

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**  
**AND**  
**THE HON'BLE SRI JUSTICE N. TUKARAMJI**  
**+ WRIT PETITION No.15979 of 2019**

% Date: 24.04.2023

# Y.Lakshmana Rao

... Petitioner

**v.**

\$ The Union of India, Rep. By its Secretary, Department of Space, ISRO Head Quarters, New BEL Road, Antriksh Bhavan, Bangalore-5,  
and others.

... Respondents

! Counsel for the petitioner : Dr. P.B.Vijay Kumar,  
learned Senior Counsel, representing  
Ms. A.V.S.Laxmi

^ Counsel for respondents No.1 to 3: Mr. Gadi Praveen Kumar,  
Deputy Solicitor General of India.

< GIST:

> HEAD NOTE:

? CASES REFERRED:

1. (2008) 8 SCC 725
2. 2012 SCC Online CAT 4128
3. (2009) 16 SCC 146
4. (2013) 9 SCC 566
5. (2018) 18 SCC 640

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

**AND**

**THE HON'BLE SRI JUSTICE N. TUKARAMJI**

**WRIT PETITION No.15979 of 2019**

**ORDER:** *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Dr.P.B.Vijay Kumar, learned Senior Counsel representing Ms. A.V.S.Laxmi, learned counsel for the petitioner and Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India representing respondents No.1 to 3.

2. This writ petition has been filed assailing the legality and correctness of the order dated 26.04.2019 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (CAT) in O.A.No.21/1076/2015 (Y.Lakshmana Rao v. Union of India).

3. By the aforesaid order, the original application filed by the petitioner assailing the decision of the respondents therein (hereinafter referred to as, the respondents) in not

promoting the petitioner as Scientist/Engineer SE with effect from 01.07.2008 was rejected by CAT firstly on the ground that there was no infirmity in the decision of the respondents and secondly, the original application was filed belatedly after seven years in 2015.

4. Facts lie within a very narrow compass. Petitioner joined Indian Space Research Organization (ISRO) as Technical Assistant-B in 1988. In the course of his service, he was promoted to the rank of Scientist/Engineer SD in the year 2004. He was due to be promoted as Scientist/Engineer SE in the year 2008 but was not considered by the Screening Committee/Departmental Promotion Committee (DPC, for short) till the year 2014. On 01.07.2014, petitioner was promoted as Scientist/Engineer SE. Petitioner made several representations seeking his promotion with effect from 01.07.2008. As his request was not considered, he had filed the original application before CAT.

4.1. Respondents had filed objection by contending that petitioner was accommodated at Advanced Data Processing Research Institute (ADRIN), Secunderabad in 1996 on request transfer from Bangalore. In the course of his service career, he was given due promotion. He was due for promotion from Scientist/Engineer SD to Scientist/Engineer SE in the year 2008 after completing residency period of four years as Scientist/Engineer SD. At the time of his consideration, his service details were placed before the Screening Committee as to whether case of the petitioner should be recommended for consideration by DPC. As the petitioner could not measure up to the requirement standards, he could not clear Screening Committee till 2011. Though he could clear Screening Committee in 2011 and 2012, he did not fare well in DPC. Hence, he was not promoted. Ultimately, he was screened by the selection committee and on recommendation to DPC he was cleared by the DPC in the year 2014, whereafter he was promoted to the rank of Scientist/Engineer SE with

effect from 01.07.2014. Stand taken was that according to the scheme of ISRO, once an employee completes the residency period, he would be considered for promotion based on Annual Performance Appraisal Report (APAR) and other performance parameters. It was only when the petitioner was found fit for promotion that he was selected by DPC and ultimately promoted with effect from 01.07.2014.

4.2. CAT noted that ISRO has an elaborate system of setting up of Screening Committee which filters the candidates based on APAR etc. To usher in objectivity, APARs have been allotted marks as under:

Grade	Marks
A+ Brilliant	10
A Outstanding	9
AA- Tending to Outstanding	8
A- Very good	7
B+ Good	6
B Average	5
B- Just worth retaining	4
C- Not worth retaining in service	2

4.3. In addition thereto, the Screening Committee considers other parameters such as biodata of the employee, work report for the relevant period, recommendation of the office, any special contribution etc. Once a candidate is screened in by the Screening Committee, he would be entitled to appear before DPC. However, if it is remarked that “relook after six months”, then the employee has to appear before the next Screening Committee with fresh data. “Screened out” would mean employee would have to appear after one year before the Screening Committee with fresh records. Thus, according to CAT, respondents have developed an objective system of assessment at two levels: firstly, at the level of Screening Committee and thereafter at the level of DPC.

4.4. Based on the guidelines issued by ISRO, performance of the petitioner was screened over the years till he got promoted in the year 2014. Thereafter, CAT recorded the

assessment of the petitioner from 01.07.2008 till 01.01.2014 as under:

Sl.No.	Review date	No.of years	Screening Result
1	1.7.2008	4	Relook after 6 months
2	1.1.2009	4.5	Screened out
3	1.1.2010	5.5	Relook after 6 months
4	1.7.2010	6	Relook after 6 months
5	1.1.2011	6.5	Screened-in deferred in interview
6	1.1.2012	7.5	Screened-in deferred in interview
7	1.1.2013	8.5	Cooling off
8	1.1.2014	9.5	Screened in-promoted w.e.f.1.7.2014

4.5. Rejecting the contention of the petitioner that Screening Committee did not give reasons for rejecting his case, CAT held that the Screening Committee had adduced reasons in the following manner:

“After considering the ACRs, work report, recommendations of the divisional head and other relevant facts the recommendations are made.”

4.6. When the petitioner sought for minutes of the Screening Committee proceedings, respondents informed CAT that they did not have the record. CAT observed that it cannot sit on judgment on the finding of the Screening Committee or for that matter DPC. That apart, after participating in the process of selection, it is not open to the petitioner to question the result thereof after he was unsuccessful. CAT further observed that system of evaluation was transparent and objective by quantifying APAR grading and by giving opportunity to the employees to try for promotion by bringing in concepts of screening in, deferred, cooled, screened out etc. That apart, there was delay of about seven years in filing the original application. Petitioner sought for a direction for promoting him with effect from 01.07.2008, but filed the original application in the year 2015. Therefore, both on merit as well as on delay, the original application was dismissed by CAT vide the order dated 26.04.2019.



5. It is this order which is under assailment in the present proceeding.

6. The writ petition was admitted for hearing on 13.07.2021. In the course of the hearing on 12.12.2022, we had called upon Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India to submit a copy of the rules/regulations governing promotion of Scientists in ISRO. It was thereafter that a memo was filed by the respondents.

7. In their counter affidavit respondents have justified the promotion of the petitioner with effect from 01.07.2014 and not from 01.07.2008. Adverting to the screening guidelines dated 02.11.2006, it is stated that for the last two years of the residency period, the grading should not be less than A-. Residency period of four years should be considered for promotion to the post of Scientist/Engineer SE. Petitioner was assigned overall grading of B+/A- for the calendar year 2006; B+ indicates "good" and A-

indicates “very good”. Screening Committee after considering all relevant factors including Annual Confidential Reports (ACRs)/APARs had remarked in various proceedings *qua* the petitioner as “relooked after six months”, “screened out” etc., till ultimately he was screened in and promoted with effect from 01.07.2014. As per guidelines, an employee should have minimum grading of 2A (outstanding) and 2AA- (tending to outstanding) as on 01.07.2008 on completion of four years of residency period as Scientist/Engineer SD. As petitioner did not meet the minimum requirement, his case was recommended for relook after six months. After six months also as per guidelines, petitioner should have minimum one A and three AA- which the petitioner did not meet. Therefore, petitioner was screened out. Case of the petitioner was considered as on 01.01.2010 after one year in which Screening Committee recommended for a relook after six months. His case was considered on 01.07.2010 after six years of residency period but Screening Committee

recommended relook after six years. This went on till 01.01.2014 when petitioner after 9½ years of residency period was screened in and was interviewed by the DPC. Based on his performance, he was recommended for promotion with effect from 01.07.2014 and accordingly, he was promoted to the post of Scientist/Engineer SE. It is stated that as per the guidelines only adverse remarks in ACRs were required to be communicated to the concerned employee. Gradings given to the petitioner were not considered as adverse.

8. In his rejoinder affidavit, petitioner has contended that respondents had acted upon uncommunicated confidential reports i.e., ACRs of the petitioner, which were below the benchmark. This could be noticed from the stand taken by the respondents in the counter affidavit.

9. In the memo filed by the respondents on 22.12.2022 in response to this court's order dated 12.12.2022, office memorandum dated 22.02.1988 has been placed on record

which deals with promotion of Scientists/Engineers in ISRO.

9.1. Minimum eligibility period for promotion from SD to SE is four years. In the procedure for screening, it is stated that the Screening Committee will consider each case carefully and objectively and make suitable recommendation after examining the work report of each individual, ACR assessment, recommendation of the Divisional/Unit Head etc.

10. Learned Senior Counsel for the petitioner strongly argued that firstly, Screening Committee had erred in acting upon uncommunicated APARs of the petitioner. This is not permissible in view of the law laid down by the Supreme Court in **Dev Dutt v. Union of India**<sup>1</sup> which has been followed by the Ernakulam Bench of Central Administrative Tribunal in **Saji K. Sam v. Director, ISRO**<sup>2</sup>

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<sup>1</sup> (2008) 8 SCC 725

<sup>2</sup> 2012 SCC Online CAT 4128

which decision has been affirmed by the High Court of Kerala.

10.1. Insofar delay is concerned, learned Senior Counsel for the petitioner submits that petitioner had represented before the authority and only after the representations were rejected on 13.07.2015, he had approached CAT by filing O.A.No.21/1076/2015. Thus, there was no delay in filing the original application before CAT. Therefore, CAT had erred in rejecting the original application of the petitioner.

11. On the other hand, learned Deputy Solicitor General of India submits that petitioner ought to have minimum grading of 2A (outstanding) and 2AA- (tending to outstanding) as on 01.07.2008 on completion of four years of residency period. Petitioner had B+ (good)/A- (very good) in the year 2006. Therefore, he had fallen short of the minimum requirement for which his case was recommended for relook after six months. This process

went on till he was finally found fit for promotion. He submits that as per executive instruction, only adverse remarks in ACRs/APARs are required to be communicated to the concerned employee. A remark of “good” or “very good” cannot be construed to be adverse. Therefore, there was no error in not communicating such remarks in the case of the petitioner. Screening Committee as well as the DPC had objectively assessed the petitioner from 01.07.2008 till 01.01.2014. Contending that the order of CAT does not suffer from any infirmity, he seeks dismissal of the writ petition.

12. Submissions made by learned counsel for the parties have received the due consideration of the court.

13. At the outset, we may consider the ground of delay which was also held against the petitioner by CAT. According to CAT, petitioner had sought for promotion with effect from 01.07.2008 but filed the original application

seven years thereafter in the year 2015. Such belated claim could not be considered.

14. It is true that in matters of promotion, challenge to non-consideration for promotion has to be made at the earliest. Supreme Court has observed that a period of three or four years would be considered as reasonable for launching a challenge to non-consideration for promotion. This is so because if there is a delayed challenge it may unsettle settled positions by reopening promotions of third persons. Supreme Court had given the example of a scrambled egg which cannot be unscrambled. There is no dispute to such a proposition. But insofar the present case is concerned, petitioner has not claimed promotion *qua* other employees of ISRO. Rather, he had sought for the benefit of promotion for himself with effect from 01.07.2008. Moreover, since petitioner has superannuated from service on 31.01.2020, all that he would be entitled to in the event he succeeds is notional benefit and benefits that may accrue to him post superannuation. However,

factually speaking, petitioner has stated in the writ affidavit that he had submitted representations on 21.09.2012, 04.10.2012, 10.12.2014, 19.01.2015 and finally on 25.02.2015 before the respondents to consider his case for promotion to the next higher grade of Scientist/Engineer SE with effect from 01.07.2008. All his representations were finally rejected by respondent No.2 on 13.07.2015 whereafter he filed the related original application. Therefore, on such fact situation it cannot be said that there was delay on the part of the petitioner in instituting the challenge.

15. Insofar merit is concerned, it is the admitted position that petitioner did not meet the benchmark of having minimum 2A and 2AA- during the four years of residency period. According to the respondents, petitioner had gradings of B+ (good) and A- (very good); such gradings could not be construed to be adverse to the petitioner and therefore those were not communicated. However, the Screening Committee duly considered the APARs as well as



other performance parameters of the petitioner and did not find him to be fit to be recommended to DPC for consideration till 01.01.2014.

16. In **Dev Dutt** (supra), Supreme Court was considering the case of an employee in Border Roads Engineering Service who was not considered for promotion to the post of Executive Engineer. Rather, his juniors were selected and promoted to the post of Superintending Engineer by the DPC. This was unsuccessfully challenged before a Single Bench of the Gauhati High Court; his appeal before the Division Bench also resulted in failure. Thereafter, he approached the Supreme Court. In the above factual backdrop, Supreme Court held that 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: firstly, 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; secondly, he would have an opportunity of making a representation against the entry if he feels it is unjustified and pray for its upgradation. Supreme Court held that non-communication of an entry in ACR is arbitrary and thus violative of Article 14 of the Constitution of India. Supreme Court held as follows:

**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*** [(1978) 1 SCC 248 : AIR 1978 SC 597] 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.

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**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.

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**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.

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**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.

17. We may mention that on the face of it a grading of “good” or “very good” may not appear to be adverse to an employee. But if the benchmark is fixed above such grading, for example, “outstanding”, then in such an event, a grading of “good” or “very good” would be adverse to the employee in the facts and circumstances of the case. In any event, such an entry would have to be communicated to the concerned employee.

18. This decision of the Supreme Court in **Dev Dutt** (supra) was referred to by a three judge Bench of the Supreme Court in **Abhijit Ghosh Dastidar v. Union of**

**India**<sup>3</sup>. In that case the benchmark fixed was “very good” and appellant had got the grading of “good” which was not communicated to him. In that context, Supreme Court held that entry of “good” should have been communicated to the appellant. Supreme Court held 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 aboveresferred decision (**Dev Dutt v. Union of India** [(2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771 : (2008) 7 Scale 403] , 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

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<sup>3</sup> (2009) 16 SCC 146

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.

19. A three judge Bench of the Supreme Court in **Sukhdev Singh v. Union of India**<sup>4</sup> considered the correctness of the above decision of the Supreme Court in **Dev Dutt** (supra). After referring to the observations and findings rendered in **Dev Dutt** (supra), Supreme Court in **Sukhdev Singh** (supra) expressed complete agreement with the views expressed in **Dev Dutt** (supra) and approved the same. Supreme Court further held that the view taken in **Dev Dutt** (supra) that every entry in ACR of a public servant must be communicated to him within a reasonable period is legally sound and helps in achieving threefold objectives. Firstly, communication of every entry in the ACR to a public servant helps him to work harder and achieve more that helps in improving his work. Secondly, on being made aware of the entry in the ACR, the public

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<sup>4</sup>(2013) 9 SCC 566

servant may feel dissatisfied with the same. Communication of the entry would enable him to make a representation for upgradation of the remarks entered in the ACR. Thirdly, 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. It has been held as follows:

6. We are in complete agreement with the view in ***Dev Dutt v. Union of India***, [(2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] particularly paras 17, 18, 22, 37 and 41 as quoted above. We approve the same.

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8. In our opinion, the view taken in ***Dev Dutt v. Union of India***, [(2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] 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.

20. Thus, it has emphatically been held by the Supreme Court that every entry in the ACR – poor, fair, average, good or very good, must be communicated to the public servant within a reasonable period.

21. This is also the view taken by the Supreme Court in **Rukhsana Shaheen Khan v. Union of India**<sup>5</sup>.

22. That being the position, we are of the view that consideration of the case of the petitioner by the Screening Committee and DPC stood vitiated on account of acting on

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<sup>5</sup> (2018) 18 SCC 640

the uncommunicated remarks in the ACRs/APARs of the petitioner for the relevant period. Case of the petitioner for promotion to the post of Scientist/Engineer SE from an anterior date is therefore required to be reconsidered by the DPC either by ignoring the uncommunicated remarks in the ACRs for the related residency period or by giving an opportunity to the petitioner to represent against such ACR gradings. If the petitioner represents against such ACR gradings, the same may be considered and based on such consideration or in the event of ignoring the uncommunicated remarks, case of the petitioner may be placed again before the DPC to reconsider promotion to the post of Scientist/Engineer SE with effect from 01.07.2008.

23. Ordered accordingly.

24. Let the entire exercise be completed within a period of six months from the date of receipt of a copy of this order.

25. Since the petitioner has already superannuated from service, the benefits accruable to the petitioner, in the

event of successful reconsideration, would be notionally fixed only for the purpose of retirement benefits.

26. Consequently, order dated 26.04.2019 of CAT is set aside.

27. Writ petition is accordingly allowed to the extent indicated above.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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**UJJAL BHUYAN, CJ**

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**N. TUKARAMJI, J**

24.04.2023

Note: LR copy to be marked.

B/o.

vs