

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.302/2002

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this 27th day of August, 2002

Dr. S.C.Agarwal
Additional Commissioner
of Income Tax
Range - I
Bareilly - 243 001. Applicant

(By Advocate: Sh. D.P.Sharma)

V_e

1. Union of India through
Secretary
Ministry of Finance
North Block
New Delhi.
2. Chairman
Central Board of Direct Taxes
North Block
New Delhi.
3. Secretary
Union Public Service Commission
Shahjahan Road
New Delhi.
4. Shri K.K.Tiwari
New Commissioner of Income Tax
c/o Chief Commissioner of Income Tax-I
Mumbai. ... Respondents

(By Advocate: Mrs. B.Rana for Respondent No.3
Shri V.P.Uppal, for other Respondents)

O R D E R (Oral)

By Shri Shanker Raju, Member(J):

Applicant has assailed his non-inclusion in the select list of promotion from Junior Administrative Grade in the scale (NFSG) Rs.14300-18300 to Senior Administrative Grade in the scale of Rs.18400-22400 by the Departmental Promotion Committee convened in

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February, 2001 and has sought quashing of down graded remarks below the 'Bench Mark' with directions for promotion in SAG from the date of promotion of his junior with all consequential benefits.

2. Applicant is an Indian Revenue Services Group-A Officers Batch of 1982. He was promoted to Non Functional Selection Grade w.e.f. 6.6.2000 as per the recruitment rules for promotion of an officer to Senior Administrative Grade (in short as 'SAG') 8 years satisfactory continuous service in Junior Administrative Grade (in short as 'JAG') is essential. Bench Mark for promotion from JAG to SAG is 'Very Good'. Applicant being not included in the select list whereby number of juniors have been promoted by an order dated 28.1.2002, assailed the action of the respondents by filing the present O.A.

3. Shri D.P. Sharma, learned counsel appearing on behalf of the applicant, contended that the applicant has an excellant service record, without communication of adverse remarks, according to him, on introduction of self appraisal in the Annual Confidential Report (in short as 'ACR') and in view of the Bench Mark is 'Very Good', the ACRs graded below the Bench Mark have to be treated as adverse and it was incumbent upon the respondents to have communicated the same to the applicant.

4. Shri D.P.Sharma places reliance on a decision of the Apex Court in U.P.Jal Nigam and Others v. Prabhat Chandra Jain and Others, 1996 SCC (L&S) 579 to contend that any remark of grading in the performance appraisal report which places an individual below the specified Bench Mark for elevation would have to be treated as adverse and should have to be communicated. Any transpassant administration would have to communicate the unfavourable remarks to the person reported upon.

5. Shri Sharma placed reliance on a decision of the Co-ordinate Bench in OA 456/2000, Shri B.L. Srivastava v. Union of India & Others which was upheld by the High Court of Delhi in CWP No.715/2001 and contended that being similarly circumstance the benefit of the Judgement should also be given to him. In that event, the respondents are bound to hold a review DPC, ignoring the ACRs where the grading was below the Bench Mark. Shri Sharma was also placed reliance on a decision of the Co-ordinate Bench in OA No.1016/2001, A.K.Gupta v. Union of India & Others to substantiate his plea.

6. On the other hand, Respondents' counsel, Mrs. B.Rana appearing for the UPSC and Shri V.P.Uppal appearing for official respondents, denied the contentions and stated that in view of the decision of the Apex Court in Nutan Arvind v. Union of India & Anr., (1996) 2 SCC 488 once the high level

Committee, i.e., DPC had considered the respective merits of the candidates and assessed the grading, it is not open for the Tribunal to sit over the assessment made by the DPC as an appellate authority. It is contended that the promotion to NFSG is made on the basis of overall grading 'Good' while promotion to the grade of Commissioner of Income Tax is on the basis of overall grading as 'Very Good'. No malafide has been alleged by the applicant and his name was not included as per his performance and assessments made by the DPC. It is contended that the applicant was judged as 'Good' only by the DPC and having failed to achieve the requisite Bench Mark of 'Very Good', he was not included, whereas the other officers who have been included in the select panel, have achieved the requisite Bench Mark. Being a selection post, the criteria is merit-cum-seniority.

7. Mrs. B.Rana, appearing on behalf of UPSC, reiterated her contentions taken in the reply and stated that as the applicant on the basis of his assessment of character rolls for the period 1995-2000 would not achieved the Bench Mark of 'Very Good', hence, there is no illegality or irregularity in the findings arrived at by the DPC.

8. In the rejoinder, Shri Sharma has relied upon the decision of the Co-ordinate Bench in OA 1936/2001

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in R.K.Anand v. Union of India which has been upheld by the High Court in CWP No.1386/2002 decided on 27.2.2002.

98 We have carefully considered the rival contentions of the parties and also perused the record produced by the respondents. From the perusal of the ACRs of the applicant we find that whereas zone of consideration was from 1995 to 2000, the applicant was graded 'Very Good' for the year 1995-96, 'Good' for the years 1996-97, 1997-98 and 1998-99 and 'Very Good' for the years 1999-2000, whereas the others have been graded as 'Very Good' on the basis of their consistent performance and graded 'Very Good' which is the Bench Mark.

10. If one has regard to the decision of the Apex Court in U.P.Jal Nigam's case supra, the criteria for promotion to SAG was 'Very Good', any down gradation of the ACR from 'Very Good' to Good for the years stated above, will have an adverse remark to the career of the applicant and in that event it was incumbent upon the respondents to communicate such remarks to the delinquent official, which is admittedly not done in the present case.

11. In our considered view, supported by various pronouncements of this Court and U.P.Jal Nigam's case, supra and upheld decision of the

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High Court in R.K.Anand's case supra, the ACRs which were graded as 'Good' are unsustainable. The ACRs have not been reported in accordance with the ratio laid down in U.P.Jal Nigam's case supra. As the applicant has been deprived of a reasonable opportunity to represent against the adverse remarks, as per the Bench Mark of DPC.

In view of the decisions of Co-ordinate Bench in OA No.2200/98 (Jairaj Singh v. Union of India & Anr.) and V.Y.Ramamurthy v. Union of India & Ors., 2002(2) ATJ CAT(PB) 495 and in view of the decision of Apex Court in State of U.P. v. Yamuna Shanker Mishra & Another, 1997 SCC(L&S) 903, The purpose of ACR was to enable an employee to improve his performance in public service, in accordance with his fundamental duty to strive towards excellence in all spheres of individual and collective activity, and if such an individual falls short of the above requirement, he has to be advised about it. Failure to do so will be a clear administrative failure.

12. In the result, OA succeeds and is accordingly disposed of by directing the respondents to communicate, within two months from the date of receipt of a copy of this order, to the applicant the remarks/entries in the ACR which are below the Bench Mark of 'Very Good' for the relevant period, which have come in the way of promotion,

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with liberty to the applicant to file representation and thereafter to take a decision thereon. If the ultimate decision of the representation is in favour of the applicant, the respondents shall hold a review DPC and consider the applicant for promotion to a Senior Administrative Grade and in that event, he would be entitled for consequential benefits in full. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)


(M.P.SINGH)
MEMBER(A)

/rao/