

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.792/2002

This the 27th day of November, 2003

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HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

N.L.Sahi,
General Manager (Development),
Department of Telecom,
M.P.Telcom Circle,
Bhopal-462015.

... Applicant

(By Shri V.S.R.Krishna with Shri S.N.Anand, Advocate)

-versus-

1. Union of India through Secretary,
Department of Telecom,
Ministry of Communications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.
2. Chairman,
Union Public Service Commission,
Dholpur House, New Delhi.
3. Establishment Officer,
Department of Personnel and Training,
North Block, New Delhi.
4. A. K. Bhandari,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.
5. Shri R.N.Prabhakar,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.
6. Shri J.Balakrishna,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.
7. Rakesh Kumar,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.
8. t.L.Dubey,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.

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9. Shri G.S.Grover,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.

10. Shri K.S.Nair,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.

11. S.A.Thomas,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.

12. Shri P.C.Sahu,
C/O Director (ST-II),
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi. Respondents

(By Shri R.N.Singh for Shri R.V.Sinha, Advocate for
Respondent No.1; Shri Jayant Nath, Advocate for
Respondent No.2)

ORDER

Hon'ble Shri V.K.Majotra, V.C.(A):

Applicant has challenged Annexure-A dated 29.1.2002
whereby allegedly nine officers (respondents 4 to 12)
junior to the applicant have been promoted to the grade
of Chief General Manager of Indian Telecom Service Group
"A" in the pay scale of Rs.22400-24500 on regular basis
and also action of respondents in denying the applicant
such promotion.

2. Briefly stated, the facts of the case are that
the applicant who has been working as General Manager was
considered for promotion to the grade of Chief General
Manager in the DPC held by the UPSC on 30.10.2001 against
the vacancies for the year 2001-2002. The DPC considered
2 vacancies for 2000-2001 and 19 vacancies for the year
2001-2002. The 2 vacancies for the year 2000-2001 were

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in addition to 24 vacancies which had already been considered by the DPC held on 16th and 17th November, 2000. As these 2 vacancies occurred subsequent to the said meeting of the DPC, a supplementary DPC for the year 2000-2001 was held. The DPC considered 8 officers for promotion for the year 2000-2001 and 42 officers for the year 2001-2002. We have perused the records relating to the DPC held on 30.10.2001. The applicant was considered at Sl. No.16 of the eligibility list for the year 2001-2002. The post of Chief General Manager is a selection post, benchmark for which is "very good". The DPC assessed the suitability of the applicant among other eligible candidates for promotion on the basis of ACRs - for five preceding years, i.e., from 1995-96 to 1999-2000 for the vacancy year 2001-2002. The applicant has been assessed as "good" and was not recommended for promotion as he failed to attain the prescribed benchmark, i.e., "very good".

3. The learned counsel of the applicant raised the contention that while the relevant instructions for consideration of promotion to the level of Chief General Manager require that the eligible candidates must be duly considered, the UPSC and the respondents have not accorded such consideration to the applicant's claim. He pointed out that the procedure of writing ACRs for officers of the Junior and Senior Administrative Grades, the applicant being a Senior Administrative Grade (SAG) officer, requires that apart from the report of the reporting officer, the ACR has to be reviewed by the reviewing authority. The learned counsel contended that

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ACRs for the years 1995-96 to 1999-2000 of the applicant were not reviewed by the reviewing authority. The DPC considered the candidature of the applicant on the basis of the reports of the reporting officer alone which does not constitute due consideration. In this regard the learned counsel of the respondents stated that this point has not been included in the averments in the OA and as such, it cannot be raised at the time of arguments in the case. We find that ground C. mentioned in paragraph 5 of the OA states that respondents have adopted a negligent/careless approach in "non-reviewing or non-submission of complete information and record before the DPC". Thus in our view, the objection raised on behalf of the respondents has to be rejected. Even otherwise, contention of the applicant constitutes a legal point which can be raised even at a later stage at the time of hearing. We have seen the records ourselves. The contention made on behalf of the applicant that ACRs of the applicant for the said period had not been reviewed by the reviewing authorities is established from the record produced by the respondents. As per procedure an ACR may not be reviewed only if the reviewing officer had demitted office or the officer reported upon had worked for a period less than three months under the reviewing officer. In the present case, the reporting officer has recorded a note in respect of the ACR for 1997-98 that the reviewing authority had demitted office and as such, the report could not be reviewed. There is no such note in respect of the remaining four ACRs. Thus the contention of the learned counsel of the applicant that applicant's relevant ACRs had not been reviewed by

the competent authority is established in respect of four years out of the five relevant years.

4. The learned counsel of the applicant next stated that the procedure for writing ACRs prescribes that the reporting officer has to be a superior officer than the officer reported upon. He particularly referred to ACRs of the applicant for the year 1995-96 contending that the same had been written by an officer who was of the same rank as the applicant and had conflicting interest against the applicant as he too was a competing candidate for promotion along with the applicant. While the UPSC had taken into account the applicant's ACRs for the year 1995-96 in its meeting held on 30.10.2001, such a report should have been considered as invalid.

5. We have perused the applicant's ACRs for the relevant years. We find that for the period 1995-96 (1.4.1995 to 28.11.1995) applicant had been reported upon on 12.7.1996 by Shri C.R.Kataria, CGM(T), Haryana Telecom Circle, Ambala. While it was contended on behalf of the respondents that Shri Kataria was a superior officer than the applicant as Shri Kataria was a Chief General Manager, the applicant was working as General Manager only. In this connection, the learned counsel of the applicant filed Department of Telecommunication Services order No.315-1/99-STG-III dated 21.8.2000 in which Shri C.R.Kataria who was GM, Jallandhar was posted as PGM, Jallandhar. On the basis of this document, the learned counsel stated that Shri Kataria was promoted as PGM/CGM w.e.f. 21.8.2000 only. He further stated that when Shri

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Kataria signed the ACR of the applicant for the period 1995-96 on 12.7.1996. he was not holding the rank of Chief General Manager but was only a General Manager like the applicant. As such, Shri Kataria was not competent to record applicant's ACR for 1995-96 as he was not a superior officer than the applicant. The contention of the applicant's counsel could not be rebutted on behalf of the respondents. In our view, it is established beyond doubt that the applicant's ACR for the year 1995-96 was written by an incompetent officer who was of the same level as the applicant. Such an ACR could not have been taken into consideration by the DPC while assessing the applicant for promotion under consideration, as it had been written by an incompetent officer who was of the same rank as the applicant. In this regard, we draw support from (1996) 8 SCC 762 : State Bank of India & Ors. v. Kashinath Kher & Ors., in which it was held as follows :

"15. It would appear that the confidential reports and character rolls are being prepared by the officers of the same rank in the same MMGS-II working in the establishment department over the same cadre officers working elsewhere and the reporting officers are the same. Ms. Nisha is right and the High Court is well justified in holding that such a procedure is violative of the principles of natural justice. Such procedure and practice is obviously pernicious and pregnant with natural prejudices and manipulation violating the principles of natural justice and highly unfair. The object of writing the confidential report is twofold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in Delhi Transport Corp. case (Delhi Transport Corp. v. D.T.C. Mazdoor Congress, 1991 Supp (1) SCC 600) pointed out the pitfalls and

insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectivity, impartiality—and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by a superior officer of high rank. Who are such high rank officers is for the appellant to decide. The appellants have to prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form the basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust."

6. In the end, the learned counsel of the applicant contended that the DPC had assessed suitability of the applicant for promotion in an arbitrary fashion without specifying how it had assessed the competence and suitability of officers for promotion. The learned counsel of the respondents in this regard stated that under the relevant instructions DPC is competent to evolve its own procedure for assessing the suitability of officers for promotion. While we are not re-appraising or re-assessing the gradings taken into consideration by the DPC, it is observed from the proceedings that the DPC has not stated the procedure how it has assessed the competitive suitability of the applicant among the eligible candidates. From the records, it seems that

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merely the grading accorded by the reporting officer had been taken into consideration for the purpose. There is no denying that the DPC can on perusal of the entire ACR and service record revise the grading given by the reporting officer/reviewing officer. Such a course was not adopted in the present case. In any case, by taking into consideration the ACR of the applicant for the period 1995-96 which had been written by an incompetent officer, as established above, the DPC has certainly faulted.

7. Having regard to the above discussion, though we are refraining from quashing Annexure-A dated 21.1.2002, we find that the DPC had adopted an illegal, unfair and unjust procedure for assessing the suitability of the applicant in its meeting held on 30.10.2001 for vacancies for the period 2000-2001. While it may not be feasible at this late stage to require the respondents to have the relevant ACRs of the applicant reviewed by the concerned authorities, in the facts and circumstances of the case and in the interest of justice, the respondents are directed to review the case of the applicant by placing it before the DPC again. The DPC should ignore the applicant's ACR for the year 1995-96 and re-assess the applicant's suitability for promotion to the Senior Administrative Grade (Rs.22400-24500) in accordance with law and rules keeping in view the observations made above. If this review DPC finds him suitable, he should be accorded the said promotion with effect from the date his junior was so promoted. Applicant should also be

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granted all consequential benefits in the event of such promotion.

8. The OA is allowed in the above terms. No costs.

V. Maiotra

(V. K. Maiotra)
Vice-Chairman (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

/as/