

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2117/2001

This the 8th day of July, 2004

HON'BLE JUSTICE SH. V.S. AGGARWAL, CHAIRMAN
HON'BLE SH. S.A. SINGH, MEMBER (A)

Nand Kumar
Office of the Principal
Controller of Defence Accounts,
"G" Block, New Delhi.
(By advocate: Shri S.D. Raturi)

Versus

1. The Secretary,
Ministry of Defence/Finance,
South Block New Delhi-11.
2. Controller General of Defence Accounts
West Block R.K. Puram
New Delhi-66.
3. Principal Controller of Defence Accounts,
"G" Block New Delhi.
... Respondents.
(By Advocate: Shri Bhaskar Bhardwaj)

O R D E R (ORAL)

By Justice Shri V.S. Aggarwal, Chairman

The applicant Nand Kumar is working as Accounts Officer in the office of the Principal Controller of Defence Accounts "G" Block, New Delhi.

2. By virtue of the present application, the applicant seeks a declaration that he is entitled to be considered from 16.4.2001 the date from which his juniors have been promoted and that he should be reconsidered to the post of Senior Accounts Officer by constituting a review Departmental Promotion Committee.

3. Some of the other relevant facts can be delineated. Applicant's claim is that he was promoted as Accounts Officer on 16.6.1997. His juniors were promoted

As Ag e

as Senior Accounts Officer w.e.f. 16.4.2001, ignoring the claim of the applicant. Applicant's plea is that same is not in order and is illegal.

4. Needless to state that in the reply filed by the respondents, the application is being contested.

5. The arguments advanced by applicant's counsel is that the applicant had a good record. There was steep down grading in his confidential report which were not communicated. Therefore, the same should be ignored and the claim of the applicant should be reconsidered.

6. It is not in dispute that the claim of the applicant has been rejected as he was not found fit in the ACR.

7. Respondents' counsel has very fairly made available to us the confidential report of the applicant. It reveals that for the year 1996-97, the applicant had earned "Very Good" and for the next two years, i.e., 1997-98 and 1998-99, it was down graded to "Average", however, the same had not been communicated to the applicant.

8. A Full Bench decision of this Tribunal in OA 555/2001 decided on 16.4.2004 has little application because the question which fell for consideration therein did not pertain to down gradation of the confidential report.

ls Ag

9. In the decision rendered by the Hon'ble Supreme Court in the case of U.P. Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Ors. 1996 (33) ATC 217, the Apex Court held:

"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 downgrading 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 '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 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".

10. This decision of the Supreme Court was followed by the Full Bench of the Delhi High Court in the case of

As Ag

J.S.Garg Vs. Union of India & Ors, 2002 (65) Delhi
Reported Judgements 607 (FB) wherein it is held:

"13. The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to pose unto itself a right question so as to enable it to arrive at a correct finding of fact with a view to give a correct answer. The question which was posed before the learned Tribunal was not that whether the petitioner had been correctly rated by the DPC? The question, as noticed hereinbefore, which arose for consideration before the learned Tribunal as also before us was as to whether having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. (supra), as also Rule 9 of the CPWD Manual the concerned respondents had acted illegally in not communicating his fall in standard. It is now trite that the Court of the Tribunal cannot usurp the jurisdiction of the Statutory Authority but it is also a settled principle of law that the jurisdiction of this Court to exercise its power of judicial review would arise in the event it is found that the concerned authority has, in its decision making process, taken into consideration irrelevant fact not germane for the purpose of deciding the issue or had refused to take into consideration the relevant facts. The learned Tribunal, in our opinion, while holding that having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. the DPC could ignore categorisation, committed a serious error in usurping its jurisdiction. Once such categorisations are ignored, the matter would have been remitted to the DPC for the purpose of consideration of the petitioner's case again ignoring the remarks 'Good' and on the basis of the other available remarks. This position stands settled by various judgments of the Supreme Court."

14. From the aforesaid, it is clear that if there is a down grading of the confidential report, the same should be communicated to the applicant otherwise it cannot be considered against the interest of the applicant.

ls Ag

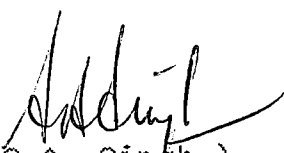
(5)

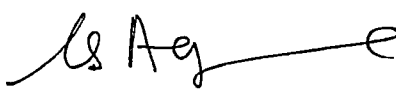
12. We have already reproduced above in brief to the confidential reports of the applicant holding that there is a down grading of the confidential report of the applicant from good to average and the same were not communicated. The same could not be taken for consideration while declaring him unfit for promotion.

13. Keeping in view the facts on record, we allow the present application and direct that:

a) the claim of the applicant should be considered, ignoring the down grading confidential report of the applicant for the years 1997-98 and 1998-99; and

b) the Review Departmental Promotion Committee meeting may be held to reconsider the claim of the applicant in accordance with law.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

/kdr/