

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 283/2001

Date of Decision: 02.4.2002

V.Y. RamamurthyApplicant

(By Shri Gyan Prakash, Advocate)

Versus

Union of India & ORs.....Respondents.

(By Shri Rajiv Bansal, Advocate)

Corum:

Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? YES/NO
2. Whether it needs to be circulated to other Benches of the Tribunal ? YES/NO

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 283/2001

NEW DELHI THIS THE 2nd APRIL 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Sh. V Y Ramamurthy
S/o Sh. Amanna Shastri,
R/o 451 Sector 4 RK Puram, New Delhi as Dy. Director
EIA- Directorate Central Water Commission, Sewa Bhawan,
R K Puram, New Delhi

.....Applicant

(By Sh. Gyan Prakash, Advocate)

VERSUS

1. Union of India through
Secretary Min of Water Resources,
Shram Shakti Bhawan,
New Delhi
2. Chairman,
Central Water Commission,
Sewa Bhawan, R K Puram,
New Delhi
3. Secy. Central Water Commission
& Vigilance Officer,
Sewa Bhawan, R K Puram
New Delhi
4. Secy. Deptt. of Personnel, Public Grievances
and North Block, New Delhi
5. Director General,
National Water Development Agency (NWDA)
Community centre, Saket New Delhi

.....Respondents

Bansal
(By Shri Rajeev Bansal, Advocate)

ORDER

Letter No.7/7/2000-CM&V dated 14.11.2000, issued by
the respondents, declining to communicate
unfavourable remarks, unless they are adverse in
nature, is assailed by this order.

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2.

While Sh. Gyan Prakash appeared for the applicant, the respondents case was argued by Sh. Rajeev Bansal.

3.

The applicant is a Dy. Director (Ex. Engineer) in Central Water Commission since 7.9.93. For the post of Director / Suptdg. Engineer, five years regular service, in the Junior Cadre is the required minimum. Applicant's rank in the seniority list at Sl No. 457, and those up to 120 have been promoted as Supdtg. Engineers. His request for being posted as Supdtg. Engineer, on deputation did not succeed and some one junior has been selected more. It appeared therefore that he did not achieve the bench mark of 'Very Good', It meant that there was a downgrading in his ACR leaving to his filing this OA. According to the applicant, the respondents have failed to follow the law settled in the case of U P Jal Nigam & Others Vs Prabhat Chandra Jain & Others [1996 SCC (L&S) 579] and they have not adhered to the two basic objectives of writing the ACRs- to assess the performance of the Junior and to improve the same in the best interest of the organisation. His request on 8/6/2000 for communication of the ACR, has been negatived in the impugned order. Hence this O.A.

5.

The grounds raised in the OA are that:

- i) the importance of ACR while considering promotion and regularisation has not been appreciated;
- ii) his apprehension that he has not obtained the requisite bench mark for promotion;
- iii) performance appraisal below the level of accepted Bench mark, and ;

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iv) reluctance of respondents to communicate unsatisfactory entries, below the bench mark, leading to denial of his legitimate promotion on deputation.

5. Following are the reliefs prayed :

- a) The respondents may be directed to communicate immediately those ACR of applicant from 1993 onwards which are below the bench mark of 'Very Good'. Keeping in view the law laid down by Hon'ble Courts an opportunity to the applicant should be given to file a representation if considered necessary by him within a period of one month from the date of receipt of such ACR.
- b) the respondents may be directed not to take into account those ACR, for the future DPC's for the post of Suptd. Engg./Director for which representation has been pending for fund disposal further the respondents may be directed to take final decision on applicants representation within a period of 4 months;
- c) directions may be given to respondent No. 4 to implement the law laid down by Hon'ble Supreme Court and Hon'ble Tribunal in their circular/instruction on ACR;
- d) the respondents may be directed to produce relevant records before Hon'ble Tribunal;
- e) any other relief which Hon. Tribunal may deem fit keeping in view the facts and circumstances of the case.

5. Sh. Gyan Prakash appearing for the applicant states that the applicant has been denied his due promotion, without his being heard or his being given an opportunity to represent against the unfavourable remarks/gradation in the ACR, in spite of the same, has been settled in the decisions of UP Jal Nigam (supra), State of UP Yamuna Shankar Mishra & Another [1997 SCC (L&S)903], as well as Swatantra Singh Vs State of Haryana & Others [1997 SCC (L&S)909]. learned counsel therefore prays for Tribunal's interference to grant him justice.



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6. In the reply filed on behalf of the respondents, reiterated during the hearing by Sh. Rajeev Bansal, learned Counsel, applicant's contentions are hotly contested. They agree that the applicant was not selected as Supdtg Engineer on deputation, but they point out that the applicant has no case. His representation for communicating the remarks in his ACR has been considered but rejected correctly. In terms of Govt of India instructions contained in OM dated 30.1.78 only the entries which are adverse in nature and none others have to be communicated. Respondents have therefore committed nothing irregular. The applicant's reliance on the judgements cited was misplaced as they were in personam and not in rem and did not have application in other cases. Applicant's case deserved dismissal, according to Sh. Bansal.

7. I have carefully considered the matter. The applicant has challenged the reluctance of the respondents to communicate unfavourable remarks in his ACR, which has apparently led to his non-selection as Supdt. Engineer. Respondents, while not disputing the facts, justify their action, holding that only adverse remarks in ACRs have to be communicated, and nothing else. On examination of the issue, I am convinced that the applicant has a case. In Govt. service, career prospects like promotion, selection for deputations^{et.} depend on the performance ^{Appraisal} of an individual.

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which is indicated in the Annual Confidential Reports (ACR).

If the performance appraisal is favourable, such ^{prospects} ~~progress~~ become bright and if it is not so effect is just the opposite. Government has fixed bench marks for elevation in career and any Govt. servant who does not obtain such [^] bench mark is deprived of the advancement in career. It follows therefore that any remark or grading in the performance appraisal report which places an individual below the ^{specified} bench mark for elevation, would have to be treated as adverse and would have to be communicated. Any administration which declines to do so would not be acting as a model employer, ^{but as} ~~and~~ one not interested in the future of the organisation. Performance appraisal is meant both to assess and evaluate the performance and potential of an individual with reference to his utility for the organisation he or she serves and to suggest improvements or to cut off the dead wood. That being the case, ^{by} transparent administration would have to communicate the unfavourable remarks to the person reported upon, so that he/she can explain the position and make sincere attempts to improve himself / herself which is ultimately in the interest of the organisation itself. The catena of decision of the Hon'ble Apex Court in this regard, reiterate and emphasise the above principle UP Jal Nigam & Other Vs Prabhat Chandera Jain & Others decided on 31.1.96. State of UP Vs Yamuna Shankar Mishra & Another, decided on 21.2.97 and Swantantar Singh Vs State of

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Haryana & Others , decided on 3.3.97 (supra) are cases on the point. Besides the decision of the Tribunal Bangalore Bench dated 31.12.97 in O.A. No. 568/93 filed by Smt. G. Chenkamalam has reiterated the above. In Yamuna Shanker Mishra's case it is reiterated that the purpose of ACRs was to enable an employee to improve his performance in public service, in accordance with his fundamental duty to strive towards excellence in all spheres of individual and collective activity. Obviously therefore, if any individual falls short of the above requirement, he/she has to be advised about it. Failure to do so will be a clear administrative failure. That precisely has happened in this case and the respondents plea that the above judgements are only those in personam and not in rem, is indicative of their reluctance to see reason and act properly. Respondents have failed to perform their duty and have to be held accountable for the above.

8. In the result, the OA succeeds and is accordingly allowed. The respondents are directed to communicate within two months from the receipt of the copy of this order to the applicant , the remarks/entries in the

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ACR for the relevant period, which have come in the way of his promotion, and permit him to file representation, if felt needed, and take a decision thereon. If the ultimate decision on the representation is in favour of the applicant, he would be entitled for all consequential benefits in full. No cost.

(Govindan S. Jampi)
Member (A)

Patwal/