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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
J.K. MAHESHWARI; J., ATUL S. CHANDURKAR; J.
CIVIL APPEAL NO.2536 OF 2011; MAY 26, 2026
DR. INDIRA SARANATH *versus* UNION OF INDIA AND ANOTHER

Service Law – Promotion – Indian Railway Medical Service – Evaluation Criteria & Allocation of Points - Challenge to non-promotion to the post of Chief Medical Director in Higher Administrative Grade (HAG) - The Railway Board's promotion policy dated 22.05.1996 prescribed a whole-number point system for Annual Confidential Report (ACR) gradings - The Selection Committee awarded the appellant a fractional score of 19.5 points despite her five-year ACR grading being uniformly 'Very Good' (which mandated 20 points) – Held that there is no provision in the promotion policy for awarding points in fractions - The assessment was made without an objective basis, and the appellant must be deemed to have secured 20 points based on her consistent 'Very Good' gradings.

[Paras 16]

Service Law – Annual Confidential Reports (ACRs) – Non-communication of Entries: Obligation to communicate ACR entries, adverse or otherwise - The respondents contended that prior to the 2008-09 policy shift, only 'Average' or 'Below Average' gradings were communicable – Held that the nomenclature of an entry is immaterial; its determinative effect is what matters - Even a 'Good' or 'Very Good' entry becomes adverse in character if it makes an incumbent ineligible for promotion or prejudicially affects empanelment prospects - Non-communication of such entries carries civil consequences, depriving the employee of a fair opportunity to seek redressal or make representations. *[Paras 12 – 17]*

Service Law – Destruction of Records – Weeding Out During Pendency of Litigation – Adverse Inference - The respondents admitted that the appellant's original ACR service records were destroyed/weeded out in 2013, despite the active pendency of the present civil appeal before the Supreme Court filed in 2009 – Held that Service records are mandatorily required to be retained until the final conclusion of judicial proceedings - The destruction of the records during the pendency of the litigation severely prejudiced the appellant's case and precluded judicial scrutiny - a strong adverse inference is liable to be drawn against the employer-respondents. *[Paras 15-17]*

Service Law – Retrospective Promotion – Retiral Benefits vs. Arrears of Salary - Appellant retired from service during the pendency of litigation – Held that where an employee is found to have been treated unfairly in the promotional evaluation, but the original service records are unavailable due to inadvertent weeding out, granting dynamic monetary relief like arrears of salary on a 'no work, no pay' relaxation may not be feasible - the ends of justice are met by directing the grant of notional promotion

from the date her juniors were promoted, along with a mandatory re-fixation of pension and payment of retiral arrears. [Relied on *Prabhat Ranjan Singh v. R.K. Kushwaha*, 2018 INSC 796; *Dev Dutt v. Union of India*, 2008 INSC 630; distinguished from *Union of India v. Chaman Rana*, 2018 INSC 230; Paras 18, 19]

For the Appellant(s): Senior Advocate Mr. Jaideep Gupta; Ms. Radha Rangaswamy, Advocate; Mr. Prateek K. Chadha, AOR; Ms. Racheeta Chawla, Advocate; Mr. Sreekar Aechuri, Advocate; Ms. Pragya Ganjoo, Advocate; Ms. Surbhi Soni, Advocate; Mr. Aniket Chauhaan, Advocate.

For the Respondent(s): Mr. Vikramjit Banerjee, Additional Solicitor General; Ms. Rekha Pandey, Advocate; Mr. Suyash Pande, Advocate; Mrs. Priya Mishra, Advocate; Mr. Padmesh Mishra, Advocate; Mr. Amrish Kumar, AOR.

J U D G M E N T

ATUL S. CHANDURKAR, J

1. The issue raised in this Civil Appeal is the entitlement of the appellant to promotion on the post of Chief Medical Director (Higher Administrative Grade) in the Indian Railway Medical Service¹. The claim of the appellant having been turned down by the Central Administrative Tribunal² vide its judgment dated 22.05.2007 and that adjudication having been upheld by the Delhi High Court³ on 09.01.2009, the appellant has preferred this Civil Appeal.

2. It is the case of the appellant that after obtaining requisite qualification for being recruited at the IRMS, she was appointed as Assistant Medical Officer. During the course of service, the appellant was eligible for being considered for further promotion. On 06.12.2006, the Railway Board published two lists with regard to promotion and posting of various officers from Senior Administrative Grade⁴ as Chief Medical Director⁵ in Higher Administrative Grade⁶. According to the appellant, despite being entitled to be promoted in HAG, she was deprived of the same and an officer junior to her came to be promoted. The appellant, therefore, approached the Tribunal raising a challenge to the promotion of respondent Nos. 3 to 9 and further sought relief of promotion as CMD, HAG. The Original Application preferred by the appellant came to be decided on 22.05.2007 by the Tribunal. It was held that the Selection Committee⁷ on 10.08.2006 considered the cases of about ten officers out of whom six came to be promoted as CMD, HAG. The appellant was at serial No.10. Her grading from 2001-02 to 2005-06 was considered by the SC. On the ground that the appellant did not secure the grading of 'Very Good +'⁸, the Tribunal held that the criteria required to be satisfied for being considered for promotion was not satisfied. Accordingly, the Original Application came to be dismissed.

¹ For short, 'IRMS'

² For short, 'the Tribunal'

³ For short, 'the High Court'

⁴ For short, 'SAG'

⁵ For short, 'CMD'

⁶ For short, 'HAG'

⁷ For short, 'SC'

⁸ For short, 'VG+'

3. The appellant approached the High Court challenging the judgment of the Tribunal. The High Court held that the Resolution dated 28.03.2000 by which the Railway Board laid down the procedure as well as the eligibility criteria for promotion as well as the Circular dated 03.06.2002 by which the Railway Board prescribed the benchmark of VG+ for promotion to the HAG was not under challenge. It was, therefore, held that the appellant having failed to secure the grading of VG+ coupled with the fact that she was awarded 19.5 marks, the assessment undertaken by the SC could not be faulted. By observing that the competence of SC was not liable to be questioned, the writ petition was dismissed. Being aggrieved, the appellant is before this Court.

4. Mr. Jaideep Gupta, learned Senior Advocate for the appellant while raising a challenge to the impugned judgment made the following submissions:

a) The SC applied the benchmark of VG+ which was in violation of the relevant service rules. According to the Secretary, Railway Board, the benchmark of VG+ was proposed vide letter dated 22.05.1996 and the same was approved by the letter dated 26.08.1996 issued by the Department of Personnel and Training⁹. Subsequently however, the DoPT on 08.02.2002 issued an Office Memorandum¹⁰ prescribing the benchmark of 'Very Good'. It was further directed that any other OM in conflict with the OM dated 08.02.2002 was to be treated as modified to that extent. Despite aforesaid, the Railway Board and the SC assessed the eligibility of the appellant for promotion by applying the benchmark of VG+. As a result, by applying the wrong benchmark, the appellant had been deprived of proper consideration for promotion.

b) Uncommunicated adverse entries in the Annual Confidential Reports¹¹ were taken into consideration by the SC. In this regard, it was submitted that the Railway Board having failed to communicate adverse entries awarded to the appellant, she was deprived of making any representation against the same. Relying on the decision in **Dev Dutt Vs. Union of India and others**¹² and the subsequent decision of the larger Bench in **Sukhdev Singh Vs. Union of India and others**¹³, it was submitted that all entries in the ACRs, adverse or otherwise, were required to be mandatorily communicated to the concerned employee. Notwithstanding the fact that these decisions were rendered after the appellant's candidature was concerned by the SC, the said decisions merely clarified the legal position and, hence, were deemed to have effect since inception.

c) The appellant's ACRs were destructed ignoring the pendency of the present proceedings. It was submitted that for assessing the legal submissions of the appellant, perusal of the ACRs maintained by the Railway Board was material.

⁹ For short, 'DoPT'

¹⁰ For short, 'OM'

¹¹ For short, 'ACRs'

¹² 2008 INSC 630

¹³ 2013 INSC 275

The hearing of the writ petition before the High Court concluded on 13.11.2007 and the impugned judgment was delivered on 09.01.2009. Shortly thereafter, the appellant filed the present proceedings before this Court and on 24.07.2009, notice was issued to the respondents. Though the Railway Board appeared in the present proceedings and filed its counter affidavit, it was submitted to this Court that the service records of the appellant had been weeded out. The learned Senior Advocate invited attention to the orders dated 12.10.2023, 29.11.2023 and 10.01.2024 passed in the present proceedings in this regard. He also referred to the affidavit dated 09.02.2024 filed on behalf of the Railway Board wherein it was stated that in a case where judicial process was undertaken, the service records were required to be retained till the conclusion of the same. The Railway Board having failed to produce the appellant's ACRs for the relevant period despite grant of opportunity, an adverse inference was liable to be drawn against it. By failing to produce the appellant's ACRs, the Railway Board sought to deprive the appellant of a fair consideration of her case.

It was, thus, submitted that in the light of aforesaid submissions, the appellant was entitled to the reliefs as prayed for notwithstanding the fact that she had retired from service on 31.05.2008. It was prayed that the appeal be accordingly allowed.

5. Mr. Vikramjit Banerjee, learned Additional Solicitor General for the respondents supported the impugned judgment and urged as under:

a) The Railways having framed its own service rules and regulations, it was not bound by the OM's issued by the DoPT. Referring to the communication dated 22.05.1996 issued by the Secretary, Railway Board indicating the policy for promotion from SAG to Additional Secretary Grade, it was submitted that the same had been approved by the DoPT on 26.08.1996. In view of the Government of India (Allocation of Business) Rules, 1961¹⁴, the Railways were entitled to frame its own policy and Resolution dated 29.03.2000 had been accordingly passed. It was submitted that this issue was no longer *res integra* in view of the decision in **Prabhat Ranjan Singh and another Vs. R.K. Kushwaha and others**¹⁵. The exercise, thus, undertaken by the SC in accordance with the promotion policy of the Railways could not be challenged on the ground that inapplicable criteria was applied to the case of the appellant.

b) The benchmark of VG+ had been rightly applied to the case of the appellant. That benchmark required two 'Outstanding' ACR ratings and three 'Very Good' ratings in the preceding five years for being considered by the SC. This was clear from the letter dated 03.06.2002 issued by the Ministry of Railways. The appellant having failed to meet the said benchmark, she was not considered suitable for promotion to HAG. Besides, the SC was also required to view the suitability of the concerned candidate for promotion on the basis of

¹⁴ For short, 'Rules of 1961'

¹⁵ 2018 INSC 796

service records. The SC took into consideration all the relevant material related to the appellant and thereafter found her not suitable for promotion.

c) On the ground of non-communication of adverse remarks, it was submitted that prior to 2008-09 before the decision in *Dev Dutt (supra)*, the final gradings in the ACR were never conveyed to any individual officer unless such grading was 'Average' or 'Below Average'. Reference was made to the communication dated 16.09.1998 issued by the Secretary, Railway Board. It was only after the decision in *Dev Dutt (supra)* that the DoPT issued Instructions in the form of OM dated 14.05.2009 requiring disclosure of all entries in the ACRs. These Instructions were adopted by the Railway Board pursuant to its letter dated 18.08.2009. In the light of the fact that the Ministry of Railways had the power to frame its own rules and regulations, it could not be said that the appellant was entitled to be communicated all the entries in her ACRs. It was further submitted that the law laid down in *Dev Dutt* and *Sukhdev Singh (supra)* did not have any retrospective application. Moreover, the prayer for a direction to grant promotion retrospectively was not liable to be granted in the light of the decision in **Union of India Vs. Chaman Rana**¹⁶.

(d) As regards weeding out of the relevant service records of the appellant, it was submitted that the factual position was brought on record by the Ministry of Railways in its affidavit dated 09.02.2024. The ACRs of the appellant had been inadvertently weeded out on the expiry of a period of five years and the same were now not available. However, the career card of the appellant containing the summary of the final gradings in the ACRs were available. It, therefore, could not be said that any prejudice whatsoever had been caused to the appellant on account of destruction of her ACRs.

e) It was submitted that the Tribunal having considered the entire material on record and having agreed with the conclusion of the SC which adjudication was also upheld by the High Court, the appellant was not entitled for any relief whatsoever. In absence of there being any illegality or arbitrariness in the action of the Railway Board in not promoting the appellant and she having retired from service on 31.05.2008, no relief could be granted to her. The appeal was, thus, liable to be dismissed.

6. We have heard the learned senior counsel for the parties at length and with their assistance, we have also perused the documentary material on record. The appellant's challenge to her non-promotion is principally based on the premise that adverse entries in her ACRs were not communicated to her, thus causing prejudice, that a wrong benchmark was applied while considering the appellant's case for promotion and that by weeding out her service records despite pendency of the present proceedings, an adverse inference was liable to be drawn against the respondents.

7. Since it is urged on behalf of the appellant that by applying a wrong benchmark, her case for promotion was incorrectly considered by the SC, it

¹⁶ 2018 INSC 230

would be necessary to deal with this submission first. It is submitted that in view of the OM issued by the DoPT on 08.02.2002, the benchmark of 'Very Good' was prescribed and the same ought to have been applied by the SC. However, on the basis of other OMs that were in conflict with the OM dated 08.02.2002, the appellant's candidature was not properly considered. On the other hand, it was urged by the respondents that the Ministry of Railways and the Railway Board had its own rules and regulations with regard to service matters and that they were not bound by the OMs framed by the DoPT.

We do not feel it necessary to go into this aspect in detail as this very issue was the subject matter of consideration by this Court in *Prabhat Ranjan Singh and another (supra)*. The very same question "whether the Railways are bound by the rules framed by the DoPT or whether it could frame its own rules" fell for consideration therein. After referring to the Rules of 1961 that were framed under Article 77(3) of the Constitution of India, it was observed in paragraphs 20 and 21 as under:

"20. A perusal of the Allocation of Business Rules, 1961, especially the highlighted portion leaves no manner of doubt that the Railways is specifically excluded from the ambit of the scope of business allocated to the DoPT, whether it be for classification of posts, recruitment of ministerial staff, appointment of non-indians to civil posts, fixing of service conditions, including conduct rules, general policy regarding retrenchment and revision of temporary service of the Railways etc., and as such the DoPT cannot issue binding circulars upon the Railways. We may make it clear that if the DoPT issues a circular and the Railways specifically accepts the circular or makes it applicable, then such a circular may apply but if the circular is not made specifically applicable then it has no force so far as the Railways and its employees are concerned.

21. In the same Allocation of Business Rules, 1961 while allocating business to the Ministry of Railways power has been given to it to deal with all matters including those relating to Revenue and Expenditure. Therefore, the Ministry of Railways has the power to lay down conditions of service for its employees."

It was, thus, concluded that service conditions of employees of the Railways were governed by the rules framed by it which would include the Indian Railways Establishment Code as well as the Indian Railways Establishment Manual. It is, thus, clear from the aforesaid decision that what would be material would be the rules and regulations framed by the Ministry of Railways or by the Railway Board and if any Circular of the DoPT was not specifically accepted by the Railways, such Circular would not be applicable.

8. Perusal of the communication dated 22.05.1996 issued by the Secretary, Railway Board indicates that the benchmark 'VG+' was specifically made applicable for selection to posts in the grade. The requirement with regard to the previous five years ACRs was that the officer should earn minimum of three 'Very Good' and two 'Outstanding' reports. This proposal by the Railway Board was accepted by the DoPT on 26.08.1996. On the other hand, the OM dated 08.02.2002 was issued by the DoPT wherein the benchmark of 'Very Good' was prescribed. However, on 03.06.2002, the Railway Board issued a Circular prescribing the benchmark for promotion to various grades including 'HAG'. The benchmark of 'VG+' was prescribed with the note that 'stringent criteria of selection shall apply for promotion to 'HAG'. It is, thus, clear that notwithstanding OM dated 08.02.2002 issued by the DoPT, the Railway Board on 03.06.2002

issued a Circular prescribing benchmark 'VG+' for promotion to 'HAG'. It is this Circular dated 03.06.2002 that would therefore govern the case of the appellant. The SC, as is clear from the Minutes of its proceedings has applied this benchmark while considering the candidature of ten officers for promotion to HAG grade. It, therefore, cannot be said that the SC applied a wrong benchmark while assessing the eligibility of the appellant for promotion. This ground of challenge raised by the appellant, therefore, cannot be accepted.

9. Having found that the SC had applied the appropriate benchmark for considering the appellant's candidature for promotion, the other grievance of the appellant regarding noncommunication and non-supply of her ACRs requires consideration. According to the appellant, she was entitled to be considered for promotion as CMD in HAG. For considering her eligibility to be promoted, the ACRs for the preceding five years were required to be taken into consideration. As per the Minutes of the proceedings of the SC held on 10.08.2006, the ACRs for the period from March 2002 to March 2006 were taken into consideration. The appellant's grading for all the five years was 'Very Good'. She was also considered fit for consideration. It is, however, the case of the appellant that her annual gradings were never communicated to her as a result of which, she was unable to either make a representation against such entries or take appropriate steps in the matter. On the other hand, according to the respondents it was only if the entries in the ACRs were 'Average' or 'Below Average' that the same were required to be communicated to the concerned employee. It is for this reason the appellant was never communicated her gradings.

In this regard, the appellant seeks to rely upon the law laid down by this Court in *Dev Dutt (supra)* that was subsequently approved by a larger Bench in *Sukhdev Singh (supra)*. It is urged that these decisions clarify the legal position that every entry in an ACR was required to be communicated to every officer within reasonable time to enable such officer to take further steps, if required. Though the decision in *Dev Dutt (supra)* was rendered on 12.05.2008 which is after the candidature of the appellant was considered for promotion, the same would not make any difference since the said decision merely reiterated/clarified the existing legal position. On the other hand, the respondents contend that only after the decision in *Dev Dutt (supra)* that OM dated 14.05.2009 came to be issued by the DoPT and the new system of communicating all entries in the ACRs was made applicable prospectively from 2008-09.

10. Before considering the contention raised by the appellant as regards the effect of the ratio in *Dev Dutt (supra)*, it is to be noted that prior to the appellant's candidature being considered by the SC on 28.12.2005, she had issued a communication to the Director General, Railway Health Services seeking a review of her confidential reports. She stated that for reasons not connected with her discharge of duties, it was likely that her confidential reports had not been properly assessed. According to her, she was not supplied her ACRs despite such demand. In the Original Application preferred by the appellant before the Tribunal, one of the reliefs sought by her was to quash/ignore the

adverse ACRs, if any. The Tribunal in paragraph 47 of its judgment, however, did not grant that relief. The appellant then raised such ground in her writ petition stating that non-communication of her ACRs had caused her prejudice. These factual aspects are being mentioned only to indicate that even prior to the consideration of the appellant's candidature for promotion by the SC, she had been demanding her ACRs by raising a grievance that she had been downgraded.

11. Coming to the aspect of non-communication of entries in the ACRs of the appellant, it was urged on behalf of the respondents that such requirement came to be prescribed only by the OM dated 14.05.2009 issued by the DoPT pursuant to the decision in *Dev Dutt (supra)*. Hence, no retrospective benefit of the decision in *Dev Dutt (supra)* could be sought. In this regard, heavy reliance was placed on the decision in *Chaman Rana (supra)* to contend that no retrospective operation could be given to the law as enunciated in *Dev Dutt and Sukhdev Singh (supra)*. We, however, find that the ratio laid down in *Chaman Rana (supra)* is clearly distinguishable in view of the facts involved therein.

In *Chaman Rana (supra)*, one of the respondents claimed to be superseded in the year 1997. He made a representation on 20.02.1997 and the same was rejected by assigning reasons on 25.03.1997. The said respondent, however, made numerous representations thereafter and approached the High Court only in the year 2015. Similarly, the other respondent was superseded in the year 2001-02. He too made various representations and ultimately challenged his supersession in the year 2015. The High Court directed consideration of the case of the said employees for promotion with retrospective effect. The Union of India challenged the decision of the High Court contending that the claims made by the said respondents were highly belated and stale. Granting retrospective promotion would have had a cascading effect leading to administrative chaos. It was held that mere filing of repeated representations would not be a sufficient explanation for the delay in approaching the Court for seeking relief. It was found that the direction to consider the grant of retrospective promotion after a lapse of about seventeen to twenty years would result in administrative chaos as well as financial implications for the State. The Court distinguished the decision in *Dev Dutt (supra)* by noticing that the meeting of the Departmental Promotion Committee was held on 16.12.1994 and the appellant therein had immediately moved the High Court. The Single Judge had decided the writ petition on 21.08.2001 and the Division Bench rendered its decision on 26.11.2001. Dev Dutt, the appellant had approached this Court in the year 2002.

It is, thus, clear that in *Chaman Rana (supra)*, the issuance of a direction for grant of retrospective promotion at a belated stage was set aside as the same would have resulted in administrative chaos. We, therefore, find that the ratio of this decision cannot be made applicable to the facts of the present case.

12. We may profitably refer to the decision of a three Judge Bench in **Abhijit Ghosh Dastidar Vs. Union of India and others**¹⁷. Therein, the issue pertained to consideration of a claim for promotion by the Departmental Promotion Committee on 15.12.1999 and 28.02.2001. Two entries in the service record dated 22.09.1997 and 08.02.1998 that were considered to be adverse had not been communicated to the said appellant. On being denied promotion, the appellant contended that adverse entries that were not communicated were not liable to be taken into consideration by the Departmental Promotion Committee. It was held that noncommunication of the entries in the ACR of a public servant has civil consequences and could affect his chance for promotion or getting other benefits. Reference was made on the decision in *Dev Dutt (supra)*. Accordingly, the Court granted benefit of retrospective promotion from 28.08.2000, which was the date on which an officer who was immediately junior to the appellant was promoted. The pension of the appellant was directed to be refixed alongwith other retiral benefits.

It is, thus, clear from the aforesaid decision that the dispute pertained to the adverse entries of the years 1997-98. Their non-communication was found to be unjustified and arbitrary. Relief was, accordingly, granted to the said appellant. Even though the decision in *Dev Dutt (supra)* was rendered on 12.05.2008, the ratio as regards noncommunication of adverse entries resulting in civil consequences was applied for the period prior to that decision. The ratio of this decision, therefore, would apply to the facts of the present case.

13. The aforesaid discussion would indicate that the entitlement to communication of entries in ACRs was found to be necessary as their non-communication results in civil consequences. In the present case, it can be seen that even prior to the decision in *Dev Dutt (supra)*, the appellant had been demanding copies of her confidential reports which is evident from the communication dated 28.12.2005 issued by her. This request was pursued by the appellant before the Tribunal and the grievance in this regard was also made before the High Court. The fact remains that the appellant's confidential reports were not supplied to her despite being demanded. This aspect would definitely have material bearing when considered cumulatively alongwith non-communication of the appellant's ACRs.

14. The issue can be viewed from another angle. The respondents seek to rely upon the communication dated 16.09.1998 issued by the Secretary, Railway Board wherein it is stated that all unfavourable remarks recorded in an ACR should be communicated to the officer within a month of finalisation of the report by the Accepting Authority. This is to enable the officer to make a representation against such remarks. In *Dev Dutt (supra)*, it has been held that the nomenclature of an entry is not relevant but its effect is determinative whether the entry is adverse or not. It was observed that a 'good' entry would be of no satisfaction to an incumbent if such entry makes him ineligible for promotion or has an adverse effect on his chances. Thus, every entry in the

¹⁷ SLP (C) No.26566 of 2004 decided on 22.10.2008

ACR of a public servant has to be communicated to him. A three Judge Bench in *Sukhdev Singh (supra)* has approved the aforesaid view.

Thus, when the communication dated 16.09.1998 issued by the Railway Board is read in the context of the law laid down in *Dev Dutt* and *Sukhdev Singh (supra)*, it is evident that the appellant was entitled to receive her ACRs notwithstanding the 'Very Good' entries as she was not considered suitable for empanelment despite such grading.

15. Another factor that has material bearing is the weeding out of the appellant's ACRs despite pendency of her judicial proceedings. The record indicates that during pendency of the present appeal, a request was made on behalf of the appellant to produce her ACRs. According to the respondents, her relevant records had been weeded out inadvertently. In the affidavit filed on behalf of the respondents dated 09.02.2024, the position that confidential reports of an officer were required to be retained till any judicial process was concluded, was accepted. It was, however, stated that the appellant's service records came to be inadvertently destroyed in 2013 after five years of her superannuation. It may be noted that the present proceedings had been filed on 18.04.2009 within a year of her superannuation and thus, her relevant records ought to have been retained. It is on this factual premise that the appellant urges the Court to draw an adverse inference against the respondents as retention of her ACRs, their production and consideration in the present proceedings would have gone against them.

16. Yet another aspect that requires consideration is the award of 19.5 points to the appellant by the SC. The same has been referred to in paragraph 27 of the impugned judgment and it has been observed that in terms of communication dated 22.05.1996, the appellant did not fall within the 'grey area' count. According to the appellant, her assessment could not have been made in any fragment as the communication dated 22.05.1996 prescribing the manner of assessment did not provide for the same. A perusal of the communication dated 22.05.1996 issued by the Secretary, Railway Board indicates formulation of the promotion policy in Railway Services for grade ₹7300-7600/-. It directs award of points in the following manner: 'Outstanding' performance- five points, 'Very Good' performance - four points, 'Good' performance - three points and 'Average' performance - two points be assigned. The justification offered by the respondents is that the fraction was a result of arriving at a mean of two part confidential reports written for a particular year.

We do not find any such course mentioned in the communication dated 22.05.1996. Moreover, the year in which two part confidential reports were written has also not been indicated by the respondents. Thus, even going by the communication dated 22.05.1996 issued on behalf of the Railway Board, there is no provision for awarding any points in fraction. It can, therefore, be said that the performance of the appellant was assessed by the SC without indicating the basis for awarding 19.5 points to her, especially when the Minutes of the SC held on 10.08.2006 indicate that assessment for every year from March 2002 to

March 2006 was 'Very Good'. Taking four points for each entry, twenty points for five years ought to have been awarded. The case of the appellant would, therefore, have to be adjudged on the premise that she had been awarded twenty points on the assessment of her ACRs for the last five years.

17. From the aforesaid discussion, three factors are found to be relevant. Firstly, the appellant was not supplied the various entries made in her ACRs despite her request made prior to her assessment by the SC. Secondly, the service records of the appellant came to be weeded out despite pendency of judicial proceedings initiated by her on the same subject matter and thirdly, the award of points in a fraction when no such enabling provision is brought on record nor the communication dated 22.05.1996 provides for the same. These relevant factors borne from the record would have to be cumulatively assessed while considering the entitlement of the appellant.

Taking these aspects together, in our view, prejudice has been shown to have been caused to the appellant by the noncommunication of her ACRs. We have found that the decision in *Dev Dutt (supra)* merely recognises the principle that noncommunication of entries in an ACR results in civil consequences. Here, the appellant had been demanding copies of her ACRs not only with the respondents but had made such prayer before the Tribunal and thereafter also before the High Court. On account of inadvertent weeding out of her service records, the same could not be produced even before this Court. The respondents accept that the weeding out of such records was inadvertent despite pendency of judicial proceedings in that regard. Coupled with the fact that the appellant was assessed on the basis of 19.5 points which was not provided in the promotion policy of the Railways dated 22.05.1996, in our view, an adverse inference deserves to be drawn against the respondents in that regard.

To reiterate, various factors referred to above when taken cumulatively, it is clear that the appellant has been prejudiced by the non-supply of her ACRs, destruction of her service records and award of points in fraction. Though the appellant was assessed under the prevailing promotion policy of the Railways, we find sufficient material on record to hold that she was not treated fairly in the matter. Her candidature could have been considered in a better manner, if she had been supplied her ACRs enabling her to seek redressal, if she was not satisfied by the entries therein and her service records had not been weeded out. We, therefore, find the grievance as raised by the appellant to be justified.

18. Having found that the assessment of the appellant was not as desired by law, the question arises as to the relief that could be granted to her. The meeting of the SC was held on 10.06.2006 wherein the proposal for empanelment of six officers to the HAG was recommended. This recommendation was approved by the Appointments Committee of the Cabinet on 12.11.2006. The appellant attained the age of superannuation on 31.05.2008. Since we have found that the appellant was not fairly treated while assessing her performance, she would be entitled to pensionary benefits in the HAG to ₹22,400-24,500/- (refixed) of

the IRMS. As we did not have the benefit of perusing the service record of the appellant and as we have drawn inference against the respondents in that regard, we are of the view that no monetary relief in the form of a direction to pay her arrears of salary from the notional date of promotion of the six officers who were so promoted till the date of her superannuation can be granted. Though it was urged by relying upon the decision in **State of Kerala and others Vs. E.K. Bhaskaran Pillai**¹⁸ that the principle of 'no work no pay' could not be applied as a rule of thumb in such cases, we are of the view that in the facts of the present case, a direction for re-fixation of the appellant's pension in the HAG grade would meet the ends of justice.

19. For aforesaid reasons, we set aside the judgment dated 22.05.2007 passed by the Tribunal in OA No.2612/2006 as well as judgment of the High Court dated 09.01.2009 in WP(C) No.4123/2007. The appellant is held entitled to notional promotion in HAG grade ₹22,400-24,500/- and to receive pensionary benefits in that grade alongwith other benefits admissible in that regard. The arrears be accordingly paid to the appellant within a period of two months from today.

The civil appeal is allowed in aforesaid terms leaving the parties to bear their own costs. The pending interlocutory application is also disposed of.

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¹⁸ C.A. 7953 of 2004 decided on 17.04.2007