HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR.

WP(C) 323/2023

Reserved on: 23.05.2025
Pronounced on: 06.08.2025

Baseer -Ul- Haq Hussami, D/O Abdul Haq Hussami
R/O Abubaker Colony, Habbak, Srinagar

...Petitioner(s)

Through: Mr. Altaf Haqani, Sr. Advocate with
Mr. Shakir Haqani, Adv.

Vs.

1. **UT of J&K through**
Commissioner/Secretary to Government Law Department, Civil Sectt, Srinagar/Jammu
2. **High Court of Jammu and Kashmir and Ladakh, Srinagar/Jammu through its Registrar General**
3. **Principal Secretary to the**
Hon'ble Chief Justice,
High court of Jammu & Kashmir and Ladakh, Srinagar
4. **Registrar Judicial, Srinagar Wing of High Court of J&K and Ladakh.**
5. **Salim Rashid Rather, Head Assistant**
6. **Sheikh Davood, Head Assistant**

Respondent Nos. 5 and 6 C/o Registrar Judicial
High court of J&K and Ladakh, Srinagar

…Respondent(s)

Through Mr. M.I.Qadiri, Sr. Advocate for Respondent Nos. 2 to 4
None for respondent Nos. 5 and 6.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGEMENT

Per Wasim Sadiq Nargal, J

PRAYER

The instant writ petition has been filed on behalf of the petitioner, praying for the following reliefs:-

i) Writ, order or direction including one in the nature of Certiorari :-

a) quashing the impugned order- Annexure-l so far as the same pertains to the promotion of respondents 5 and 6 over the head of the petitioner in the post of the Head Assistant;

b) quashing the impugned order Annexure-ll rejecting the petitioner's representation by a non-speaking order;

c) quashing the impugned entry of "below average" in the annual confidential report of the petitioner for the year 2020, as conveyed to her vide communications dated 4-12-2022 and 17-1-2023 (Annexures -III and IV).

ii) ***Writ, order or direction including one in the nature of Mandamus, commanding upon the respondents not to give any effect to the impugned orders and with a further direction upon them to accord consideration to the claim of the petitioner for her promotion to the post of Head Assistant w.e.f 24-11-2022, without taking into consideration the adverse uncommunicated ACR of the year 2020 and grant her all the benefits of seniority, pay and grade alongwith arrears.***

FACTUAL MATRIX OF THE CASE

1. The petitioner, a Senior Assistant in the High Court of J&K and Ladakh, challenges the order dated 24.11.2022, whereby she was denied promotion to the post of the Head Assistant and superseded by her juniors. The respondents justified the denial on the ground that the petitioner secured only 54% (19 points) in the assessment of her Annual Confidential Reports (ACRs) for the period 2017-2021, falling short of the mandatory 65% aggregate marks prescribed under Order No. 415 dated 05.10.2020. The petitioner contends that the

adverse ACRs recorded for **2019–2021** were never communicated to her, violating her right to make representations against them. She further contends that the guidelines applied for her assessment were originally framed for the post of Gazetted staff and could not be extended to her post without publication by way of a notification, rendering them inapplicable and unenforceable. The petitioner seeks directions for her promotion with retrospective effect from the date her juniors were promoted.

2. The respondents, on the other hand, admit that there is no record of communication of adverse ACRs but submitted that the petitioner's failure to achieve the 65% aggregate marks, disqualified her from promotion. The further stand of the respondents 2 to 4 is that the petitioner did not challenge the validity of Order No. 415 in her writ petition, and as such, no relief can be granted on this ground. They further contend that publication of the executive order by way of a notification was not required in the absence of any statutory mandate and that the order operates both retrospectively and prospectively for assessing promotions. Even if Order No. 415 is excluded, the respondents submit that promotions to the post of Head Assistant are based on seniority-cum-merit, and evaluation of ACRs remains an integral part of the process. Accordingly, they pray for dismissal of the writ petition while assuring that the petitioner's case for promotion will be considered in future as per the applicable rules and practices.

SUBMISSIONS ON THE BEHALF OF THE PETITIONER

3. Learned Counsel appearing on behalf of the petitioner, submits that the impugned orders denying promotion to the petitioner are illegal, arbitrary, and contrary to settled principles of law, and are liable to be quashed. The said orders are based on an adverse Annual Confidential Report (ACR) for the year 2020, which was not communicated to the petitioner at the relevant time. The failure to communicate the adverse ACR deprives the petitioner of an opportunity to represent against the same, which is a fundamental violation of law.

4. It is the specific case of the petitioner that the respondents, while considering her case for promotion, were not aware of the fact that the petitioner had rendered unblemished service for over fifteen years, except for the alleged adverse ACR for 2020. This aspect of the matter was deliberately concealed and suppressed by the authorities in their decision-making process. The respondents failed to appreciate that the petitioner was on sanctioned medical leave for a substantial period in 2020 and that the entire year was severely affected by the COVID-19 pandemic, during which the petitioner was not engaged in any misconduct that could justify a “below average” rating in her ACR.

5. The learned senior counsel, Mr. Haqani, further submits that the non-communication of the adverse ACR to the petitioner goes to the root of the case and renders the denial of promotion legally unsustainable.

6. Learned senior counsel also submits that the respondents have committed a grave illegality by rejecting the petitioner's representation vide a non-speaking order dated 16.12.2022. Such an order, passed without assigning reasons, reflects complete non-application of mind and violates the settled principle that reasons are the soul of administrative and quasi-judicial decisions.

7. The learned counsel highlights that the petitioner was senior to respondents No. 5 and 6 in the seniority list and was otherwise fully eligible for promotion. Denial of promotion to the petitioner, while promoting her juniors, is a clear case of supersession and violates the principle of seniority-cum-merit applicable in such cases.

8. It is further submitted that the respondents have mechanically applied guidelines for assessment and promotion which were neither applicable to the post of the petitioner nor duly published or notified. This lack of proper procedure reflects arbitrariness and renders the impugned orders legally unsustainable.

9. Learned Counsel lastly submits that the petitioner has been subjected to serious prejudice as a result of the impugned orders and prays that the impugned orders be quashed. It is further prayed that the respondents be directed to consider the petitioner's claim for promotion to the post of Head Assistant w.e.f. 24.11.2022, with all consequential benefits, without taking into account the uncommunicated and unjustified ACR for the year 2020.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

10. ***Per Contra***, The Learned Counsel appearing on behalf of the respondents submits that the writ petition filed by the petitioner is devoid of merit, misconceived, and liable to be dismissed. The denial of promotion to the petitioner is neither arbitrary nor illegal but is based on objective criteria and service records duly considered by the competent authority.

11. It is submitted that the petitioner failed to secure the mandatory aggregate of 65% marks in her Annual Confidential Reports (ACRs) for the preceding five years, as required under Order No. 415 dated 05.10.2020. This order, issued with the approval of the Hon'ble Chief Justice and Administrative Committee of the High Court, lays down a uniform standard for evaluating merit in promotions and has been consistently applied for all non-gazetted posts in the High Court over the last several years.

12. The learned counsel further submits that the petitioner has not challenged the validity or legality of Order No. 415 in her writ petition, and no relief has been sought against it in the prayer clause. In the absence of such a challenge, the petitioner cannot now contend that the said order is inapplicable to her case. Reliance is placed on ***Mukesh Singh Kushwah v. State of MP*, 2002 (1) SCC 598**, wherein it was held that a relief not claimed, cannot be granted by the Court.

13. It is the specific case of the respondents that the petitioner's adverse ACR for the year 2020, though not formally communicated, was duly recorded in the service records and formed part of the assessment

process for promotions. The absence of formal communication does not by itself vitiate the assessment, especially when the evaluation is based on cumulative service records.

14. Learned counsel, Mr. M.I. Qadari, Senior Advocate, submits that the stand of the petitioner, requiring publication of executive orders in the Gazette is misplaced. There is no statutory mandate under the applicable service rules requiring publication of Order No. 415 in the official Gazette. The order was issued as an administrative instruction to streamline promotions and ensure merit-based advancement.

15. It is further submitted that even if Order No. 415 dated 05.10.2020 is excluded, the principle of seniority-cum-merit as envisaged under Order No. 517 dated 24.10.2008 requires consideration of both seniority and merit. The petitioner's merit was duly assessed on the basis of her ACRs for the preceding five years, and she did not meet the required standard for promotion.

16. Learned senior counsel further emphasizes that the petitioner's supersession does not violate any of her rights, as promotion is not a matter of right but is subject to availability of posts and suitability of the candidate. The respondents acted in accordance with established practice and procedure while denying promotion to the petitioner.

17. In view of the above, the learned counsel for the respondents submits that the impugned orders are legal, justified, and passed after due consideration of the petitioner's service record. The writ petition is without merit and liable to be dismissed.

ISSUES TAKEN UP FOR DETERMINATION

18. Heard learned counsel for both the parties at length and carefully perused the material on record. The following issues arise for determination:

Issue no. i: Whether the non-communication of adverse entries in the petitioner's Annual Confidential Reports (ACRs) renders the respondent's decision to deny promotion legally unsustainable.

Issue no. ii: Whether Executive Order No. 415 dated 05.10.2020, originally applicable to gazetted staff, could have been extended and applied to non-gazetted staff without proper notification highlighting the revised benchmark for promotion?

Issue no. iii: Whether Executive Order No. 415 operates retrospectively so as to govern the consideration of promotions pertaining to a period prior to its issuance.

Issue no. iv: Whether the recording of the petitioner's Annual Confidential Report (ACR) for the year 2020 during the period of her sanctioned medical leave due to COVID-19, without due communication of the recorded remarks irrespective of whether they were favourable, average, or adverse vitiates the procedural fairness required under service jurisprudence.

LEGAL ANALYSIS

19. The issues framed above are now taken up for determination by us. Each issue is examined individually in the following paragraphs, upon a careful consideration of the pleadings, the evidence placed on record, and the applicable legal principles as expounded in judicial precedents.

20. **ISSUE No. I: Whether the non-communication of adverse Annual Confidential Reports (ACRs) vitiates the respondent's decision to deny promotion to the petitioner.**

At the very core of the petitioner's grievance lies the allegation that her promotion was denied on the basis of adverse entries in her

Annual Confidential Reports (ACRs) for the years 2019–2020 and 2021, which were admittedly never communicated to her. This Court considers it essential to first address this issue, as it strikes at the foundation of fairness, transparency, and adherence to the principles of natural justice in service jurisprudence. We find it imperative to first address the issue of non-communication of adverse ACRs, as it strikes at the heart of fairness and natural justice in public service law.

21. Before deciding the above issue, we deem it proper to refer to the judgment rendered by The Apex Court in, ***Dev Dutt v. Union of India, (2008) 8 SCC 725,*** the Hon'ble Supreme Court unequivocally held that:

> ***"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? that arbitrariness violates Article 14 of the Constitution."***

22. The Court reasoned that the right of an employee to be informed of any adverse material recorded in their service dossier is a fundamental facet of fairness, accountability, and transparency in service jurisprudence. This right assumes greater significance where such adverse material is proposed to be relied upon to deny promotional benefits or career advancement. The principles of *audi*

alteram partem, which mandate that no individual shall be condemned unheard, apply with full force to service matters where adverse entries in Annual Confidential Reports (ACRs) have a direct bearing on the employee's rights and legitimate expectations. Denial of such an opportunity not only violates natural justice but also renders any decision based on uncommunicated material, legally unsustainable.

23. The law laid down by the Apex Court in ***Dev Dutt v. Union of India, (2008)*** has been reiterated in ***Sukhdev Singh vs. Union Of India and others, 2013 (9) SCC 566*** as under:

> ***"5. In paras 37 and 41 of the Report this Court then observed as follows: (Dev Dutt case-, SCC pp. 737-38)***
> ***"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***
>
> ***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."***

24. It is a well-established principle in service jurisprudence that any adverse entry in the Annual Confidential Report (ACR) must be communicated to the concerned employee in a timely manner,

particularly when such entry is likely to affect the employee's service prospects, including promotion.

25. Keeping in view the above, we find that lowering down of ACRs from "very good" to "below average" would require the respondents to give an opportunity of hearing to the petitioner after conveying the said remarks.

26. In the present case, the respondents have admitted that the adverse Annual Confidential Reports (ACRs) for the years 2019–2020 and 2021 were not communicated to the petitioner, thereby depriving her of the opportunity to make a representation or seek their review in accordance with law. The consideration of such uncommunicated entries while denying her promotion is in violation of the principles of natural justice, particularly the rule of *audi alteram partem*, and is manifestly arbitrary, thus offending Article 14 of the Constitution. As laid down in ***Dev Dutt v. Union of India*** and consistently reiterated in subsequent judgments, the reliance on uncommunicated adverse remarks in ACRs vitiates the entire promotion process, rendering the consequential decision invalid and unsustainable in law. The respondents' failure to adhere to the mandatory requirement of communication has, therefore, not only infringed the petitioner's statutory and constitutional rights but has also tainted the selection process with illegality.

27. Therefore, we hold that the non-communication of the relevant ACRs is the most fundamental flaw and strikes at the very root of the decision-making process adopted by the respondents. It constitutes a

grave violation of the principles of natural justice and renders the entire exercise manifestly arbitrary and procedurally unfair. Such a fundamental defect cannot be cured or overlooked and decision taken by the respondents by virtue of orders impugned, cannot sustain the test of law and is liable to be rejected.

Issue no. I, is decided accordingly.

28. **ISSUE No.II**: **Whether Executive Order No. 415 dated 05.10.2020, originally applicable to gazetted staff, could have been extended and applied to non-gazetted staff without proper notification highlighting the revised benchmark for promotion?**

29. Upon a careful examination of the material on record and in light of the settled legal principles, this Court is of the considered view that Executive Order No. 415 dated 05.10.2020, which prescribed a revised benchmark of 65% aggregate marks in Annual Confidential Reports (ACRs) for promotion, was originally intended to apply to gazetted staff only, and its subsequent extension to non-gazetted staff without any formal notification or publication, amounts to a procedural illegality.

30. The records reveal that there was no contemporaneous notification, office memorandum, or circular issued by the Registrar General or the Administrative Department that expressly made the said executive order applicable to non-gazetted employees. No attempt was made to notify or circulate the revised benchmark among non-gazetted employees, nor was any opportunity afforded to them to acquaint

themselves with or prepare for the application of such an elevated standard.

31. In the absence of any such formal notification, the affected category of non-gazetted staff had no reasonable means of knowing that the eligibility criteria for promotion had been altered. The fundamental principles of natural justice demand that rules or standards that impose new obligations or alter existing service conditions, must be duly published and communicated to those affected.

32. With a view to fortify this principle, we deem it proper to refer to the judgement passed by the Apex Court in ***Harla v. State of Rajasthan, AIR 1951 SC 467***, wherein the Hon'ble Supreme Court authoritatively held:

> ***9. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.***

33. This principle flows from the broader doctrine of ***audi alteram partem*** and the right to natural justice, as individuals cannot be expected to comply with unknown norms or be penalised for their breach.

34. Similarly, in ***B.K. Srinivasan v. State of Karnataka, (1987) 1 SCC 658,*** the Hon'ble Supreme Court reiterated:

> ***15. There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint of justice Holmes's "unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient.***

The court further observed that administrative instructions, even if validly issued, must be publicised effectively if they alter existing rights or impose new burdens.

35. The Hon’ble Supreme Court in case titled as ***R.Ranjith Singh & Ors v State Of Tamil Nadu & Ors.*** reported as ***2025 SCC Online SC 1009***, has made it clear that:

> ***21. This Court in case of Jaiveer Singh v State of Utrakhand 2023INSC 1204 has held as under:***
>
> > ***34. It can thus be seen that it is a trite law that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, it can fill up the gaps and supplement the rules and issue***

> ***instructions not inconsistent with the rules already framed. It is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. This Court has again held in the aforesaid case that the Government cannot issue executive instructions in contravention of the statutory rule.***

In the present case, Executive Order No. 415 dated 05.10.2020, which introduced a new benchmark for promotion eligibility, was neither traceable to any statutory rule nor duly notified or communicated to the affected employees. Its retrospective application, therefore, not only offends the principle of administrative fairness and transparency but also violates the doctrine of legitimate expectation. The attempt to apply the benchmark fixed under Executive Order No. 415, originally confined to gazetted staff, to non-gazetted employees without any formal notification or publication is wholly arbitrary and violates the doctrine of legitimate expectation and administrative fairness.

36. Moreover, nothing has been placed on record to show that the Registrar General, after obtaining approval from the Hon’ble Chief Justice as the competent authority, ever took steps to formally notify this change or to make it applicable to the cadre of non-gazetted employees. This constitutes a serious administrative omission, particularly when the order was used to deny promotion to the petitioner.

37. In light of the above, this Court holds that Executive Order No. 415 could not have been extended to non-gazetted employees without formal notification and communication, especially when it introduced a substantive change in promotion criteria. The failure to notify the same has resulted in denial of due opportunity to the petitioner, rendering the action arbitrary and violative of Articles 14 and 16 of the Constitution of India.

38. **ISSUE NO. III: Whether Executive Order No. 415 operates retrospectively so as to govern the consideration of promotions pertaining to a period prior to its issuance.**

It is now trite in law that executive orders or administrative instructions altering service conditions cannot operate retrospectively unless the language of the order expressly provides for such an effect. Retrospective application is generally frowned upon as it offends the principles of fairness and violates vested rights.

39. This principle was reiterated in ***State of Punjab v. Bhajan Kaur, (2008) 12 SCC 112***, where the Apex Court observed:

> ***"9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law."***

40. Further the Hon'ble Supreme Court in the case titled ***Madishetti Bala Ramul v. Land Acquisition Officer reported in (2007) 9 SCC 650*** has held as under:

> ***19. In Land Acquisition Officer-cum-SWO v. B.V. Reddy and Sons this Court opined that Section 25 being not a procedural provision will have no retrospective effect, holding : (SCC p. 471, para 6)***
> ***"6. Coming to the second question, it is a well-settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same***

> ***would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30-4-1982 and came into operation with effect from 24-9-1984.***

41. In the present case, Order No. 415 dated 05.10.2020 introduced a new criterion of securing 65% aggregate marks in Annual Confidential Reports (ACRs) as a precondition for promotion. The petitioner's case for promotion was under consideration for the period 2017-2021, a substantial portion of which precedes the issuance of the impugned order.

42. The application of the newly introduced ACR criterion of securing 65% aggregate marks to the period in question effectively alter the service conditions of the petitioner in a retrospective manner. Such application prejudices her vested right to be considered for promotion under the previously existing criteria, which did not prescribe any minimum aggregate threshold for ACRs.

43. In the present case, the application of Order No. 415 introduces a new obligation requiring employees to secure a minimum of 65% aggregate marks in their Annual Confidential Reports (ACRs) for eligibility to promotion. This requirement is sought to be enforced in respect of past years for which the petitioner's ACRs had already been recorded without any prior knowledge of such a threshold. Imposing this condition retrospectively, squarely falls within the mischief of retrospective operation and is legally impermissible.

44. The Honble Apex court in case titled as ***Land Acquisition Officer Cum DSWO, A.P v. B.V. Reddy & Sons, reported in (2002) 3 SCC 463*** has consistently held that:

> ***"6. Coming to the second question, it is a well-settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30-4-1982 and came into operation with effect from 24-9-1984. Under the amendment in question, the provisions of Section 23(2) dealing with solatium were amended and Section 30(2) of the amended Act provided that the provisions of subsection (2) of Section 23 of the principal Act as amended by clause (b) of Section 15 shall apply and shall be deemed to have applied, also to and in relation to any award made by the Collector or court or to any order passed by the High Court or the Supreme Court in appeal against any such award under the provisions of the principal Act, after 30-4-1982 and before the commencement of the Act. It is because of the aforesaid provision, the question cropped up as to whether in respect of an award passed by the Collector between the two dates, the amended provision will have an application or not and that question has been answered by this Court in the Constitution Bench decision in Union of India v. Raghubir Singh. Sub-section (2) of Section 30 has at all no reference to the provisions of Section 25 of the Act. In that view of the matter, question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the Act."***

45. We are firmly of the view that the retrospective application of Executive Order No. 415 dated 05.10.2020 to promotion processes covering the period from 2017 to 2021 is neither justified nor legally sustainable. The said order introduced a new eligibility condition requiring 65% aggregate marks in the ACRs which was neither notified nor communicated to the employees concerned at the relevant time. As such, the petitioner and similarly placed employees were deprived of an fair opportunity to comply with or address this new requirement. Imposing such a standard retrospectively not only unsettles vested rights but also causes serious prejudice and administrative uncertainty. Revisiting settled promotions after several years disturbs the finality of service matters, generates avoidable litigation, and undermines institutional fairness. In our view, enforcing an unpublished and uncommunicated executive instruction with retrospective effect is arbitrary, unreasonable, and impermissible both in law and in equity.

46. Accordingly, the respondents' attempt to apply the new standard introduced under Executive Order No. 415 requiring a minimum of 65% aggregate marks in Annual Confidential Reports (ACRs) to the petitioner's case is legally unsustainable. Such retrospective application of a criterion that was neither in existence nor communicated during the relevant assessment years directly offends the well-settled principle of non- retrospectivity in service law. It also violates the guarantee of fairness and equality enshrined under Article 14 of the Constitution, as administrative authorities are

required to act in a just, transparent, and non-arbitrary manner. Moreover, this action undermines the doctrine of legitimate expectation, which protects employees from arbitrary alterations of service conditions and ensures that they are not prejudiced by changes introduced without adequate prior notice or opportunity to adjust their conduct.

47. Order No. 415, having been issued on 05.10.2020, cannot lawfully be applied to the petitioner's case retrospectively. Thus, we hold that, its application to a period prior to its issuance is legally unsustainable, arbitrary, and violative of the petitioner's rights**.**

Issue no. III is decided, accordingly.

48. **ISSUE NO. IV: Whether the recording of the petitioner's Annual Confidential Report (ACR) for the year 2020 during the period of her sanctioned medical leave due to COVID-19, without due communication of the recorded remarks irrespective of whether they were favourable, average, or adverse vitiates the procedural fairness required under service jurisprudence?**

49. An ACR is meant to be an objective assessment of an employee's performance, conduct, and work output during a defined reporting period. When an employee is on sanctioned leave particularly for medical reasons such as COVID-19, he or she is not actively discharging duties and therefore cannot be evaluated on performance metrics during that time. Recording adverse remarks under such circumstances can be inherently unfair and arbitrary, as it is not based on active service or observable conduct during the period in question. Further, the principles of natural justice demand that any evaluation which may adversely affect an employee's rights such as eligibility

for promotion or career advancement must be transparent, fair, and objectively grounded. An adverse ACR recorded while the employee was legitimately absent from duty violates this principle, as the employee has no opportunity to demonstrate performance or defend against subjective assessments.

50. Moreover, as held by the Hon'ble Supreme Court in ***Dev Dutt v. Union of India [(2008) 8 SCC 725]***, even non-adverse or 'average' entries must be communicated if they can impact promotional prospects. It logically follows that adverse remarks recorded during a period of sanctioned leave, without any valid basis tied to actual performance, must be communicated with reasons and an opportunity for the employee to represent against them. Failing to do so renders such entries procedurally and substantively defective. In addition, departmental rules, executive instructions, and settled judicial precedent all underscore that recording of ACRs must reflect actual work and conduct not presumptions or administrative convenience.

51. In light of the above, recording an adverse ACR during sanctioned leave especially without due communication cannot withstand legal scrutiny. It is not only administratively improper, but also vitiates the evaluation process, thereby **compromising the employee's right to fair consideration** in matters of promotion, postings, and other service benefits.

52. It is the specific stand of the petitioner that she was on duly sanctioned medical leave for a substantial period in 2020 owing to COVID-19 and related complications. Despite this, her performance for that year was assessed as “below average.” Recording an adverse Annual Confidential Report (ACR) during a period of sanctioned leave raises serious questions about the fairness, legality, and propriety of such an evaluation.

53. The law is clear that no adverse remark can be made in an ACR unless it is based on concrete material reflecting actual work or misconduct during the reporting period**.**

54. In the present case, there is no material on record to show that the petitioner was either engaged in any work or guilty of any misconduct during her sanctioned leave. Rather, the respondents appear to have mechanically recorded a “below average” rating without assessing whether she had an opportunity to demonstrate her performance. Such action fails the test of fairness, non-arbitrariness, and application of mind, which are cornerstones of service jurisprudence.

55. This Court also takes judicial notice of the fact that the COVID-19 pandemic constituted an extraordinary public health emergency, wherein employees across the spectrum were affected physically and psychologically. Many were absent from work not by choice, but due to circumstances beyond their control. To penalise an employee for absence during such a period, particularly when the leave was duly

sanctioned, is not only legally untenable but also violates the principles of equity and humane administration.

56. In light of the above, recording an adverse ACR during sanctioned leave especially without due communication cannot withstand legal scrutiny. It is not only administratively improper, but also vitiates the evaluation process, thereby compromising the employee's right to fair consideration in matters of promotion, postings, and other service benefits.

57. Therefore, we hold that recording a "below average" ACR for the petitioner during her period of sanctioned medical leave for COVID-19, is patently unjustified, arbitrary, and legally unsustainable. The said adverse entry is liable to be set aside, and any reliance on it for denying her promotion, is illegal and vitiates the entire process of consideration**.**

Issue no. IV, is decided accordingly.

CONCLUSION

58. In light of the foregoing analysis, we find that the denial of promotion to the petitioner on the basis of uncommunicated adverse Annual Confidential Reports (ACRs), amounts to a gross violation of the principles of natural justice. It is a settled position in law that any material adverse to the interest of an employee, if relied upon to deny promotion or other career advancement must be duly communicated so as to enable the employee to make an effective representation. The failure of the respondents to communicate such ACRs deprived the

petitioner of this vital procedural safeguard and renders the entire process unsustainable in law.

59. Further, we hold that Executive Order No. 415 dated 05.10.2020, which imposes conditions materially affecting the service rights and legitimate expectations of employees, required proper publication, either in the Official Gazette or through another effective mode of communication. In the absence of such publication or communication, the said order cannot be enforced against the petitioner. Administrative instructions that remain un-notified, cannot be used to alter the service conditions of employees to their detriment.

60. The retrospective application of Executive Order No. 415, dated 05.10.2020, to govern promotions for a period predating its issuance, is wholly untenable in law. It is a settled principle in service jurisprudence that administrative orders or executive instructions altering service conditions cannot operate retrospectively unless there is clear and express statutory sanction authorising such retrospective effect. In the present case, the respondents have sought to apply the newly introduced criterion of securing a minimum of 65% aggregate marks in Annual Confidential Reports (ACRs) to the petitioner’s promotion assessment for the period 2017–2021. This approach is legally impermissible, as it imposes an additional eligibility condition for a period during which the petitioner had no notice or opportunity to meet such a requirement. The respondents' reliance on this uncommunicated and un-notified order to retrospectively deny the

petitioner her due consideration for promotion, not only contravenes the principles of fairness and non-arbitrariness under Article 14 of the Constitution but also prejudices her vested right to be assessed under the criteria that was in force during the relevant time.

61. Further, the stand taken by the respondents that the criteria prescribed under executive order no.415 are intended to apply to non-gazetted staff, does not absolve them of their obligation to ensure wide publicity and due notification of the said order. The respondents were duty bound to notify all employees, including those to whom the rules would apply, so that they could be made aware of the applicability of the benchmark criteria. Mere internal application or selective enforcement cannot suffice to meet the requirement of transparency and procedural fairness.

62. If the intention was to extend the applicability of the 65% benchmark, which was originally framed for gazetted officers, to non-gazetted staff as well, then the respondents ought to have either amended the relevant rules or issued a formal corrigendum clarifying the same. Only upon such due notification could employees be expected to make a conscious and informed effort to achieve the prescribed benchmark. Failure to do so renders the application of the criteria arbitrary and unsustainable in law.

63. In the absence of any published notification or formal communication extending the applicability of the benchmark to non-gazetted employees, it is unreasonable to expect them to anticipate such standards or orient their performance accordingly. The retrospective

application of the rule that was neither made known nor duly enforced is plainly contrary to law. It violates the principle of legal certainty, non-arbitrariness and article 14 of the constitution.

64. We are of the considered view that the respondents were legally bound to give vide publicity to the order if they intended to apply it to the non-gazetted employees. They cannot rely on internal decisions or informal practices when the consequences affect the service rights of individuals. Without proper publication, affected employees cannot be expected to follow or comply with such criteria.

65. Critically, the recording of an adverse ACR for the year 2020 when the petitioner was on sanctioned medical leave due to COVID-19 pandemic, is patently arbitrary and unsupported by any material. Penalising an employee for a period of illness beyond her control, particularly during a global pandemic, violates not only established legal principles but also the broader tenets of fairness and equity in public employment.

66. Judicial precedents lend unequivocal support to the petitioner's case. Courts have consistently held that uncommunicated adverse entries and unpublished administrative instructions cannot form the basis for adverse decisions affecting employees' service rights. The petitioner's claim for promotion with retrospective effect from the date on which her juniors were promoted is, therefore, well founded and deserves to be upheld.

67. In weighing the equities of the case, we are persuaded that the petitioner has suffered substantial prejudice due to administrative

lapses, entirely beyond her control. Granting the relief sought would not only vindicate her individual rights but also affirm constitutional values of fairness, equality, and accountability in public service. It would serve as a necessary reminder to the executive of the importance of maintaining transparent and just administrative practices.

68. Before parting, we direct the Registrar General of the High Court of J&K and Ladakh that if executive order No. 415 dated 05.10.2020 is to be applied to the non-gazetted staff of the High Court, it shall be duly communicated, notified, and published through appropriate mode to ensure that all affected employees are given proper notice of its contents and implications and issue a formal notification applying executive order No. 415 to non-gazetted employees only after obtaining approval from Hon'ble the Chief Justice of the High Court. The notification shall specifically mention the benchmark criteria and its effective date.

69. Any attempt to enforce the said order without adherence to these procedural safeguards, shall render its application vulnerable to legal challenge.

70. In view of the above findings, the writ petition is allowed and disposed of in the following manner :

i) **Quashing the impugned order Annexure-ll rejecting the petitioner's representation without assigning any cogent reasons for such rejection.**

ii) Quashing the impugned entry of "below average" in the annual confidential report of the petitioner for the year 2020.

71. We further hold that the impugned action denying the petitioner's promotion cannot be sustained in law. Accordingly, the respondents are directed to accord consideration to the claim of petitioner for promotion to the post of Head Assistant with retrospective effect from the date her juniors were promoted i.e. 24.11.2022 as Head Assistant, and to grant her all consequential benefits of seniority and monetary in accordance with law without taking into consideration the adverse ACR of the year 2020.

72. ***Disposed of***.

(Rajesh Sekhri)
Judge

(Wasim Sadiq Nargal)
Judge

Jammu:
06. 08.2025
Gh.Nabi/Secy

Whether the Judgment is Reportable: Yes/No
Whether the Judgment is Speaking: Yes/No