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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1768/2001

New Delhi this the 4th day of March 2003.

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

HON'BLE SHRI A.P.NAGRATH, MEMBER (A)

Shri M.S.Reddy,
Deputy Director, Mon (s) Dte.
Central Water Commission
Sewa Bhawan, R.K.Puram
New Delhi. ... Applicant

(By Shri Gyan Prakash, Advocate)

vs.

1. Union of India
through Secretary
Ministry of Water Resources
Shram Shakti Bhawan,
New Delhi-110 001.
2. Chairman
Central Water Commission
Govt. of India
Sewa Bhawan, R.K.Puram
New Delhi.
3. Secretary
Central Water Commission
Sewa Bhawan, R.K.Puram
New Delhi.
3. Secretary
Deptt. of Personnel Training (DOPT)
North Block
New Delhi. Respondents

(By Shri R.N.Singh, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

The applicant had been regularised as Assistant Engineer in 1977. He was promoted to Group 'A' post of Assistant Executive Engineer on ad hoc basis in July 1980 and regularised on 5.4.1984. He was subsequently promoted as Deputy



Director with effect from 15.2.1995 while his juniors had been promoted two years earlier to him. His next promotion is to the post of Superintending Engineer/Director. The applicant had written to the respondent No.2 to communicate his adverse entries so as to enable him to represent against them. By virtue of the impugned order, the respondents informed the applicant:-

"Sub:- Communication of grading recorded in the CR of Shri M.S. Reddy, Deputy Director below the prescribed "Bench Mark".

The representation dated 1st August 2000 of Shri M.S.Reddy, Deputy Director on the subject mentioned above has been considered by the Competent Authority and it is to inform that as per instructions in force only adverse entries in the CRs are to be communicated to the individual."

The applicant in pursuance of the present application prays that the respondents should be directed to communicate all those Annual Confidential Reports to him which are below those prescribed for promotion and an opportunity should be given to the applicant to file a representation, if considered it necessary. He further prays that the respondents should start communicating the Annual Confidential Reports which affect the promotional avenues and directions should be issued in this regard that all Annual Confidential Reports which are below the bench-mark



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should be communicated.

2. In the reply filed, the application has been contested. It has been asserted that the applicant has not approached this Tribunal with clean hands. The applicant had earlier filed OA No.264/1986 before the Hyderabad Bench of this Tribunal. He had admitted that there were adverse entries in his confidential report in the year 1977 which had been communicated to him. This fact has been suppressed. The applicant was otherwise eligible for promotion on regular basis in June 1980. The first Departmental Promotion Committee meeting was held in July 1982 and the case of the applicant was ignored. The next Departmental Promotion Committee meeting for promotion was convened on 5.4.1984 in which the applicant was considered and recommended for regularisation. It is asserted that the present application is barred by the principle of res judicata.

3. Otherwise also, it has been pointed that the post of Assistant Executive Engineer is a selection post which is filled up on basis of merit-cum-seniority. According to the instructions of the Department of Personnel and Administrative Reforms, where promotions are to be made for selection posts, the field of choice should be extended to three times the number of vacancies. The officers in the field of selection, excluding

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those considered unfit for promotion are classified by the Departmental Promotion Committee as 'Outstanding', 'Very Good' and 'Good' on basis of their respective merit as assessed by the said Committee. The panel is then drawn to the extent necessary by placing the names of 'Outstanding' officers firstly followed by the officers categorised as 'Very Good'. It is denied that the applicant is entitled to the reliefs claimed.

4. During the course of submissions, it was not disputed that the applicant had earlier filed OA No.264/1986 before the Hyderabad Bench of this Tribunal. The question to be considered by the Hyderabad Bench was as to whether the applicant who is a regular Assistant Engineer attached to the Central Water Power Commission and who was promoted as Assistant Executive Engineer on an ad hoc basis with effect from 14.7.1980 could be ignored when regular selections were made in the year 1982. The case of the applicant was rejected holding that he had been considered and his case was rejected in this regard. While dismissing the claim of the applicant, it was held:-

"3. On the basis of the Counter filed, it is clear that the applicant had filed this application under the mis-apprehension that he was not considered for the selection held in 1982. By way of reply affidavit he has sought to raise other contentions namely that the D.P.C. ought to have selected him for inclusion in the 1982 panel, that the D.P.C. should have met every year in 1981 and 1983 apart from 1982 and 1984 and he should have been included in the panel in those years.

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These are not matters forming the subject matter of relief as prayed for by the applicant in his application. The only relief claimed by him is his right to be considered for inclusion in the panel drawn up in the year 1982. The Counter and the record produced disclose that he was considered but not selected. The applicant has thus not made out any case for grant of the relief as prayed for and accordingly his application is dismissed, but in the circumstances without costs."

Having, in this process, filed the earlier application and not succeeding, it is too late in the day for the applicant to re-agitate the same claim couched in a different language. Therefore, the same claim about his having been ignored in the year 1982 cannot be made the subject matter of a fresh controversy. Having filed the application earlier and not succeeding, he cannot be permitted to raise the same plea.

5. There is another way of looking at the same matter. The applicant had been ignored for promotion in the year 1982. In so many words, he did not claim the relief that he was entitled to be so considered. Irrespective of that, even if he had claimed the relief, it would be barred by time. In a roundabout manner, the same relief cannot be permitted to be re-claimed in this process which in any case would be barred by time.

6. However, the learned counsel for the applicant contended that in this regard, the instructions that have been issued by the Government, only require the adverse entries to be

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communicated and that even if the applicant did not come up to the bench-mark but there was no adverse entry, the same should also be so communicated and that it requires to be modified. He had drawn our attention towards the instructions of the Government of India vide Office Memorandum No.21011/1/77-Est.dated the 30th January, 1978 which clearly provide that all adverse entries in the confidential report of the Government servant should be communicated along with good points.

7. So far there is not controversy in this regard because the confidential report is an important document. It provides vital inputs for assessing the performance of an officer and for his further advancement in the career. It can also be used as a tool to convey to the officer, his performance so that he can improve upon it. The Bangalore Bench of this Tribunal in OA No.568/1993 in the case **Smt.G.Chankamalam v. Union of India & ors.** decided on 31.12.1997 had gone into this controversy and observed:-

" There is another aspect of this matter also. The Govt. of India has made 'Very Good' as the bench mark, and have also stated that if there are not sufficient number available, the post may be kept vacant. In point of fact, this is actually a superfluous provision as the working of the cadres and the grading also get adjusted for getting sufficient number within the zone of consideration itself so that normal 'Good' C.Rs get even otherwise left out, bench mark or no bench mark. Hence the utility of retaining a para 6.3.1(iv) needs review by Govt. If the fact of adverseness in the promotion prospects were to be the criterion,

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in the cadres for which Good is the bench mark by the same logic, the average would have also to be communicated which has specifically been stated as to be not the intention, in view of the instructions reproduced above."

These observations have been made after relying upon a 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 in which the Supreme Court 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 obligate 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."

We would have gone into further discussions in this regard but it becomes unnecessary because of the decision rendered in the case of **Union of India & ors. Vs. M.S.Preet & anr.** in Civil Writ Petition No.13024/CAT/2002 decided on 22.11.2002 by the Punjab and Haryana High Court. In the cited case, the plea of Shri M.S.Preet, the 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

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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 (supra) 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 ignored because the same had not been communicated. The Punjab and Haryana High Court held that this was the ratio deci dendi of the decision of the Supreme Court in the case of U.P.Jal Nigam (supra) and it was not because of he downgrading of the Annual Confidential Reports. The observations made by the said court are:-

"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

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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.

8. In that view of the matter, necessarily it must follow that unless it was the plea of the applicant that his Confidential Report has been downgraded, he could not take advantage of the decision of the Supreme Court in the case of U.P.Jal Nigam (supra). It is not even asserted by the applicant in this regard and, therefore, his contention in this regard must fail. Keeping in view the above finding, the hypothetical plea raised by the applicant that he must be communicated all the confidential dossiers as indicated above becomes insignificant.

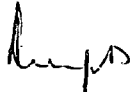
9. As a result of these reasons, the plea of

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the applicant must fail and accordingly the application is dismissed. No costs.

Announced.



(A.P. Nagrath)
Member (A)

/sns/



(V.S. Aggarwal)
Chairman