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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2967/2002

New Delhi, this the 25th April, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

Tarun Kumar
S/o Sh. Nathu Ram
R/o 234, Sector 19
Pocket III, Dwarka
New Delhi-45

... Applicant

(Applicant in person)

versus

Union of India, through

1. Secretary
Department of Telecommunication
Ministry of Communication
Sanchar Bhawan, 20, Ashoka Road
New Delhi
2. Member (Service)
Department of Telecommunication
Ministry of Communication
Sanchar Bhawan, 20, Ashoka Road
New Delhi
3. Secretary
UPSC
Dholpur House, Shahjahan Road
New Delhi
4. Tajinder Kumar
5. Balak Ram
6. Balwant Ram
7. Baidya Kshitish Ch.
8. Ravi Goel
9. Gunjan Dave
10. Ajay Kumar Sahu
11. Satinder Kumar Jain
12. Satyapal Singh
13. Vinod Kumar Singh
14. Ritu Ranjan Mittar

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15. Vinod P. Abraham
16. Vinod Kumar
17. T. S. Sivakamy
18. Sudeb Kumar Kayal
19. Pramod Kumar
20. Narendra K
21. Siva Sankar Reddy
22. N. R. Natarajan
23. V. Rajendran
24. G. Narendra Nath
25. N. Janardhan Rao
26. Rakesh K Sharma
27. Neeraj Verma
28. Bal Kishan
29. Rakesh Kumar Dubey
30. Balram Pal
31. Kallyan K. Singh
32. P. S. Desale Respondents

(R-4 to R-32 to be served through R-1)

(Shri R. N. Singh, Advocate for R-1 and R-2,
Shri V. S. R. Krishna, Advocate for R-3)

ORDER(ORAL)

Justice V.S. Aggarwal

Applicant (Tarun Kumar) had joined the Indian Telecom Service Group 'A' Service on 21.7.1986. By virtue of the present application, he seeks a direction to quash the order dated 21.8.2001 whereby he had been superseded for promotion to Junior Administrative Grade and further for a direction to the respondents to hold a review Departmental Promotion Committee for his promotion to the Junior Administrative Grade for the year 1997-1998

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ignoring his Confidential Reports which were below the bench-mark and not communicated to him.

2. It has been asserted that the applicant had been promoted to the Junior Administrative Grade on 8.9.1997 on ad hoc basis and was posted as Deputy General Manager (Material Management), Mahanagar Telephone Nigam Limited, Delhi. In February 2000, he was sent to Spain for three weeks. He was expecting his promotion to the Junior Administrative Grade. The Departmental Promotion Committee meeting was held for the vacancies for the years 1994-95 to 1997-98 and the applicant was in the zone of consideration for the vacancies of 1997-98. The claim of the applicant has been ignored on the ground that his Confidential Reports did not meet the bench-mark. It is contended that no adverse entries or entries which did not come upto the bench-mark have been communicated to him and, therefore, the said Confidential Reports should be ignored and he should be held entitled to the promotion.

3. The application as such has been contested. The Union Public Service Commission in the reply filed pointed that the applicant was considered. His overall assessment was taken to be as "Good" by the Departmental Promotion Committee. The bench-mark for the promotion was "Very Good" and, therefore, the applicant's case was ignored. As regards communication of entry to the officer concerned, it was pointed that it is the



responsibility of the administrative Ministry or the department. So far as, the Departmental Promotion Committee is concerned, it had strictly followed the guide-lines and assessed the officers on basis of their service record.

4. The other official respondents also contested the application by pleading that the applicant cannot claim that the Confidential Reports which did not come upto the bench-mark and not communicated should be ignored.

5. The applicant appeared in person and made his submissions. As is apparent from the nature of the assertions made, the argument of the applicant was that if the bench-mark for promotion to the Junior Administrative Grade is "Very Good" and some of the Confidential Reports for the previous years in question did not meet the bench-mark, the same should have been communicated to him. Once that has not been done, those reports should be ignored and the applicant is entitled to be considered for promotion.

6. On behalf of the respondents, reliance was placed on a decision of the Punjab and Haryana High Court in the case of **Union of India & Ors. vs. M.S.Preet & anr.** in Civil Writ Petition No.13024/CAT/2002 rendered on 22.11.2002. In the said case, the plea of Shri M.S.Preet, respondent before the Punjab and Haryana High Court was that he was not adjudged suitable because he



could not achieve the prescribed bench-mark. He filed an Original Application before the Chandigarh Bench of this Tribunal. The Chandigarh Bench relied upon the decision of the Supreme Court in the case of **U.P.Jal Nigam and Ors. v. Prabhat Chandra Jain and ors.**, 1996 SCC (L&S) 519 besides the decisions of the Principal Bench of this Tribunal in the case of **B.L.Srivastava v. Union of India** in OA No.456/2000 rendered on 16.8.2000; in the case of **R.K.Anand v. Union of India** in OA No.1936/2001 rendered on 12.11.2001; ... and in the case of **A.K.Gupta v. Union of India** in OA 1016/2001 rendered on 2.4.2002. It was held that average entries recorded were liable to be ignored because the same had not been communicated. The Punjab and Haryana High Court held that that was not the ratio of the decision of the Supreme Court in the case of U.P.Jal Nigam (supra) and that was not a case of downgrading of the Annual Confidential Reports. The findings of the Punjab and Haryana High Court were:-

"It is also an admitted position that respondent No.1 was not promoted because he could not achieve the prescribed bench-mark and this was due to the fact that he had earned average entries in the ACRs for the years 1994-95 to 1998-99. The Tribunal was of the view that average entries recorded in the ACRs of respondent No.1 cannot be taken into consideration for assessing his suitability for promotion under BCR Scheme because the same had not been communicated to him. For this purpose, it is sought support from the judgment of the Supreme Court in U.P.Jal Nigam's case (supra) and three orders passed by Principal Bench in the cases of B.L.Srivastava (supra) R.K.Anand (supra) and A.K.Gupta (supra) apparently by relying upon the proposition laid down by the Supreme Court.

In our opinion, the reason assigned by the Tribunal for entertaining the plea of respondent



No.1 is per se erroneous and legally unsustainable and the direction given by it for re-consideration of his case for promotion under BCR Scheme is liable to be set aside. It seems to us that the Tribunal laboured under a mistaken impression that the rules/instructions which regulate recording of ACRs provide for communication of even those entries which are not adverse. During the course of hearing, Shri T.S.Sidhu placed before us the instructions issued by the Government of India for recording the ACRs to show that only adverse remarks are required to be communicated to the officer/employee. This position was not contested by Shri R.K.Sharma. Unfortunately, the Tribunal completely over-looked this important aspect of the matter and interfered with the recommendations of the Departmental Promotion Committee by erroneously assuming that average entries were required to be communicated to respondent No.1."

The decision rendered by the Principal Bench was also disapproved as not laying the correct law.

7. At this stage, before proceeding further, it would be in the fitness of things to refer to the decision of U.P.Jal Nigam (supra) wherein the Supreme Court had held:-

"2. The first respondent was downgraded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners plea was that downgrading entries in confidential reports cannot be termed as adverse entries so as to oblige the Nigam to communicate the same to the employee and attract a representation. This argument was turned down by the High Court, as in its view confidential reports were assets of the employees since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately had earned an 'outstanding' report in a particular year which, in a succeeding one and without his knowledge, is reduced to the level of 'satisfactory' without any communication to him, it would certainly be adverse and affect him at one or the other stage of his career."

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It is in this back-drop that the abovesaid controversy comes up for consideration before us.

8. It was urged that the decision of the Punjab and Haryana High Court would not be binding on the Principal Bench of this Tribunal at Delhi. We have not least hesitation in rejecting the said contention. In the federal set up of the Constitution, it may be that the Punjab and Haryana High Court has the jurisdiction over the territories of Punjab, Haryana and Union Territory of Chandigarh but there is only one Central Administrative Tribunal and it has different branches in different parts of the country. If the Chandigarh Bench of this Tribunal is bound by the decision of the Punjab and Haryana High Court, necessarily, it should be binding on the other Benches as well. It cannot be that different benches of this Tribunal are bound by different judicial precedents by different High Courts. At this stage, we are not venturing into the question arising in such a situation when two High Courts may take different a view but as for the present, once a decision has been rendered by the Punjab and Haryana High Court and there is no other contradictory decision from any other High Court in India, necessarily, it must be held that it will have its binding force. We reject the said contention.

9. To resolve the said controversy as to whether the applicant has been downgraded to take advantage of the decision in the case of the U.P. Jal Nigam (supra), we had called for the Confidential Reports of the applicant. A perusal of the same reveals that for the years in

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question, to begin with, the applicant had "Average"/"Good" reports. In the later years, he had improved his performance and his work was assessed as "Very Good". The Departmental Promotion Committee taking note of the overall assessment had assessed the work of the applicant for the years in question as "Good". Therefore, it is not a question of downgrading or steep fall that the applicant can press into service the decision of the Supreme Court in the case of U.P.Jal Nigam (supra). Therefore, the decision of the Punjab and Haryana High Court in the peculiar facts would certainly apply.

10. There is another way of looking at the matter. In the normal circumstances, it is for the Departmental Promotion Committee to go into the said controversy. In the case of **Union Public Service Commission v. Hiranyalal Dev and Others**, AIR 1988 SC 1069, the Supreme Court held:-

"The jurisdiction to make the selection vested in the Selection Committee. The Selection Committee had to make the selection by applying the same yardstick and norm as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials as "outstanding", "very good", "good" etc.. This function had also to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules. The powers to make selection were vested unto the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play."

Similarly it was held that a comparative merit of the candidates can only be judged by the Departmental Promotion Committee and not by the Tribunal/Courts. In

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the case of **Dalpat Abasaheb Solunke, etc.etc.** v.

Dr. B.S. Mahajan etc. etc., AIR 1990 SC 434, the findings were:-

"Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

Same view was expressed in the case of **Nutan Arvind (Smt) v. Union of India and another**, (1996) 2 SCC 488 that when a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, the court will not sit over the assessment made by the Departmental Promotion Committee.

11. Same was the view of the Supreme Court in the case of **Anil Katiyar (Mrs.) v. Union of India and others**, 1997(1) SLR 153.

12. In the present case, we have already referred to the facts ~~that it was~~ ~~which were~~ not necessary to convey the

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Confidential Reports. There is nothing on the record to indicate that there is any error factual or logical to prompt this Tribunal to interfere. Therefore, there is no ground as to why this Tribunal should re-assess the factum of the dispute that has arisen.

13. For these reasons, the applications fails and is dismissed. No costs.

Announced.

(Govindan S. Tampi)
Member (A)

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(V.S. Aggarwal)
Chairman