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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 456/2000

New Delhi this the 16th day of August, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Shri B.L.Srivastava
S/o late Shri R.L.Srivastava
R/O L-II/42-A, D.D.A. Flats
Kalkaji, New Delhi.

...Applicant

(By Advocate Shri S.K.Gupta)

vs.

1. Union of India
Through Secretary
Ministry of Urban Development
Nirman Bhawan
New Delhi.
2. Director General
Central Public Works Department
Nirman Bhawan
New Delhi.
3. Secretary
U.P.S.C.
Shahjehan Road
New Delhi.
4. Arun Kumar Tyagi
5. C.Murali
6. Inderjeet Dutta
7. Sh.G.S.Monga
8. Ramakant Prasad
9. Iqbal Singh

(Respondent Nos.4 to 9 through
Director-General, C.P.W.D
Nirman Bhawan, New Delhi.

... Respondents

(By Shri Rajeev Bansal, Advocate)

O R D E R (ORAL)

Shri V.K. Majotra, Member (A):-

The grievance of the applicant is that he has not been considered for promotion to the post of Architect in accordance with rules and his juniors

have been promoted vide order dated 15.3.2000, Annexure A-1. Applicant was promoted to the post of Assistant Architect in the scale of Rs.2000-3500 with effect from 17.11.1987 vide order dated 13.11.1987, Annexure A-2. The next promotional avenue available to the applicant is the post of Architect in the grade of Rs.3000-4500 (unrevised) and Rs.10,000-15200 (revised). The post of Architect is filled up in quota of 50% from Deputy Architects with 4 years' regular service and remaining 50% from the post of Assistant Architects with 8 years' service in the grade. As per Annexure A-4 which are guidelines for Departmental Promotion Committees issued by the Department of Personnel & Training vide Memorandum dated 27.3.1997, 8 years' service record has to be assessed if a person is otherwise eligible in terms of the recruitment rules and the post is a selection post. The minimum bench mark for Group 'A' post is 'Good'. Since the applicant has been holding the post of Assistant Architect regularly since 30.1.1990, he was eligible for consideration for the post of Architect. His representation of 15.3.2000 for promotion to the post of Architect has been rejected by the respondents. The applicant has placed reliance on the ratio in the case of U.P.Jal Nigam & Others v. Prabhat Chandra Jain & Others, 1996(1) SLR 743 contending that if some reports below good are given though not required to be communicated under the rules, namely the 'Average' reports then 'Average' assumes the role of 'Adverse' report, and thus it becomes necessary to communicate the adverse reports even if they are 'Average' or 'Good' and in the instant case as nothing has been communicated and also

no Memo for improving the performance was ever given to the applicant, the supersession of the applicant is bad in law. The applicant has sought to quash and set aside the impugned order at Annexure A-1 to the extent it is applicable to respondent Nos.4 to 9 and a direction to the respondents to hold a review DPC to consider his case for promotion to the post of Architect and if he is found suitable then promote him from the date when his immediate junior was given promotion with all consequential benefits.

2. As per the counter of the respondents, the DPC was held in UPSC on 1.2.2000 for 10 posts of Architect belonging to Assistant Architect quota and the names of all the 14 eligible candidates were considered. As per directions of the Tribunal in OA No.1847/99, the name of one more candidate was also considered. The applicant's name was at Sl.No.6 in the seniority list of Assistant Architects considered by the DPC for promotion to the post of Architect. After assessment of service record of the applicant, DPC graded him as 'Good' for the year 1998-99 while his juniors, who were graded as 'Very Good' in the same year were empanelled. Therefore, the applicant could not be empanelled on account of his own service record and his juniors with comparatively better service record have been empanelled by the UPSC. The respondents have contended that there is no reason to communicate the ACRs which are below the bench mark 'Very Good' unless adverse remarks are recorded therein. The applicant has filed a rejoinder affidavit.

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3. We have heard the learned counsel for the applicant and gone through the records available in the case carefully. The learned counsel for the applicant has drawn our attention to the instructions contained in para 9 of the CPWD Service Manual-1992 which read as follows:-

"Apart from the adverse remarks in the confidential reports, in case it is noticed at any time that there is a fall in the standards of an officer in relation to his past performances as revealed through the assessment, his attention should be drawn to this fact so that he can be alerted for improving his performance and does not suffer in his service prospects without knowing about the deterioration in his performance."

He has further relied on the ratio in the case of U.P.Jal Nigam (supra). The Hon'ble Supreme Court has dismissed the special leave petition holding as under:-

"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 aduerseness 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 of 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 periously 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."

4. We have also gone through the ACRs of the applicant which were produced for our perusal and find that during 1992-93, the applicant has been graded as 'Very Good' both by the reporting and the reviewing authorities. However, during 1993-94 and 1994-95, the applicant has been accorded as 'Good' grading. Thus there was a down grading in the ACRs of the applicant for the years 1993-94 and 1994-95. During the year 1998-99 also there was a fall in the grading from the 'Very Good' recorded during 1997-98. In view of the ratio of the judgement of the Supreme Court in the case of U.P. Jal Nigam (supra) when in view of the criteria of promotion for the post of Architect down grading from the 'Very Good' grading has an adverse effect on the career of the applicant, it had to be communicated to him which was not done in the present case. Similarly during 1995-96 whereas the reporting officer has graded the applicant as "Outstanding", the reviewing officer has categorised him as 'Very Good' and the accepting authority has down graded the entry to 'Good' without assigning any reason. The grading accorded by the accepting authority during 1995-96 is unsustainable when no reasons were assigned for down grading. Thus we are of the view that when

the gradings obtained by the applicant during the years 1993-94, 1994-95 and 1998-99 had not been communicated to the him, it has to be held in view of the ratio of the judgement in the case of U.P. Jal Nigam (supra) that the down grading of the applicant in his ACRs had an adverse effect on his career the same having not been communicated to him.. Thus ACRs for the years 1993-94, 1994-95 and 1998-99 are wholly unsustainable. Consideration of his case for promotion to the post of Architect based on the aforesaid ACRs has to be held as vitiated. In the circumstances, we are left with no alternative but to hold that non consideration of the applicant for promotion was irregular and he had to be reconsidered ignoring the ACRs for 1993-94, 1994-95 and 1998-99 and the remarks of the accepting authority in the ACR for 1995-96.

5. We, therefore, direct the respondents to convene a review DPC for the purpose of reconsidering the case of the applicant for promotion to the post of Architect ignoring the ACRs for 1993-94, 1994-95 and 1998-99 and the remarks of the accepting authority in the ACR for 1995-96. The applicant's claim for promotion to the post of Architect may be considered in the above terms within a period of three months from the date of receipt of this order as per rules and relevant instructions on the subject. In this manner, if he is found fit for promotion, he may be promoted as Architect with effect from the date his immediate junior was promoted with consequential benefits.

6. Present OA is allowed in the aforesaid terms. In the circumstances of the case, there will be no order as to costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Ashok Agarwal

(Ashok Agarwal)
Chairman

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