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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.478/2004

New Delhi, this the 3<sup>rd</sup> day of August 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Ajay Purswani  
Deputy Central Intelligence Officer  
(EDP), Address: 35, S.P. Marg  
New Delhi  
r/o A-124, Vivek Vihar  
Delhi - 110 095. ... Applicant

(By Advocate: None)

Versus

1. Union of India through  
the Secretary  
Ministry of Home Affairs  
Government of India  
Central Secretariat  
Gate No.7, North Block  
New Delhi.
2. The Intelligence Bureau through  
its Director, I.B. Headquarters  
Central Secretariat  
Gate No.7, North Block  
New Delhi. ... Respondents

(By Advocate: Sh. S.M.Arif)

ORDER

Justice V.S. Aggarwal:-

Applicant (Ajay Purswani) was appointed as Assistant Central Intelligence Officer-I (Electronic Data Processing) in the Intelligence Bureau, Ministry of Home Affairs, Government of India on 12.12.1989. He was promoted as Deputy Central Intelligence Officer (Electronic Data Processing) on 24.2.1997 in the scale of Rs.2000-3500 besides special pay. On the recommendations of the Fifth Central Pay Commission, the said post of Deputy Central Intelligence Officer was upgraded and the upgraded scale was granted to the applicant. The Office Memorandum clearly shows that revised pay scale would be admissible to Rs.8000-13500.

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2. On 7.8.2002, the Intelligence Bureau Electronic Data Processing cadre posts Recruitment Rules 2002 came into force. Prior to the coming into force of the said rules, the recruitment and promotion of the officials of Intelligence Bureau was being governed by the Rules of 1991. As per the new service rules, there are three posts of Assistant Director and they were to be filled up by the method of selection-cum-seniority. The post can be filled up either by promotion, failing which by deputation.

3. Applicant contends that he was placed at Sl. No.2 in the seniority list that had been circulated on 20.12.2002 and was within the zone of consideration.

4. The precise grievance of the applicant is that his Annual Confidential Reports have been downgraded which have not been communicated. The same cannot be considered while considering his case for promotion. Therefore, the applicant sought that a direction should be issued to fill up the promotional post of Assistant Director ignoring the downgraded ACRs of the applicant.

5. The respondents earlier filed a short affidavit but thereafter had filed the counter reply and contested the application. It is not disputed that earlier the applicant had filed OA 2844/2003 which was disposed of with a direction to dispose of the representation of the applicant. Respondents contend that the Annual Confidential Reports (for

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short 'ACRs') of the applicant had been considered by the Committee and he was found 'unfit' for promotion. Due to his service records, the applicant is neither becoming eligible for holding the pay scale of Rs.8000-13500 nor for promotion to the post of Assistant Director referred to above. The applicant become eligible for consideration after he completed five years of service in the lower grade on 24.2.2002 but the Union Public Service Commission found him 'unfit' for promotion.

6. The short question agitated before us as to whether the applicant's Annual Confidential Reports in which he was downgraded should have been communicated to him or not?

7. The Supreme Court in the case of U.P. Jal Nigam and Others v. Prabhat Chandra Jain and Others. (1996) 2 SCC 363 was concerned with a matter pertaining to the U.P. Jal Nigam. In the cited case there was downgradation of the ACRs. 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

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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 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."

8. This decision of the Supreme Court was followed by the Bench of the Gauhati High Court in Donatus Engzanang v. State of Mizoram, 2001 (2) ATJ 467. In the cited case also the confidential reports had been downgraded. It was held that in that event the remarks should have been communicated.

9. 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) again took up the matter wherein the Annual Confidential Reports of the applicant after being 'Verygood' have been downgraded. The Judgement of the U.P. Jal Nigam (supra) was referred to by the Full Bench and held that the uncommunicated downgraded remarks could not have been considered. The findings of the Full Bench of the Delhi High Court reads:

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"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 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. From the aforesaid, it is clear that when there is a steep fall as in the present case that officer with 'Outstanding' record was downgraded as 'Good', the remarks should have been communicated.


11. The position in the present case, as is apparent from the perusal of the ACRs of the applicant from 1996 onwards, is as under: ...

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1996-97	Very Good
1997-98	Very Good
1998-99	Average
1999-00	Good
2000-01	Average
2001-02	Average/Good for part of the year and
2002-03	Very Good

12. From the above said, it is clear that there has been downgrading of the ACRs of the applicant. Admittedly, the same were never communicated to the applicant. There has been a steep fall even on certain occasions. In the absence of the same being communicated, indeed, those ACRs cannot be considered against the applicant.

13. Necessarily, on this short ground, we allow the present application and direct that a review DPC may be held for considering the claim of the applicant in the light of the findings that we have arrived at. This should be preferably be done within three months from the date of receipt of a certified copy of this order.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

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