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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2601/2004

with

Original Application No.2818/2004

New Delhi, this the 9th day of August, 2005

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

Original Application No.2601/2004:

Smt. Ved M. Rao
W/o Shri M.K. Mahadev Rao
R/o A-26, Pandara Road
New Delhi - 110 003.

Working as Director
Programme Archives (IPR)
Doordarshan Bhawan
Mandi House
New Delhi.

... Applicant

(By Advocate: Sh. S.Y. Khan)

Versus

Union of India through

1. Secretary
Ministry of Information & Broadcasting
Govt. of India, Shastri Bhawan
New Delhi.

2. Secretary
Union Public Service Commission
Shahjahan Road
New Delhi

3. Chief Executive Officer
Prasar Bharti P.T.I. Building
New Delhi.

4. Director General
Doordarshan
Doordarshan Bhawan
Mandi House
New Delhi.

... Respondents

**(By Advocate: Sh. S.M. Arif, for Respondents 1, 3 and 4 and
None for Respondent No.2)**

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Original Application No.2818/2004:

B.A. Budgami
Chief Producer (Adhoc)
Doordarshan, Srinagar
Working under Secretary
Ministry of I&B, Govt. of India
Shastri Bhawan
New Delhi.

.... Applicant

(By Advocate: Sh. S.Y. Khan)

Versus

1. Secretary
Ministry of Information & Broadcasting
Govt. of India, Shastri Bhawan
New Delhi.
2. Secretary
Union Public Service Commission
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New Delhi
3. Chief Executive Officer
Prasar Bharti P.T.I. Building
New Delhi.
4. Director General
Doordarshan
Doordarshan Bhawan
Mandi House
New Delhi.
5. Smt. Y. Subramaniam
6. Smt. Bani Ghose
7. Ms. Sita Nanda
8. Mr. K.P.Sriniwasan
9. Mr. G.L.Asnani
10. Dr. A.K.Tripathi

C/o D.G. Doordarshan, Private Respondents from 5 to 10 are working under D.G. Doordarshan Mandi House, New Delhi. Copies are to be sent through DG Doordarshan, Mandi House, New Delhi.

... Respondents

(By Advocate: Sh. S.M. Arif, for Respondents 1, 3 and 4 and None for other respondents)

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ORDER

By Mr. Justice V.S. Aggarwal:

By this common order, we propose to dispose of the following applications, namely, **OA No.2601/2004 and OA No.2818/2004**. Since the facts are by and large identical, we are taking the assertions from the case of **Smt. Ved M. Rao**.

2. Applicant seeks quashing of the order of 12.10.2004 and a direction to Respondent No.1 to regularize her in the post of Junior Administrative Grade in the Doordarshan Programme Cadre with effect from the date her juniors have been regularized. It is also claimed that a direction should be issued to the respondents to ignore the uncommunicated Annual Confidential Reports, which are below the 'benchmark'.

3. The applicant's grievance is that no adverse entries had ever been communicated to her. On the contrary, her senior officers have always applauded her work. Her name figures in the seniority list at Sl. No.55 while the persons junior to her were considered and promoted to Senior Administrative Grade on regular basis. She has put in 30 years of service and as referred to above, no adverse entries had ever been communicated. On these broad facts, the above said reliefs are being claimed.

4. The applications have been contested.

5. According to the respondents, as per the Indian Broadcasting (Programme) Service Rules, 1990, the method of recruitment is 'by promotion ^{ie} by Selection'. The applicant was duly considered by the Departmental Promotion Committee



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presided over by the Chairman/Member, Union Public Service Commission but she was not found fit in accordance with the Rules. Since she was not found fit for regular promotion, the competent authority terminated the ad hoc promotion with immediate effect. The respondents' claim is that at best the applicants have a right of consideration. There is no provision to communicate the downgraded Annual Confidential Reports to the concerned officers. Thus, question of ignoring the uncommunicated/downgraded ACRs does not arise.

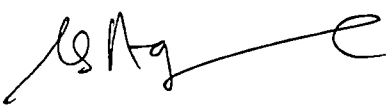
6. We have heard the parties' counsel and have seen the relevant record.

7. The respondents, in all fairness, made available to us the Annual Confidential Reports of the applicants and proceedings of the Departmental Promotion Committee meeting. The ACRs gave the following scenario:

B.A. Budgami	
Year	Remarks
1997-98	Very Good
1998-99	Good
1999-2000	Good
2000-2001	Good
2001-2002	Good

Smt. Ved M. Rao	
Year	Remarks
1998-99	Good
1999-2000	Good
2000-2001	Outstanding
2001-2002	Outstanding
2002-2003	Very Good

8. Admittedly, the benchmark is 'Very Good'.



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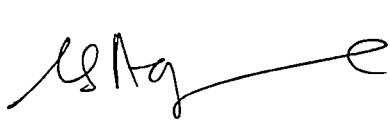
9. It was not in dispute that the downgraded ACRs which were below the benchmark had not been communicated.

10. At this stage, we deem it necessary to mention the decision of the Supreme Court in the case of **NUTAN ARVIND (SMT.) v. UNION OF INDIA AND ANOTHER**, (1996) 2 SCC 488. It had dealt with this question and concluded that when a high-level Committee had considered the respective merits of the candidates and assessed the gradings, there is little scope for judicial interference/review. The findings read:

“6. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference.”

To the same effect is the decision of the Supreme Court in the case of **UNION PUBLIC SERVICE COMMISSION v. H.L. DEV AND ORS.**, AIR 1988 SC 1069. It was held that it is exclusively the function of the Selection Committee to categorize and make assessment of the concerned officers. It is not the function of the Court/Tribunal to hear the matter as if it is an appeal against the same. To that extent, there is no dispute at either end.

11. However, as already referred to above, the benchmark was 'Very Good'. We know that in the case of **U.P. JAL NIGAM &**



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OTHERS v. 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 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 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 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 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.”

12. The Full Bench of the Delhi High Court in the case of

J.S.GARG v. UNION OF INDIA & OTHERS, 2002 (65) Delhi

J.S. Garg

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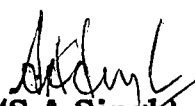
Reported Judgments 607 (FB) had also gone into the same controversy and while relying upon the decision in the case of **U.P. Jal Nigam (supra)**, it was held that in case of downgrading of the Annual Confidential Reports, they must be communicated. Otherwise they have to be ignored.


13. In the present case before us, as already referred to above, the uncommunicated remarks, which were below the benchmark, have been considered. In terms of the decisions referred to above which bind this Tribunal, the same could not have been so considered. Necessarily, it had to be ignored. That has not been done in the present cases.

14. In this view of the matter, we dispose of the present applications in terms of the **Full Bench decision of the Delhi High Court** in the case of **J.S. Garg (supra)** directing:

a) Review Departmental Promotion Committee Meeting should be held to consider the claim of the applicants in accordance with law and as held above.

b) Till then, the applicants shall not be reverted.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/