Supreme Court in its judgment in the case of Devdutt vs. UOI in Civil Appeal No.7631/2002 has held that ACR/APAR of employee are required to be communicated to the employee. The abstract of the judgment is as under:

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradeation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. 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 concerned authority, and the concerned authority 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. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in Union of India vs. Major Bahadur Singh 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants).

2. In the regard please provide the following information:
(a) Whether your organization has implemented this judgment of the Apex Court.
(b) If your organization has not implemented this judgment, reason thereof.
(c) Provide the copy of order issued by the department/organization in compliance of this judgment.
Sub: Furnishing information under Right to Information Act, 2005.

Kindly refer your application dated 25.02.2015 addressed to the CPIC, Ministry of Agriculture, New Delhi requesting information under RTI Act, 2005. The information pertaining to Central Institute of Coastal Engineering for Fishery (CICEF) is as under:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Information required by the applicant</th>
<th>Information furnished by CICEF, Bengaluru</th>
</tr>
</thead>
</table>
| 1      | Supreme Court in its judgment in the case of Davduit Vs. UOI in Civil Appeal No. 7631/2002 has held that AGR/APAR of employee are required to be communicated to the employee. The abstract of the judgment is as under:-  
39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.  
40. 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 concerned authority, and the concerned authority must decide the representation in a fair manner and within a 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. |
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Information required by the applicant</th>
<th>Information furnished by CICEF, Bengaluru</th>
</tr>
</thead>
<tbody>
<tr>
<td>41.</td>
<td>We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in Union of India Vs. Major Bahadur Singh 2006 (1) SCC 398. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants).</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>In this regard please provide the following information</td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>Whether your organization has implemented this judgment of the Apex Court.</td>
<td>Yes</td>
</tr>
<tr>
<td>(b)</td>
<td>If your organization has not implemented this judgment, reason thereof.</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>(c)</td>
<td>Provide the copy of order issued by the department/organization in compliance of this judgment.</td>
<td>Enclosed</td>
</tr>
</tbody>
</table>

रेखा में /To,
Shri Shanjay Thul,
Qr. No.5, Type IV, Central Excise Colony,
Seminory Hills,
Nagpur
MAHARASHTRA – 440 006.

Copy to Shri Yoginder Kumar, Under Secretary (Admn-V) & CPIO, Ministry of Agriculture, Dept. of Animal Husbandry, Dairying & Fisheries, Krishi Bhawan, New Delhi – 110 001. This has reference to Ministry letter No.8-21/2015-Admn-V dated 18th March, 2015.

(न.VENKATESH PRASAD)
DIRECTOR & CPIO
OFFICE MEMORANDUM

Subject:- Maintenance and preparation of Annual Performance Appraisal Reports - communication of all entries for fairness and transparency in public administration.

The undersigned is directed to invite the attention of the Ministries/Departments to the existing provisions in regard to preparation and maintenance of Annual Confidential Reports which inter-alia provide that only adverse remarks should be communicated to the officer reported upon for representation, if any. The Supreme Court has held in their judgement dated 12.5.2008 in the case of Dev Dutt vs Union of India (Civil Appeal No. 7631 of 2002) that the object of writing the confidential report and making entries is to give an opportunity to the public servant to improve the performance. The 2nd Administrative Reforms Commission in their 10th Report has also recommended that the performance appraisal system for all services be made more consultative and transparent on the lines of the PAR of the All India Services.

2. Keeping in view the above position, the matter regarding communication of entries in the ACRs in the case of civil services under the Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government:-

(i) The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR).

(ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment.

(iii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.

(iv) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.
(v) The new system of communicating the entries in the APAR shall be made applicable prospectively only with effect from the reporting period 2008-09 which is to be initiated after 1st April 2009.

(vi) The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation.

(vii) The competent authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the competent authority and the final grading shall be communicated to the officer reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section.

3. All Ministries/Departments are requested to bring to the notice of all the offices under them for strict implementation of the above instructions.

(C.A. Subramanian)
Director

To

All Ministries/Departments of Government of India

Copy to:-

1. Chief Secretaries of All State Governments/U.T.s
2. The President’s Secretariat, New Delhi.
3. The Prime Minister’s Office, New Delhi.
4. The Cabinet Secretariat, New Delhi.
5. The Rajya Sabha Secretariat.
6. The Lok Sabha Secretariat.
7. The Comptroller and Auditor General of India, New Delhi.
8. The Union Public Service Commission, New Delhi.

Copy also to:-

(a) All Attached offices under the Ministry of Personnel, Public Grievances and Pensions.
(b) Establishment Officer and Secretary, ACC (10 copies).
(c) All officers and Sections in the Department of Personnel and Training.
(d) Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi.
(e) All Staff Members of Departmental Council (JCM).
(f) All staff members of the Departmental Council (JCM), Ministry of Personnel, Public Grievances and Pensions.
(g) NIC (DoP&T) for placing the Office Memorandum on the web-site of DoP&T.
(h) Hindi Section for Hindi version of the O.M.