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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.639/2002

New Delhi, this the ^{Sr} 1 day of **August, 2005**

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

Vinod Kumar
Assistant Superintendent
Central Jail, Tihar
New Delhi – 110 064. ... Applicant

(By Advocate: Sh. G.D. Gupta, Sr. Counsel with Sh. S.K. Sinh)

Versus

1. Chief Secretary
Government of NCT of Delhi
Sachivalaya Building
I.P. Estate
New Delhi.
2. The Principal Secretary (Home)
Government of NCT of Delhi
Sachivalaya Building
I.P. Estate, New Delhi.
3. The Director General (Prisons)
Prison HQ
Near Lajwanti Garden
New Delhi – 110 064.
4. Ms. Ashwani Kumari
Dy. Supdt. Grade-II
5. Sh. Jagdish Singh
Dy. Supdt. Grade-II
Respondent No.4 and 5 to be served
Through Respondent No.3. .. Respondents

**(By Advocate: Mrs. Sumedha Sharma for Respondents 1 to 3
and Sh. G.D.Bhandari, for Respondent No.4)**

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ORDER

By Mr. Justice V.S. Aggarwal:

By virtue of the present application, the applicant (Vinod Kumar) seeks quashing of the orders of 12.07.2001 and 12.10.2001 and also the proceedings of the Departmental Promotion Committee.

2. The applicant contends that for the post of Deputy Superintendent Grade-II, the feeder post is Assistant Superintendent (Prison). He contends that he has illegally been ignored and two junior persons have been promoted ignoring his claim. Even his representation has since been rejected. His plea is that two junior persons are less meritorious. The applicant was adjudged as 'Average' on the basis of his Annual Confidential Reports, though he had 'Very Good' reports. He pleads that private respondent No.4 is not only junior but also she had been issued Memos for her misconduct and also issued various warnings, which are in the service records. Further more, it is contended that downgraded reports of the applicant have not been communicated.

3. On behalf of Respondents 1 to 3, it had been pleaded that the Departmental Promotion Committee Meeting was held on 29.6.2001 to consider the suitability of the candidates for the post of Assistant Superintendent. The prescribed benchmark for the post of Deputy Superintendent Grade-II is 'Good'. The applicant could not meet the benchmark. Therefore, the DPC did not recommend his case. It has been pointed that the applicant did

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not have a blemish-free record. A recordable warning was given to him on 09.6.1995 for allowing two outsiders into the Deodi of Jail No.1 for meeting on Holiday in violation of Jail Manual. He was again suspended on 24.5.2001 and reinstated on 04.7.2001. While performing the duties on 13.2.2001, he had manipulated the release of a prisoner, who was facing trial in a very serious offence punishable under Section 302 of Indian Penal Code, from Police Station Kalkaji. The Additional Session Judge, Delhi had inquired into the matter and concluded that the applicant along with other Jail officials was involved in the illegal release of under trial prisoner.

4. The departmental inquiry is in progress and further it is contended that the case as such is pending. However, it is not disputed that Respondent No.4 was censured on 11.4.1997, 22.4.1997, 15.12.1997, 26.3.1998 and 15.12.2000. Earlier, she was imposed a penalty of stoppage of three increments but the penalty was reduced to recordable warning by the appellate authority. In this process, it is claimed that the order passed is not invalid.

5. So far as the claim of Respondent No.4 is concerned, at the outset, we make it clear that this is not a Public Interest Litigation. If she had adverse entries, it was for the Departmental Promotion Committee to consider the same. In the present case of litigation, therefore, we believe that it will not be appropriate for us to look into the proceedings because that would be going beyond the scope of judicial review.

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6. However, the respondents made available to us the minutes of the Departmental Promotion Committee meeting held on 29.6.2001. They had adjudged the performance of Respondent No.4 as 'Good'. We have already held in the preceding paragraphs that it is not for this Tribunal to consider the manner in which the grading has to be arrived at. But we only pin faith in Respondent Nos.2 and 3, who may look into the facts, because admittedly Respondent No.4 had suffered with couple of warnings and censure. They can take any action in accordance with law because in the present case of litigation, further probing by this Tribunal into this controversy is uncalled for.

7. So far as the applicant himself is concerned, over all grading by the DPC had been given to be 'Average' and that it has been recorded that he does not meet the benchmark. During the course of submissions, it was pointed that the applicant was facing trial in FIR No.187/2001 pertaining to Police Station, Hari Nagar. We were informed in pursuance to our query that the matter is being investigated.

8. The main argument advanced on behalf of the applicant was that the performance of the applicant for certain years had been downgraded without conveying to him the downgraded entries and, therefore, the same could not be read against him. We have perused the Confidential Reports of the applicant, which gives the following scenario:

2002-2003	Very Good
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2001-2002	Very Good
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2000-2001	Good
1999-2000	Very Good
1998-1999	Average
1997-1998	Average
1996-1997	Good
1995-1996	Fit

9. The learned counsel for the applicant relied upon the decision of the Supreme Court in the case of **U.P. JAL NIGAM & OTHERS v. PRABHAT CHANDRA JAIN AND OTHERS**, AIR 1996 SC 1661. The Supreme Court held:

"3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not down grading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All what is required by the Authority recording confidentials in the situation is to record reasons for such down grading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would not frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given

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case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

10. The Full Bench of the Delhi High Court, in the case of J. S. GARG v. UNION OF INDIA & ORS., 100 (2002) Delhi Law Times 177 (FB), was concerned with the same controversy. After scanning into various precedents, including the case of U.P. Jal Nigam referred to above, if the downgraded reports were not communicated, it made the following observations:

"7. It is also not in dispute that the ACR of the petitioner in terms where officer was ranked 'Good' had never been communicated to him. From the facts as noted hereinbefore, it would appear that although he received the remarks 'good' consecutively for the period 1992-93, 1993-94 as also 1995-96, he received 'Very good' remarks in the years 1994-95 and 1996-97. The Rule evidently was made for a purpose. Pursuant to and in furtherance of the said Rule not only the adverse remarks but also in a case where an Appropriate Authority notices a fall in standard of an officer in relation to his past performances, he has an obligation to draw his attention to the said effect so that he can be altered for improving his performance. Such communication, a bare perusal of the Rule would clearly demonstrate, was necessary so as to prevent sufferance of service prospect by the employee concerned by way of ignorance as regards deterioration in his performance. It stands admitted that the petitioner was not communicated about such fall in standards."

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The Delhi High Court further went on to hold:

"13. The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to pose unto itself a right question so as to enable it to arrive at a correct finding of fact with a view to give a correct answer. The question which was posed before the learned Tribunal was not that whether the petitioner had been correctly rated by the DPC? The question, as noticed hereinbefore, which arose for consideration before the learned Tribunal as also before us was as to whether having regard to the decision of the Apex Court in *U.P. Jal Nigam and Ors. (supra)*, as also Rule 9 of the CPWD Manual the concerned respondents had acted illegally in not communicating his 'fall in standard'. It is now trite that the Court of the Tribunal cannot usurp the jurisdiction of the Statutory Authority but it is also a settled principle of law that the jurisdiction of this Court to exercise its power of judicial review would arise in the event it is found that the concerned authority has, in its decision making process, taken into consideration irrelevant fact not germane for the purpose of deciding the issue or has refused to take into consideration the relevant facts. The learned Tribunal, in our opinion, while holding that having regard to the decision of the Apex Court in *U.P. Jal Nigam and Ors.* the DPC could ignore categorizations are ignored, the matter would have been remitted to the DPC for the purpose of consideration of the petitioner's case again ignoring the remarks 'Good' and on the basis of the other available remarks. This position stands settled by various judgments of the Supreme Court."

11. In the present case also, there is a steep downgrading in the performance of the applicant, which has not been communicated. Necessarily, the uncommunicated reports could not be considered and well be ignored.

12. In face of the findings recorded above, we are not expressing any further opinion pertaining to the warning that has been awarded to the applicant and the other facts, to which we

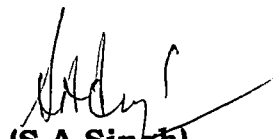
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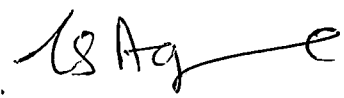
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have briefly referred to above, of not meeting the benchmark. Necessarily, this should be so done by the review Departmental Promotion Committee.

13. For these reasons, we allow the present application and quash the impugned order. It is directed that the review Departmental Promotion Committee may be held and claim of the applicant be reconsidered in the light of the findings given above.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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