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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2530/2004

M.A. NO.1453/2005

M.A. NO.1601/2005

This the 10/K day of January, 2006

HON'BLE SHRI JUSTICE B. PANIGRAHI, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

P.K.Mehrotra,
4004, Bank Note Press Colony,
Dewas (MP)-455001.

... Applicant

(By Mrs. Jyoti Singh, Advocate)

versus

1. Union of India through
Secretary, Ministry of Finance and
Company Affairs, North Block,
New Delhi-1.
2. Joint Secretary (CC&A),
Govt. of India,
Ministry of Finance and Company Affairs,
North Block,
New Delhi-110001.
3. Additional Secretary (FB, ADB and Ext.Fin),
Ministry of Finance and Company Affairs,
North Block, New Delhi.
4. Secretary,
Department of Economic Affairs,
Ministry of Finance & Company Affairs,
North Block,
New Delhi-1.
5. Shri Sumit Sinha,
Working as Deputy General Manager,
Bank Note Press, Dewas (MP).
6. Chairman,
Union Public Service Commission,
Dholpur House,
New Delhi. ... Respondents

(By Shri Rajeev Bansal, Advocate for Respondents 1 to 5;
Mrs. B. Rana, Advocate for Respondent No.6)

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O R D E R

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

Applicant has assailed his non-selection to the post of Deputy General Manager (DGM) in scale Rs.14300-18300. The process of selection in issue had been initiated vide advertisement dated 12/18.4.2003. It has been averred in the OA that applicant had been working on various Government posts from September, 1972 to April, 2002, whereafter he was appointed on the post of DGM, Bank Note Press, Dewas (Madhya Pradesh) w.e.f. 21.4.2002 on *ad hoc* basis for a period of one year, i.e., up to 20.4.2003. It is claimed that applicant's ACRs up to 1997-98 had been graded as "very good" and there had been no communication to him of any adverse remarks or downgrading. As regards ACRs for the years 1998-99 to 2001-02, again there has been no communication of any adverse remarks or downgrading. In this light, applicant has claimed that he should have been selected on the post of DGM on regular basis. Applicant has sought that the filling up of vacancy of DGM in July, 2003, if done on regular basis, be set aside and quashed. Annexure-K dated 3.9.2004 whereby applicant's representation dated 21.5.2003 for regular appointment to the post of DGM was rejected is also sought to be quashed with a direction to respondents to consider applicant's case for regularisation on the post of DGM after discarding the downgraded ACRs which had not been communicated.

2. Applicant had filed MA No.1453/2005 seeking production of applicant's ACRs for the period 1998-2002 which were considered by the DPC, as also ACRs for the period of five years prior to 1997-98. He had also filed MA No.1601/2005 for preponing the hearing on MA No.1453/2005. It is seen that through MA No.1453/2005 too applicant had sought production by respondents of the records stated in MA No.1601/2005. On 29.11.2005, the learned counsel of respondents had sought time for production of the relevant records as the same were to be brought from Dewas (MP). On 5.1.2006, respondents produced the

CR folders of applicant from 1.1.1979 to 31.3.2003 for perusal of the Court. Pleadings being complete, the case was also finally heard. Thus MA Nos.1453/2005 and 1601/2005 stand disposed of.

3. The learned counsel of applicant contended that prior to 1997-98 applicant's ACRs were graded "very good". From 1998-99 to 2001-02 applicant was never communicated any adverse entries. If there had been any downgrading in the ACRs of applicant for the period 1998-99 to 2001-02, that ought to have been communicated to applicant. In this connection, the learned counsel relied upon the following:

- (1) (1996) 2 SCC 363 ***U.P. Jal Nigam & Ors. v Prabhat Chandra Jain & Ors.;***
- (2) Judgment dated 20.4.2005 in WP(C) 6878-6881/2005 ***Union of India & Ors. v Shivendra Bhatnagar;***
- (3) CAT Full Bench Order dated 16.4.2004 in OA Nos.555/2001 & batch of cases in ***Dr. A.K.Dawar & Ors. v Union of India & Ors.;*** and
- (4) 2005 (9) SCALE 459 ***Union of India & Ors. v Major Bahadur Singh.***

On the basis of these judgments, the learned counsel maintained that the issue of downgrading of ACRs should not be restricted to the period of five years which are considered relevant for purposes of selection but should be extended to a further period of five years prior to the relevant period. Admittedly, in the present case, the relevant period of five years for selection had been from the year 1995-96 to the year 1999-2000. The learned counsel maintained that the question of downgrading of ACRs should be decided on the basis of the grading received by applicant even during the period of five years prior to the aforesaid period.

4. On the other hand, the learned counsel of respondents maintained that the DPC meeting was held on 27.9.2002 in the office of the Union Public Service Commission to consider selection of officers for promotion to the post of DGM in the Bank Note Press, Dewas, against one vacancy pertaining to the year 2001-02.

As per the DPC guidelines the benchmark prescribed for promotion to all posts in pay scale of Rs.12000-16500 and above was "very good" with the stipulation that the officers who are graded as "outstanding" would rank *en bloc* senior to those who are graded as "very good" and placed in the select panel accordingly up to the number of vacancies, officers with the same grading maintaining their *inter se* seniority in the feeder post. These DPC guidelines which permitted supersession in 'Selection' promotion were revised by DOP&T OM dated 8.2.2002. As per the revised DPC guidelines, the DPC has to determine the merit of those being assessed for promotion with reference to the prescribed benchmark and accordingly grade the officers as "fit" or "unfit" only. Only those who are graded "fit", i.e., who meet the prescribed benchmark, by the DPC are to be included and arranged in the select panel in order of their *inter se* seniority in the feeder grade. Those officers who are graded "unfit" in terms of the prescribed benchmark by the DPC are not included in the select panel. Applicant was the only eligible officer in the above DPC which met on 27.9.2002. He was duly considered by the DPC. On the basis of assessment of his ACRs for the relevant years, i.e., from 1995-96 to 1999-2000 for the panel year 2001-02, applicant was assessed by the DPC as "unfit" as he had failed to attain the prescribed benchmark, i.e., "very good" according to the DOP&T's revised guidelines dated 8.2.2002. Applicant was accordingly not recommended for promotion by the DPC.

5. We have considered the respective contentions as also seen the records produced by respondents.

6. ACRs of applicant for the relevant period of five years, i.e., from 1995-96 to 1999-2000, which are relevant for the panel year 2001-02 reveal that applicant had been graded as "very good" for three years and "good" for two years by the reporting officers. However, for all five years, the reviewing officers had graded applicant as "good". The grading accorded by the reporting officer gets superseded by grading granted by the reviewing officer. Thus, applicant had

obtained the grading "good" for all these five years, i.e., from 1995-96 to 1999-2000. The DPC had taken the ACRs for these five years into consideration for the panel year 2001-02 and found the applicant unfit having failed to attain the prescribed benchmark, i.e., "very good".

7. The only issue before us would thus be whether the downgrading in the ACRs has to be restricted to the five years which were relevant for empanelment, or these ACRs should also be related to five years preceding 1995-96, as maintained by the learned counsel of applicant.

8. The case law cited by the learned counsel of applicant does not relate to the proposition that ACRs for the earlier five years than the relevant five years should be taken into consideration for the purpose. In the matter of *U.P. Jal Nigam* (supra) it was brought out that U.P. Jal Nigam rules provided for communication of adverse entry but not of downgrading of an entry. It was held that even in such circumstances, an extreme variation in gradation such as "outstanding" gradation in one year followed by "satisfactory" in the succeeding years may reflect an adverse element compulsorily communicable.

9. In the matter of *Shivendra Bhatnagar* (supra) the issue raised was whether or not any fall in the grading in the ACR of an employee having an effect and impact in the matter of further promotion of the employee should be communicated? If the answer is 'yes' and if the same is not communicated, what would be the consequential effect of the said confidential report on the matter of promotion of the said employee? After considering the Full Bench of Delhi High Court's decision in *J.S. Garg v Union of India & Ors.* [2002 (65) Delhi Reported Judgments 607 (FB)] and *U.P. Jal Nigam* (supra), it was held that it was no more *res integra* that if downgrading has got the effect of adverse consideration in the matter of promotion then that ACR has to be communicated to the person concerned. In the related case there had been a fall in the standard and

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downgrading in the ACRs which were not communicated and as such it was held that downgrading having the effect of adverse consideration in the matter of promotion, has to be communicated to the person concerned. In the event of downgrading having adverse consideration in the matter of promotion, the related ACRs must be communicated to the person concerned.

10. In *Major Bahadur Singh* (supra) the respondent was not empanelled on the basis of overall profile and comparative batch merit. He filed a statutory complaint for setting aside the ACRs of 1988-89 and 1989-90, which was rejected. The Writ Petition was filed praying that he should be assessed afresh by the selection board and for setting aside the ACRs for the years 1988-1990. The High Court held that there was downgrading which was adverse to the respondent which ought to have been communicated. It was held by the Apex Court that *U.P. Jal Nigam*'s case had no universal application. It was intended to be meant only for the employees of U.P. Jal Nigam. The writ petitioner had merely made a grievance of non-communication but the High Court went on to quash the entry for 1988-1990 which was held to be clearly indefensible. The High Court was directed to re-hear the matter and consider the grievance of the writ petitioner. No opinion was expressed on the merits of the case and the matter had been remitted to the High Court for fresh consideration.

11. In *Dr. A.K.Dawar* (supra) the CAT Full Bench considered the question, "Whether the grading of "Good" in the Annual Confidential Report, given to a Government employee, when the grading prescribed in the benchmark is "Very Good" for the next higher promotion post, should be treated necessarily as "adverse" and so required to be communicated to him in accordance with the law and rules". After considering *U.P.Jal Nigam*'s case and a host of other judgments, the reference was answered as follows:

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"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.”

12. Taking stock of various judgments cited above, we reach the inevitable conclusion that if there is no downgrading in the ACRs, the grading of “good” given to the concerned employee irrespective of the benchmark for the next promotion being “very good” need not be communicated or to be treated as adverse. The selection related to the panel year 2001-02. The prescribed benchmark was “very good”. The DPC had taken into consideration the ACRs for the relevant five years, namely, 1995-96 to 1999-2000. If the gradings of applicant in these years are taken into consideration, they were consistently graded as “good” by the reviewing authority. As such, there had been no downgrading of the ACRs in these five years, and applicant had to be graded as “good” and “unfit” for having not attained the benchmark of “very good”. We are not convinced by the contention of the learned counsel of applicant that the grading in these ACRs should be related to the gradings obtained by applicant in five years preceding 1995-96. There is no rationale in this contention nor has this issue been deliberated in case law relied upon. If this rationale is accepted, then in case a person gets an “outstanding” grading in the first year of his service and keeps on obtaining lower gradings in for say the next twenty years, the lower gradings in these twenty years must be communicated and reviewed on representation. It cannot be accepted being unreasonable. The scope of consideration of ACRs to ascertain whether there has been a downgrading has to be restricted to the prescribed number of years records of which are perused by the DPC. Thus, in the present case we have considered the grading obtained by applicant in five years from 1995-96 to 1999-2000, which were relevant for selection for the post of DGM for the panel year 2001-02. Applicant having obtained the grading of “good” at the hands of the reviewing authority during these years, had obviously not attained the benchmark “very good”.

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13. In result, we do not find any infirmity in the non-selection of applicant to the post of Deputy General Manager on the basis of DPC held on 27.9.2002. Accordingly, the OA is dismissed being without merit.

V. K. Majotra
(V. K. Majotra) 10.1.06
Vice-Chairman (A)

B. Panigrahi
(B. Panigrahi)
Chairman

/as/