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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2336/2004

New Delhi this the 1st February, 2005

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER(A)

R.B.Bansal Staff No.8081,
General Manager,
O/o Chief General Manager,
Rajasthan Telecom Circle,
Jainpur.
(By Advocate: Shri G.S.Lobana)

...Applicant.

Versus

1. Union of India through
Secretary, Department of Telecommunication,
Sanchar Bhawan, Ashoka Road,
New Delhi-110001.
 2. The Chairman, Union Public Service Commission,
Dholpur House, New Delhi-110001.
 3. Shri Sheetla Prasad, Staff No.8083
General Manager TD,
BSNL, Company Bagh,
Muzaffar Pur-248001.
 4. Shri G.P.Srivastava, Staff No.8085
General Manager, MTNL,
Laxmi Nagar, DDA Market,
Preet Vihar, Delhi-110092.
 5. Shri Charu Krishna, Staff No.8086
GM(OP) MTNL Telephone House,
10th Floor Veer Savarkar Marg,
Dadar West Mumbai-400028.
- ...Respondents
- (By advocate: Shri Duli Chand, official respondents
None for the private respondents)

ORDER (ORAL)

By Shri Justice V.S.Aggarwal, Chairman

Applicant (R.B.Bansal) belongs to Indian Telecommunication Service Group 'A' (for short ITS) Group 'A'). He was recruited directly through Union Public Service Commission Engineering Services Examination. He had been promoted to Senior Time Scale. He was given Junior Administrative Grade and thereafter was regularly promoted.

2. The grievance of the applicant is that he has been denied Senior Administrative Grade, ignoring his just claim. He had submitted a representation,

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which had been rejected on 29.9.2003 with the following order:

Subject: Promotion to SAG of ITS Group 'A' -
Case of Shri R.B.Bansal (Staff No.8081) GM, Rajasthan
Telecom Circle.

Sir,

I am directed to refer to your letter No.STA/7-391/GA/07 dated 4.9.2003 on the above subject and to say that case of Shri R.B.Bansal has been examined in this office in detail. In this connection, it is informed that Shri R.B.Bansal was assessed as "unfit" by the DPC held in June/July, 2003. As such, he could not be promoted to SAG of ITS Group 'A'.

The officer may be informed of the position accordingly.

Yours faithfully,

(Dr.Vincent Barla)

Under Secretary to the Govt. of India"

3. By virtue of the present application, he seeks setting aside / quashing of the said order. The main argument advanced is that his Annual Confidential Reports have been downgraded, which was not communicated to him, namely the un-communicated report which is below the bench-mark.

4. The application has been contested.

5. The ~~sub~~ substance and substance of the reply is that the Departmental Promotion Committee had met for awarding Senior Administrative Grade on 30th June, 1st and 2nd July, 2003. The claim of the applicant was considered. He was assessed as 'Unfit' by the Departmental Promotion Committee. Respondents plead that the applicant has no right for promotion but he has only a right to be considered.

6. This question had been considered by the Supreme Court in the case of U.P.Jal Nigam and Others v. Prabhat Chandra Jain and Ors., JT 1996 (1) SC 641:

"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 adverseness 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 by an adverse entry since both are a positive grading. All what is required by the Authority recording

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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 be 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 adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasized 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".

The Full Bench of the Delhi High Court in the case of J.S. Garg v. Union of India and Others 2002 (65) Delhi reported Judgments 607 (FB) had also gone into the same controversy and while considering the same question, held:

"13. The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to pose unto itself a right question so as to enable it to arrive at a correct finding of fact with a view to give a correct answer. The question which was posed before the learned Tribunal was not that whether the petitioner had been correctly rated by the DPC? The question, as noticed hereinbefore, which arose for consideration before the learned Tribunal as also before us was as to whether having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. (supra), as also Rule 9 of the CPWD Manual the concerned respondents had acted illegally in not communicating his 'fall in standard'. It is now trite that the Court of the Tribunal cannot usurp the jurisdiction of the Statutory Authority but it is also a settled principle of law that the jurisdiction of this Court to exercise its power of judicial review would arise in the event it is found that the concerned authority has, in its decision making process, taken into consideration irrelevant fact not germane for the purpose of deciding the issue or has refused to take into consideration the relevant facts. The learned Tribunal, in our opinion, while holding that having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. the DPC could ignore categorizations are ignored, the matter would have been remitted to the DPC for the purpose of consideration of the petitioner's case again ignoring the remarks 'Good' and on the basis of the other available remarks. This position stands settled by various judgements of the Supreme Court".

7. The respondents have made available to us the photocopies of the Annual

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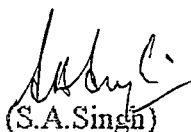
Confidential Reports of the applicant. They give the following scenario:


1997-1998	(01.04.1997 - 08.07.1997)	Very Good
	(09.07.1997 -13.10.1997)	Very Good(Not Reviewed)
	(13.10.1997- 31.03.1998)	Very Good
1998-1999	(01.04.1998-15.07.1998)	Good (Not reviewed)
	(15.07.1998-31.03.1999)	Good
1999-2000	01.04.1999-31.03.2000)	Good
2000-2001	(01.04.2000-24.08.2000)	Good
	(25.08.2000-31.03.2001)	Better than Very Good
2001-2002	(01.04.2001-30.09.2001)	VeryVery Good(not reviewed)
	(01.10.2001-31.03.2002)	Very Good.

8. The above fact clearly shows that the ACRs of the applicant have been graded below the benchmark for certain ^{period} ~~purpose~~. The same were not communicated. Earlier for the year 1997, he has been graded as 'Very Good'. Subsequently he has been downgraded. Admittedly, the same had not communicated to the applicant.

9. Though we do not dispute the right of the Departmental Promotion Committee to adopt its own method and we are conscious of the fact that there is a limited scope for interference but when the DPC while considering the ACRs of the applicant took into consideration those confidential reports which had to be ignored following the ratio of the decision of the Supreme Court in the case of U.P.Jal Nigam (supra) and the decision of Full Bench of the Delhi High Court in J.S.Garg (supra) the impugned order cannot be sustained.

10. Resultantly, we allow the present application and quash the impugned orders. It is directed that a review Departmental Promotion Committee may be held to consider the claim of the applicant in the light of the findings recorded above. Necessary compliance should be done preferably within four months from the date of receipt of the certified copy of the present order.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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