

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 4th DAY OF NOV, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. S. N. Shukla, Member (A)

**Original Application No.1286 of 2004
(U/S 19, Administrative Tribunal Act, 1985)**

Jagat Pal, Aged about 51 years, son of Late Shiv Balak,
Resident of 353 B Balaipur Railway Colony, Civil Lines,
Allahabad, posted as Chief Public Relation Officer/Deputy Chief
Operations Manager, Central Organization for Railway
Electrification Allahabad.

..... Applicant

Present for Applicant : Shri Vikas Budhwar, Advocate

Versus

1. Union of India, through Secretary Ministry of Railways,
Rail Bhawan, New Delhi.
2. Railway Board (Rail Bhawan)
New Delhi, through its Chairman.
3. General Manager, Central Organization for Railway
Electrification, Allahabad.

..... Respondents

***Present for Respondents : Shri P. Mathur, Advocate
Shri L.G. Sinha, Advocate***

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

Does expunging of adverse remarks mean that grading of
the person reported upon should correspondingly be incremented

and promotion which was not granted due to adverse remarks should be afforded? This is the question. The respondents contend that merely because the adverse remarks were expunged, it need not result in upgradation of the grading that is made by the DPC, as the DPC has its own norms for grading. The applicant however contends that once the adverse remarks obliterate, the result is that the grading should correspondingly change applicant should be promoted.

2. The factual matrix, required to the minimum to understand the history of the case is essential at this juncture. The applicant entered the Indian Railway Traffic Services and at the material point of time he was holding the post of Senior Grade/IRTS/CORE, Allahabad. He had been adversely reported upon for a few years against which he moved OA No. 1106/2003. The same came to be allowed vide order dated 1st June 2004, the operative portion of which reads as under:-

"Accordingly, the O.A. succeeds and allowed in part. The adverse entry for the year 1999-2000 is quashed. The respondents are directed to communicate the entry to the applicant who may file his representation for consideration by the Competent Authority who shall give appropriate grading in accordance with Law afresh for the year 1999-2000 and in the subsequent years 2000-2001, 2001-2002 & 2002-2003 depending on the out come of the representation finds favour with the Competent Authority a review DPC shall be arranged in accordance with Law. This exercise shall be completed within a period of four months from the date of communication of this order."

3. Vide Annexure A-5, the respondents have communicated certain adverse remarks and the applicant has filed his representation vide Annexure A-6. This had resulted in the

respondents' communicating vide Annexure A-7 to the applicant that the adverse remarks in question have been expunged. The applicant immediately requested the respondents vide Annexure A-8 to consider him for promotion to the SAG by conducting review DPC.

4. The applicant had been expecting his promotion to the senior administrative grade, but the respondents have come up with the order dated 08-09-2004 which reads as under:-

गोपनीय

संख्या:ई/आरई/कान/27/adv14/418

08.9.2004

श्री जगत पाल,
उप मुख्य परिचालन प्रबंधक,
रेल विद्युतीकरण,
इलाहाबाद

द्वारा:मुख्य विद्युत इंजीनियर

विषय Communication of adverse remarks from the ACR for the period ending 31.3.2001 & 31.3.2002-Implementation of Hon'ble Central Administrative Tribunal Allahabad's Judgement in O.A.No.1106/2003- Shri Jagat Pal, SG/IRTS/RE/Allahabad.

संदर्भ : Your representation No. RE/Dy.COM/Adv./1/4
Dated 27.7.2004.

Your above quoted representation in connection with certain adverse remarks recorded in your Confidential Report for the period ending 31.3.2001 & 31.3.2002, communication vide this office letter of even No. dated 16.7.2004, has been decided to expunge the same. Accordingly, the remarks communicated to you vide this office letter of even No.dated 16.7.2004 have been expunged.

Please acknowledge receipt.

(गुरदेव सिंह)
कृते महाप्रबन्धक

It is this order that is under challenge in this O.A.

5. The contention of the applicant is that the issue has been sidetracked by the respondents stating that though the applicant

is suitable for promotion, there were many seniors above him who could not be promoted, despite they also being suitable for promotion. However, according to the applicant there are as many as 17 juniors who have been promoted and thus the contention of the respondents is thoroughly wrong. Para 4.42 of the OA refers.

6. Respondents have contested the O.A. They have contended that grading in the ACR and grading by the DPC represent assessment of an officer by two distinct authorities, i.e. the Reporting/Reviewing/ Accepting Authority in the former and the Members of the DPC in the latter. Fitness for promotion to a higher grade recorded in the ACR is no guarantee for promotion to SA Grade because the Members of the DPC make their independent assessment of an officer on the basis of the entries in his ACRs. It has also been contended vide para 37 of the counter that it is not necessary that all the officers placed in the panel will get promoted as the number of officers promoted will be limited to the number of vacancies available. In this panel, several of the Applicant's seniors could not be promoted because of lack of vacancies and hence the Applicant cannot claim promotion ahead of his seniors just on the ground that he has been included in this panel. The claims of the applicant for promotion to SA Grade can only be with reference to his juniors and he himself has stated that his juniors were promoted to SAS Grade vide order dated 31-01-2003.

7. In his rejoinder the applicant has refuted all the contentions of the respondents and reiterated his contentions as contained in the O.A. He has highlighted the fact that when there is downgrading of the grading from Very Good to Good, the same ought to have been communicated. Para 8 of the rejoinder refers. Again, it has been contended that once the adverse entries have been expunged, the authorities have no option but to convene the review DPC for considering the claim of the applicant for promotion as if no adverse entry has ever been awarded against the applicant. It has been emphatically stated by the applicant that the contention of the respondents that the findings recorded that the applicant cannot be considered for promotion by the DPC as the grading cannot be changed is patently illegal as once the adverse entries illegally inserted have been expunged, then the grading shall undergo a corresponding upward change.

8. The parties participated in the hearing and also supported their respective versions through written arguments. Counsel for the applicant contended that grading is consolidation of all the entries in various columns and thus grading has to take the colour of the entries made in different columns of the ACR. Earlier, if a particular grading had been awarded taking into account the adverse entries made, then on the expunction of the said adverse entries, as a natural consequence, a corresponding change should take place in the grading as well. Otherwise, the purpose of

expunging of adverse remarks gets defeated and the entire drill becomes an exercise in futility.

9. In his written submission, the applicant has referred to the following decisions of the Apex Court in support of his case:-


Amar Kant Choudhary vs State of Bihar and others AIR

1984 SC 531 (1984 (1) SCC 698: In this case, the Apex court has held as under:-

8. After giving our anxious consideration to the uncontroverted material placed before us we have reached the conclusion that the case of the appellant for promotion to the Indian Police Service Cadre has not been considered by the Committee in a just and fair way and his case has been disposed of contrary to the principles laid down in Gurdial Singh Fijji case . The decisions of the Selection Committee recorded at its meetings in which the case of the appellant was considered are vitiated by reason of reliance being placed on the adverse remarks which were later on expunged. The High Court committed an error in dismissing the petition of the appellant and its order is, therefore, liable to be set aside. We accordingly set aside the order of the High Court. We hold that the appellant has made out a case for reconsideration of the question of his promotion to the Indian Police Service Cadre of the State of Bihar as on December 22, 1976 and if he is not selected as on that date for being considered again as on March 12, 1981. If he is not selected as on March 12, 1981 his case has to be considered as on October 14, 1981. The Selection Committee has now to reconsider the case of the appellant accordingly after taking into consideration the orders passed by the State Government subsequently on any adverse entry that may have been made earlier and any other order of similar nature pertaining to the service of the appellant. If on such reconsideration the appellant is selected he shall be entitled to the seniority and all other consequential benefits flowing therefrom. We issue a direction to the respondents to reconsider the case of the appellant as stated above. We hope that the above direction will be complied with expeditiously but not later than four months from today.

10. Counsel for the respondents, relied upon the written submission comprehensively prepared and submitted on 17th September, 2000. Respondents have, in their written submission

raised the preliminary objection relating to non joinder of necessary party (para 3 of the written submission) and res-judicata (para 4 ibid). The respondents further contended that the applicant already stands promoted to the SAG from 2005, vide Annexure No. WS 2. The applicant was, no doubt, assessed as 'fit' for promotion in 2000 but for want of number of vacancies, he could not be promoted during that year. The respondents have also indicated in their written submission that the post in question in the SAG is a senior position and the bench mark for the same is Very Good. The DPC consisted of high level officers, chaired by the Chairman, Railway Board. The DPC makes its own gradation. There is no instruction to communicate the grading of ACR which are below the bench mark. Mere expunction of adverse entries does not itself guarantee promotion to the post of SAG, as the individual authorities have to make their independent assessment of the officers concerned on the basis of individual entries in the ACR. In their supplementary written submission filed on 20th October, 2010, the respondents have, in respect of the year 1999-2000, given an account of the total number of officers (47) found fit for promotion and the position of the applicant thereon (46) and also the number of vacancies (8) and said that since many seniors to the applicant remained without being promoted, the applicant was not promoted. As regards the rest of the years, they have stated that the DPC did not find him fit for promotion as his grading for various years remained less than the Bench mark.



11. The respondents had also produced the records as directed by the Tribunal.

12. Arguments were heard and the records as well as pleadings and written submissions perused.

13. The Records reflect that on receipt of the order dated 01 June 2004 of this Tribunal, the respondents have undertaken the process of implementation. First, they had communicated the adverse remarks of 'average' to the applicant and on the representation made, the adverse remarks were expunged. As per the DOPT instructions, the grading does not undergo any material change and in any event, it is the grading that is ultimately given by the DPC (or Review DPC as the case may be), that would prevail. Accordingly on the advice of the Board Member Technical, review DPC was conducted and the DPC had held as under:-

"It is noted that Shri Jagat Pal was empanelled in the SAG Panel approved on 17-10-2000 in relaxation of performance norms. Therefore, it is in the fitness of things that he is assessed as 'Fit' in the panel dated 17-10-2000 after expunging the adverse remarks. Even now the position remains that he is empanelled but he will not be able to get the benefit of promotion on the basis of this panel, as many of his seniors were not promoted due to non-availability of vacancies at the material time.

As regards the SAG panels dated 12-01-2002, 26-12-2002, it is observed that even after expunging the adverse remarks, Shri Jagat Pal's performance in most of the entries in the ACRs of 2000, 2001 and 2002 is assessed as 'Good' and these do not justify revision of grading by the DPC for the purpose of empanelment to SAG. His performance has deteriorated during the years 2000 to 2002. therefore, Shri Jagat Pal is assessed as 'unfit' to be included in the panels dated 12-01-2002 and 26-12-2002."

14. Thus, notwithstanding the stand taken by the respondents that mere expunction of the adverse entries would not change the grading, the Review DPC has considered the records again, applied their mind and arrived at a consensus that the applicant cannot be graded better than Good for a few years and hence, he was declared 'Unfit' for such years. And in respect of that year in which the applicant has been adjudged as 'fit', the applicant could not be promoted due to limited number of vacancies.

15. The decision by the Review DPC as extracted above does not appear to be perverse. It has analyzed the entire ACR again afresh, after obliterating the adverse entries made and arrived at its own grading as "Good" on the basis of the entries made in respect of the years 2000, 2001 and 2002. This grading being afresh, cannot be upset by the Tribunal. For, the Apex Court has in a number of cases has held that judicial interference is not called for against the decision of DPC save when it is not properly constituted or its decision is arbitrary. The following decisions would be relevant to advert to:-

(a) *Joginder Singh v. Roshan Lal*, (2002) 9 SCC 765: The Apex court has in this case observed:

The High Court in exercise of its jurisdiction under Article 226 of the Constitution is not supposed to act as an Appellate Authority over the decision of the Departmental Selection Committee. If the Committee has been properly constituted, as in this case, and the post is advertised and a selection process known to law which is fair to all, is followed, then the High Court could have no jurisdiction to go into a question whether the Departmental Selection Committee conducted the test properly or not when there is no allegation of mala fides or bias against any member of the Committee.

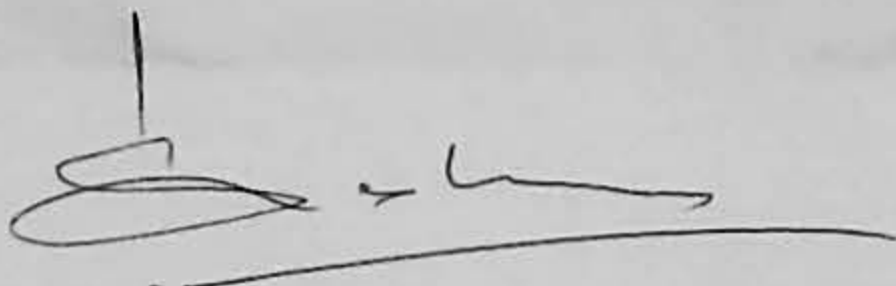
(b) *UPSC v. L.P. Tiwari*, (2006) 12 SCC 317, at page 320 :

12. It is now more or less well settled that the evaluation made by an expert committee should not be easily interfered with by the courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. Such view was reiterated as late as in 2005 in *UPSC v. K. Rajaiah*¹ wherein the aforesaid Regulations for the purpose of promotion to the IPS cadre were under consideration. Apart from the above, at no stage of the proceedings, either before the Tribunal or the High Court or even before ³²¹this Court, has any allegation of malafides been raised against the Selection Committee and the only grievance is that the Selection Committee erred while making assessment of the comparative merits of the respective candidates. While concluding his submissions, Mr Rao had pointed out that the direction given by the High Court to the appellant to hold a Review Departmental Promotion Committee was also erroneous since the Regulations provided for selection to be made not by a Departmental Promotion Committee but by a Selection Committee constituted as per the Regulations.

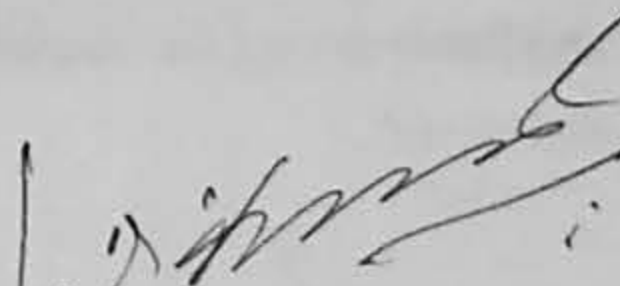
(c) *Union of India v. S.K. Goel*, (2007) 14 SCC 641:

27. In our opinion, the judgment of the Tribunal does not call for any interference inasmuch as it followed the well-settled dictum of service jurisprudence that there will ordinarily be no interference by the courts of law in the proceedings and recommendations of DPC unless such DPC meetings are held illegally or in gross violation of the rules or there is misgrading of confidential reports.

16. In view of the above, the application has to fail and accordingly, the same is dismissed. No costs.



(S. N. Shukla)
Member (A)



(Dr. K.B.S. Rajan)
Member (J)

/U.V./