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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1016/2001

This the 2nd day of April, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

A.K.Gupta,
Director Postal Services,
O/O Postmaster General,
Bareilly Region,
Bareilly-243001.

... Applicant

(By Shri D.P.Sharma, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of
Communication, Department of Posts,
New Delhi-110001.
2. Director General Deptt. of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
3. Shri V.S.Saksera,
Chief Postmaster General (Retd.),
U.P.Circle, Lucknow,
C/O D.G.Posts,
New Delhi-110001.
4. Shri S.P.Ojha,
Principal Chief Postmaster General (Retd.),
U.P.Circle, Lucknow,
C/O D.G.Posts, New Delhi-110001.
5. Smt. Karuna Pillai,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
6. Ms. R.Handa, Director,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
7. Col. Y.P.S.Mohan,
Director Army Postal Services,
C/O Additional Directorate General
of Army Postal Services,
West Block No.III, Wing No.5,
R.K.Puram, New Delhi-110066.
8. Shri S.K.Sinha, Director,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.

9. Shri K.M.Patel,
Director Postal Services,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
10. Shri A.P.Srivastava,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
11. Shri R.R.P.Singh,
Director Postal Services,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
12. Smt. Shoba Koshy,
Director Postal Services,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
13. Shri H.K.Sharma, Director,
Director Postal Services,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
14. Shri K.L.Sharma,
Director Postal Services,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
15. Smt. S.S.Nair, Director,
Director Postal Services,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
16. Smt. Indu Gupta, Director,
Director Postal Services,
C/O Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.

... Respondents

(By Shri S.K.Gupta, Advocate on behalf of Respondents 1
& 2. None for Respondents 3 to 16)

O R D E R (ORAL)

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

Applicant joined the Indian Postal Service Group
'A' officers batch of 1979. He was promoted to the
Junior Administrative Grade (JAG) w.e.f. 31.7.1989 and

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further promoted to Non-functional Selection Grade (NFSG) (Rs.14300-18300) from 1.1.1995. Having put in eight years' continuous service in JAG, applicant claims promotion to Senior Administrative Grade (SAG). The benchmark for promotion to SAG is "very good". According to applicant, he has not been communicated any adverse ACRs and in case he was downgraded from the benchmark "very good", the same ought to have been communicated to him being tantamount to adverse remarks for purposes of promotion to SAG. Since the same has not been communicated, such remarks should have been ignored by the DPC. There were six vacancies in SAG for the year 1998-99 and nine more for the year 2000-2001. The DPC for promotion to SAG was held on 11.5.2000. It is alleged that respondents 5 to 16 who are juniors to applicant were promoted to SAG vide Annexure A-1 dated 26.3.2001 ignoring the applicant's claims. Annexure A-1 has been challenged by applicant seeking the following reliefs :

"8.1 That the down graded remarks below the benchmark "VERY GOOD" may kindly be quashed and remarks above the benchmark that is "Very Good" and above should be maintained in ACRs.

8.2 That the name of the applicant be ordered to placed in the select list of Senior Administrative Grade above his next Junior Respondent No.5 and the promotion in Senior Administrative Grade be allowed to him from the date of promotion of his next Junior with all consequential benefits."

2. Learned counsel of applicant, Shri D.P.Sharma, contended that whereas the benchmark for promotion to SAG is "very good", applicant had not been communicated any

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adverse remarks or downgraded remarks for the relevant years. Thus, any grading lower than the benchmark should be quashed. Learned counsel placed reliance on the following :

1. **U.P.Jal Nigam v. Prabhat Chandra Jain**, AIR 1996 SC 1661;
2. Order dated 16.8.2000 in OA No.456/2000 : **B.L.Srivastava v. Union of India** (CAT, Principal Bench); and
3. Order dated 12.11.2001 in OA No.1936/2001 : **R.K.Anand v. Union of India** (CAT, Principal Bench).

3. Learned counsel of respondents stated that respondents held DPC in association with UPSC on 11.5.2000 for vacancies in SAG for the years 1998-99 and 2000-2001. Learned counsel stated that DPC had made their own assessment on the basis of entries for the relevant years in the ACRs of eligible candidates including applicant and assessed him below the benchmark. Learned counsel also produced attested copies of applicant's ACRs as also attested copy of the DPC minutes of 11.5.2000.

4. The Hon'ble Supreme Court in the case of **U.P.Jal Nigam** (supra) held as follows :

"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

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'good' that may not 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 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 periously 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."

Relying on the above case, in the matter of **B.L.Srivastava** (supra), the Tribunal held as follows :

"5. We, therefore, direct the respondents to convene a review DPC for the purpose of reconsidering the case of the applicant for promotion to the post of Architect ignoring the ACRs for 1993-94, 1994-95 and 1998-99 and the remarks of the accepting authority in the ACR for 1995-96. The applicant's claim for promotion to the post of Architect may be considered in the above terms within a period of three months from the date of receipt of this order as per rules and relevant instructions on the subject. In this manner, if he is found fit for promotion, he may be promoted as Architect with effect from the date his immediate junior was promoted with consequential benefits.

6. Present OA is allowed in the aforesaid terms. In the circumstances of the case, there will be no order as to costs."

5. The High Court of Delhi upheld this Tribunal's decision in the case of **B.L.Srivastava** (supra) vide their

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orders dated 2.2.2001 in CWP No.715/2001 holding that any downgrading affecting 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. The CWP was dismissed.

6. Again, in the case of **R.K.Anand (supra)** this Tribunal held as follows :

"5. 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 re-considering 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. The applicant's claim for promotion to SAG may be considered in the above terms within a period of three months from the date of receipt of this order as per rules and relevant instructions on the subject. In this manner, if he is found fit for promotion to SAG, he may be promoted to the SAG with effect from the date his immediate junior was promoted, with all consequential benefits."

The Tribunal's order in **R.K.Anand (supra)** was upheld by the High Court vide order dated 27.2.2002 in CWP No.1386/2002 (**Union of India v. R.K.Anand**) referring to the ratios in **U.P.Jal Nigam (supra)** and **B.L.Srivastava (supra)**.

7. From the records produced by respondents, we find that the DPC had assessed applicant as "good" for vacancies for the year 1998-99 and also for vacancies for the year 2000-2001. The reviewing authority had assessed applicant as "good" for the years 1990-91, 1991-92, 1995-96, 1997-98 and 1998-99, and as "average" for the

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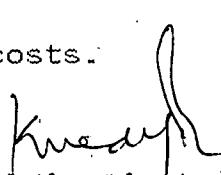
year 1999-2000. Respondents have not provided any proof regarding having communicated such remarks which were below the benchmark "very good".

8. 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 had not been communicated to applicant. These ACRs are wholly unsustainable. Consideration of applicant's case 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 he has to be re-considered ignoring his ACRs for the years 1990-91, 1991-92, 1995-96, 1997-98, 1998-99 and 1999-2000.

8. We, therefore, direct respondents to convene a review DPC for the purpose of re-considering applicant's case for promotion to SAG ignoring his ACRs for the years 1990-91, 1991-92, 1995-96, 1997-98, 1998-99 and 1999-2000. His claim for promotion to SAG shall be considered by respondents in the above terms within a period of three months from the date of receipt of these orders, as per rules and relevant instructions on the subject. In this manner, if applicant is found fit for promotion, he shall be promoted to SAG with effect from the date his immediate junior, respondent No.5, Smt. Karuna Pillai, was promoted, with consequential benefits.

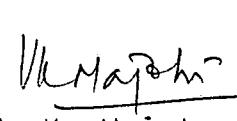
9. Present OA is allowed in the aforesated terms.

No costs.


(Kuldip Singh)

Member (J)

/as/


(V. K. Majotra)
Member (A)