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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. Nos.:

Date of decision: 10.7.1992

1. OA-1359/89
2. OA- 838/92

Shri J.S. Pande Applicant

Versus

Union of India through Respondents
Foreign Secretary,
Ministry of External
Affairs

For the Applicant In person

For the Respondents Shri N.S. Mehta, Advocate

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed
to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGMENT
(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

As the issues raised in these two applications are
inter-connected, it is proposed to deal with them in a
common judgement.

2. The applicant belongs to the Indian Foreign Service
and is presently working as Deputy Secretary in the Ministry
of External Affairs, New Delhi. His grievance is that he has
not been promoted as Director from the due date though many
of his juniors have been so promoted.

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3. When OA-1359/89 came up for hearing, it transpired that the adverse remarks contained in the confidential reports of the applicant for the period 1.1.1984 to 22.4.1985 had some bearing on the question of his promotion, though he had not specifically sought for expunging the same. OA-838/92 was filed thereafter, wherein he has asked for expunction of the aforesaid adverse remarks. He has also prayed that an entry in the A.C.R. of Shri Ranjit Sethi, former High Commissioner of India to Kuala Lumpur be directed to be entered to the effect that he did not exercise due care and attention in recording the confidential reports of the applicant while the applicant was working as First Secretary, High Commission of India, Kuala Lumpur, at the relevant time.

4. We have gone through the records of the case carefully and have heard the applicant in person and Shri N.S. Mehta, the learned counsel for the respondents.

5. The applicant is a direct recruit to the Indian Foreign Service. He was promoted to the senior scale w.e.f. 18.12.1978. He was passed over for promotion from Deputy Secretary to Director in 1987 and 1988. The applicant has contended that according to his information, the D.P.C. had cleared his case for promotion in 1987 but his name was excluded from the panel by the

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Appointments Committee of the Cabinet (A.C.C.). The D.P.C. which met in 1988, did not clear his name for promotion. He has challenged the above decision of the A.C.C. in 1987 and that of the D.P.C. in 1988. He has relied upon the O.M. dated 9.12.1987 issued by the Department of Personnel & Training on the subject of grant of Selection Grade in Group 'A' services. According to the said O.M., it is not necessary to grade the officers for appointment to Selection Grade as 'Outstanding' or 'Very Good' or to give consideration to all officers within the prescribed zone, as is done in the case of promotion on selection method. The Selection Grade in Group 'A' Central Services is, according to the said O.M., a 'Non-functional Selection Grade'. Accordingly, appointment to Selection Grade may be made according to the seniority based on suitability, taking into account the following factors:-

- (a) Overall performance;
- (b) Experience; and
- (c) Any other related matter.

6. The contention of the respondents is that promotion to the rank of Director is made by the D.P.C. on the basis of an overall assessment and experience of the officer and his suitability for promotion. The D.P.C. takes into

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account not only the overall grading given by the Reporting/Reviewing Officer and any adverse remarks but also every attribute of the officer brought in the confidential reports. They have also contended that it is the Government's prerogative to accept or reject part or all of the recommendations of the O.P.C. based on their judgement.

7. In our opinion, the O.M. issued by the Department of Personnel & Training on 9.12.1987 regarding the grant of Selection Grade will not be applicable to the instant case. The officers of the Indian Foreign Service are governed by the Indian Foreign Service (Recruitment, Cadre, Seniority & Promotion) Rules, 1961 which came into force w.e.f. 1.4.1962. Rule 12 of the said Rules which deals with appointments and promotions of super-time scale posts, reads as follows:-

"12. Appointments and promotions of super-time scale posts - (1) Except as provided in rule 9, there shall be no direct recruitment to Grade IV or any higher Grade of the Service.

(2) Promotions to Grades I, II, and III of the Service shall be made on merit from among members of the Service holding posts in the next lower grade.

(3) Promotions to Grade IV shall be made by selection on merit from among officers of the Service in the senior scale:

Provided that where a member of any other service is holding a cadre post in the senior scale of the Service under sub-rule (1) of sub-rule (3) of rule 10, the Central Government may promote the officer to hold a Grade IV post of the Service."

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8. In the instant case, we are concerned with promotion to Grade IV (Director). Promotion shall be made by selection on merit from among officers of the Service in the senior scale.

9. According to the Recruitment Rules extracted above, promotion to Grade IV of the I.F.S. is not a 'Non-functional Selection Grade' as in other ministries/departments of the Government of India. According to the Rules, the promotion is to be made by selection on merit. The applicant has only a right to be considered for promotion. The respondents have done this. The A.C.C. is the competent authority to consider the suitability of an officer for empanelment/promotion. The competent authority did not find the applicant suitable for promotion to the post of Director. The Tribunal also cannot interfere with the assessment made by the D.P.C. in regard to the suitability of the applicant, specially when no mala fides have been attributed to the members of the D.P.C. which consisted of high ranking officers of the Government.

10. The applicant relied upon the decision of the Ahmedabad Bench of this Tribunal in P.L. Khandelwal Vs. Union of India & Others, 1991 (2) CAT 100 in support of his contentions. In our opinion, the decision in Khandelwal's case is clearly distinguishable as in the instant case, the matter is governed by the relevant recruitment rules, mentioned above.

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11. We may now consider the relief sought in DA-838/92. The adverse remarks which were communicated to the applicant, stated that while his working has been appreciated, the High Commissioner in Kuala Lumpur had stated as follows:-

- "i) Your temperament was introverted at time.
- ii) You had to be directed to take initiative and ingenuity.
- iii) You were somewhat withdrawn for your sociability and standard of living.
- iv) You did little real reporting and you need to do more to expand scope of reports."

12. The applicant has challenged the validity of the aforesaid remarks on a variety of grounds. He has stated that the above remarks are vague, misconceived and misconstrued and were not based on any material. He has also alleged unfairness and bias on the part of the Reporting Officer.

13. The High Commissioner who has given the above adverse remarks, was on the spot at Kuala Lumpur and had watched the performance of the applicant during the relevant period. The applicant has alleged bias on the part of the High Commissioner and in order to substantiate this, has referred to some documents attached to the main application. During the hearing of the case, the applicant has drawn our attention to a Telex Message

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sent by the High Commissioner to the Ministry of External Affairs on 9.10.1984 seeking sanction for purchasing three aluminium degchis of 44, 42 and 38 cms. required for the forthcoming festival entertainment. Further, a tava for making 'dosas' and stirring spoons were needed for the same purpose. He had sought for the approval for incurring the expenditure for the same. The High Commissioner had stated in the Telex that serviceable utensils of this size were not available at his residence. Similarly, in connection with the programme arranged for Zubin Mehta at Kuala Lumpur, the High Commissioner had sent another telex message ^{9.8.84} ~~wherein~~ he had proposed to arrange a post-Concert Supper in his honour. He has sought for the views of the Ministry of External Affairs if a hot curry would be suitable or acceptable at that time.

14. The applicant also relied upon numerous decisions in support of his contention that the adverse remarks are liable to be expunged. The learned counsel for the respondents also relied upon some rulings in support of his contention. We have duly considered them.

* Rulings relied upon by the Applicant:

1990 (2) ATC 302; 1990 (2) ATC 145; 1988 (6) ATC 666; 1991 (15) ATC 586; 1991 (16) ATC 177; 1991 (16) ATC 101; A.T.R. 1988 (1) CAT 145.

** Rulings relied upon by the learned counsel for Respondents A.T.R. 1987 (1) CAT 638; A.I.R. 1991 (SC) 1216.

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15. In Union of India Vs. E.G. Nambudiri, 1991 (1) SCALE, 783, the Supreme Court has held that in the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries, the competent authority is not under any obligation to record reasons, but the competent authority has no licence to act arbitrarily, he must act in a fair and just manner.

16. In Amar Kant Choudhary Vs. State of Bihar, 1984 S.C.C. (L&S) 173 at 178, the Supreme Court has made some observations regarding the system of maintenance of confidential reports and the need for its review by the Government. It was observed that "suspensions, adverse remarks in confidential rolls and frequent transfers from one place to another are ordered or made many a time without justification and without giving a reasonable opportunity to the officer concerned and such actions surely result in the demoralisation of the Services. Courts can give very little relief in such cases. The Executive itself should, therefore, devise effective means to mitigate the hardship caused to the officers who are subjected to such treatment. These questions require to be examined afresh in the light of the experience gained in recent years and solutions should

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be found to eliminate, as far as possible, complaints against misuse of these powers by official superiors who may not be well disposed towards the officer against whom such action is taken. It is needless to state that a non-disgruntled bureaucracy adds to the efficiency of administration."

17. After the judgement of the Supreme Court in A.K. Choudhary's case, the Department of Personnel have devised a revised form for writing confidential reports. Even these may not be foolproof but in the absence of any other better system of recording the assessment of performance of officers, the confidential reports continue to have relevance in the matter of promotion and the like.

18. In the instant case, the adverse remarks communicated to the applicant cannot be said to be vague or irrelevant, having regard to the fact that the applicant belongs to the Indian Foreign Service the members of which have to maintain certain norms and etiquettes while posted at the Headquarters or abroad. Not being an introvert, taking initiative and ingenuity, being sociable, etc., on which the Reporting Officer has made remarks, cannot be said to be irrelevant or vague. The applicant has not been able to substantiate the allegations of bias and mala fides on the part of the Reporting Officer.

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19. As regards the Telex messages sent by the Reporting Officer to the Ministry of External Affairs asking for their views in some matters, we do not wish to express any views. It is for the competent authorities to take a view about these matters and take such action as they may deem fit and proper.

20. In the conspectus of the facts and circumstances of the case, we are of the opinion that the applicant is not entitled to the reliefs sought in OA-1359/89 and OA-838/92. At the same time, we make it clear that nothing stated herein would preclude the respondents from considering the case of the applicant for promotion to the post of Director or in utilising his services appropriately. The applicant argued his case in person before us and we were impressed by his presentation of the case.

21. Let a copy of this order be placed in both the case files. There will be no order as to costs.

B.N.Dhundiyal
(B.N. Dhundiyal) 10/7/92
Administrative Member

Amrit
10/7/92
(P.K. Kartha)
Vice-Chairman (Judl.)