

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1779 of 2020

H.L. Hidco, S/o Shri Mantu Ram Hidco, Aged about 57 years, R/o Ganpati Vihar, Durg, Chhattisgarh currently posted as Joint Commissioner (Appeals), Commercial Tax & GST Department
---- Petitioner

Versus

1. State of Chhattisgarh through the Chief Secretary, Government of Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Chhattisgarh 492015
2. Department of Commercial Tax & GST Department, through Principal Secretary, Mahanadi Bhawan, Naya Raipur, Chhattisgarh 492015
3. Commissioner, Commercial Tax & GST Department, North Block, Sector 19, Naya Raipur, Chhattisgarh 492015
4. Under Secretary, Department of Commercial Tax & GST Department, Mahanadi Bhawan, Naya Raipur, Chhattisgarh 492015
---- Respondents

For Petitioner: Mr. Abhyuday Singh, Advocate.
For Respondents/State: Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/12/2021

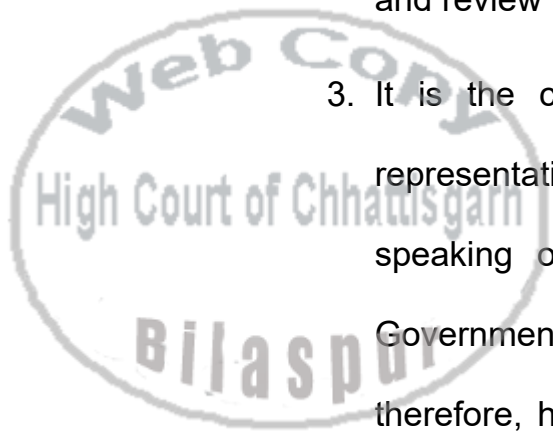
1. The petitioner herein calls in question legality, validity and correctness of order dated 15-10-2018 (Annexure P-1) by which his review representation for expunging the adverse remarks made in the ACR for the year 2015-16 has been rejected and he also seeks to challenge the order dated 4-1-2020 (Annexure P-2) by which his review representations for expunging the adverse remarks made in the ACRs for the years 2016-17 & 2017-18 have been rejected.
2. The petitioner was graded 'very good' by the Commissioner in the ACRs for the years from 2011 to 2015, however, it was downgraded in the year 2015-16 and adverse remark was communicated to him on 4-





1-2018 against which he made representation on 2-2-2018 for expunging the adverse remark which was rejected on 4-6-2018 and when he made review representations to the State Government on 19-6-2018 & 28-7-2018, it was rejected by the Under Secretary on 15-10-2018. Similarly, for the year 2016-17, again, adverse remark in the ACR was communicated to the petitioner on 3-1-2019, against which he made representation on 30-1-2019 which was rejected on 30-4-2019 and review representation was rejected on 4-1-2020. For the year 2017-18, adverse remark in the ACR downgrading the petitioner was communicated to him on 26-2-2019 against which he made representation on 12-3-2019 and the same was rejected on 24-9-2019 and review representation was also rejected on 4-1-2020.

3. It is the case of the petitioner that representations and review representations, both, have been rejected by un-reasoned and non-speaking orders and secondly, that the Under Secretary to the Government of Chhattisgarh is subordinate to the Commissioner, therefore, he was not competent to decide the representation of the petitioner and as such, the orders impugned are liable to be quashed.
4. Return has been filed opposing the writ petition stating inter alia that writing of annual confidential report is the simple prerogative of the employer and that cannot be dictated by the employee to the employer to write his ACR as per his own wish and will. It has been further stated that though the petitioner's performance from the years 2011 to 2015 was quite satisfactory and he was awarded very good remark in the ACRs of the years 2011 to 2015, but from the years 2015-16 to 2017-18, there was a great down fall in his performance, working and discharge of duties which was observed by the respondents and as such, on account of close observance and after





observing his performance totally, he was graded as Good, Average and Good in the ACRs for the years 2015-16, 2016-17 and 2017-18, which is strictly in accordance with law and accordingly, his representations and review representations have been considered and same have been rejected by the competent authority.

5. Mr. Abhyuday Singh, learned counsel appearing for the petitioner, would make two fold submissions: -

1. The orders rejecting the representations and review representations have been passed by non-speaking and un-reasoned orders which runs contrary to the decision of the Supreme Court in the matter of Gurdial Singh Fijji v. State of Punjab and others¹.

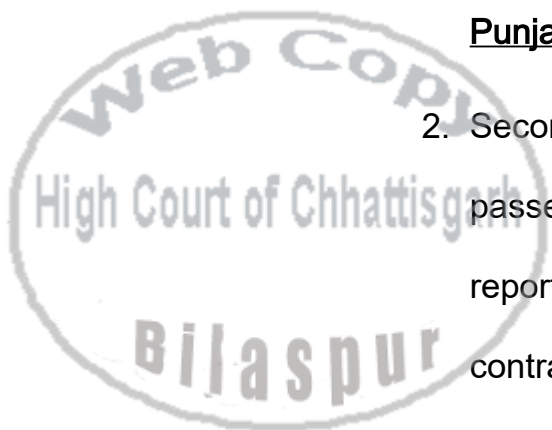
2. Secondly, the order rejecting review representations has been passed by the Under Secretary who is subordinate to the reporting officer i.e. the Commissioner, therefore, it is also contrary to the decision rendered by the Supreme Court in the matter of Dev Dutt v. Union of India and others² which has been followed by the Supreme Court in the matter of Sukhdev Singh v. Union of India and others³.

6. Mr. Avinash Singh, learned State counsel, would support the impugned orders and would submit that the petitioners representations and review representations have been considered by the competent authority and same have rightly been rejected and therefore, no exception can be taken to the impugned orders rejecting the representations and review representations, which are strictly in accordance with law and as such, the writ petition deserves to be

1 (1979) 2 SCC 368

2 (2008) 8 SCC 725

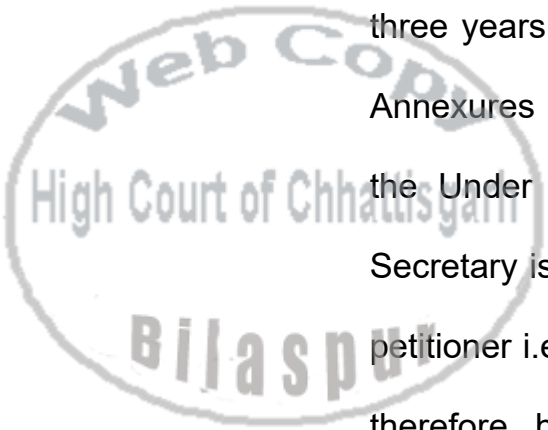
3 (2013) 9 SCC 566





dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
8. The petitioner is working on the post of Joint Commissioner (Appeals) Commercial Tax & GST Department. He was graded 'very good' by the reporting officer / Commissioner (principally held by an IAS officer) - respondent No.3 herein, in the ACRs from 2011 to 2015. His accepting authority is the State Government. In the years 2015-16, 2016-17 and 2017-18, he was downgraded as 'good' from 'very good' against which he made representation which was rejected for all the three years and review representations have also been rejected vide Annexures P-1 & P-2 and orders to that effect have been passed by the Under Secretary. It is the case of the petitioner that Under Secretary is an officer lower in rank than the reporting authority of the petitioner i.e. Commissioner, Commercial Tax & GST Department and therefore, his representations could not have been considered and decided / rejected by the Under Secretary of the Government of Chhattisgarh.
9. The question is, whether respondent No.4 - Under Secretary, who is lower in rank to respondent No.3 - Commissioner / reporting authority of the petitioner, was empowered to take decision on the representation against downgrading of the petitioner?
10. The Supreme Court in Dev Dutt (supra) has held that representation against downgrading must be decided by an authority higher than the one who gave the entry, otherwise it would be an appeal from Caesar to Caesar. It has been observed by their Lordships as under: -





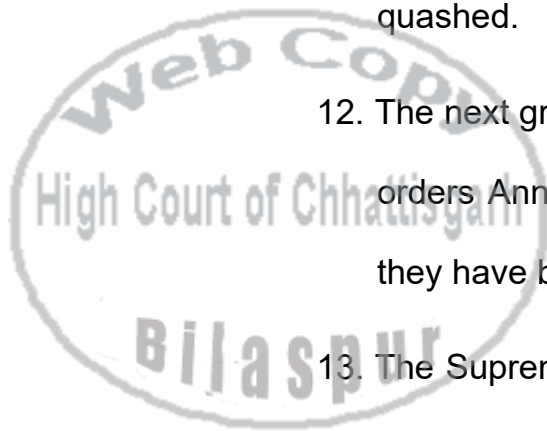
"37. ... We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive 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."

11. Accordingly, it is held that the Under Secretary being an officer lower in rank than the Commissioner (reporting authority of the petitioner) could not have decided the representations and review representations of the petitioner. Therefore, Annexures P-1 & P-2 and the orders passed on the original representations deserve to be quashed.

12. The next ground urged by the petitioner's counsel is that the impugned orders Annexures P-1 & P-2 smacks total non-application of mind as they have been passed by non-speaking and un-reasoned orders.

13. The Supreme Court in Gurdial Singh Fijji (supra) has clearly held that an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality.

"17. The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. ..."





14. Similarly, in Dev Dutt (supra), their Lordships of the Supreme Court have recognised the right of a Government servant to have an opportunity to represent against the adverse remark and held as under: -

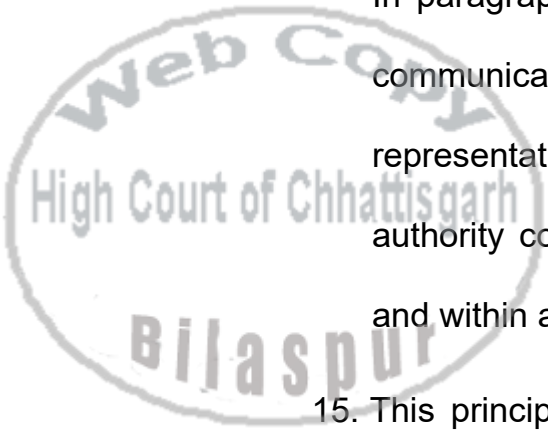
"22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the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

In paragraph 37, their Lordships further held 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.

15. This principle of law laid down in Dev Dutt (supra) was followed in Sukhdev Singh (supra) and further followed in the matter of Prabhu Dayal Khandelwal v. Chairman, Union Public Service Commission and others⁴.

16. Reverting to the facts of the present case in the light of the aforesaid legal position, it is quite vivid that the petitioner's representations against the adverse remarks in the ACRs for the years 2015-16, 2016-17 and 2017-18 have been rejected by un-reasoned and non-speaking orders passed by the Under Secretary to the Government of Chhattisgarh and they were not considered in its right perspective, particularly when the representations made were exhaustive and

4 (2015) 14 SCC 427





when the petitioner made review representations giving complete details of adverse remarks in the ACRs, same were again rejected by non-speaking and un-reasoned order dated 15-10-2018 (Annexure P-1) and thereafter, on 4-1-2020 (Annexure P-2) again the review representation was rejected by the Under Secretary to the Government on the ground that the earlier review representation for expunging of adverse remarks for the year 2015-16 has already been rejected on 19-6-2018 and 28-7-2018 and therefore, there will not be any further consideration on that aspect and thus, rejected the review representations for the years 2016-17 and 2017-18. The orders impugned have been passed by the Under Secretary to the Government who is an officer lower in rank than the Commissioner - respondent No.3 who is reporting authority of the petitioner. This runs contrary to the decision of the Supreme Court in Dev Dutt (supra) wherein it has been held that the representation must be decided by an authority higher than the one who gave the entry, as the accepting authority in the present case is the State Government and that too by reasoned and speaking order.

17. Accordingly, the impugned orders Annexures P-1 & P-2 are hereby set aside and respondent No.1 & 2 are directed to consider the petitioner's review representations within two months from the date of receipt of a copy of this order on its own merits, in accordance with law and decide the same by a reasoned and speaking order.
18. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1779 of 2020

H.L. Hidco

Versus

State of Chhattisgarh and others

Head Note

Representation / review representation against the adverse confidential report has to be considered and decided by an authority higher than the reporting authority / who has given the entry, by reasonable and speaking order.

प्रतिकूल गोपनीय प्रतिवेदन के विरुद्ध अभ्यावेदन / पुनर्विलोकन अभ्यावेदन पर उस रिपोर्टिंग प्राधिकारी जिसने प्रविष्टि की है, उन से उच्च प्राधिकारी द्वारा युक्तियुक्त एवं सकारण आदेश देते हुए विचारित एवं निर्णित किया जाना चाहिए।

