

14

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.3457/2001

New Delhi, this the 24th day of September, 2002

*Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)*

Sudershan Singh
C-33, CPWD Trg Inst
Kamla Nehru Nagar
Ghaziabad - 201002 (Ph: 914587978)

..Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

1. Union of India thro'
Secretary, Ministry of Urban
Development & Poverty Alleviation
Nirman Bhawan, New Delhi-11
2. The Director General (Works)
Central Public Works Department
Nirman Bhawan, New Delhi-11
3. The Additional Director General (Trg)
CPWD, E Wing, Nirman Bhawan
New Delhi-11

...Respondents

(By Advocate: Shri Arun Bhardwaj and Shri Bhasker
Bhardwaj)

ORDER

Shri S.A.T. Rizvi:

The applicant, a Junior Engineer (JE) in the CPWD on the civil side cleared AMIE Examination in 1990 which is equivalent to a degree in Civil Engineering. He thus became eligible for promotion to the post of Assistant Engineer (Civil) (AE (C)). On 21.2.1999, he appeared in the Limited Departmental Competitive Examination held by the respondents for promotion of JEs to the post of AE in respect of vacancies relating to 1994-95, 1995-96,

dw

1996-97 and 1998-99. The applicant scored a total of 449 marks in the said examination and in result could not be promoted to the post of AE (C). Hence, the present OA

2. The main contention raised on behalf of the applicant is that his ACR for 1995-96 which was material for the consideration of his claim for promotion was down graded to 'average', but the same was not communicated to him as an adverse remarks. By placing reliance on U. P. Jal Nigam & Others Versus Prabhat Chandra Jain & Others reported in (1996) 2 SCC 363, it has been argued on his behalf that since he was consistently graded as 'very good' during the previous so many years, the grant of 'average' grading to him in respect of 1995-96 would amount to grant of an adverse entry which should have been communicated to enable him to make a representation in the matter. This was ^{not} done and in consequence, he has suffered due to his non-promotion on the basis of the aforesaid examination. The learned counsel appearing on his behalf submitted that in such a situation, the aforesaid ACR for 1995-96 ought to be ignored and the ACR in respect of a previous year taken into account for determining the applicant's grading. It is not in dispute that for the purpose of consideration of the applicant's claim as also the claims of all the others, the respondents have taken into account the ACRs in respect of the four year period starting with 1994-95 which means that the ACR gradings for 1994-95, 1995-96, 1996-97 and 1997-98 were taken

Q

into account for giving marks based on ACR valuation. The applicant's case is that the ACR of 1995-96 should have been ignored and instead the ACR of 1993-94 should have been taken into consideration. According to the learned counsel appearing on the applicant's behalf, if the respondents had done so, the applicant would have succeeded in getting promotion.

3. Since the principle laid down in U. P. Jal Nigam's case (supra) has been invoked in support of the applicant's case, we have found it in order to go through the ACRs of the applicant for a number of years so as to satisfy ourselves whether the principle laid down by the Hon'ble Supreme Court could be successfully invoked in the circumstances of the present case. A perusal of the applicant's ACR shows that he has been consistently graded as 'very good' from 1990-91 to 1994-95, and after an 'average' grading in 1995-96, he has been consistently graded as 'outstanding' for the following three years. Viewed in the context of the gradings given to the applicant in respect of the aforesaid period of ten years, it does seem to us that the grant of 'average' grading for 1995-96 should be looked upon with an amount of suspicion.

4. In U. P. Jal Nigam's case (supra), an extreme variation in grading from 'outstanding' in one year to 'satisfactory' in the succeeding year was looked upon by the Court with suspicion, and it was held that such a

dr

19

down gradation reflects adversely on the work and conduct of the employee and accordingly, the down graded entry should be held to be compulsorily communicable. The Supreme Court went on to say that the reason for such a down gradation must be recorded ~~in~~ ^{✓ the ✓} personal file and the employee must be informed of the change in the form of an advice and if an employee is not informed, the down gradation cannot be sustained. In that case, the down gradation noticed by the Court was from 'outstanding' grade to 'satisfactory' grade. In the case at hand, the down gradation is from 'very good' grade to 'average' grade. In our view, ^{✓ in the background of facts noticed in para 3 above ✓} the down gradation which has taken place in the instant case is of the same order ~~✓ and is quite as sharp ✓~~ as the down gradation noticed by the Supreme Court in U.P. Jal Nigam's case (supra). The ratio of that case can accordingly be invoked to deal with the present case. Thus, if the 'average' grading for 1995-96 is ignored and the same is substituted by 1993-94 ACR entry, which carries a 'very good' grade, the applicant will stand to gain 20 marks. In the circumstances, the total marks obtained by him will become 469 instead of 449 as shown in the additional affidavit filed on behalf of the respondents. The cut-off marks for general category candidates for 1996-97 ^{✓ which is admittedly the year in dispute ✓} vacancies have been fixed at 459 meaning thereby that all those who secured more than 459 marks have been promoted. In fact, the last JE of the general category already promoted had secured 460 marks. But with the marks obtained by the applicant moving up from 449 to 469 as above, he should ^{✓ for 1996-97. ✓} find place in the select panel of AES. As it is, the

2

respondents have committed a mistake in respect of the applicant's ACR for 1994-95 by treating the said ACR as being of 'good' grade. In point of fact, the said ACR is of a 'very good' grade. A perusal of the applicant's ACR for that year confirms this position. This would mean 10 more marks accruing to the applicant on the basis of ACR valuation. The maximum marks accruing to him will, therefore, go up further to a total of 479 marks, making his position still better for promotional purposes.

Ignoring of the ACR^{of} 1995-96 has been stressed by the learned counsel appearing on behalf of the applicant in the context of the settled legal position that an uncommunicated adverse ACR is required to be ignored at the time of assessing an employee's suitability for promotion.

5. The learned counsel appearing on behalf of the respondents has relied on the DOP&T's instructions dated 20.5.1972 placed at A-R-1 which would show that even though 'outstanding', 'very good' and 'good' gradings are considered as favourable, an 'average' grading by itself is not considered as an adverse entry and, therefore, the same need not be communicated to the employee. On a perusal of these instructions, we find that the same contain a 'note of caution' which is to the effect that the reporting officers should as far as possible avoid giving 'average' grading, and this is because the guide-lines issued for the Departmental Promotion Committees generally provide that only those officers should be considered as deserving promotion as are found to be above 'average'. It appears to us that

the aforesaid 'note of caution' has not been kept in view by the reporting authority in respect of the applicant's ACR for 1995-96. Moreover, the aforesaid instructions will have little value in the face of the ratio of the Supreme Court's judgment in the case of U.P. Jal Nigam (supra).

6. For these very reasons, the following instructions issued by the DOP&T for observance by the DPCs will also not assist the respondents' case:-

"(e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in ^{is footing} may be inconsistent with the grading under various parameters or attributes."

Additionally, it is clear from the pleadings of the respondents that the DPC has, in practice, not followed the aforesaid instructions by assessing the officials concerned on a ^{different} ~~footing~~ different from the overall gradings available in the ACRs. We are in fact informed, on the other hand, that the DPC has, at the time of ACR evaluation of each candidate, granted marks mechanically on the basis of norms indicated in the additional affidavit without any variation whatsoever. Thus, 50 marks have been assigned in all cases for an 'outstanding' grading, 40 for a 'very good' grading, 30 for a 'good' grading, 20 for an 'average/satisfactory/fair' grading and 10 for 'poor/below average' grading. In this view of the matter also, the aforementioned instructions cannot be relied upon against the legitimate

2

interest of the applicant in the present case. Accordingly, when it comes to evaluating his ACRs, the respondents will be bound to observe the aforesaid norms precisely in the same manner.

7.  For all the reasons brought out in the preceding paragraphs, the OA succeeds and is allowed. The respondents are directed to hold a review DPC meeting in respect of the year 1996-97 to consider the applicant's case for promotion by keeping in view the observations and directions contained in this order regarding evaluation of his ACRs. While doing so, the respondents will, as directed, ignore his ACR for 1995-96 and instead take into account his ACR for 1993-94 and also correct the mistake they have committed in respect of the overall grading of the applicant's ACR for 1994-95. We direct accordingly. We also direct the respondents to carry out the aforesaid directions in a maximum period of two months from the date of receipt of a copy of this order. If found fit by the review DPC, the orders granting him promotion will also be issued within the same period of two months. 

No costs.


(S.A.T. Rizvi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

/sunil/