

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2389/1999

HON'BLE SHRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

New Delhi, the 21st January, 2000

(8)

M.T. Assudani
Qtr. No.321, Block-18
Lodhi Colony, New Delhi 110 003 ...Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

1. Union of India
Secretary, Ministry of
Urban Development
Nirman Bhawan, New Delhi 110 011
2. The Director General(Works)
Central Public Works Department
Nirman Bhawan, New Delhi 110 011
3. The Secretary
Union Public Service Commission
Shahjahan Road, New Delhi 110 011
4. Mr. P. Gopalakrishnan
Executive Engineer(Civil)
EE(Vigilance), CPWD
Nirman Bhawan, New Delhi ...Respondents

(By Advocate: Shri Harvir Singh, proxy
of Smt. P.K. Gupta)

O R D E R

By Reddy, J. -

The applicant joined Central Public Works Department (CPWD) as a Junior Engineer(Civil) in 1965. He is a diploma holder in Civil Engineering. Under 1954 Rules degree in Engineering was essential for promotion from Assistant Engineer to Executive Engineer. As per Rule 21 of the Central Engineering Service Group 'A' Recruitment Rules, a diploma holder Assistant Engineer is entitled for consideration for regular promotion to Executive Engineer grade provided he is of "outstanding ability and record". The



Recruitment Rules of 1954 have been amended in 1972 and further in 1996.

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2. The Hon'ble Supreme Court in J.N. Goel & Others Vs. R.K. Bhargava & Others (JT 1997 (1) SC 451) held that for the vacancies which arose prior to 1996, the Recruitment Rules of 1954 should be followed. The applicant was considered for promotion on regular basis to the post of Executive Engineer by the DPC during 1996-97. It is also not in dispute that as per the Supreme Court decision in J.N. Goel's case (supra) the relevant rules which are applicable for promotion to the post of Executive Engineers is of 1954 Rules. As per the 1954 Rules, diploma holder Assistant Engineers of "outstanding ability and record" only are entitled for consideration in relaxation to the educational qualifications, i.e. degree in Engineering.

3. The only contention advanced by Shri Aggarwal, learned counsel for the applicant, is that the applicant was having excellent record of service and is given as his grading "outstanding" in all the relevant ACRs but in one year in 1994-95 there was downgrading entry in his ACR, i.e., a dip in the entry but the same has not been communicated to the applicant. The applicant has not been favourably considered for promotion only on the ground of single downgrading entry in his ACR. It is, therefore, contended by the learned counsel for the applicant that the sudden downgrading had an adverse effect in the applicant's ~~career~~ and it



should have been communicated to him. Since it has not been communicated, the consideration of the applicant for promotion has been vitiated.

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4. We have given careful consideration of the arguments advanced by the learned counsel for the applicant. It may be stated at the outset that the CA not applicant has raised this ground in the O.A. nor has given any factual basis on the basis of which this contention could be advanced. However, as no objection has been raised by the respondents and as we find that this argument if accepted would go to the root of the matter, we have allowed him to raise the contention.

5. It is not in dispute that a diploma holder Assistant Engineer is entitled for consideration for promotion provided he satisfied the condition of "outstanding ability and record". The applicant has been considered for promotion but he has not been empanelled by the DPC whereas his juniors have been empanelled and promoted as Executive Engineers. The short question that is in controversy is whether the applicant was having entries of "outstanding" in his ACRs during the relevant years excepting one year where there is downgrading of the entry in his personal file and if so, whether it amounts to an adverse entry which is liable to be communicated to the applicant. In order to satisfy the factual position in the ACR dossier of the applicant, we have called for the ACR dossier of the applicant for the years 1991-92 to 1997-98. As the DPC was held in the

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instant case during 1996-97, we have perused the ACRs of the applicant from the year 1991-92 to 1996-97. For the year 1991-92 the grading was given as "Very Good", whereas for the year 1992-93 and 1993-94 the grading was given as "outstanding" but for the year 1994-95 grading was given as "Fair AE".

6. Learned counsel for the applicant placed reliance upon a judgment U.P. Jal Nigam & Others Vs. Prabhat Chandra Jain and Others (JT 1996(1) SC 641). In that case the first respondent was the employee of the U.P. Jal Nigam. He was downgraded at a certain point of time and the case of the department was that the downgrading of the entry in the confidential reports cannot be termed as an adverse entry so as to obligate the Nigam to communicate the same to the employee. This argument was turned down by the High Court. The Supreme Court upholding the view taken by the High Court held that the High Court was justified in holding that confidential reports being assets of the employee and in a case of recording confidentials it is necessary to record reasons for such downgrading on the file of the officer concerned and communicate him in the form of an advise. The Court added:-

"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.

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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." ✓2

7. The following illustration given by the High Court is quoted in the judgment of the Supreme Court:-

"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 effect him at one or the other stage of his career."

8. In the instant case, the applicant during the relevant year 1992-93 was given the grading of "outstanding". Again in 1993-94 he was also shown as having "outstanding" grading. But for the succeeding year 1994-95 the grading in the confidential report was given as "Fair AE". For the succeeding years from 1995-96 and 1996-97 he was again given an "outstanding" grading. Thus for the year 1994-95 there is a sudden downgrading in his confidential report. It is not in dispute that the applicant has not been communicated the downgrading entry in his confidential report. In view of the ratio of the judgment of the Supreme Court in the U.P. Jal Nigam case (supra), it is to be held that the sudden downgrading of the applicant in his confidential report has an adverse effect in the career of the applicant and it has not been communicated. Thus the ACR for the year 1994-95 is wholly unsustainable. The consideration of his case for promotion to the post of Executive Engineer based upon the confidential report

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for the year 1994-95 is also to be held as vitiated. In the circumstances, we are left with no alternative but to hold that the consideration of the applicant for promotion was irregular and has to be reconsidered ignoring the ACR of 1994-95. The O.A. is accordingly allowed.

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9. We, therefore, direct the respondents to convene a review DPC for the purpose of re-considering the case of the applicant for promotion to the post of regular Executive Engineer, ignoring the ACR for the year 1994-95. This exercise should be completed within a period of three months from the date of receipt of the order.

No order as to costs.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER(A)

sc*

V. Rajagopal Reddy
(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)