By way of present writ petition, the petitioner has prayed for quashing an office order dated 20.12.2014 (Annexure P-13), passed by respondent No.2, whereby his representation to consider him for promotion to the post of

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Inspector of Police w.e.f. 31.10.2014 has been rejected.

2. Shorn of unnecessary details, the brief facts of the case are that the petitioner was appointed as Sub Inspector with respondent No.2 in the year 2008 and had joined his duties on 01.01.2009.

3. The petitioner being eligible for promotion to the post of Inspector of Police was considered by the Departmental Promotion Committee (hereinafter to be referred as "DPC"), convened on 22, 27 & 28.10.2014.

4. As per the proceedings of the DPC, the Annual Confidential Reports (ACRs) for the period from 01.04.2009 to 31.03.2014 were considered. The DPC had awarded 2.5 marks for every completed year of service and decided to award $\frac{1}{2}$ marks for the quarter of a year to all candidates, whose length of service involved such a period. Since the promotions are to be made on the principle of merit-cum-seniority, the DPC had decided to reduce one mark of

average ACR. The name of the petitioner was also considered and he found place at Sr. No.69 in the merit list prepared, but since there were only 55 vacancies available of the Inspectors of Police, the DPC recommended 55 Sub Inspectors of Police for promotion in order of merit.

5. The petitioner was not offered the appointment since he was at serial number 69 in the merit list prepared by the DPC. Feeling aggrieved by his non appointment to the post of Inspector of Police, he submitted a representation to respondent No.2 on 19.11.2014 (Annexure P-12), stating therein that he was legitimately expecting his promotion, being fully eligible for promotion inasmuch as per the knowledge of the petitioner, there was no complaint against him and further he being senior ought to have been promoted to the post of Inspector of Police. It was specifically pleaded in the representation that the persons junior to him were promoted to the post of Inspector of Police. However,

the said representation made by the petitioner was rejected vide office order dated 20.12.2014, stating therein that as per the provisions of Police Rule 13.1 read with Police Rule 13.14(2), the promotion to the rank of Inspector of Police is to be made on the principle of merit-cum-seniority and not merely on the basis of merit obtained in the selection to the rank of Sub Inspector. The DPC on the assessment of the service record of the Sub Inspectors of Police, who were in the zone of consideration, brought their names on promotion list 'F' in order of merit. Though the name of the petitioner was considered in the DPC convened on 22, 27 & 28.10.2014 for promotion to the rank of Inspector of Police, but he being low in merit, his junior Sub Inspectors, who were higher in order of merit in promotion list 'F', have been recommended for promotion as Inspectors of Police as per number of vacancies in the rank of Inspector of Police. It has further been averred that Rule 13.17 of the Punjab Police Rule,

applicable to the State of Himachal Pradesh, clearly provides that for making the promotion to the rank of Inspector from the rank of Sub Inspector, a report shall be prepared on the basis of the ACRs of each official and the same shall be of three kinds i.e. A, B and C. The DPC while considering the eligible candidates had made four categories for granting the marks, which is against rule and has wrongly given two less marks to the petitioner. The petitioner having honest and efficient service record, has not been recommended for promotion, though his juniors had been recommended and promoted.

6. The petitioner has also placed on record certificates issued by Haryana Police Academy, Madhuban (Annexure P-2) wherein he has shown to secure 2nd position in the Course on Investigation of Economic Crimes and 09.04.2013 issued by the then Inspector of Police, Law and Order, Himachal Pradesh for commendable work done by

him during Vidhan Sabha Election, 2012. He has also placed on record the ACRs, Annexures P-5 to P-9, which pertain to the period 01.04.2009 to 20.08.2013. A perusal of ACRs reveals that for the period w.e.f. 01.04.2009 to 09.01.2010, Reporting Officer had given remarks "Very Good" in the ACR, which remarks were accepted by the Reviewing Officer and also accepted by the Accepting Officer being Accepting Authority. For the period w.e.f. 01.04.2010 to 31.03.2011, the remarks in the ACR were "Very Good". For the period w.e.f. 01.04.2011 to 31.03.2012, the remarks in the ACR were "Outstanding" since Accepting Authority had accepted the view of the Reporting Officer. However, for the period w.e.f. 01.04.2012 to 31.03.2013, Reporting Officer had given "Very Good" remarks in the ACR, which were accepted by the 1st and 2nd Reviewing Officers/Reviewing Authorities, but the Accepting Authority had rated him as "Average". Similarly for the period from 01.04.2013 to 20.08.2013, Reporting Officer

had given "Very Good" remarks in the ACR, which remarks were made "Good" by the first Reviewing Officer, but second Reviewing Officer had given "Very Good", and the Accepting Authority had rated again him as "Average". It is worth to note here that same very Officer was the Accepting Authority both times when the petitioner had been given Average ACRs during 01.04.2013 to 31.03.2013 and 01.04.2013 to 20.08.2013. All the above downgraded ACRs were never communicated to the petitioner.

7. The respondents-State filed reply to the petition and supported the decision, whereby the juniors to the petitioner had been promoted to the post of Inspector of Police and the petitioner had been reduced to one mark of "Average" ACRs for the period from 01.04.2012 to 31.03.2013, due to which he only secured 23 marks i.e. 14 marks for length of service + 09 marks of ACRs. Since the petitioner was found low in merit and his juniors were found higher in

seniority in order of merit, the DPC had recommended only 55 Sub Inspectors to be promoted to the rank of Inspector of Police.

8. The petitioner filed rejoinder to the reply and controverted the averments made in the reply.

9. I have heard Mr. Sunil Mohan Goel, learned Senior Counsel duly assisted by Mr. Ashok K. Tyagi and Mr. Abhinav M. Goel, learned counsel and Mr. Rupinder Singh Thakur, learned Additional Advocate General and also gone through the record carefully.

10. A perusal of recommendations made by the DPC (Annexure P-4), reveals that the last candidate from General Category, who had been recommended for promotion to the post of Inspector of Police, had secured 23.50 marks and the petitioner had secured 23.00 marks. The respondents have admitted in the reply that the DPC had reduced 1 mark of the average ACR of the petitioner from the period 01.04.2012 to

31.03.2013. Had the petitioner been given 1 mark more, he would have secured 24 marks and recommended for promotion to the post of Inspector of Police. The respondents have not disputed the ACRs placed on record by the petitioner and also that the same were not communicated to the petitioner including the Average ACRs.

11. The respondents in their supplementary affidavit filed in compliance with the directions given by this Court on 24.12.2025 have admitted that Average ACRs were not communicated to the petitioner. The reason which has been assigned is that since there was no below average/adverse entry, the same were not communicated. The relevant para of the supplementary affidavit dated 18.03.2026, filed by respondent No.2 reads as under:-

"5. That based on the guidance offered by aforementioned letter it was taken/understood by the then DIG/NR that a 'Below average Rating' has been construed as 'Adverse Entry'. Since, there was no Below Average/ Adverse entry for the above period there was nothing to be communicated to the petitioner. Copy of letter dated 03.09.2022 issued from office of IG(NR)

Dharamshala is annexed as (Annexure R-2/2)."

12. It is not in dispute that due to average ACRs for the period 01.04.2012 to 31.03.2013, the petitioner was given one mark less, which had adversely affected him. As already noticed above, if the petitioner had been awarded one mark more, he would have been recommended for promotion to the post of Inspector of Police.

13. It is now settled in catena of judgments by the Hon'ble Supreme Court that the adverse ACRs have to be communicated to an employee, in case, it affects him while considering his candidature for promotion to the next higher post. In the present case, the petitioner has not been communicated the Average ACRs. No doubt the promotion to the post of Inspector of Police had to be made on the principle of merit-cum-seniority, but the ACRs which were adverse to the petitioner and had affected him were not communicated to him as a result of which his merit had gone

down.

14. The Hon'ble Supreme Court in its judgment in ***Dev Dutt vs. Union of India and others, (2008) 8 SCC 725***, had categorically held that every entry in the ACR of a public servant must be communicated to him. It had held that all gradings whether 'very good', 'good', 'average' or 'poor' are required to be communicated to an employee working in the Government Offices or Statutory bodies, Public Sector Undertakings or other State Instrumentalities. The public servant should have a right to make representation and thus, all gradings are required to be communicated to him within a reasonable period. Even an outstanding ACR should be communicated since that would boost the morale of the employee and make him work harder. Further, the representation so made should be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily

rejected without adequate consideration as it would be an appeal from Caesar to Caesar. The relevant paras of the judgment read as under:-

"16. In our opinion if the office memorandum dated 10/11-9-1987, is interpreted to mean that only adverse entries (i.e. "poor" entry) need to be communicated and not "fair", "average" or "Good" entries, it would become arbitrary (and hence illegal) since it may adversely affect the incumbent's chances of promotion, or to get some other benefit. For example, if the benchmark is that an incumbent must have "very good" entries in the last five years, then if he has "very good" (or even "outstanding") entries for four years, a "good" entry for only one year may yet make him ineligible for promotion. This good" entry may be due to the personal pique of his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or to for some other extraneous consideration.

17. In our opinion, every entry in the A.C.R. 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 vs. Union of India (supra)* that arbitrariness violates Article 14 of the Constitution

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice.

Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

19. to 21. xxxxx

22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the 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.

23. In the present case, the action of the respondents in not communicating the 'good' entry for the year 1993-1994 to the appellant is in our opinion arbitrary and violative of natural justice, because in substance the 'good' entry operates as an adverse entry (for the reason given above).

24. to 33. xxxxx

34. Originally there were said to be only two principles of natural justice : (1) the rule against bias and (2) the right to be heard (*audi alteram partem*). However, subsequently, as noted in *A.K. Kraipak's case (supra)*

and K.L. Shephard's case (*supra*), some more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons vide S.N. Mukherjee vs. Union of India AIR 1990 SC 1984. In *Maneka Gandhi vs. Union of India* (*supra*) (vide paras 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

35. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that **all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation.** This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. **We also hold that the representation must be decided by an authority**

higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

38. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in *Union of India vs. Major Bahadur Singh* 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants)."

15. The issue regarding communication of ACR was again considered by a three-judge Bench of the Hon'ble Supreme Court in ***Abhijit Ghosh Dastidar vs. Union of India and others*, (2009) 16 SCC 146**, and the earlier view taken by a two-judge Bench in ***Dev Dutt's case (supra)*** was reiterated and held that non-communication of entries in the ACRs of a public servant whether he is in civil, judicial, police or any other service, other than the armed forces, has civil consequences, because it may affect his chances of

promotion or getting other benefits and as such non-communication would be arbitrary and violative of Article 14 of the Constitution. The relevant para of the judgment reads as under:-

"8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly the entry of "good" was not communicated to the appellant. The entry of "good" should have been communicated to him as he was having "very good" in the previous year. In those circumstances, 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 armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (Dev Dutt case, SCC p. 738, para 41) relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."

16. Thereafter, again a three-Judge Bench of the Hon'ble Supreme Court considered the same very issue in

Sukhdev Singh vs. Union of India and others, (2013) 9 SCC

566, and has held as under:-

"7. A three-Judge Bench of this Court in *Abhijit Ghosh Dastidar v. Union of India* followed *Dev Dutt*. In para 8 of the Report this Court with reference to the case under consideration held as under: (*Abhijit Ghosh Dastidar case (2009) 16 SCC 146, SCC p. 148*)

"8. Coming to the second aspect, that though the benchmark 'very good' is required for being considered for promotion, admittedly the entry of 'good' was not communicated to the appellant. The entry of 'good' was not communicated to him as he was having 'very good' in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or getting other benefits. **Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (*Dev Dutt case, SCC p. 738, para 41*) relied on by the appellant. Therefore, the entries 'good' if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."**

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.”

17. From the aforesaid expositions of law laid down by the Hon'ble Supreme Court, it is crystal clear that every entry in the ACR including outstanding, whether it affects to an employee or not has to be communicated to him, except to an employee serving in armed forces and non-communication thereof would be violative of Article 14 of the Constitution.

18. In the present case, the petitioner had been given “very good” ACRs by the Reporting Officer, who was his

immediate superior and the Reviewing Officer had accepted the same, but the Accepting Officer/Authority had downgraded the same as "average" which had materially affected the petitioner while considering his candidature for promotion to the post of Inspector of Police. No doubt, the Accepting Officer/Authority may differ from the ACRs/grading of the Officer, but if the ACRs are downgraded, the least which is expected is to communicate the same to the affected employee. However, in the present case the said average ACRs were not communicated to the petitioner, so as to enable him to represent against them.

19. Learned Additional Advocate General has placed reliance upon the judgment in ***Union of India and another vs. Major Bahadur Singh, (2006) 1 SCC 368***, and laid much emphasis on paras 13, 16, 17, 18 and 19 of the judgment, to contend that there are specific parameters laid down for making promotion in the disciplinary forces.

20. I have gone through the said paragraphs of the judgment in **Major Bahadur Singh's case (supra)**, which provide that the same shall apply to military officers as held in **Dev Dutt's case (supra)**. Further, it was held that once the parameters were specifically highlighted and the promotion was to be made on merit-cum-seniority basis, the respondents had rightly considered the material in the DPC and the same does not require any interference by the Court. In **U.P. Jal Nigam and others versus Prabhat Chandra Jain and others, (1996) 2 SCC 363**, the Hon'ble Supreme Court had held that the average ACRs are not to be communicated. However, the Supreme Court in **Major Bahadur Singh's case (supra)** had held that the principles laid down in U.P. Jal Nigam has no universal application. Relevant para of the judgment in **Major Bahadur Singh's case (supra)** is reproduced as under:-

"8. As has been rightly submitted by learned counsel for the appellants U.P. Jal Nigam case has no universal application. The judgment itself shows that it was

intended to be meant only for the employees of U.P. Jal Nigam only."

21. In ***Dev Dutt's case (supra)***, the Hon'ble Court had held that the decision in ***U.P. Jal Nigam (supra)*** is cryptic and does not go into details. It was held that ***U.P. Jal Nigam (supra)*** cannot be said to have laid down any legal principle that entries need not be communicated. Since there was a conflict of view taken by two-Judges Bench decisions in ***U.P. Jal Nigam's case (supra)*** and ***Major Bahadur Singh's case (supra)***, the matter was referred to the larger Bench and the Hon'ble Supreme Court by a three-Judge Bench in ***Sukhdev Singh's case (supra)*** had considered the issue again taking into account the judgment passed in ***Dev Dutt's case (supra)*** and ***Abhijit Ghosh's case (supra)*** in detail and returned the findings that the purpose of communication of ACRs is to achieve three-fold objectives i.e. 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 or her in

improving work and to give better results, second, to make him/her aware of the entry in the ACRs, so that, if he/she feels dissatisfied, can make representation for upgradation of the remarks, and third, communication of ACRs brings transparency in recording the remarks to a public servant.

22. The above view expressed by the Hon'ble Supreme Court, is being consistently followed till date. In ***R.K. Jibanlata Devi vs. High Court of Manipur, through its Registrar General and others, (2023) 19 SCC 472***, the Hon'ble Supreme Court had reiterated the same view that uncommunicated ACRs cannot be considered, if it affects an employee. The DPC proceedings were quashed and set aside and the case of the petitioner for promotion was directed to be considered afresh. The relevant para of the judgment reads as under:-

*23. In view of the above and for the reasons stated above, present petition is allowed. The DPC proceedings dated 9-4-2021 denying the promotion to the petitioner for the post of Assistant Registrar are hereby quashed and set aside. **The case of the petitioner for***

promotion to the post of Assistant Registrar as on 9-4-2021 i.e. the date on which the juniors came to be promoted is directed to be considered afresh ignoring the uncommunicated ACRs for the years 2016-2017 and 2019-20 and thereafter the DPC/competent authority to take a fresh decision in accordance with law and taking into consideration the ACRs of remaining years i.e. 2017-2018 and 2018-2019. Such an exercise be completed within a period of six weeks from today."

23. From, the perusal of dicta in the ibid judgments, it is crystal clear that the ACRs which affect a public servant while making promotion has to be communicated.

24. In the present case, had the ACRs of the petitioner been considered as "very good", he would have definitely found place in the merit list above 55 candidates, who were recommended for promotion to the post of Inspector of Police and it is not the case of the respondents that the juniors to the petitioner were not recommended. Since, the petitioner had been given one mark less by the DPC on the basis of the "average" ACRs, this Court is of the considered view that grave injustice has been caused to him.

25. It would also be apt to notice that the Hon'ble Division Bench of this Court had also the occasion to consider the same very issue in **CWP No.645 of 2018**, titled, ***Himachal Pradesh State Electricity Board vs. Prem Chand***, wherein the order passed by the learned Tribunal directing the employer to make promotion of the petitioner, to the post of Assistant Engineer by ignoring the uncommunicated ACRs for the period from 2007 to 2011 with all consequential benefits was upheld.

26. Further the learned Single Judge of this Court in **CWPOA No.1304 of 2019**, titled, ***Jai Gopal Lodta vs. State of Himachal Pradesh and others***, has also followed the principles laid down by the Hon'ble Supreme Court enunciated in the aforesaid judgments and held the person entitled for promotion to the post of Superintendent, Model Central Jail, from the date the person junior to him was promoted to the post of Superintendent, Model Central Jail

vide notification dated 03.12.2014, with all consequential benefits.

27. The respondents had considered the candidature of the petitioner in the DPC held on 22, 27 & 28.10.2014, but he has been given one mark less for average ACR of the period w.e.f. 01.04.2012 to 31.03.2013. Since in the present case, the petitioner was not communicated about the ACRs of Average rating before considering his candidature for promotion to the post of Inspector of Police, this Court could have directed the respondents to reconsider his case afresh, but keeping in view the long time have lapsed since the year 2012 and 2013, this Court is of the considered view that the respondents should promote the petitioner w.e.f. 31.10.2014 with all consequential benefits and he should be placed above his juniors. This direction is being issued keeping in view that fact that in one of the ACRs, the petitioner was given "outstanding" and further, before convening DPC,

Inspector General of Police, Law and Order, H.P. who is higher officer than the Accepting Authority who gave average ACRs to the petitioner for the period of 01.04.2012 to 31.03.2012 and 01.04.2013 to 20.08.2013 had given him certificate dated 09.04.2013 of commendable work during Vidhan Sabha Election, 2012 and also cash prize.

28. Consequently, the present petition is allowed and the impugned order dated 20.12.2014 (Annexure P-13) is quashed and set aside and the respondents are directed to promote the petitioner to the post of Inspector of Police w.e.f. 31.10.2014, when his juniors were promoted and further assign him the seniority above the juniors on the post of Sub Inspectors of Police with all the consequential benefits.

29. The writ petition is accordingly disposed of. Pending application(s), if any, shall also stand disposed of.

24th March, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**