

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

Hon'ble Justice Soumitra Pal, Hon'ble Chairman &
Hon'ble Dr. Subesh Kumar Das, Administrative Member.

CASE NO. OA 1083 of 2017.

SATYA PRAKASH MISHRA –Vs–THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>20 25.11.2020.</p>	<p>For the Applicant : Mr. K. Basu, Mr. M.N. Roy, Advocates.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Advocate.</p> <p>In this application, Satya Prakash Mishra, the applicant, has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p>“a).....An order and/or orders, direction and/or directions upon the respondent authorities and each of them to consider to appoint the applicant in the post of Superintendent, Central Correctional Home with effect from 25.01.2016 upon up gradation of his uncommunicated adverse ACR and further to grant him all consequential benefits, including restoration of his seniority relating to the said post of Superintendent, Central Correctional Home since January, 2016.</p> <p>b) An order and/or direction upon the respondent authorities to certify and transmit before this Hon'ble Court all records and proceedings relating to the consideration for promotion in the post of Superintendent, Central Correctional Home since January,</p>	

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	<p>2016, so that conscionable justice may therein administered upon perusal of the same;</p> <p>c) An order and/or direction upon the respondent authorities restraining them from filing up the vacancy in the post of Superintendent, Central Correctional Home which will arise with effect from January, 2018 in General Category until the applicant's representation praying for up gradation of his ACR is considered and decision taken thereon and his case is considered for promotion to the said post.</p> <p>d) An order and/or direction upon the respondent authorities to certify and/or to transmit before the Hon'ble Tribunal all records and proceedings relating to the adverse entry recorded in his ACRs for the years 2013-14 and/or 2016-17, so that conscionable justice may be rendered therein by setting aside and/or quashing the same and consequently to consider to promote the applicant to the post of Superintendent, Central Correctional Home with effect from 25.01.2016....".</p>	

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	<p>It appears that the applicant, an officer in the rank of Superintendent, District Correctional Home/Deputy Superintendent, Central Correctional Home and in the cadre of Superintendent, District Correctional Home/Deputy Superintendent, Central Correctional Home under the Department of Correctional Administration, was confirmed on 7th June, 2014. The case of the applicant was considered for promotion. He was due to be promoted to the rank of Superintendent, Central Correctional Home in December, 2015/January, 2016. It has been stated that even after consideration he was denied promotion on the ground that the ACR of the applicant for the year 2013-14 was "Average" which was an adverse entry and the applicant's immediate junior Subhendu Krishna Ghosh was promoted on 24th January, 2016 superseding the applicant. Since the applicant was unaware of the remarks in the ACRs for the year 2011-12 to 2014-15 for non-communication, an application was filed under the under the Right to Information Act, 2005.</p>	

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	<p>Subsequently he was furnished with the remarks in the ACRs for the said years as evident from the annexures to the application. The applicant made a representation on 7th April, 2016 (page 41 of the original application) before the Principal Secretary to the Government of West Bengal, Department of Correctional Administration, Kolkata for promoting him to the rank of Superintendent, Central Correctional Home, which was followed by another representation on 23rd November, 2017 (page 43 of the original application) before the Principal Secretary.</p> <p>It is submitted by Mr. Kallol Basu, learned advocate appearing on behalf of the applicant that since the remarks in the ACRs for the period from 2011-12 to 2014-15, which was the basis of promotion, were not communicated, the same is illegal and unconstitutional and cannot be the basis of denial of promotion which was legitimately due. The applicant had filed an application under 2005 Act for obtaining the information relating to ACRs from 2011-12 to 2014-15 and had come to know that he was marked, inter alia, as "Average Officer" for</p>	

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	<p>the year 2013-14 (pages 36, 37 of the original application). Relying on the judgements in Abhijit Ghosh Dastidar-Vs.- Union of India (2009) 16 SCC 146, particularly paragraph 8 thereof, Rukhsana Shaheen Khan-Vs- Union of India & Ors (2018) 18 SCC 640, The Union of India & Ors-Vs-Anil Kumar Sarkar (2013) 4 SCC 161 submission is since non communication of the ACRs has civil consequences and as the remarks in the ACRs was the basis of denial of promotion to the applicant, appropriate order, as prayed for, may be passed. Referring to the order dated 25th June, 2018 issued by the Principal Secretary to the Government of West Bengal, pursuant to the order of the Tribunal, submission is as the said order is cryptic and as it does not refer to the non communication of the ACRs, the same be quashed and appropriate relief be granted. Referring to the judgement in Suresh Babu –Vs-Union of India & Ors delivered on 7th January, 2013 in W.P.C.T. No. 398 of 2012 submission is, as in a similar matter the Division Bench of the High Court while setting aside the order of the Tribunal had directed the respondents to promote</p>	

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	<p>the applicant with effect from the same date as his immediate junior in service and had also directed for consequential relief, appropriate order may be passed.</p> <p>Mr. G.P. Banerjee, learned advocate on behalf of the State respondents submits that the order dated 25th June, 2018 passed by the Principal Secretary, pursuant to the order by the Tribunal, is just and proper. Referring to the judgements relied on behalf of the applicant submission is those are on different facts and circumstances.</p> <p>There is no dispute that the remarks in the ACRs for the year 2011-12, 2012-13, 2013-14 and 2014-15 were not communicated. Applicant had to file an application under the 2005 Act for obtaining information regarding the remarks made therein. It is now well settled proposition of law that it is the bounden duty of the administration to communicate the remarks in the ACRs. In the case in hand the respondents grossly erred in not communicating the ACRs to the applicant. In fact in <i>Rukhsana Shaheen Khan, (supra)</i> it has been held that <i>"...that uncommunicated and adverse ACRs cannot be relied upon in the process...for promotion"</i>.</p>	

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	<p>In Suresh Babu (supra) the High Court had held as under :-</p> <p><i>“...Admittedly, the remarks in the petitioner’s Annual Confidential Reports were not communicated to him although these remarks were below the benchmark of “very good”.</i></p> <p><i>In our opinion, therefore, the Tribunal has erred in directing the petitioner to submit a representation to the Authorities once again for reconsidering the position. When it has been admitted that the Annual Confidential Reports have not been communicated to the petitioner, the question of directing the Petitioner to submit a representation to the Authorities does not arise. It appears from the communication received by the petitioner under the R.T.I. Act that the petitioner’s case for the years 1st April, 2003 to 31st March, 2004 till 1st April, 2007 to 31st March, 2008 have been considered and it has been found that in the year 1st April, 2004 to 31st March, 2005 he had not obtained the remark “very good” which was necessary for being promoted to the post of Deputy Director.</i></p>	

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	<p><i>This non-communication of the remarks is violative of the petitioner's rights and the judgements of the Supreme Court in the cases of Dev Dutt vs Union of the India and others (supra) and Abhijit Ghosh Dastidar Vs. Union of India (Supra).</i></p> <p><i>In these circumstances, we direct the respondents to promote the petitioner with effect from the same date as his immediate junior in service. The petitioner will be entitled to all consequential reliefs by considering his date of promotion as that of his immediate junior, i.e., from 13th April, 2010....”.</i></p> <p>Since the law is settled that uncommunicated ACRs cannot be relied on while considering the case of promotion and as non communication of remarks is violative of Article 14 of the Constitution and is also arbitrary and illegal and impugned order dated 25th June, 2018,- which relies primarily on G.O. No. 573 GAC dated 24th May, 1973 issued by the Principal Secretary, Department of Correctional Administration, Government of West Bengal – the respondent no 1- is contrary to the law laid down in</p>	

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Skg.	<p>the judgements discussed hereinbefore, the same is set aside and quashed. The application is allowed.</p> <p>Accordingly, we direct the Principal Secretary, Department of Correctional Administration, Government of West Bengal, – the respondent no 1, to promote the applicant with effect from the date of promotion of his immediate junior in service and the applicant will be entitled to all consequential reliefs by considering his date of promotion as that of his immediate junior within a period of eight weeks from the date of communication of this order.</p> <p>Since for circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.</p> <p>(Subesh Kumar Das) Member (A).</p> <p>(Soumitra Pal) Chairman.</p>	