

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2607/2002

NEW DELHI THIS ...10<sup>th</sup>...DAY OF DECEMBER 2002


HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)  
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Smt. T K Aryavir,  
Deputy Director General (P.G.)  
O/O Director General, Department of Posts  
Dak Bhawan, New Delhi

..Applicant

(By Shri G.S. Lobana, Advocate)

VERSUS

1. Union of India through  
Secretary Deptt. of Posts,  
Min. of Communication & Information  
Technology, Dak Bhawan,  
New Delhi.
  2. Chairman, UPSC  
Dholpur House, Shahjahan Road  
New Delhi
  3. Shri D Kailash Prasad,  
Chief Post Master General,  
Himachal Pradesh Circle,  
Shimla
  4. Smt. K Noorjhan,  
Chief Post Master General,  
Haryana Circle, Ambala Cantt.
  5. Shri P K Chatterjee,  
Chief Post Master General,  
North Eastern Circle,  
Shillong.
  6. Sh S C Sharma, Indian Postal Service, 1971 Batch  
C/o Director General, Department of Posts,  
Dak Bhawan, New Delhi
  7. Smt. A Das Gupta, Indian Postal Service, 1971 Batch  
C/o Director General, Department of Posts,  
Dak Bhawan, New Delhi
  8. Ms Datta Meera, Indian Postal Service 1973 Batch  
C/o Director General, Department of Posts,  
Dak Bhawan, New Delhi
  9. Ms. R. Dorai Swamy, Indian Postal Service 1973 Batch  
C/o Director General, Department of Posts,  
Dak Bhawan, New Delhi
- 

(2)

10. Sh. A K Bhatnagar, Indian Postal Service,  
1974 Batch C/o Director General, Department of  
Posts, Dak Bhawan, New Delhi

... Respondents

(By Shri N.K. Agarwal, Advocate)

**ORDER**

(Hon'ble Shri Govindan S.Tamp, Member (A))

Applicant in this case challenges the failure of the respondents to promote her as Chief Post Master General (in the AAG), while promoting a few of her juniors.

2. Heard Shri G.S.Lobana, learned counsel for the applicant and Shri N.K. Aggarwal, learned senior counsel for the respondents. Though the official respondents have only filed a short reply, with specific reference to the interim relief and have argued on that, we feel that the arguments advanced and the documents placed before are sufficient to dispose of the OA itself. Hence we have reserved the judgement at the conclusion of the oral submissions. It is also seen that the official respondents have argued the case of the private respondents as well in para 4.

3. The applicant (Smt. T.K. Aryavir) joined Indian Postal Service Group 'A' on 6.11.1970 as a Probationer on the basis of the IAS and Allied Services Examinations of 1969. After completing her probation, she worked in various capacities and in various posts, earning her promotion on time and rose to the rank of Post Master General, Baroda (in S.A.G.) in 1993. She was empanelled to be a Joint Secretary in July, 1996 and since 13.11.1997 she is working as Dy. Director General (Public Grievances) in the Directorate General of Posts. She has had an exceptionally creditable

(3)

record of service throughout her career and her performance had earned encomia for her <sup>from</sup> all concerned both within the Deptt. and otherwise. As she apprehended denial of justice <sup>to her</sup> from the Secretary of Posts, when DPC for promotion to HAG was held on 18.5.2002, she had represented on 13.6.2002 to the Hon'ble Minister for Communication but the same did not evoke any response and to her surprise she found that promotion/posting orders issued on 20.8.2002, did not include her name but contained among other four officers from 1971 batch, three officers from 1973 batch and one officer from 1974 batch, all of whom were her juniors, in the common seniority list of S.A.G. Officers in her service. Bench mark for promotion from both S.A.G. and JAG was 'Very Good' and as she was promoted to SAG w.e.f. 28.10.1993, it was evident that she had obtained the said benchmark till then. Grading below the said benchmark, would have occurred only thereafter on account of malafide attitude of either the Reporting/ Reviewing officer, but no remarks indicating the downgradation had been communicated to her, which was a clear denial of the principle of natural justice. When a benchmark has been fixed and notified, any gradation below the said benchmark has to be treated as adverse and communicated, as held by a number of decisions of the Courts and Tribunals [OA No.18370/94 filed by Udai Krishan Vs. Union of India (Deptt. of Posts) decided by Allahabad Bench of the Tribunal on 17.8.1995]. Applicant's excellent performance, duly appreciated by all concerned and her overall record had not been taken into consideration by the DPC which had apparently acted in a mechanical manner. The non-selection of the applicant, the first senior lady officer from the Scheduled Caste category, despite her creditable record, apparently on the basis of the downgraded ACR

(4)

entries, which were never communicated to her, was unfair, illegal and against natural justice and repeated judicial pronouncements. Hence this OA.

4. Grounds raised in this OA are enumerated as below:-

- i) Non-communication of remarks, below the bech-mark, entered in her ACR had prejudiced her case, as would be seen from the decisions of the Hon'ble Supreme Court in U.P. Jal Nigam Vs. Prabhat Chandra Jain and Others (AIR 1996 SC 1661), Assam High Court in Donatus Engzanang Vs. State of Mizoram and Others (CWP 45/1997 given on 5.1.2000, Delhi High Court in UOI Vs. B.L.Srivastava and Ors in CWP 715/2000 pronounced on 2.2.2001, Bombay High Court in Dr.Binoy Gupta Vs. UOI & Ors (CWP No.3641/2002) decided on 27.8.2002 and of the Tribunal Principal Bench in OA 1936/2001 R.K.Anand Vs. UOI and Ors. held on 12.11.2001, OA No.1016/2001 A.K.Gupta Vs. UOI and Ors announced on 2.4.2002 and of Chandigarh Bench in OA No.367/2000 Col. Tilak Raj Vs. UOI and Ors. <sup>given</sup> decided on 3.7.2002.
- ii) Courts and Tribunals have repeatedly held that any remark, which would be prejudicial to the consideration of the individuals promotion would have to be communicated;
- iii) having worked for nine years in SAG she was eligible for promotion and should have been promoted;
- iv) if she had any entry in the ACR, below the bechmark 'Very Good' the same should have been communicated;
- v) applicant's claims had been illegally ignored by the DPC;
- vi) the applicant's case is squarely covered by the Tribunal decision in OA No.1016/2001-A.K.Gupta Vs.UOI, pronounced on 2.4.2002, wherein the respondents (Deptt.of Posts where the present applicant also works) were directed to consider the case of the applicant ignoring the ACRs for the years, wherein grading below the benchmarks were recorded which were not communicated;
- vii) the applicant's case is also fully covered by the Chandigarh Bench decision given on 3.7.2002 in OA No.367/2000-Col Tilak Raj, CPMG, Chandigarh Vs.UOI and Ors. also against the Deptt. of Posts.

(5)

5. In the above circumstances, the OA should succeed with full consequential reliefs to the applicant, pleads Shri Lobana, her counsel.

6. The short reply filed on 22.10.2002 on behalf of the respondents by Shri N.K. Aggarwal, learned senior counsel is reproduced in full as below:-

"That the applicant seeks interim relief in terms of para 9 of the OA which is as under:-

The applicant is working in the SAG for the last about 9 years. From all angles she is eligible to work in HAGT, so pending final decision of the Hon'ble Tribunal the respondents may be directed to consider the case of the applicant for ad hoc promotion to HAG in the first available vacancy. Any regular promotions to HAG should be subject to the outcome of this O.A."

That in response to the above prayer, even though the case has been listed before JR on 2nd December 02, this Hon'ble Tribunal has been pleased to direct the respondents to file reply by issuing short notice hence the short reply.

**Preliminary objections:**

1. That in the case of Sh A K Gupta writ petition has been filed against the order of this Hon'ble Tribunal and the same is pending for hearing in the High Court of Delhi;
2. that the applicant had represented on 17th July 02 to the Hon'ble Minister of Communications & IT and Hon'ble Minister of State for Communications & IT respectively requesting to safeguard her interest to the promotion to above grade;
3. that the applicant belongs to 1970 batch of Indian postal Service?ice Group 'A' and is working DDG (PG) in the Directorate of SAG. The applicant was in the zone of consideration for promotion to the grade of Sr. DDG/CPMG constituted by UPSC. The applicant was considered by the DPC but did not recommend her name for promotion as based on her records of service, it graded her 'unfit' for promotion to the above grade;
4. It is further submitted that the recommendation of the DPC has been accepted by the competent authority and the orders have

(6)

been issued in this regard on 20th August 02. The guide-lines relating to promotion of the officers belonging to SC/ST have been strictly followed in this case. Therefore, it will be appreciated that the applicant has been found 'unfit' for promotion to the grade of Sr. DDEG/CPMG on the basis of her service records. There is no provision in the rules to consider an officer for promotion to a grade on ad hoc basis after the DPC has found her 'unfit' for promotion on the basis of her service records.

5. It is therefore respectfully prayed that the applicant is not entitled to any interim relief whatsoever at this stage and the granting of any interim relief will virtually amount to allowing her petition in to without the detailed reply of the answering respondent and eight other respondents being on record."

7. On 23.10.2002 when the matter had come up, Shri Aggarwal forcefully reiterated the written pleadings and averred that the applicant cannot at all have any legitimate grievance as her case had been considered by the duly constituted DPC which did not find her 'fit' for promotion. The individuals right is only for consideration and once the consideration has taken place, the applicant should be satisfied. The Tribunal cannot interfere in the selection process, once no procedural infirmity has been committed. OA should, therefore, fail according to Shri Aggarwal.

8. As directed by us on 23.10.2002, <sup>Sh. Aggarwal</sup> learned Senior Counsel for the respondents, brought for our perusal, the minutes of the DPC meeting held on 18.5.2002 for promoting of officers of Indian Postal Service, to the grade of Sr. Deputy Director General/Chief Post Master General in the scale of Rs.22,400-24,500/- in which the case of the applicant among others was considered, along with the ACR folder of the applicant. He also placed on record, DOPT's OM 7 No 35034/7/97-Estt (D) dated 8.2.2002, on the procedure to be observed by DPCs, duly circulated under Deptt. of Posts letter

(7)

dated 22.3.2002 and invited our special attention to paras 3.2 and 3.3 of the OM. According to Sh. Aggarwal, perusal of the DPC minutes, ACRs of the applicant for the relevant period in the backdrop of the instructions would make it evident that the Deptt. had acted properly and legally. Shri G.S. Lobana on behalf of the applicant pointed out that if the applicant's case had been considered on the basis of ACR entries, below the benchmark, which have not been communicated, the said entries should go out of reckoning as has <sup>already</sup> been held in the cases of UP Jal Nigam, B.L. Srivastava, A.K. Gupta and Col. Tilak Raj (supra). Tribunal would have, in those circumstances, to interfere in the matter and do her justice, urged Shri Lobana.

9. We have carefully deliberated upon the rival contentions and perused all the documents brought on record. Facts are not disputed. The applicant, a lady officer belonging to the Scheduled Caste category, who joined Indian Postal Service in 1970 and has climbed the official ladders by regular and timely promotions and has reached the rank of the Post Master General, has found after nearly nine years of service, that Dy. Director General Grade, that she has been sidelined and superseded for promotion to the grade of Sr. Dy. Director General/ Chief Postmaster General by as many as eight officers shown below her in the Seniority list. While the applicant feels that there was no justification for her supersession, as she had not been communicated any remarks pointing to any fall in her performance level, the respondents plead that the duly constituted DPC, which had considered her case along with others had found her 'unfit' for promotion, on assessment of her performance.

(8)

10. Before examining the case on merits it would be necessary to deal with the preliminary objections raised by the respondents. It is pointed out that against the decision of the Tribunal in A.K.Gupta's case a writ petition has been filed in the High Court but evidently the same has not been set aside, modified or stayed. The decision, therefore, holds good. Secondly, it is indicated that the OA was pre-mature as the applicants representation dated 17.7.2002 to the Honble Minister for Communication and I.T and the Hon'ble Minister of State for Communication and I.T are pending. This objection is also of no avail in that the applicant is on record of having filed the representation on 13.6.2002 apprehending denial of promotion to her; whether the representation is of 13.6.2002 or of 17.7.2002 the same has not produced any result, as the impugned promotion/posting orders have been issued on 20.8.2002, excluding her name from the list of those who were promoted. She need not have waited indefinitely for the respondents to wake up at any convenient date in future and react, before approaching the Tribunal.

11. Respondents have produced before us the copy of the DOPT's OM No 35034/7/97-Estt (D) dated 8.2.2002, communicating the procedure to be observed by the DPCs in 'selection' promotion and have invited our specific attention to paras 3.2 and 3.3. The same would merit reproduction in full to appreciate the respondents case

3.2. 'Bench-mark' for promotion.

" The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' ( i.e. who meet the prescribed bench-mark ) by the DPC shall be



(9)

included and arranged in the select panel in order to their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC.

\* \* \* \* \*

3.3. Promotion to the revised pay-scale (grade) of Rs.12,000-16,5000 and above.

(i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.

(ii) The bench-mark for promotion, as it is now, shall continue to be 'very good'. This will ensure element of higher selectivity in comparison to selection promotions to the grades lower than the aforesaid level where the bench-mark, as indicated in the following paragraphs, shall be 'good' only.

(iii) The DPC shall for promotions to said pay-scale (grade) and above, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'very good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'very good'.

It follows, therefore, that only those who are assessed as 'Very Good' by the DPC would be 'fit' for promotions and those who do not make it to the assessment of 'Very Good' would be unfit.

12. It is in the above context that the case of the applicant has to be examined. Minutes of the meeting of the Departmental Promotion Committee chaired by the Chairman of the UPSC, held on 18.5.2002 at 3 PM at Bangalore, reads as under:

"UNION PUBLIC SERVICE COMMISSION'S FILE NO.  
1/34(7)/2002-AP-3 DEPARTMENT OF POST REF.  
NO. 1-3/2002-SPG

(10)

Minutes of the meeting of the Departmental Promotion Committee held on 18th May 2002 at 3.00PM at Bangalore.

**Present**

1. Lt. Gen. (Retd) Surinder Nath : Chairman  
Chairman, UPSC
2. Shri S C Dutta, Secretary  
to the Govt. of India : Member.  
Department of Posts.

**ITEM: DPC- Selection of Officers for promotion to the grade of Senior Deputy Director General / Chief Post Master General in the scale of pay of Rs. 22400-24500 in the Department of Posts.**

The Committee considered the question of selection of officers for promotion to the grade of Senior Deputy Director General / Chief Post Master General in the Department of Posts.

2. The vacancy position is as under:-

Year	General	S.C.	S.T.	Total
2001-2002	6	--	--	6
2002-2003	5	--	--	5

3. Having examined the character rolls of the eligible officers, the Committee assessed them as indicated in Annexure-I.

4. On the basis of the assessment as indicated in Annexure-I, therefore, the Committee recommend that the panel for promotion to the grade of Senior Deputy Director general/Chief Post Master general in the department of Posts should consist of the officers as mentioned in Annexure-II in the order stated therein.

**UNION PUBLIC SERVICE COMMISSION'S FILE NO.**  
**1/34(7)/2002-AP-3 DEPARTMENT OF POST REF.**  
**NO. 1-3/2002-SPG**

5. The Department have furnished the requisite integrity certificates in respect of the officers recommended for promotion.

Sd/-  
[LT. GEN. (RETD.) SURINDER NATH]

Sd/-  
(S.C. DUTTA)

(11)

The only fact which emerges from the above is that the applicant's case for promotion was indeed considered by the DPC for promotion to the Grade of Sr. Dy. Director General/Chief Post Master General against the vacancies for the years 2001-2002 as well as 2002-2003, which assessed her as 'unfit' for promotion for both the years. We tried hard but <sup>in</sup> ~~so~~ vain, to find out as to the rationale or basis of the findings recorded by the DPC. Similarly we failed to discover any indication supporting the contention of the respondents in their counter affidavit to the effect that "guide lines relating to the promotion of the officers belonging to SC/ST have been strictly followed in this case." (emphasis supplied). That being the case we assume that the decision, apparently <sup>has</sup> been taken on the basis of the ACRs of the applicant in the years 1995-96 to 1999-2000 (for 2000-2002) and for the years 1996-97 to 2000-2001 (for 2002-2003). The ACR gradations <sup>are</sup> ~~are subtracted~~ <sup>abstracted</sup> as below:

#### Vacancies for 2001-2002

Financial year	Sl. No.	Period	Reporting Officer	Reviewing Officer	Overall grading
1999-2000	1	1.4.99 to 31.3.2000	Very good	Very good	Very good
1998-1999	2	1.4.98 to 31.3.99	Very good	Very good	Very good
1997-1998	3	13.11.97 to 31.3.98	-	Very good	Good
		1.4.97 to 11.11.97	Good	Good	

(12)

1996-97	4	6.12.96 to 31.3.1997	Good	Good	Good
		1.4.1996 to 15.12.1996	Good	Good	
1995-96	5	1.4.1995 to 31.3.1996	Good	Good	Good

**Vacancies for 2002-2003.**

<b>Financial Year</b>	<b>Sl. No</b>	<b>Period</b>	<b>Reporting Officer</b>	<b>Reviewing Officer</b>	<b>Overall grading</b>
2000-2001	1	1.4.2000 to 31.3.2001	Good	Good	Good
1999-2000	2	1.4.99 to 31.3.2000	Very good	Very good	Very good

-12-

1998-1999	3	1.4.98 to 31.3.99	Very good	Very good	Very good
1997-1998	4	13.11.97 to 31.3.98	-	Very good	Good
		1.4.97 to 11.11.97	Good	Good	
1996-97	5	6.12.96 to 31.3.97	Good	Good	Good
		1.4.96 to 15.12.96	Good	Good	

Thus for both the years of reckoning the applicant is found to have been assessed as having the overall grading of two 'Very Good' and three 'Good' out of five ACRs and accordingly she has been described as "UNFIT" for promotion. We have also seen the ACR folder of the applicant with special reference to the above five years, in each case. The abstracts represent the position

(13)

indicated in the ACRs themselves, but two factors are interesting to note. The same Reporting Officer has graded the applicant 'Very Good' both in 1998-99 and 1999-2000 but has graded her as 'Good' in 2000-2001. Obviously in his appraisal there is a fall in the applicant's performance level. Similarly for the year 1997-98, there are two assessments first year the period of 1-4-97 to 11-11-97 when the applicant has been graded as 'Good' and 13.11.1997 to 31.3.1998 when she has been assessed as 'Very Good'. Reviewing Officer is the same in both cases and in fact for the period 13.11.1997 to 13.3.1998, Reviewing Officer was himself the Reporting Officer. Still the Overall grading for the year is shown in the abstract placed before the DPC as only 'Good'. For the other two years the gradation has been 'Good'. Hence the application has been held to be 'Good' only and, therefore, 'UNFIT'.

13. The above analysis makes it clear that the applicant was not empanelled for promotion by the DPC, as she did not achieve the benchmark of 'Very Good' but only 'Good'. The applicant has argued vehemently that she had not been communicated any remarks entered in her ACR for the period 1995-1996 to 2000-2001, which would have shown that her performance level was below par in the assessment by her superiors. Respondents have also not shown that during any of the years when the performance of the applicant was rated as below 'Very Good' the bench mark, the same has been communicated to her. As observed earlier, the same Reporting Officer who had graded her 'Very Good' both in 1998-1999 and 1999-2000 had graded her only as 'Good' in 2000-2001 showing that in his assessment the applicant's performance level has suffered. In fact against column 8 in the report for 2000-2001, he had made a specific remark which shows his lack of satisfaction with the applicant's performance. The same also does not appear to have

(14)

been communicated. , In June it is seen that the applicant's gradation by the DPC as " UNFIT" is based on reports for three years, where her overall grading has been 'Good' a categorisation below the bench mark, which has not been communicated to the applicant:

14. We also note that the same officer<sup>2</sup> <sup>who has reported her fall in performance in 2000-01</sup> has been<sup>2</sup> the sole member of the DPC, besides the Chairman, who was the Chairman of the UPSC. It is also on record that the applicant's representation dated 13.6.2002 addressed to the Hon'ble Minister for Communication and S.T. referred to the bias of the said officer against the applicant. We leave it at that.

15. Performance appraisal of an individual whether he or she works for the Govt. or any private organisation serves two purposes. Firstly it provides the assessment of the individual which would be relevant for career advancement which is his/her natural expectation. Secondly it provides an insight for the organisation about the relevance and/ or utility of the individual for the organisation he or she serves in. Performance appraisal, is thus an effective tool of management and supervision, to be employed for the betterment of the organisation and not to be used a weapon to destroy careers on personal prejudices. It would also enable to him/<sup>her</sup> to improve upon his own performance, if so warranted, both for his/her benefit and for the benefit of the organisation. In that scenario the individual concerned has a right to know about his/her own worth and the organisation concerned has a duty or responsibility cast <sup>on</sup> it to let the individual employee know what it thinks about him or her. Transparency and fairmindedness of the organisation warrant the above. It follows, therefore, that the assessment about any employees particularly where the same is unfavourable or adverse should be communicated to the employee

(15)

concerned. Besides, as the career advancement of the employee is directly relatable to the performance appraisal, he would have to be informed of any assesement which goes against such professional advancement or elevation would call for communication. If the same is not done in time, the employee would know that he or she has been hurt, only after the event when it would be too late for correction. Supervisors can shy away from communicating the adverse remarks only at the cost of the employees and the organisation.

16. DOPT's OM 7 No.35034/7/97-Estt.(D) dated 8.2.2002 makes it clear that the bench mark for promotion to grades having scale of pay of Rs.12,000-Rs.16,500/- and above shall be 'Very Good' and the same was meant to "ensure element of higher selectivity in comparison to selection promotion to the grades lower than the aforesaid level where the bench mark as indicated in following paragraphs, shall be 'Good' only (emphasis supplied). Obviously, therefore, in the higher echelons of service, as in the present case none will be entitled for promotion unless he or she in assessed as 'Very Good' consequently whether the assessment be 'Good' or 'Average' it would be adverse in nature, and would have to be necessarily communicated. If such adverse remarks are not communicated, to the person reported upon either to improve his performance or to explain his defence, the same would be a clear violation of the principle of natural justice. Any action taken on the basis of such uncommunicated adverse remarks would be clearly vitiated and would not merit endorsement in law.

17. The above observations gain full support in the <sup>decision</sup> ~~decision~~ of the Hon'ble Supreme Court in the case of UP Jal Nigam (supra), relevant portion from which are reproduced below:-

(16)

" We need to explain these observations of the High Court. The Nigam has rules, where under 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 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 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 officers 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 of annual confidential reports would be frustrated. Having achieved an optimum level of 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 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 ".

It is further seen that in the case of B.L.Srivastava, decision of the Tribunal, allowing the OA was upheld by the Hon'ble Delhi High Court on 2.2.2001, who rejected CWP 715/2001 with the observations that " the law is well settled now that any down grading which will affect the promotional prospects of the employee has to be communicated to him so that he can make an effective representation and take recourse to an appropriate remedy ". Hon'ble Delhi High Court reiterated the above on 27.2.2002 while dismissing CWP No. 136/2002, filed against the order of the Principal Bench of the Tribunal in the OA filed by R.K.Anand. Tribunal's specific directions in that OA were as below:



(17)

"We therefore, in the light of the above discussion, quash and set aside the applicant's assessment as "Good" based on which his case was considered in the DPC meeting held on 30.11.2000 and direct the respondents to convene a review DPC for reconsidering the applicant's case for promotion to the SAG ignoring the ACRs in which he was graded as "Good" and when such ACRs were not communicated to the applicant."

" Once again the Tribunal, while deciding on 2.4.2002 the OA 1016/2001, filed by A.K.Gupta (supra) held as below:-

" Placing reliance on the citations described above. We find that entries recorded in ACRs for the years 1990-91, 1991-92, 1995-96, 1997-98 1998-99 and 1999-2000 which were below the benchmark and had not been communicated to the applicant. These ACRs are wholly unsustainable. Consideration of applicant's for promotion to SAG based on the aforesaid ACRs has to be held as vitiated. In the circumstances, we hold that non-empanelment of applicant for promotion was irregular and has to be reconsidered ignoring his ACRs 1990-91, 1991-92, 1995-96, 1997-98, 1998-99 and 1999-2000".

Chandigarh Bench of the Tribunal, while disposing of OA 367/2000 Col.Tilak Raj. CPMG, Chandigarh Vs. UOI and Others fully adopted the reasoning of the Principal Bench in A.K.Gupta's case and <sup>directed</sup> that the case of the applicant in that OA reconsidered by ignoring the ACR with remarks below the benchmark, which were not communicated or by treating the ACR for this period 'Very Good'. All the above decisions, which have followed the ratio of U.P.Jal Nigam's case still hold the field not having been altered, upset or stayed. *They are binding and authoritative precedents.*

18. In the present OA, where the non-promotion of the appellant is under challenge the applicant has been rated as 'Good' during 1995-96, 1996-97, and 1997-98 and as 'Very Good' for 1998-99 and 1999-2000 (for the vacancies of 2001-02). She has been rated as 'Good' for 1996-1997, 1997-1998 and 2000-2001 and as 'Very Good' for 1998-99 and 1999-2000 (for the vacancies of 2002-03). Besides, in our view as pointed out in Para 12 (supra), categorisation 'Good' for 1997-1998 also does not give the correct picture. Anyhow the

(18)

applicant has not been communicated about the ACR gradings for 1995-96, 1996-97, 1997-98 ~~on~~<sup>2</sup> the one hand and those for 1996-97, 1997-98 and 2000-2001 ~~and~~<sup>2</sup> the other. Non communication thereof has made the consideration of the case of the applicant for promotion for the vacancies of 2001-2002 and 2002-03, on the basis of the uncommunicated ACR grading of 'Good', which was already below the benchmark of 'Very Good' was illegal and <sup>Kerehan</sup> unsustainable. Impugned orders would, therefore, call for modification after the reconsideration of the case of the applicant. . Reconsideration of the applicant's case cannot be treated as prejudicial to the interest of the private respondents No. 3 to 10, (whose cases have been championed by the official respondents) as they are admittedly her juniors- in fact <sup>belonging to</sup> ~~from~~ later batches. What is being ordered now is only the rectification of mistake. The applicant will also be entitled for costs towards this litigation.

19. In the above view of the matter, the OA succeeds and is accordingly allowed. Respondents are directed to convene a review DPC for considering the case of the applicant for promotion to the HAG - as Sr. Dy. Director General / CPMG- ignoring the ACRs for the period 1995-96, 1996-97, 1997-98 (for the vacancies of 2001-02) and the ACRs for the periods 1996-97, 1997-98 and 2000-01 (for the vacancies of 2002-03) which were adverse, being below the benchmark for promotion, but which were not were not communicated. If found fit by the review DPC she shall be promoted to HAG-to the level of Sr. Dy. Director General / Chief Post Master General,- from the date on which ~~has~~<sup>was</sup> immediate junior, Shri D.Kailash Prasad was promoted and shall be granted all the consequential benefits, including arrears of pay and allowances. This exercise shall be completed by the Respondents within three months from the date of receipt of a copy of this order. We also award the cost of Rs.3000/- against the respondents and in favour of the applicant.

S. Raju  
(Shanker Raju)  
Member(J)

(Govindan S. Tampi)  
Member(A)

Patwal /