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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 2880/2001

New Delhi, this the 8th day of April, 2005

**HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.K. NAIK, MEMBER (A)**

Sh. O.P. Gupta
S/o late Sh. Chander Bhan
R/o Anupam House,
Ram Ganj (Near Mor Kothi),
Railway Road,
Hapur – 245 101 (UP).

...Applicant.

(By Advocate: Shri Shyam Babu)

-versus-

1. Union of India through
Secretary,
Ministry of Consumer Affairs,
Food & Public Distribution,
Department of Food & Public Distribution
Krishi Bhawan,
New Delhi- 110 001.
2. Indian Grain Storage Management &
Research Institute through
Director,
Ministry of Consumer Affairs,
Food & Public Distribution,
Department of Food & Public Distribution,
Post Box No. 10,
Hapur 245 101.
3. Dr. J.L. Srivastava, Ex. Director,
Indian Grain Storage Management &
Research Institute,
R/o 44, Subham Apartmetns,
37, I.P. Extension, Patparganj,
Delhi – 110 092.

...Respondents

(By Advocate: Shri D.S. Mahendru for R-1 & R-2; None for R-3)

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ORDER(ORAL)**Justice V.S. Aggarwal, Chairman:**

Applicant (Shri O.P. Gupta) seeks setting aside of the OMs of 23.07.2001, 18.01.2000, 31.10.2000, 23.01.2001 and 05.09.2002. He further seeks to declare the action of the respondents in denying him the financial upgradation to the next higher scale under the Assured Career Progression Scheme and to direct the respondents to grant financial upgradation to the applicant from 09.08.1999 and to revise his pension and terminal benefits.

2. Some of the relevant facts are that the applicant was appointed as Statistical Officer, on being selected by Union Public Service Commission, w.e.f. 14.02.1978 in the office of Respondent No. 2 (Indian Grain Storage Management and Research Institute). The said Institute is under the control of Respondent No. 1. The applicant held the post till 31.10.2000, when he superannuated. During his term, he did not earn any promotion nor was granted any financial upgradation. On 18.01.2000, he was served with the following adverse remarks:

"i) he did not pay attention to project work. He could complete the remaining portion of the single project in respect of Bihar inspire of being asked to do so vide D.O. Letter dated 23.1.98 & 5.2.99;

ii) his attitude to work is not satisfactory;

iii) the reporting officer does not think that the applicant can handle unforeseen situations of his own."



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3. The applicant made a detailed representation, which did not yield any result. Resultantly, the applicant claims the said relief contending:

- a) his down graded annual confidential reports, which have not been communicated, cannot be read against him and should be ignored;
- b) the adverse remarks are without basis and should be set aside.

4. The respondents contest the present Original Application. They plead that the claim of the applicant for grant of benefit under the Assured Career Progression Scheme was considered by the Committee on 23.08.2002 and 26.08.2002 and on evaluation of his Annual Confidential Reports for the period from 1994-95 to 1998-99, it was found that the performance of the applicant was not upto the mark. However, in order to give the benefit of doubt, it also considered the Annual Confidential Reports for the period 1988-89 till 1999-2000, but overall performance of the applicant during the above period did not meet the benchmark. It is denied that the impugned orders were unconstitutional or that there is any ground to set aside the adverse remarks that have been recorded against the applicant.

5. We have heard the parties' counsel and have seen the relevant records.

6. During the course of submissions it was not in dispute that to earn the benefit of the Assured Career Progression Scheme, the concerned person must meet the benchmark. Admittedly, in the

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present case, the benchmark for the next post in the hierarchy was 'Good'.

7. To keep the sequence of the events complete, it may be mentioned that earlier on 13.5.2002, this Tribunal had directed the respondents to take a final decision in respect of grant of the benefit of the Assured Career Progression Scheme within three months and if the decision is adverse to the applicant, it should be communicated. The applicant shall have the right to seek revival of the Original Application. On re-consideration, the claim of the applicant was rejected. Resultantly, the Original Application was revived. Necessary amendment challenging the said order was also effected.

8. The first and foremost argument advanced was that the uncommunicated adverse entries should not have been read against the applicant.

9. This question had been considered by the Supreme Court in the **U.P.JAL NIGAM & OTHERS v. PRABHAT CHANDRA JAIN AND ORS.**, JT 1996 (1) SC 641:

"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 'good' that may not ordinarily be an adverse

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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 not 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."

The Full Bench of the Delhi High Court in the case of **J.S.GARG v. UNION OF INDIA & OTHERS**, 2002 (65) Delhi Reported Judgments 607 (FB) had also gone into the same controversy and while considering the same question, 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

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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 has 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 categorizations 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."

10. This being the legal position, necessarily one can travel back to the Confidential Reports of the applicant from 1988-89 to 1999-2000.

It gives the following scenario:

"1988-89	Average
1989-90	Above Average
1990-91	Part I (1.4.1990 to 23.7.1990) – Good, Part II (24.7.90 to 31.3.91) (V.Good).
1991-92	(Adverse remarks communicated and expunged).
1992-93	Good.
1993-94	Good
1994-95	Good (Adverse remarks not communicated and not taken into consideration.
1995-96	Good
1996-97	Part I (1.4.1996 to 31.12.1996) – Good. Part II (1.1.97 to 31.3.1997) V. Good.
1997-98	Average
1998-99	Average (Adverse remarks communicated but not expunged.
1999-2000	Average (Shri O.P. Gupta retired on 31.10.2000)"



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11. Normally, we have to take five years' Confidential Reports. It shows that in 1994-95, adverse remarks had not been communicated and had not been taken into consideration. For 1997-98, the adverse remarks had not been communicated and the applicant had been graded as 'Average'. However, it becomes necessary for us to go further into the same because for the next year again adverse remarks had been recorded and communicated. Even if for the year 1997-98, adverse remarks were not to be taken note of still for the next year the adverse remarks had been recorded and communicated. In that view of the matter, the applicant obviously does not meet the benchmark and resultantly, he cannot claim that he is entitled to the benefit of Assured Career Progression Scheme.

12. In that event, the learned counsel highlighted the fact that the adverse entries, that have been recorded, deserve to be set aside. According to the learned counsel, there was no basis for such adverse entries. He urged eloquently drawing our attention to certain facts that the Project file was submitted to the Director on 2.4.1998 with tour programme but Respondent No. 3 did not agree with the said proposal submitted by the applicant and the said file was returned with the remarks "as discussed". Respondent no. 3 had in fact advised the applicant to wait for few months and undertake the project to facilitate the recording of storage date for current year. The applicant had sent a reply to the Memo dated 23.10.1998 on 28.10.1998. It remained pending with Respondent No. 3 till 5.2.1999. The file was returned on 15.1.1999 with a direction to complete the said project with one Assistant only. The applicant had pointed in his proposal that one of the

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earlier Team Member did not submit his tour programme and he seems to be reluctant to go on tour and Respondent no. 3 did not take any action. The requirement was for additional staff, which was not provided. He further argued that Respondent no. 3 had issued Memo dated 5.2.1999 on false and baseless allegations that applicant was directed to proceed on tour on 15.01.1999. The applicant had pointed that 60 villages could not be covered by one person in the remaining period of that financial year. Respondents insisted in following the instructions. In compliance of the same, a tour programme in four phases was submitted but was not approved. It is on the sum total of the facts that it was thus urged that the recording of adverse entries were totally baseless.

13. At the outset, it must be stated that this Tribunal is not sitting as a court of appeal. It is always for the concerned authority, which has judged the work and conduct of the person. In the absence of any malice or prejudice or bias, we find little ground to interfere. The same is absent.

14. The respondents explained that the above project was assigned to the applicant and as per Status Report, the work of the project had to be undertaken by the applicant as Principal Investigator. Statistical Assistant was provided. There was no requirement of any additional equipment/material. The applicant neither initiated nor completed the project within the stipulated period. He could not complete it even after extension was granted. The applicant even did not proceed on tour and was insisting on additional staff. He submitted the tour programme for

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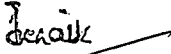
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the month of March, 1999 to July 1999 giving all the work to Gaya Sahai only and nothing for himself.

15. We find that the explanation given by the respondents cannot be ignored. The applicant himself was the Principal Investigator. He has not carried out the instructions nor completed the work. Thus, the contention that adverse remarks are without basis necessarily must be rejected.

16. No other argument was advanced.

17. For these reasons, the Original Application, being without merit, must fail and is dismissed.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

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