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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 180/2004

New Delhi this the 23rd day of July, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member (A)

Shri Balkar Singh
S/O Shri Shangara Singh,
Dy. Chief Commercial Manager
(Claims), Northern Railway,
N.D.C.R. Building, New Delhi.

(By Advocate Shri J.P. Singh with Shri Ajit Kumar Pandey) ..Applicant

VERSUS

Union of India : Through

1. The Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway, Baroda House,
New Delhi.
3. Member (Traffic),
Ministry of Railways,
Rail Bhawan, New Delhi.
4. Shri Sushil Kumar
5. Shri Sanjeev Halder
6. Shri Rajender Kumar Meena
7. Shri Ashok Chandra Lathe
8. Shri Anurag
9. Shri Sunil Mathur
10. Shri B.P. Swain
11. Shri Sanantha Raman
12. Shri P.S. Mishra
13. Shri Purushottam Gulia
14. Shri Sarla Balagopal
15. Shri M.N.S. Ray
16. Shri P. K. Sinha
17. Shri Ajit Kumar Jain
18. Shri Yash Vardhan

19. Shri G.C. Ray
20. Shri Rajendra Kumari Soni
21. Shri Rakesh Tripathi
22. Shri G. Laxminarayan
23. Shri B.K.Joshi

. . . Respondents
(By Advocate Shri Rajinder Khatter with Sh.R.N. Singh)

O R D E R (ORAL)

Mr. Justice V.S. Aggarwal, Chairman

The applicant by virtue of the present application seeks quashing of the selection list for promotion from Junior Administrative Grade to Senior Administrative Grade issued by the Joint Secretary, Railway Board dated 29.8.2002 and subsequent list of 31.1.2003 issued by the Joint Secretary, Railway Board, New Delhi ignoring the claim of the applicant.

2. So far as the relief that no further promotion of juniors should be effected during the pendency of the present OA is concerned, the same was not pressed.

3. The dispute is within the narrow compass and, therefore, it becomes unnecessary for us to dwell into all the facts.

4. The short argument advanced has been that there has been down grading of applicant's Annual Confidential Report which had not been communicated to him and, therefore, the same cannot be read against the applicant.



5. Needless to state that the petition has been contested.

6. Before venturing further, it becomes necessary to mention that for promotion from Junior Administrative Grade to Senior Administrative Grade, the benchmark was "Very Good". The respondents had made available to us the proceedings of Departmental Promotion Committee and Annual Confidential Reports of the applicant. The Departmental Promotion Committee found the applicant unfit for promotion.

7. The confidential report of the applicant reveals that for the year 1996, he was adjudged "Very Good" and found fit for promotion. For the year 1997, he was again adjudged "Very Good" and found fit for promotion. In the next year, the record reveals that the confidential reports were treated to be "not written". For the year 1999, ^{and} for the period April 1999 to December 1999 he has been adjudged as "Good" and found fit for promotion. For the period December 1999 to March 2000 no ACRs were written. However, for 2001 he was adjudged as "Very Good" and found fit for promotion. These facts clearly show that for the ACR ending 31.3.1999 and the period upto December 1999 there has been a downgrading of the applicant. The confidential reports of the same have not been communicated.

8. The Supreme Court in the well-known decision rendered in the case of U.P.Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Ors. 1996 (33) ATC 217 held:

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"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 downgrading 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 confidential 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 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 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".

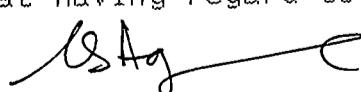
It is abundantly clear without pale of controversy that the Supreme Court was basically deal with a matter where there was a ~~step~~ fall in recording of the confidential reports and otherwise also not only the Supreme Court was concerned with the relevant rules of the U.P.Jal Nigam but the said Court held that if there is a downgrading, in that event, a person who has reached the

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optimum level must be conveyed the same.

9. This decision of the Supreme Court was followed by a Bench of the Guwahati High Court in the case of Donatus Engzanang v. State of Mizoram, 2001 (2) ATJ 467. 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) also took up the matter wherein the Annual Confidential Reports after being 'Very Good' had been downgraded. The judgement of the U.P.Jal Nigam ((supra)) was referred to by the Full Bench and it was held that the uncommunicated downgraded remarks could not have been considered. The Full Bench held:

"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 had refused to take into consideration the relevant facts. The learned Tribunal, in our opinion, while holding that having regard to the decision of



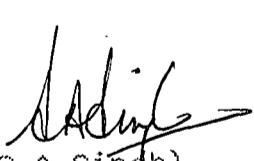
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the Apex Court in U.P.Jal Nigam and Ors. the DPC could ignore categorisation, committed a serious error in usurping its jurisdiction. Once such categorisations are ignored, the matter would have been remitted to the DPC for the purpose of consideration 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 judgments of the Supreme Court."

10. To the same effect is the Single Bench decision of the Delhi High Court in the case of Madhu Bala Dham v. Delhi Development Authority in Civil Writ Petition No.5761/2003, decided in January, 2004.

11. From the aforesaid, it is clear that when there is downgrading of the confidential reports and it is not communicated, the same is necessary to be ignored. We have referred to above in brief the basic fact that there is downgradation in the confidential report of the applicant for the year 1999.

12. As a result, it must be followed that the claim of the applicant requires re-consideration. It is directed that review DPC should be held to consider the claim of the applicant afresh in the light of the findings recorded above. This exercise should be done preferably within four months of the receipt of the certified copy of the present order.


(S.A.Singh)
Member(A)


(V.S.Agarwal)
Chairman

/kdr/