

HIGH COURT OF DELHI

Date of Decision: April 2, 2024

CORAM: Justice V. Kameswar Rao and Justice Saurabh Banerjee

W.P.(C) 779/2018

GURIQBAL SINGH ...PETITIONER

Versus

UNION OF INDIA & ANR. ...RESPONDENTS

Legislation:

Article 14 of the Constitution of India

Subject: Challenge against the order rejecting the petitioner's request for restoring his seniority in the rank of Commandant from the date his immediate junior was promoted, i.e., July 01, 2017.

Headnotes:

Promotion and Seniority Issue - Challenge against HQ DG BSF order dated February 12, 2015, for non-restoration of seniority - Petitioner's ACRs for 2005-06 & 2007-08 initially marked below benchmark, leading to his non-inclusion in promotion list - ACRs later upgraded on representation - Petitioner contends supersession due to non-communication of below benchmark ACRs and seeks promotion with retrospective seniority [Paras 1-5, 14, 31].

Legal Framework - Application of DoP&T's OM dated April 13, 2010 - OM applied for future DPCs only - Petitioner's case relates to DPC held prior to the OM, leading to rejection of retrospective promotion claim by respondents [Paras 12, 13, 19, 28-30].

Supreme Court Precedents - Reliance on Dev Dutt v. UOI (2008) 8 SCC 725 - Principles of upgraded ACRs and retrospective consideration for promotion - Comparative analysis with similarly situated officer, Lala Krishan Kumar Lal, who received retrospective seniority - Claim of discriminatory treatment under Article 14 of the Constitution [Paras 6-7, 34].

Decision - Court held that upgraded ACRs merit review by DPC - Petitioner entitled to consideration for promotion from date junior was promoted, subject to fitment - Impugned order quashed - Respondents directed to undertake promotional exercise within eight weeks [Paras 31-37].

Referred Cases:

- Dev Dutt v. UOI (2008) 8 SCC 725
- Amita v. UOI (2005) 13 SCC 721
- S. Seshachalam v. Bar Council of T.N. (2014) 16 SCC 72
- Shiba Shankar Mohapatra v. State of Orissa (2010) 12 SCC 471
- Union of India v. G.R. Meghwal, Civil Appeal No. 2021 of 2022
- Dr. Krashnendra Singh v. Union Of India & Ors, W.P.(C) 11970/2019
- Mukul Kumar Misra v. Union Of India And Anr, W.P.(C) 7265/2017

Representing Advocates:

Petitioner: Dr. S.S. Hooda, Mr. Aditya Hooda, Mr. Aayushman A., and Mr. Vaibhav Verma, Advs.

Respondents: Mr. Jivesh Kumar Tiwari, Sr. Panel Counsel for UOI

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner primarily challenging the order of the HQ DG, BSF dated February 12, 2015 rejecting the petitioner's request for restoring his seniority in the rank of Commandant from the date his immediate junior has been promoted i.e., July 01, 2017. The impugned order dated February 12, 2015 is reproduced as under :-

"Sub; REFIXATION OF SENIORITY: CASE OF SHRI GURIQBAL SINGH, COMDT (IRLA NO. 19248134) OF 39 BN

BSF Please refer to your Letter No. IG(Spl Ops)- Od/Estt/Sr. ListCO-39Bn/2014/10582-86 dated 29.12.2014.

2. *In this connection, I am directed to inform that Shri Guriqbal Singh, then 2IC (Now Comdt) was assessed as 'Unfit' for promotion to the rank of Comdt by the DPC held on 15.03.2010 due to his confidential record of service. Further, in accordance to DoP&T's OM dated 13.04.2010, below bench mark*

ACRs for the years 2005-06 and 2007-08 were communicated to the officer and subsequently upgraded for 'Good' to 'Very Good' and 'Average' to 'Good' respectively. Though, the ACRs of the officer for the years 2005-06 and 2007-08 were upgraded from 'Good' to 'Very Good' and 'Average' to 'Good' respectively, but his case for promotion to the rank of Commandant w.r.to DPC dated 15.03.2010 cannot be reviewed as DOP85T OM dated 13.04.2010 clearly states that it would be applicable for future DPCs only. In this connection FHQ Pers Dte (Confid Section) letter No. A28012/14/2010/CC/Pers/BSF/5328-5627 dated 10.12.2010 refers.

3. Keeping in view of the above, the instant representation of the Officer has been examined in details at this Dte and rejected by the Competent Authority being devoid of merit. 4. The officer concerned may be informed accordingly.”

2. The facts as noted from the petition are that, the petitioner joined Border Security Force ('BSF', for short) as Assistant Commandant (Direct Entry) ('AC', for short) on January 04, 1992. His seniority at the time of joining the force was fixed between Sanjeev Kumar (IRLA No.: 19148038) and Lakhminder Gill (IRLA No.; 19148199) in the gradation list of Group 'A' General Duty officer. The petitioner was promoted to the rank of Deputy Commandant on October 07, 1998 and further to the rank of Second-in Command ('2IC', in short) on June 03, 2005. During his promotion, his rank / seniority remained unchanged as he was kept between Sanjeev Kumar and Lakhminder Gill.
3. It is the petitioner's case that the Departmental Promotion Committee ('DPC', for short) was constituted for considering the promotion of 2IC's to the rank of Commandant which included the name of the petitioner. The DPC was held by HQ DG BSF, New Delhi on March 15, 2010 but surprisingly the petitioner's name did not figure in the promotion orders. Later the petitioner upon making enquiries found that, because the HQ DG BSF (Pers. Dte.) vide its Order L/No.A- 1901 I/05/2010/CC/Pers/BSF/3459-61 dated July 16, 2010 had graded the petitioner in his ACR's for 2005-06 and 2007-08 as „Good“ and „Average“ respectively, which were below benchmark, his name never figured.
4. Dr. S.S. Hooda, the learned counsel for the petitioner stated that, vide order dated March 15, 2010, 2IC's who were junior to the petitioner were promoted to the rank of Commandant with effect from July 01, 2010. The juniors superseded the petitioner and became seniors. Being aggrieved by the

decision of the DPC, the petitioner made a representation to the HQ DG BSF, New Delhi for convening a Review DPC and for restoration of his Seniority in the rank of Commandant at par with his juniors. He also made a representation dated August 03, 2010 to the HQ DG BSF, New Delhi for upgradation of his „*Below Benchmark*“ ACR grading. The *Below Benchmark* ACRs of the petitioner for the years 2005-06 and 2007-08, were in fact then upgraded as ‘*Very Good*’ and ‘*Good*’ respectively.

5. He stated that the petitioner was considered for promotion to the rank of commandant by the DPC and based on his upgraded ACRs for the years 2005-06 and 2007-08 was promoted to the rank of commandant w.e.f. June 01, 2011. He also stated that, if the petitioner had been communicated about his adverse ACRs for the years 2005-06 and 2007-08, well in time, he would have made representation in time and the ACRs would have been upgraded much before the date of DPC, i.e., March 15, 2010 and he would not have suffered supersession. He also stated that the *Below Benchmark* ACR gradings for the years 2005-06 and 2007-08, as „*Good*“ and ‘*Average*’ respectively which were not communicated to the petitioner led to his supersession when other similarly situated officers were promoted by the DPC.
6. He contended that the Supreme Court has settled the law to the effect that, an employee cannot be made to suffer because of NonCommunication of *Below Benchmark* remarks in his ACRs. In support of his submission, he had relied upon the judgment of the Supreme Court in the case of ***Dev Dutt v. UOI, (2008) 8 SCC 725***. He also stated that the Supreme Court in the said judgment has held that the *Below Benchmark* remarks of 1993-94 should be communicated to the employee for him to make a representation against the same praying for its upgradation. If the upgradation is allowed, the employee should be considered forthwith for promotion and if he is promoted, he will get the benefit of higher pension and balance of arrears of pay along with interest @ 8% per annum. He also stated that his case is squarely covered by the judgment of the Supreme Court in ***Dev Dutt(supra)***. 7. He submitted that, a similarly situated officer, Lala Krishan Kumar Lal, who suffered supersession because of non-communication of *Below Benchmark* ACR remarks in time has been given promotion with retrospective seniority after his *Below Benchmark* ACR remarks were upgraded. He also stated that though Lala Krishan Kumar Lal, petitioner’s junior was promoted to the rank of Commandant along with the petitioner on the same date, not only has Lala Krishan Kumar Lal's representation for retrospective seniority been

considered, he was given retrospective seniority as well. Contrary thereto, the representation of the petitioner has been rejected by the respondents which is against the Right to Equality guaranteed to any person under Article 14 of the Constitution of India. He stated that the differential treatment of the petitioner and Lala Krishan Kumar Lal, undoubtedly amounts to violation of Article 14 of the Constitution of India.

8. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of ***Amita v. UOI, (2005) 13 SCC 721***. He also stated that, at present, as per the latest Gradation list dated December 31, 2016, Lala Krishan Kumar Lal, who was junior to the petitioner became senior to the petitioner and resultantly the seniority of Lala Krishan Kumar Lal has shifted from CSL No.435 as was in Gradation List dated July 15, 2010 to CSL No.417 in Gradation List dated February 01, 2011 and to CSL No. 344, as per latest Gradation list dated December 31, 2016. Whereas, the petitioner who was at CSL No.459 as per Gradation List dated April 01, 2009 and at CSL No.414 as per Gradation List dated July 15, 2010, went up to CSL No. 413 as per Gradation List dated February 01, 2011 and presently is at CSL No.352 as per latest Gradation list dated December 31, 2016.

9. He submitted that the representation of the petitioner has been rejected on the basis of DoP&T Office Memorandum No. 1011/1/2010Estt. (A) dated April 13, 2010. The said OM dated April 13, 2010, lays down instructions to the effect that, if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 200809, are to be considered, in that situation the *Below Benchmark* ACR grading must be communicated to such employee, his representation be sought and decided. The representation along with decision on the same should be placed before the DPC for consideration. He also stated that the OM dated April 13, 2010 is against the law laid down by the apex court in ***Dev Dutt (supra.)***. He also stated that, it is against the principles of natural justice; the principle of reasonableness; is arbitrary, illegal and is not sustainable in law. In support of his submission he has relied upon the judgment of the Supreme Court in the case of ***S. Seshachalam v. Bar Council of T.N.. (2014) 16 SCC 72***. 10. Furthermore, it is his submission that the OM dated April 13, 2010 creates an arbitrary and artificial classification between the employees whose DPC have been held before the issuance of the said OM and the employees whose DPCs would be held after issuance of the said OM. He also stated that the employee who's DPCs has been held prior to the issuance of the said OM and superseded due to noncommunication of *Below Benchmark* ACR

remarks will not get benefit of law laid down ***Dev Dutt (supra)***. Whereas, the employee who's DPC was held after issuance of the said OM would get the benefit of the law in ***Dev Dutt (supra)***.

11. He stated that after his ACRs for the years 2005-2006 and 2007-2008 were duly upgraded from *Below Benchmark* to *Above Benchmark* grading, the Review DPC should have been constituted to promote him to the rank of Commandant with seniority at par with his juniors i.e., w.e.f July 01, 2010. The petitioner's position in the Seniority list should have been restored back to the position as would have been in normal course of promotion.
12. Furthermore, he stated that the petitioner is being penalised for no fault of his, as his representation for granting him Seniority at par with his juniors w.e.f July 01, 2010, is not rejected only on the basis that the petitioner did not achieve the required benchmark in his ACRs for the years 2005-06 and 2007-08 but also because the representation of the petitioner against the *Below Benchmark* ACR was hugely delayed.
13. He stated that, as per the order dated February 12, 2015, the respondents have taken a categorical stand that the case of the petitioner for promotion to the rank of Commandant with respect to DPC dated March 15, 2010 cannot be reviewed as the DoP&T OM dated April 13, 2010, is applicable for future DPC only. He stated that the respondents are trying to change their case by stating that DPC held on March 15, 2010 considered the '*DG's Displeasure*' to the petitioner and assessed him as „*Unfit*“ for promotion to the rank of Commandant. This averment is made with a *malafide* intention by bringing in such matters which were never communicated to the petitioner when the representation dated December 29, 2014 was rejected through the order dated February 12, 2015. He also submitted that the respondents cannot be allowed to shift the goalpost with intention to deny rightful claim of the petitioner especially when another similarly situated officer has been given the benefit of promotion to the rank of Commandant with respect to DPC dated March 15, 2010.
14. Dr. Hooda submitted that the petitioner was communicated the adverse remark in his ACR for the year 2005-06 (July 18, 2005 – March 31, 2006) and 2007-08 (April 1, 2007 – March 31, 2008) on July 16, 2010. The petitioner made a representation against the same on August 03, 2010 and the ACRs of the petitioner were upgraded by HQ Spl DG (EC) vide O/ No. 1150-53 dated February 15, 2011 and Spl DG (WC) vide O/No. 68-70 dated March 03, 2011. The petitioner thereafter made a representation seeking retrospective seniority on November 27, 2014, which was rejected on the ground that the

policy laid down by OM dated April 13, 2010 only provided for prospective promotion and did not apply retrospectively, which again is in clear contravention of the law laid down by the Supreme Court. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of ***Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471***. He seeks prayers as sought in the petition.

15. On the other hand, Mr. Jivesh Kr. Tiwari, Sr. Panel Counsel appearing for the respondents stated that the petitioner was considered for promotion to the rank of Commandant by the DPC held on March 15, 2010 during the vacancy year 2010-11 but assessed as 'Unfit' for not meeting the required benchmark grade of „Very Good“ due to his confidential record of service and DG's *Displeasure*. Thereafter, the petitioner submitted a representation dated November 27, 2014 for his promotion to the rank of Commandant w.r.t. DPC held on March 15, 2010 which was examined in detail and was rejected by the Competent authority and the same was informed to him accordingly vide letter dated February 12, 2015.
16. He stated that, as per Para 3.3 of DoP&T OM dated February 08, 2002, the posts which are in the pay scale (grade) of Rs. 12,000- 16, 500 (Pre-revised) and above, the benchmark grade should be 'Very Good'. Further, as per MHA instructions on the subject, an officer may be graded as „Very Good“, if in the opinion of the Selection Committee his overall service record reflects that the officer has done highly meritorious work and possesses positive attributes and these characteristics are to be reflected in at least 3 of the last 5 ACRs. Further in the opinion of the Selection Committee, the remaining ACRs under consideration of the Committee should reflect that the officer's performance is generally good, during the period of report. There should be no adverse entry in any of the ACRs under consideration of the Selection Committee.
17. He stated that, DG's *displeasure* dated June 24, 2008 was due to petitioner having conversation with the wife of Bhoja Bhai, civil contractor of milk, during the midnight at odd hours, between 12:00 to 02:00 hrs on intervening night on Feb 13/14, 2008 and used indecent, vulgar and objectionable language. The DPC held on March 15, 2010 considered the „DGs *Displeasure*' and assessed him as 'Unfit' for promotion to the rank of Commandant.
18. Mr. Tiwari stated that, as per DoP&T OM No.21011/1/2010- Estt(A) dated April 13, 2010, below bench mark ACRs for the years 2005-06 and 2007-08 were communicated to the petitioner. Accordingly, the Officer had made a representation to Spl DG (East) Kolkata against *Below Benchmark* ACR for the year 2005-06 and to Spl DG (West) against the below benchmark ACR

for the year 2007-08. As per Spl DG (East) Kolkata Order No.PS/BBM/(GS-2IC),SDG(E)/ 2011/150-53 dated February 15, 2011 and Spl DG (West) Order No. APAR/Officers/SDG(W)/2011/68-70 dated March 03, 2011 , his below bench mark ACR for the year 2005-06 was upgraded from „Good“ to „Very Good“ and ACR for the year 2007-08 was upgraded from „Average“ to ‘Good“.

19. He submitted that after the petitioner’s representation dated November 27, 2014, and since his below benchmark ACRs for the years 2005-06 and 2007-08 having been upgraded from „Good“ to „Very Good“ and „Average“ to ‘Good“, respectively, he should have be considered for promotion to the rank of Commandant as per his seniority in the rank of Commandant likewise from the date of promotion of his immediate junior. He also submitted that, while examining the proposal of Review DPC for considering the upgradation of below benchmark ACRs of previous years, DoP&T has clearly stated that their OM dated April 13, 2010 would be applicable for future DPCs only. These instructions have been circulated to all BSF formations vide Pers Dte-Confid Section L/No.A- 28012/14/2010/CC/Pers/ BSF/ 5328-5627 dated December 10, 2010. He also stated, the Supreme Court has referred the appeals regarding consideration of promotions retrospectively once the ACR grading has been upgraded, to a larger Bench. He stated that, in view of the above, upgraded ACRs of the Officer could be reckonable for consideration of his promotion to the rank of Commandant for vacancy year 2011-12 and not for the DPC held prior to April 13, 2010.
20. He stated that, as per DoP&T OM dated May 14, 2009, *“the full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer, remarks of the Reporting officer with remarks of the Reviewing officer and the Accepting Authority. This system of Communicating the entries of APAR was made applicable prospectively only w.e.f the reporting period 2008-09 which had to be initiated after April 2009. Further, the concerned officer shall be given the opportunity to make the representation against the entries and final grading given in the report.”* In compliance, an exercise was undertaken to scrutinize the related DPCs for the year 2010-11 in respect of officers who were not empanelled for their promotion to the next higher rank probably due to not making the required bench mark. Further, all the affected officers were communicated the entries in their APAR for the year 2008-09 in terms of above OM. During the aforesaid exercise and consideration of their representations, it was found that the ACR grading for the year 2008-09 in respect of 03 officers including Lala Krishan

Kumar Lal, 2IC were upgraded by the Competent Authority. A proposal was sent to MHA for holding of a review DPC in respect to these officers. Accordingly, after approval from MHA, a review DPC was conducted w.r.t. DPC dated March 15, 2010.

21. He submitted that, in the case of petitioner, his ACRs of the years 2005-06 & 2007-08 were not covered within the period made applicable vide above instructions. He stated that, there is no similarity/parity of the petitioner with Lala Krishan Kumar Lal because the below benchmark ACR in the case of Lala Krishan Kumar Lal was of the year 2008-09, whereas the ACRs of the petitioner was for the year 2005-06 and 2007-08 and there was no provision of communication of ACRs of the period prior to 2008-09. However, the same were communicated to the petitioner pursuant to OM dated April 13, 2010 and upon representation, they were upgraded, but despite upgradation, the petitioner could not be considered for review promotion because the petitioner was „Unfit“ by the DPC held on March 15, 2010.
22. Mr. Tiwari stated that the DoP&T has clearly stated that their OM dated April 13, 2010, would be applicable for future DPCs only and the upgraded ACRs of the Officer could be reckonable for consideration of his promotion to the rank of Commandant for the next vacancy year i.e., 2011-12 and not for the DPC held prior to 13 April, 2010. He also stated that, as per the orders of the Supreme Court in ***Dev Dutt (Supra)*** and ***A.K.Goel (Supra)***, the upgraded ACRs of the officer should be reckonable for consideration of his promotion to the rank of Commandant for vacancy year 2011-12 and not for the DPC held on prior to April 13, 2010.
23. He, in support of his submissions, has relied upon the following judgments:-
 - i. ***Union of India v. G.R. Meghwal, Civil Appeal No. 2021 of 2022. Dr. Krashendra Singh v. Union Of India & Ors, W.P.(C) 11970/2019.***
 - ii. ***Mukul Kumar Misra v. Union Of India And Anr, W.P.(C) 7265/2017.***
24. He seeks dismissal of this petition.
25. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the petitioner is entitled to promotion / seniority on the post of Commandant w.e.f July 1, 2010 when officers junior to him were granted promotion.
26. It may be stated here that the case of the petitioner was also considered for promotion from the post of 2IC to Commandant, but he was not found fit because of the below benchmark gradings for the years 2005-2006 and 2007-

2008 of „Good“ and „Average“ respectively. 27. There is no dispute that, on a representation made by the petitioner, the below benchmark gradings were upgraded as „Very Good“ and „Good“ respectively. In fact, his case for promotion to the post of Commandant was also considered and he was granted promotion to the post of Commandant for the vacancy year 2011-2012.

28. The justification given by the respondents for rejecting the request in the impugned order dated February 12, 2015, is the following:

“In this connection, I am directed to inform that Shri Guriqbal Singh, then 2IC (Now Comdt) was assessed as 'Unfit' for promotion to the rank of Comdt by the DPC held on 15.03.2010 due to his confidential record of service. Further, in accordance to DoPSsT's OM dated 13.04.2010, below bench mark ACRs for the years 200506 and 2007-08 were communicated to the officer and subsequently upgraded for 'Good' to 'Very Good' and 'Average' to 'Good' respectively. Though, the ACRs of the officer for the years 2005-06 and 2007-08 were upgraded from 'Good' to 'Very Good' and 'Average' to 'Good' respectively, but his case for promotion to the rank of Commandant w.r.to DPC dated 15.03.2010 cannot be reviewed as DOP85T OM dated 13.04.2010 clearly states that it would be applicable for future DPCs only. In this connection FHQ Pers Dte (Confid Section) letter No. A28012 /14 /2010 /CC /Pers /BSF / 5328 -5627 dated 10.12.2010 refers.”

29. In substance, it is the case of the respondents that, in view of the OM dated April 13, 2010 of the DoP&T which states, prior to reporting period 2008-2009, only adverse remarks in the ACR had to be communicated to the concerned officer for representation but it has been decided that if an employee is to be considered for promotion in future DPCs and his ACRs prior to the period 2008-2009 which would be reckonable for assessment of his fitness in such future DPCs contain final gradings which are below benchmark for his next promotion before such ACRs are placed before the DPC, concerned employee will be given a copy of relevant ACR for his representation to be made within 15 days of such communication and to consider the representation objectively and in case of upgradation of final grading in the APAR, specific reasons be also given in the order of the competent authority.

30. The stand of the respondents is, since the ACRs of the petitioner were of the years 2005-06 and 2007-08 prior to 2008-09 as is contemplated in the OM

dated April 13, 2010, his promotion to the post of Commandant with respect to DPC dated March 15, 2010 cannot be reviewed being prior in point of time.

31. In the present case, the ACRs being prior to 2008-2009, i.e., of the year 2005-2006 and 2007-2008, the same being below benchmark, they were communicated to the petitioner. In fact, against that he made a representation as well. On representation, the gradings in the ACRs have been upgraded. But in the DPC dated March 15, 2010 whereby the case of the petitioner was considered did not review the upgraded ACRs of 2005-2006 and 2007-2008 and rejected only on the ground that OM dated April 13, 2010 contemplates future DPC. In other words, the DPC in which the petitioner was not found fit was dated March 15, 2010, whereas the OM dated April 13, 2010 contemplates the DPCs held after April 13, 2010 need to consider the upgraded ACRs. This stand of the respondents is not convincing / appealing for the reason that the below benchmark ACRs were communicated to the petitioner and the same have been upgraded. Otherwise, we find no reason to communicate the below benchmark ACR's to the petitioner, if upgradation of the gradings was not to be acted upon. Having communicated the same, if they have been upgraded, then the upgraded ACRs need to be considered by convening a Review DPC, otherwise, it is anomalous despite not having below benchmark ACR, the petitioner is being denied promotion.

32. The plea of the respondents that only future DPC shall consider the upgraded ACRs, is unsustainable. We agree with the submission of Dr. Hooda that, in view of the judgment of the Supreme Court in the case of ***Dev Dutt (supra)***, which is of the year 2008, specifically contemplates that, if on a representation the ACRs grading are upgraded, then the case of such an employee need to be considered by review DPC, paragraph 43 of which reads as under:

"43. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the "good" entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the "good" entry of 1993-1994 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest."

33. The ratio of the judgment is squarely applicable to the case of the petitioner inasmuch as the ACRs having been upgraded, the case of the petitioner need to be considered through the review DPC for promotion from the date his immediate junior have been promoted as Commandant.
34. The petitioner has relied upon the case of the one Lala Krishan Kumar Lal to state that, on the upgrading the ACR, the review DPC was held for considering Lala Krishan Kumar Lal case for promotion to the next higher post, retrospectively. The justification given by the respondents is that the ACR of Lala Krishan Kumar Lal was of the year 2008-2009, whereas the ACRs of the petitioner were of the years 2005-2006 and 2007-2008 and there is no provision for communication of ACRs of the period prior to 2008-2009. But this stand of the respondents is overlooking the fact that, when the DPC was held on March 15, 2010, the judgment of **Dev Dutt (Supra)** was already holding the field. The respondents were required to communicate the below benchmark ACRs to the petitioner to enable him to submit a representation and if the gradings are upgraded, then to hold review DPC. So, in that sense, they cannot rely upon the OM dated April 13, 2010 to state that DPCs after April 13, 2010 would consider the below benchmark ACRs, which have been later upgraded on the representation made by a government employee. It is to state that, Lala Krishan Kumar Lal being junior to the petitioner got the benefit of the OM dated April 10, 2013 and also promoted as Commandant whereas the petitioner whose ACRs were of the year 2005-06 and 2007-08 and not 2008-2009, was denied the benefit though his ACRs were upgraded, which according to us is discriminatory, as such violative of Article 14 of the Constitution.
35. We may also state here that the respondents have also taken a stand that the petitioner was found unfit because of *DG's displeasure*. We say nothing on this stand, as it is a fact that the grading in the ACRs having been upgraded on a representation made by the petitioner. The effect of upgrading of the ACRs and also the effect of the displeasure shall be seen / considered / looked into by the review DPC.
36. Mr. Tiwari has relied upon the judgments in the case of **G.R. Meghwal (supra)**, **Dr. Krashendra Singh (supra)** and **Mukul Kumar Misra (supra)**. The same have no applicability to the issue which arose for consideration and decided by this Court in this order.
37. In view of our above discussion, we are of the view that the impugned order dated February 12, 2015 is liable to be quashed. It is ordered accordingly. The case of the petitioner shall be considered for promotion to the post of

Commandant w.e.f. the date his immediate junior was promoted to the post of Commandant by taking into consideration the upgraded ACRs of the period 2005-06 and 2007-08 and other records of the petitioner in accordance with law. If the petitioner is found fit for promotion, his promotion shall relate back to the date of promotion of his immediate junior. Though the same shall be on notional basis till the date when the petitioner was actually promoted as a Commandant, however, the petitioner shall be given actual and consequential benefits. The respondent shall accordingly carry out the aforesaid exercise within a period of eight weeks from today.

38. The writ petition is disposed of. No costs.

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