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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2264/2004

New Delhi, this the 7th day of July, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)**

Sh. Charan Pal Singh
S/o Shri Mukhtiar Singh
Presently residing at – S-M-103,
Shastri Nagar
Ghaziabad (U.P.). ... Applicant

(By Advocate: Sh. S.K. Gupta)

Versus

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. ... Respondents

(By Advocate: Sh. N.S.Dalal)

O R D E R (Oral)

By Mr. Justice V.S.Aggarwal:

Applicant (Charan Pal Singh) joined the office of respondents as Junior Engineer on 9.11.1977. On 9.8.1999, the Government of India introduced the Assured Career Progression Scheme (for short 'ACP Scheme'). It was to provide two financial upgradations for those who have completed 12 and 24 years of regular service. The same had to be provided as per the hierarchy where there was no stagnation. The applicant had earned one promotion of Assistant Engineer. He completed 24 years of service. His grievance is that

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he has been denied the second ACP Scheme benefit and has wrongly been declared unfit.

2. The application has been contested. It is pleaded that the applicant has no right to claim such benefit under the ACP Scheme. He has only a right of being considered. On consideration of the Annual Confidential Reports of the applicant, he was found unfit. The benchmark is stated to be 'Good' for promotion. The Screening Committee keeping in view the same, had considered suitable officers but the applicant was not found suitable. It has further been pleaded that the DPC, for promotion to the grade of Assistant Engineer, had considered the applicant for promotion in the vacancies of the year 2002-2003 whereas another DPC (Screening Committee) had considered the applicant for ACP Scheme benefit with effect from 16.12.2001. Thus two cases were considered separately. The applicant was promoted but was not found suitable for ACP Scheme benefit.

3. We have heard the parties' counsel and have seen the relevant record.

4. A copy of the ACP Scheme has been placed on the record along with the conditions for grant of the benefit. Paragraph 6 of the remarks reads:

"6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designation, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP

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Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme."

5. In this process, a person has to meet the benchmark, etc for grant of financial upgradation as would be required in case of promotions.

6. The respondents' counsel had made available to us the ACR dossiers of the applicant. It gives the following scenario:

1995-96	Very Good
1996-97	Very Good
1997-98	Average
1.4.98 to 20.8.98	Average
21.8.98 to 31.3.99	Average
1999-2000	Very Good
1.04.2000 to 26.7.2000	Very Good
27.7.2000 to 31.3.2001	Very Good

7. It is on the strength of the same that it was contended that the applicant had earned two average reports for the two years and, therefore, was not found suitable.

8. However, our attention was drawn towards the decision of the Supreme Court in the case of **U.P.JAL NIGAM & OTHERS v.**

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PRABHAT CHANDRA JAIN AND ORS., JT 1996 (1) SC 641. The

Supreme Court held:

“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 not 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 aduerseness 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.”

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9. In the present case, it is obvious that there is a steep fall in the ACRs which have not been communicated. When the criteria for grant of benefit under the ACP Scheme also is the same, i.e., to meet the bench mark as in the case of promotions, we find no reason as to why the same principle should not be made applicable herein. Since the ACRs had not been communicated, they could well be ignored.

10. There is another way of looking at the matter. In the counter reply, it had been admitted that the claim of the applicant was considered for promotion to the vacancies of the year 2002-2003 for the post of Assistant Engineer (Civil). The DPC took place and the applicant had been found suitable.

11. Strangely, while considering the same ACRs, the Screening Committee did not approve the applicant. It was only a few months earlier i.e. with effect from 16.12.2001. The two contentions indeed do not reconcile. Ordinarily, in all fairness, this could well have been avoided. Further opinion need not be expressed because it is for the authorities to consider the said question.

12. For these reasons, we allow the present application and direct that the claim of the applicant may be reconsidered in the light of the findings recorded above.

Naik
(S.K.Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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