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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2514/2004

This the 30th day of March, 2006.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Smt. Shashi Arora W/O Shri Bharat Bhusan,
R/O H-25, Pratap Nagar,
Delhi.

... Applicant

(By Shri Yogesh Sharma for Shri A.K.Trivedi, Advocate)

versus

1. Indian Council of Medical Research (ICMR)
through its Director General,
Ansari Nagar, New Delhi-110029.
2. Administrative Officer,
Indian Council of Medical Research,
Ansari Nagar, New Delhi-110029.

... Respondents

(By Ms. Nidhi Bisaria, Advocate for M/s Sikri & Co., Advocates)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Applicant was promoted to the post of Assistant on 5.1.1987 and regularized on the post of Assistant w.e.f. 26.3.1991. On 4.8.2003, she was promoted to the post of Section Officer on *ad hoc* basis vide Annexure A-4 dated 14.8.2003. By Annexure A-1 dated 30.4.2004 she was reverted to her original post of Assistant w.e.f. 31.3.2004 on the ground that her name had not been recommended by the DPC for promotion on *ad hoc* basis. Her representation dated 14.5.2004 against her reversion was rejected vide Annexure A-2 dated 1.7.2004 again on the ground that her name had not been recommended by the DPC for promotion to the post of Section Officer on *ad hoc/regular* basis and that



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recommendations of the DPC were approved by the competent authority. By virtue of the present OA, applicant has assailed Annexures A-1 and A-2.

2. The learned counsel of applicant submitted that applicant had never been communicated any adverse remarks in her ACRs till date and that she had submitted her representation in this regard vide Annexure A-6 dated 14.5.2004, yet respondents rejected the representation vide Annexure A-2 dated 1.7.2004 stating that the "DPC did not find her fit for promotion as some of her Confidential Reports were adjudged to be below the benchmark prescribed for the purpose". The learned counsel submitted that if downgrading in the ACRs has the effect of adverse consideration in the matter of promotion, then the ACRs have to be communicated to the concerned but in the present case no such adverse ACRs were communicated to applicant. Thus Annexure A-1 and Annexure A-2 should be quashed and set aside and applicant's case should be reconsidered for promotion to the post of Section Officer with effect from the date her juniors were so promoted by way of convening a review DPC and without taking into account the adverse remarks and downgraded ACRs, if any. In support of his contentions, the learned counsel relied on the following case law:

- (1) Order dated 16.4.2004 in OA No.555/2001 and batch of cases – ***Dr. A.K.Dawar & Ors. v Union of India & Ors.***
- (2) CAT Full Bench order dated 25.5.2004 in OA No.2894/2002 – ***Shyam Lal v Union of India & Ors.***
- (3) Order dated 8.7.2004 in OA No.634/2003 – ***Smt. Ravinder Narang v Union of India & Ors.***
- (4) Order dated 1.3.2005 in WP(C) No.3070/2005 (Delhi High Court) – ***Union of India v Smt. Ravinder Narang.***

3. The learned counsel of respondents on the other hand, stated that applicant was accorded *ad hoc* promotion on the basis of seniority due to delay in conducting regular DPC due to unavoidable circumstances. Her promotion, among others, had been made to avoid monetary loss to the incumbents in the absence of regular DPC. Once the regular DPC was held and applicant not found

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fit by the DPC, she could not be promoted. He further submitted that the DPC did not find her fit for promotion due to her grading being 'average' which is below the benchmark during the years ending 31.3.2001 and 31.3.2002. He further expressed that 'average' grading is not an adverse remark and as such need not be communicated.

4. We have considered the respective contentions of parties and also perused the material on record.

5. In our view, the present case is identical to that of **Shyam Lal** (supra). The grievance in that case was also that downgraded 'average' report had not been communicated. Reliance was placed on the Full Bench of the Delhi High Court in the case of **J.S. Garg v Union of India & Ors.** [2002 (65) Delhi Reported Judgments 607 (FB)], which had considered the issue of non-communication of the downgraded 'average' reports, as also the decision of the Supreme Court in the case of **U.P. Jal Nigam v Prabhat Chandra Jain & Ors.** [1996 (33) ATC 217], and it was held that the uncommunicated downgraded remarks could not have been considered and the same had to be ignored. In that case the CAT Full Bench matter in **Dr. A.K. Datar** (supra) was also referred wherein the Full Bench answered the related reference as under:

"If there is no downgrading of the concerned person in the Annual Confidential Report, in that event, the grading of 'Good' given to the government employee irrespective of the benchmark for the next promotion being 'Very Good' need not be communicated or to be treated as adverse."

6. In **Smt. Ravinder Narang** (supra) the following observations/directions were made:

"12. For the subsequent years there is downgrading which was not communicated.

13. For these reasons, we allow the present application and direct:



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(a) review DPC meeting should be held to consider the claim of the applicant in the light of the findings recorded by us; and

(b) the claim of the applicant should be considered in accordance with rules and if promoted, consequential benefits should be accorded to her.”

7. The Hon’ble High court of Delhi in WP(C) No.3070/2005 filed by the Union of India in the matter of Smt. Ravinder Narang did not find any infirmity in the orders of the Tribunal and dismissed the Writ Petition observing as follows:

“In view of the decision in U.P.Jal Nigam & Others vs. Prabhat Chandra Jain & Others 1996 Vol2 SCC and catena of cases decided by the Supreme Court as well as this Court in Brigadier A.S.Saharan vs. Union of India & Others 2001 Vol 1 SLR 80, Rajinder Singh Sehrawat vs. Union of India & Ors. 2001 Vol59 DRJ 596, J.S.Garg vs. Union of India & Ors. 2002 Vol.100 DLT 177, Balwan Singh vs. Union of India & Ors. 2002 Vol.65 DRJ 464, Major Bahadur vs. Union of India 2003 Vol.103 DLTT 105, it is no more res integra that if down grading has got effect of adverse consideration in the matter of promotion then that ACR has to be communicated to the person concerned. In the case before us the Tribunal in para 10 has observed that the down grading started in the present case from 1996 i.e., after UP Jal Nigam case was pronounced on 31st January, 1996.

We, therefore, do not find any infirmity in the impugned order. The petition is dismissed.”

8. The case law cited above does not leave any doubt whatsoever that uncommunicated downgraded reports cannot be considered by respondents against applicant. The same have to be ignored. The contention of respondents that the ACRs of applicant in the years ending 31.3.2001 and 31.3.2002 were graded as ‘average’ and being below benchmark were not required to be communicated, turns absurd in the teeth of the case law cited above.

9. In result, the OA is allowed and Annexures A-1 and A-2 are quashed and set aside and respondents are directed to conduct a review DPC meeting to consider applicant’s claim ignoring the uncommunicated downgraded reports for the years ending 31.3.2001 and 31.3.2002. In this matter, if applicant is recommended for promotion, consequential benefits such as promotion from the

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date her juniors were promoted with consequential benefits should be accorded to applicant.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
30.3.06
(V. K. Majotra)
Vice-Chairman (A)

/as/