

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1821/2004

New Delhi, this the 28th day of January, 2005

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

Soordas
No.4631/D
S/o Shri Puran Singh Yadav
R/o A-3, Bara Mohalla
Devli Road
Khanpur
New Delhi 110 062.

... Applicant

(By Advocate: Sh. S.K.Gupta)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Secretariat
Players Building, I.P.Estate
New Delhi.
2. Commissioner of Police
Delhi Police Headquarters
MSO Building, I.P.Estate
New Delhi – 110 002.
3. Joint Commissioner of Police (HQS.)
Delhi Police Headquarters
MSO Building, I.P.Estate
New Delhi – 110 002.
4. Deputy Commissioner of Police (Headquarters)
(Establishment)
Delhi Police Headquarters
MSO Building, I.P.Estate
New Delhi – 110 002.
5. Deputy Commissioner of Police
Police Control Room
Model Town
New Delhi. Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R(Oral)

By Mr. Justice V.S.Agarwal:

Applicant, by virtue of the present application, seeks quashing of the order of 30.5.2003 along with the order passed dated 25.6.2004 and to declare that the action of the respondents in not considering his case for the post of Sub-Inspector is not valid and a direction should be issued to convene a Review Departmental Promotion Committee and to consider the claim of the applicant afresh. The relevant impugned order dated 25.6.2004 reads:

"Please refer to your office memo. No.9519/SIP (PC-II)/PCR dated 24.03.2004 on the subject cited above.

In pursuance of directions of the Hon'ble CAT's order dated 09.03.2004 in O.A.No.1827/2003 Shri Soor Dass Vs. Govt. of NCT of Delhi and Others a review departmental promotion committee met on 22.-6.2004 to consider the name of ASI (Exe.) Soor Dass, No.4631-D for admission to promotion list E-I (Exe.) w.e.f. 28.02.2003 and found him "Not fit" for promotion list E-1(Exe.) w.e.f. 28.02.2003 due to non achievement of benchmark of "3 good or above ACRs".

ASI (Exe.) Soor Dass, No.4631-D may please be informed accordingly and contents of this U.D. may also be got noted from the ASI which may be sent to PHQ for record.

Sd/-
(B.S.Bamel) ACP/CB/HQ
FOR JOINT COMMISSIONER OF POLICE:
HEADQUARTERS:DELHI"

The relevant impugned order dated 30.5.2003 also reads:

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"Kindly refer to your office letter No.4883/CR-II(PCR) dated 31-03-2003, on the subject cited above.

The name of ASI (Ex.) Soor Dass, No.4631-D was considered by the D.P.C. held on 28.2.2003 for admission his name to promotion list E-I (Ex.). After evaluation of his service record, the D.P.C. graded him unfit due to non achievement of bench mark of 3 good or above ACRs. ASI (Ex.) Soor Dass, No.4631-D may please be informed accordingly."

2. The relevant facts are that the applicant was initially recruited as Constable and then was promoted as Head Constable in 1982. He was promoted as Assistant Sub-Inspector (ASI) on 27.4.1992. The applicant contends that in the year 1996 when he was working as ASI, his name was kept in the Secret List but later on removed unconditionally. No major penalty had been imposed upon him. The applicant's case is that his name was required to be considered on availability of the vacancy. It was considered for E-I(Executive) but he was declared unfit to be promoted. His representation had since been rejected. The applicant contends that no adverse entries have been communicated. In the absence of the downgraded Confidential Reports of the applicant, the same could not be considered against him and even on 1.1.2004 his name again was rejected. The said action is stated to be arbitrary. Hence, the present application has been filed.

3. In the reply filed, the application is being contested. Respondents plead that the name of the applicant was considered by regular Departmental Promotion Committee for admission to

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promotion list E-I with effect from the date when his immediate junior was considered, i.e., 28.2.2003. After the evaluation of the service records, he was graded as unfit due to non-achievement of 3 Good or above Annual Confidential Reports. As per Rule 5 of Delhi Police (Promotion & Confirmation) Rules, 1980, promotion from one rank to another and from lower grade to higher grade has to be made by selection tempered by seniority. As per the circular dated 3.12.1998, officers having 3 Good or above reports and without any below Average or adverse reports can be empanelled. The applicant did not meet the said requirement. Furthermore, the respondents plead that during the entire service, the applicant had been awarded the following penalties:

1. Censured on 16.3.1994
2. Censured on 31.3.1994
3. Censured on 20.4.1994
4. Censured on 26.4.1995
5. Name brought on Secret list of persons of doubtful integrity on 2.5.1996.
6. Censured on 28.8.1996
7. Censured on 6.12.1996
8. Name brought on Secret List of persons of doubtful integrity on 8.3.1997.

4. Apart from the above, the departmental proceedings were pending against the applicant on three occasions and he was placed under suspension on two occasions.

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

6. The learned counsel for the applicant urged that the applicant's ACRs had been downgraded. They were not communicated and therefore, cannot be considered against the

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applicant. He relied upon the decision of the Supreme Court in the case of U.P.JAL NIGAM AND ORS. v. PRABHAT CHANDRA JAIN AND ORS., 1996 (33) ATC 217. 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 downgrading 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 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 emphasized 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.”

6-4 We do not dispute the said proposition. It is a binding law.

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7. Even the **Full Bench of the Delhi High Court** in the case of **J.S.GARG v. UNION OF INDIA & OTHERS**, 2002 (65) Delhi Reported Judgments 607 (FB) 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 as under:

"13. 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 has refused to take into consideration the relevant facts. The learned Tribunal, in our opinion, while holding that having regard to the decision of the Apex Court in **U.P.Jal Nigam and Others**. the DPC could ignore categorization, committed a serious error in usurping its jurisdiction. Once such categorizations 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."

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8. The respondents made available to us the Annual Confidential Reports of the applicant for the relevant period. It gives the following scenario:

1995-96	Average
1996-97	For some period he was suspended and for the remaining period it was Average .
1997-98	He was suspended.
1998-99	For some part of the year he was suspended and for the other period, it is Average .
1999-2000	Average
2000-2001	For some part of the year, it is Average and the remaining part it is Very Good .
2001-2002	Good

9. Since the applicant was under suspension for some part of the year 1998-99, necessarily we had to travel back to the Annual Confidential Reports of the earlier period, which we have referred to above. It is not in dispute that as per the Circular of 3.12.1998, a person has to earn 3 Good reports out of five without any below Average or adverse entries before he could be so empanelled.

10. The Full Bench of this Tribunal in the case of **DR. A.K.DAWAR v. UNION OF INDIA & OTHERS**, OA 555/2001, decided on 16.4.2004 had gone into this controversy. When a similar question had arisen, the following answer was given:

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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.”

11. When the decision of the Full Bench is considered in the light of the reports of the applicant, it is obvious that in 1995-96, and till the year 1999-2000, there has been no down-grading. He has, therefore, not to be communicated the average reports in the facts and circumstances of the present case. The decision rendered by the Supreme Court in the case of **U.P.Jal Nigam (supra)**, therefore, has little application when there is no downgrading to which we have referred to above. To that extent, the order of 30.5.2003 whereby the applicant was declared unfit for being considered for promotion requires no quashing. The plea must fail.

12. In that event, learned counsel contended that the applicant has been considered for promotion only in June 2004. It should have been from 1.1.2004 because on that date, certain persons juniors to the applicant had been promoted. To that extent, we find that there is some substance in the plea so raised. The claim should be considered from the date his juniors had been promoted and if for the earlier period it had not been done, it should have been considered from 1.1.2004.

13. Resultantly, for these reasons, the application whereby quashing of the orders referred to above is concerned, must fail and is dismissed. However, it is directed that claim of the

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applicant in accordance with law may be considered afresh from 1.1.12004, within a period of four months from the date of receipt of the certified copy of the present order.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/