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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

Original Application No.1159 of 2004

This the 15th day of September, 2011

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN

HON'BLE DR. VEENA CHHOTRAY, MEMBER (A)

M. N. Sridhar Rao, Indian Postal Service,
Junior Administrative Grade,
Department of Posts,
Ministry of communications,
DAK Bhawan, New Delhi-110001.

... Applicant

(By Shri Ashwani Bhardwaj, Advocates)

Versus

1. Union of India through Secretary,
Department of Posts,
Ministry of Communications,
Dak Bhawan, New Delhi-110001.
2. UPSC through its Chairman,
Dholpur House, Shahjahan Road,
New Delhi.
3. Shri A. N. Nanda,
Director Postal Service,
Ranchi, Bihar.
4. Smt. A. Ghosh,
Director Postal Service,
Calcutta.
5. Shri Vineet Pandey,
Joint Director, Postal Staff College,
Ghaziabad, R/o 1482-A,
Sector-B, Pocket-I, Vasant Kunj,
New Delhi-110070.
6. Shri V. Pati, Dy. General Manager,
PLI Directorate, Chanakyapuri,
New Delhi, R/o 608, Asia House,
K.G. Marg, New Delhi-110001.



7. Shri A. P. Singh,
Director, Ministry of Health &
Family Welfare, Nirman Bhawan,
New Delhi.
R/o D-2/232, Vinay Marg,
Chanakyapuri, New Delhi-21.

... Respondents

(By Shri Surender Kumar for official respondents and Ms. B. Rana
for UPSC, Advocates)

ORDER

Justice V. K. Bali, Chairman:

M. N. Sridhar Rao, the applicant herein, has been superseded by four of his juniors. In the context of the pleadings made in this Original Application filed by him under Section 19 of the Administrative Tribunals Act, 1985, he seeks direction to be issued to the respondents to re-compute the number of vacancies from 1990-91 onwards especially for 1994-95 in a proper manner and then to hold review DPC by preparing year-wise accurate extended panels for the total number of vacancies each year. He also seeks direction to be issued to the respondents to correct the irregularities committed by them in respect of his ACRs for four out of five relevant years, i.e., 1989-90, 1990-91, 1991-92 and 1993-94, and then to hold review DPC and award consequential benefits to him. The applicant also seeks quashing of the order dated 2.11.1995 and notification dated 13.11.1995 whereby the applicant was superseded by four junior officers.

2. The applicant, as a prelude to the main pleadings, has given his service credentials which need not be referred as the



same may not have any bearing upon the controversy in issue. Suffice it may, however, to mention that such service credentials of the applicant as given by him do appear to be impressive. It is the case of the applicant that he was shocked to learn that he had not been found fit by the DPCs held in December, 1994 and September, 1995 and had been superseded by four junior officers. The applicant, as per the case set up by him, was in the zone of consideration in both the DPCs, but the DPCs failed to fairly, objectively and correctly assess his merit based on Government instructions on the subject. It is pleaded that the DPCs erred in assessment of the applicant's merit, both in absolute terms and relatively to the other officers who were in the zone of consideration. As per the Government instructions, the following ACRs of the applicant would be relevant for assessment of his merit:

- | | | |
|-------------|-------------|--------------|
| i) 1994-95 | ii) 1993-94 | iii) 1992-93 |
| iv) 1991-92 | v) 1990-91 | vi) 1989-90* |

(*in two parts a) 1.4.1989 to 19.12.1989, b) 20.12.1989 to 23.3.1990)

It is the case of the applicant that as per the recruitment rules of the Indian Postal Service, he became eligible for promotion to the Junior Administrative Grade (JAG) (Rs.3700-50000) w.e.f. 1.10.1994, i.e., upon completion of nine years of service including five years of service in the feeder grade, i.e., in the Senior Time Scale of the Indian Postal Service, and he was, therefore, eligible for

consideration for every DPC which met for promotion to the JAG in respect of vacancies pertaining to the year 1994-95 onwards and to vacancies pertaining to 1993-94 also. DPC met in January/February, 1994 for considering promotion to the JAG possibly against certain vacancies for 1993-94 and 1994-95. The officers of the applicant's batch were considered for promotion in the said DPC. However, following the DPC, for reasons best known to the 1st respondent, only five officers of a senior batch, i.e., 1983 batch were promoted. Thereafter DPC met on 6.12.1994 and 7.12.1994 for considering promotion to the JAG against certain number of vacancies pertaining to the year 1994-95. The applicant was in the zone of consideration. Although three officers of his batch who were senior to him were promoted vide order dated 13.12.1994, no officer junior to him in the zone of consideration was promoted. One officer immediately senior to him in the batch was also not promoted. The applicant had, therefore, in good faith believed till then that his name was not reached having regard to the number of vacancies available. Thereafter DPC was held in September, 1995. The impugned order passed by the 1st respondent dated 2.12.1995 was issued on the basis of the minutes of the said DPC. Four officers junior to the applicant, namely, Smt. A. Ghosh, Shri Vineet Pandey, Shri Vishvapavan Pati and Shri Ashok Pal Singh had been shown at serial numbers 3, 4, 5 and 6 respectively, whereas the name of the applicant though senior to them had been shown below them at serial number 8 of the said order. The applicant also



found from the order dated 2.11.1995 that Shri A. N. Nanda who belongs to the 1982 batch had been shown at serial number 1, while Shri Udaikrishna of 1984 batch had been placed at serial number 2, and the four officers of the 1986 batch (applicant's juniors) and an officer of the 1985 batch (Shri P. K. Bisoi) had been shown. It is the case of the applicant that it appears from these placings that the DPC which met in September, 1995, possibly prepared year-wise panels based on which the order dated 2.11.1995 and notification dated 13.11.1995 were issued, and as the last normal DPC prior to the one held in September, 1995, was held in December, 1994 based on which order dated 13.11.1994 were issued, it would appear that the DPC of September, 1995 met for considering the preparation of year-wise panel and promotion against vacancies in the JAG for the year 1994-95 and 1995-96. It is the case of the applicant that it would be clear from the facts as mentioned above that the 1st respondent had grossly erred in the calculation of vacancies in the JAG for each year, which fact would also be corroborated by the fact that the 1st respondent held a DPC for certain number of vacancies pertaining to the year, i.e., 1994-95, in December, 1994 and within less than a year held another DPC *inter alia* for certain number of vacancies pertaining to the same year, i.e., 1994-95 in September, 1995. In that context, it is pleaded that the fact that the 1st and 2nd respondents had grossly erred in calculation of vacancies year-wise, is supported in ample measure amongst others by the judgment of the Jabalpur Bench of



✓ this Tribunal in OA No.450/1993 in the matter of **P. K. Tripathi v Union of India**, decided on 24.1.1994, wherein the Tribunal had specifically and categorically reached a finding and held that "in view of the incorrect computation of vacancies for the year 1990-91 we direct the respondents to convene a review DPC for the year 1990-91 and after recomputing the vacancies...". It is the case of the applicant that it would be evident that the 1st respondent had for successive DPC incorrectly computed the vacancies in the past thereby adversely affecting the legitimate promotions and genuine interests of its officers. In the Department of Posts order dated 11.1.1996, the 1st respondent had accepted the finding of the Jabalpur Bench of the Tribunal and conceded that there were non-reporting of at least three vacancies for the year 1990-91. A review DPC for the year 1990-91 after recomputing the vacancies in the ✓ light of the observation of the Tribunal was accordingly held by the respondent in February, 1995 and a fresh panel was recommended. The three vacancies and certain other vacancies which existed were not taken note of by the 1st respondent and not reported to the DPC held in December, 1994. If this had been done, the name of the applicant would, in the least, have been included for promotion in the order dated 13.12.1994 itself, and by this erroneous action, at least two vacancies of 1994-95 had to be considered by the DPC held in September, 1995, where Shri A. N. Nanda, who was found unfit by the December, 1994 DPC, made it Wh against the vacancies of 1994-95, thereby unfairly and



unjustifiably relegating the applicant for consideration against the 1995-96 vacancies, as a result whereof he was superseded by four officers of junior batch. It is pleaded that none of these four officers were even eligible against the vacancies of 1994-95. The applicant earlier in point of time for the same reliefs on the same pleadings, filed OA No.1140/1997 in this Tribunal which was disposed of vide order dated 7.3.2001 with a direction to the respondents to examine as to what extent the infirmities in the recording/maintenance of applicant's ACRs for the relevant period, were responsible for his supersession by four officers of his own batch in promotion to JAG vide impugned order dated 2.11.1995, and if upon such examination, the respondents were to conclude that the applicant indeed ought not to have been superseded by four officers of his own batch, they should take necessary steps to convene a review DPC in accordance with law. It is then pleaded that Shri A. N. Nanda, the 4th respondent, had filed OA No.25/1994 in the Patna Bench of the Tribunal for considering his promotion in the DPC held on 11.2.1993. The Tribunal allowed his OA vide order dated 10.4.2000 and the respondents implemented the Tribunal's order vide order dated 23.11.2001. In these circumstances, it is the case of the applicant that now he can be considered for the vacancy created by Shri A. N. Nanda, with all consequential benefits. Despite directions given by this Tribunal, the respondents are stated to have failed to decide the representation of the applicant and as such, he was compelled to



approach this Tribunal by way of two misc. applications bearing MA Nos.530 and 531/2003, which were disposed of by the Tribunal vide order dated 19.5.2003, granting further four months time to the respondents to implement its order dated 7.3.2001. The respondents, however, issued a routine order dated 10/17.10.2003 rejecting his representation without application of mind. It is the case of the applicant that the respondents ignored the fact that now there was a vacancy due to the promotion of Shri Nanda and the applicant could have been adjusted against the same being the only eligible person. As regards ACRs of the applicant, the respondents are said to have made the following errors:

Year	CR	Errors
1989-90	Very Good	CRs were not reviewed due to lapse of Respondent No.1 (for the period 1.4.1989 to 19.12.1989), and Reviewing Officer died later on.
1990-91	Very Good	CRs written by the wrong reporting officer, Not considered the Training done by the Applicant.
1991-92	Very Good	CRs not reviewed
1992-93	Outstanding	No Error
1993-94	Very Good+	Outstanding given by Reporting Officer, down-graded by Reviewing Officer, without giving any reasons. Grading also not in accordance with requirement of the Government instructions.
1994-95	Outstanding	No Error

On twin pleas as regards proper reporting of vacancies and apparent defects in the ACRs of the applicant, the applicant seeks setting aside of the order that has now been passed rejecting his



representation pursuant to directions issued by the Tribunal, and for his promotion as mentioned in the earlier part of the order.

3. Before we may proceed further, we may make a mention of the order that has now been passed pursuant to the directions given by this Tribunal. As regards the infirmities pointed out by the applicant in his ACRs, the same have been mentioned in para 2 as follows:

“2) Shri Rao has mentioned following infirmities –

- i) The applicant's ACRs for the period 1.4.89 – 9.12.89 was not reviewed thus he was deprived of benefits of the reviewing authority.
- ii) The ACR for 1990-91 was not written by the concerned Reporting Officer i.e. DDG(IR)
- iii) The ACR for 1993-94 was down graded by the Reviewing Officer without communicating to the applicant. This should have been communicated to the applicant as per the ruling given by the Supreme Court in UP Jal Nigam and Ors. Vs Prabhat Chand Jain & Ors. case.”

In pursuance of the order passed by this Tribunal, it is stated that the matter was examined by the department in consultation with UPSC and the DOP&T. The answer to the infirmities pointed out by the applicant is mentioned in para 3 as follows:

- “(i) As regards, the infirmities mentioned above it is mentioned that the ACR of the officer for the period 1.4.89-19.12.89 could not be reviewed as the concerned reviewing officer had expired.



- (ii) The ACR for 1990-91 was initiated by the officer who supervised the working of applicant as Reporting Officer and was reviewed by DDG(IR) i.e. next higher authority, who agreed with the views of the Reporting Officer.
- (iii) The applicant was ~~graded~~¹ 'outstanding' by the Reporting Officer in the ACR for the year 1993-94. However the Reviewing Officer in his assessment of performance of the applicant graded 'very good+'. As per the instructions of the nodal Ministry viz. Department of Personnel and Training only adverse remarks in the ACRs but not the gradings need to be communicated to the officer. The order passed by the Apex Court in the case U.P. Jal Nigam relates to system of writing ACRs in that organization and not to the system of writing of ACRs in Govt. of India. Hence the scope of the judgment has not been considered to be extended to the system of writing of ACRs in the Central Government by the nodal Ministry.

In view of the above, there are no infirmities in writing of ACRs of the applicant."

Para 4 of the order reads, thus:

"4. The DPC for promotion of officers of Indian Postal Service to JAG convened by UPSC on 12.9.95 assessed the officer as 'very good' on the basis of his ACRs of five years and placed him below the officers who were assessed by the DPC as 'outstanding', as per DPC guidelines. DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. DPC is not guided by merely the overall gradings, if any, that may be recorded in the CRs but makes its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall gradings in a CR may be inconsistent with the grading under various parameters or attributes. The proceedings of a DPC are reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been



brought to its notice or if there have been grave errors in the procedure followed by the DPC. As there has been no material change in the facts and no omissions or errors in conducting of the DPC, there is no scope for holding a review DPC."

4. The applicant in the first round of litigation, as mentioned above, on the same pleadings as in the present case, asked for the same relief. The Tribunal has made a mention of the facts in brevity. There are some findings also by the Bench on the issue raised by the applicant. In ultimate analysis, however, a direction came to be issued to the respondents to examine as to what extent the infirmities in recording/maintenance of the applicant's ACRs for the relevant period were responsible for his supersession by four officers of his own batch. The para containing the directions reads as follows:

"23. In the result we call upon respondents to examine as to what extent the infirmities in the recording/maintenance of applicant's ACRs for the relevant period, as noticed in para 20 above, was responsible for applicant's supersession by four officers of his own batch in promotion to JAG by impugned order dated 2.11.95, and if upon such examination, respondents conclude that applicant indeed ought not to have been superseded by four officers of his own batch, they should take necessary steps to convene a review DPC in accordance with law. However, it must be ensured by the respondents that any person who is likely to be affected adversely by the outcome of the said Review DPC is given a reasonable opportunity of making a representation against the proposed action and that such representation, if any, is considered on its merits and disposed of under intimation to the person concerned before a final order regarding refixation of seniority is passed."

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In the earlier part of the judgment, one of the findings is that the applicant as per his own showing would be eligible for promotion to JAG only with effect from 1.10.1994 on completion of nine years of service. The applicant came within the zone of consideration only in the DPC that met in January/February, 1994. Even though it has not been specifically stated, but the findings as mentioned above can well be construed to mean that once the applicant comes within the zone of consideration only in 1994, reporting of correct vacancies would have made no difference. The case of the applicant could not come up for consideration before 1994 and whatever be the number of vacancies, his case could be considered for promotion only as per his ACRs which were indeed taken into consideration by the DPC, and if on that basis he was not to be promoted, he could not be promoted, whatever be the number of vacancies. Counsel for the applicant is not able to show even now as to how chances of promotion of the applicant would increase if one or two more vacancies were to be reported. To make such a plea good, it has to be demonstrated that in case vacancies would be more, consideration of the applicant would be based upon such ACRs which may be commensurate to the benchmark for promotion. As mentioned above, whatever would be the vacancies, once consideration of the applicant could not be before 1994, the ACRs under consideration would not be different than the ones which have already been taken into consideration by the DPC.



5. We have already, in the earlier part of the judgment, referred to the objection raised by the applicant as regards his ACRs for the years 1989-90, 1990-91, 1991-92 and 1993-94. Insofar as the ACR for the year 1992-93 is concerned, the same is 'outstanding'. We have also mentioned about the order that came to be passed in pursuance of the directions given by the Tribunal in the OA earlier filed by the applicant and the reasons given by the respondents for which the objections raised by the applicant as regards his ACRs as mentioned above have been dealt with. We may first deal with the objection raised by the applicant as regards his ACR for the year 1993-94. The applicant was admittedly graded 'outstanding' by the reporting officer which has been made as 'very good+' by the reviewing officer. There is indeed no disagreement by the reviewing officer as regards the grading given to the applicant by the reporting officer. There are no reasons why the applicant would deserve 'very good+' grading instead of 'outstanding'. The instructions dealing with the situation in hand and the judicial pronouncements on the subject would require the reviewing authority to give reasons, even though in brevity, if he is to downgrade the grading given to an employee by the reporting officer, and once, such reasons are not there at all, the grading done by the reporting would be valid. The contention of the learned counsel representing the applicant that there is no grading known as 'very good+' and that the same ought to have been treated as 'outstanding', also has merit. We do not find any other substitute



for 'very good+' than 'outstanding'. The normal gradings known in service jurisprudence are 'below average', 'average', 'good', 'very good' and 'outstanding'. Some times it may be '-C', (normally when integrity of an officer may be doubtful), 'C', 'B', 'A' and 'A+'. Whenever it may be a grading in the manner as stated above, 'A+' is always treated as 'outstanding'. Moreover, if 'very good+' is treated to be a downgrading, the same ought to have been communicated to the applicant, as surely, downgrading and that too, without recording reasons which would have bearing on the promotion prospects of an individual, amounts to adverse remarks and if not communicated to the concerned employee, the same is to be ignored, as held by the High Court of Madhya Pradesh in **Shivanand Prasad v Union of India** in Misc. Petition No.4066 of 1989 decided on 23.9.1991. The ACR of the applicant for 1993-94 has thus to be treated as 'outstanding'.

6. Insofar as ACR of the applicant for the year 1989-90 is concerned, which is for the period 1.4.1989 to 19.12.1989, which would be major part of the year, the applicant has been graded as 'very good' by the reporting officer. The same was admittedly not reviewed. The reason given for not reviewing the report is that the reviewing officer had expired. We are of the considered view that whatever be the reasons for not reviewing the report, if the same is incomplete, it has to be ignored, and ACR of the year immediately preceding the report which is incomplete, needs to be taken into



consideration. We have taken the view in one of the OAs that came up before us in the matter of **Siya Ram & others v Union of India** that such reports as would be invalid need to be ignored and the ACRs of the preceding years should be considered. This view has since been upheld by the High Court of Delhi in WP(C) No.690-691/2006 in the case aforesaid vide orders dated September 14, 2007.

7. Insofar as the ACR for the year 1990-91 is concerned, the same has been graded by the reporting officer as 'very good'. Even though the applicant has objected to the said report not having been written by the concerned reporting officer, the respondents have clarified that the same was initiated by the officer who supervised the working of the applicant as reporting officer and was reviewed by DDG (IR), who agreed with the views of the reporting officer.

8. As regards the ACR of the applicant for the year 1991-92, we find that the applicant had raised no objections in his representation which was rejected vide impugned order dated 10/17.10.2003.

9. In the overall scenario as mentioned above, it would be seen that the applicant would have three 'outstanding' reports which would be for the years 1992-93, 1993-94 and 1994-95, and two 'very good' reports for the year 1990-91 and 1991-92. As regards the ACR for the year 1989-90, the respondents would have





to take into consideration the ACR of the year 1988-89. A review DPC shall have to be constituted to assess the suitability of the applicant for promotion to the Senior Administrative Grade from a date when he was overlooked by his juniors. The parties have not clarified as to whether the DPC in which the applicant was considered for promotion and ignored, had taken into consideration ACRs for five years or six years. Reference in the pleadings is to six ACRs from 1989-90 to 1994-95. The review DPC would assess the applicant on the basis of ACRs which were under consideration at the time when the applicant was considered for promotion, be it five or six. We are conscious of the plea raised by the respondents that the DPC enjoys full discretion to devise its own methods and procedures for objective assessment of the suitability of candidates who are to be considered for promotion. However, surely and admittedly, ACRs of an officer recorded by the department have a great deal of influence on the DPC, and unless there may be reasons, it may not be possible even for the DPC to grade an officer lower than what has been graded by the departmental authorities.

9. In view of the discussion made above, this Original Application is allowed to the extent that direction is issued to the respondents to constitute a review DPC to consider the case of the applicant for promotion to the Senior Administrative Grade in treating three of his ACRs as mentioned above as 'outstanding', one as 'very good', and the other, whatever would it be, for the



preceding year, i.e., 1988-89. The case of the applicant would be assessed in comparison to the others, as surely, present is not a case of requisite benchmark and no supersession. Admittedly, as per the extant rules, an officer with higher rating in his ACRs would supersede the one with lower grading, and that is how the applicant seems to have been overlooked by his juniors. In this exercise, if, therefore, any officer may be adversely affected, he shall be heard in the matter before any final orders are passed. Let the exercise as ordained above be done as expeditiously as possible and preferably within eight weeks from receipt of certified copy of this order. There shall be no order as to costs.


(Dr. Veena Chhotray)
Member (A)


(V. K. Baf)
Chairman

/as/