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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1747/2002

New Delhi this the 19th day of May, 2004.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.A. SINGH, MEMBER (A)

Smt. Vijay Zutshi
W/o Shri M.K. Zutshi
R/o A-5-1, Multi Storeyed Flats
R.K. Puram, New Delhi-110 066.

...Applicant

(Appeared in person)

-versus-

1. Union of India through
Secretary (Revenue)
Ministry of Finance
Department of Revenue
North Block
New Delhi
 2. The Chairman
Central Board of Excise & Customs
North Block
New Delhi
 3. The Secretary
Union Public Service Commission,
Shahjahan Road,
New Delhi.
 4. Shri M.K. Zutshi
Member (Central Excise)
Central Board of Excise & Customs
North Block, New Delhi.
 5. Shri D.K. Acharya
Member (Customs)
Central Board of Excise & Customs
New Delhi
-Respondents
- (By Advocate: Shri N.S. Mehta, for respondents 1-3)
None for respondents 4&5)

ORDER (ORAL)

JUSTICE V.S. AGGARWAL:-

The applicant by virtue of the present application seeks that Annual Confidential Reports for

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the period 1975-76 and 1976-77 in which there was a fall in the performance should be ignored and further that she has been a victim of bias and improper reporting despite her excellent record and review Departmental Promotion Committee meetings should be held from the post of Assistant Collector onwards in the hierarchy in which she was placed.

2. On an earlier occasion when the matter was heard by this Tribunal, the petition was dismissed on 4.12.2002 holding that it was barred by time and there were no just and sufficient grounds to condone the delay. The applicant filed a Civil Writ Petition No.2203/2003. The Delhi High Court set aside that order and remanded the case for adjudication on its merits.

3. The applicant appeared in person and made her submissions. We are not delving into all other facts which are mentioned in the application and some of them which were even urged at the Bar. Reasons are obvious and not far to fetch.

4 The crux of the matter is as it has been urged that the Annual Confidential Reports of the applicant had been down-graded. There was a fall in grading of the applicant for the said years. The same had not been communicated to the applicant and, therefore, they could not be read against her and should have been ignored.

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5. Learned counsel for the respondents had made available to us the Confidential Reports of the applicant. Indeed it is not even disputed that for the relevant years namely 1975-76 and 1976-77, there was a down-grading of the Confidential Reports and admittedly the same had not been communicated.

6. We know from the decision rendered by the Supreme Court in the case of U.P. Jal Nigam and ors. v. Prabhat Chandra Jain and ors., (1996) 2 SCC 363 that in such like events when there is a steep fall and down-grading of the report, the same should be communicated to the concerned person. The findings of the Supreme Court read:

"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 be 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 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

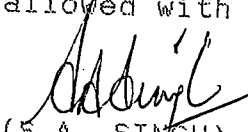
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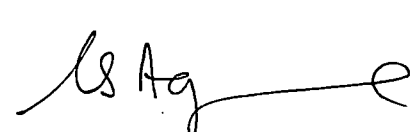
is mentioned. The down grading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

7. The said decision has been followed more often than once. Same view has been expressed by this Tribunal in the case of Ms. Manju Sharma vs. Union of India and anr. (O.A. 2330/2003) decided on 20.4.2004. It becomes unnecessary to multiply to the precedents because of the binding nature of the decision of the Supreme Court referred to above.

8. Admittedly, the down-graded confidential reports of the abovesaid years referred to have not been communicated. In the absence of the same, they have to be ignored.

9. It is unfortunate that the applicant has since superannuated but still once the law has been set into motion, it becomes necessary and we direct that a review DPC meeting should be held and claim of the applicant should be considered for the due promotions as prayed by her in paragraph 8.4 of the original application and consequential monetary benefits should be given after the review DPC meetings. Though the exercise would be long, we would appreciate that it is completed within six months of the receipt of the certified copy of the present order. The O.A. is allowed with these directions.


(S.A. SINGH)
MEMBER (A)


(V.S. AGGARWAL)
CHAIRMAN

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