

OA 75/2004

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 27 ⁵ day of April 2005.

Hon'ble Mr. S.P. Arya, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Original Application No. 74 of 2004

Prem Kumar Tripathi, S/o Sri G.P. Tripathi,
R/o Director's Residence,
General Post Office Compound,
AGRA (UP).
(Presently posted as Director, Postal Services,
Office of Post Master General, Agra Region, Agra)

.....Applicant

By Adv : Sri S. Narain

V E R S U S

1. Union of India through the Secretary,
Department of Posts,
Ministry of Communication and Information
Technology, Dak Bhawan, Sansad Marg,
NEW DELHI.
2. The Member (Personnel),
Postal Services Board,
Dak Bhawan, Sansad Marg,
NEW DELHI.
3. The Dy Director General (Personnel),
Dak Bhawan, Sansad Marg,
NEW DELHI.
4. The Chief Post Master General,
U.P. Circle, Hazaratganj,
LUCKNOW.
5. Sri Om Veer Singh Veerwal,
Post Master General,
BAREILLY (UP).

...Respondents

By Adv : Sri S. Singh

Alongwith

Original Application No. 75 of 2004

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O R D E R

By K.B.S. Rajan, JM

Since the law point involved in both the O.As
is one and the same, the two O.As are disposed of by
a common order.

2. O.A. 75/05 has been filed against the non
promotion of the applicant to the Junior
Administrative Grade in N.F.S.G., (Pay scale Rs.
14,300 - 18,300/-) while O.A. 75/05 has been filed

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against the non promotion to the Senior Administrative Grade.

3. A silhouette of the facts of the case:-

(i) Applicant, an officer of the Indian Postal Services of 1981 batch, was promoted to the Junior Administrative Grade (Rs 3,700 - 5000 equivalent to revised pay scale of 12000 - 16500/-) in May 1990. The next position in the ladder of promotion is Non Functional Selection Grade in Junior Administrative Grade (Rs 14,300 - 16,500) followed by N.F.S.G. Senior Administrative Grade (Scale Rs 18,400 - 22,400).

(ii) In Feb. 1999, DPC was held to consider eligible officers for promotion in the scale of Rs 12,000 - 16,500 and the applicant was one within the consideration zone. Criteria for promotion is Bench Mark of Very Good and A.G.Rs of five years preceding the panel year (i.e. From 1993 - 98) should be considered. In the Promotion panel released on 24-06-1999, the applicant's name did not figure in while his junior figured in the promotion list. The applicant therefore, penned a representation to the concerned authorities, who have by order dated 10-02-2000 rejected the same. Yet another representation also met with the same fate and as the applicant had felt that the two orders were 'cryptic' he moved the

Principal Bench of the C.A.T in O.A. No. 2523/02 and during the course of hearing, the Tribunal had called for the records of concerned D.P.C. And held that the applicant did not achieve the Bench Mark prescribed for promotion. Consequently, the applicant chose to have the O.A., withdrawn with liberty to move the Tribunal when a fresh cause of action arose. On the basis of the fact that his non selection was on the ground of his having been graded below the Bench Mark, the applicant had moved a comprehensive representation dated 22nd December, 2002 and the respondents, however, rejected the same by their order dated 13th May, 2003, which has been impugned in O.A. No. 75/05.

(iii) Similarly, on the applicant's finding his name missing in the panel for promotion to the post of N.F.S.Grade, in the Senior Selection Grade, vide promotion order dated 05-11-2003 while his junior's name figured in, he had filed O.A. No. 74/05. The applicant had challenged through a separate O.A, as to the adverse entries in some of his reports, which on dismissal was taken up with the Hon'ble High Court of Delhi where the same is pending.

(iv) The grounds taken in both the O.As are almost identical. (a) That his grading in various years was to the extent of Bench

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Mark for the posts; (b) that at least three out of five reports should contain the bench mark of Very Good; (c) that the applicant was not communicated the adverse remarks (save as those referred to in the O.A 74-05) or downgrading ; and (d) that the non placement of the applicant in the JAG/SAG in NFSG is purely an act of victimisation are some of the common grounds in both the O.As while in respect of OA 74-05, the additional ground is that under the provisions of O.M. Dated 8th February, 2002, there cannot be any supersession once the officer had obtained the minimum Bench Mark.

A. Prayer in both the O.As is mainly for an order quashing the respective impugned order and for a positive direction to the respondents to consider the applicant for promotion to the J.A.G/S.A.G. In N.F.S.Grade and certain satellite relief such as placement of proper seniority, cost etc.,

5. The respondents have contested the case. Their main plea is that the U.P.S.C., has taken into account the A.C.R. Gradings and accordingly recommended the names of those who were found suitable and as the applicant did not obtain the necessary Bench Mark, he has not been selected for the said posts. The respondents have also contended that there is no need to communicate



when the grading is not at par or above Bench Mark.

6. The rival contentions were heard, the documents gone through and as it was felt that for proper adjudication of the two cases close perusal of the A.C.Rs as well as the DPC proceedings was essential, the respondents were directed to produce the same and accordingly the same were made available. These have also been considered.

7. First, the extent of expectation by the department in respect of Gradings in the A.C.R., is to be considered. As the two posts (both JAG and SAG in NFSG) are of the senior management post, the minimum bench mark has been prescribed at Very Good. Admittedly, out of five a minimum of three Very Good should have been earned for promotion to the above post. In the case of J.A.G in the NFSG, as the promotion dates back to the period anterior to 8-02-2002, the provisions in extant as on the date of consideration by the DPC would hold the fort. At that time, while the Bench mark remained Very Good, as for the subsequent period, in so far as selection is concerned, after considering the eligible candidates their order would be re-arranged as per outstanding preceding Very good. Thus, there was an element of supersession. However, in the case of S.A.Grade in NFSG, as the DPC was conducted posterior to February 2002, the Bench mark would be the criteria and there is no supersession in the

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case of those who have attained the minimum Bench Mark.

8. A perusal of the A.C.R dossiers of the applicant revealed that the applicant had earned the following grades from 1992-93 to 2002-2003:-

- (a) **Very Good** : 2 (1992-93 and 2002-03)
- (b) **Good** : 5
- (c) **Average** : 4.

9. Thus, the applicant is nowhere near the requisite Bench Mark either for promotion to the J.A.Grade in NFSG or to the S.A.Grade in the said NFSG. The recommendations of the UPSC cannot therefore, be faulted with.

10. Next is whether the Bench mark of Very Good is applicable to promotion for Non Functional Selection Grade in the Junior Administrative or Senior Administrative Grade? Vide OM dated 9th October, 1989, the entire drill to be adopted for this purpose has been narrated for appointment to the Selection Grade in Group A services which is non functional. Para (iv) thereof reads, "*The Committee should satisfy itself that the overall performance of the officer was 'good' and that he has at least two 'very good' gradings in the last five A.C.Rs. Such an Officer would be considered suitable for NFSG.*" This has been reiterated in OM dated June 6, 2000, para (vi) which provides, "*Appointment to NFSG shall be made subject to suitability in terms of DoP&T O.M. No. 28038/1/88/Estt (D) dated 9-10-*

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1989". Hence, for promotion/placement in NFSG also the criteria of Bench Mark is applicable.

II. Next is whether there is a mandatory requirement for communication of the downgrading of the grades, i.e. If the grading is less than the minimum bench mark, whether should the same be communicated. The requirement is out of 5 ACRs, at least two must be of 'very good grading' and the rest could be at least 'good'. For placement in the J.A. Grade in NFSG, as the DPC met in 1999, the ACRs that were to be considered were for the period from 1993-94 to 97-98. During this period, the applicant had secured one Average and four Goods. There is no such downgrading as the gradings have almost been maintained at the same level. Similarly, for the S.A. Grade, the ACRs considered were from 1997-98 to 2001-2002. During this period, the applicant had earned Average for two full years and two half years and Good for one full year and two half years. As such, there is no downgrading inasmuch as the gradings are more or less at the same level or at best oscillate between two levels. Hence, the authorities have chosen not to communicate the gradings. The Dossier in the case of the applicant reflects a zig-zag curve of grading, starting with very good in 1992-93 and gradual decline to good the next year, average in the subsequent year and maintaining 'good for 3 successive years. Again, the mercury level shows a downward trend of Average for at least two and a half years 98-99, 99-2000 and

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the first half of 2000 - 2001 (In this year two Reports were recorded) whereafter, the graph ascends only for the late half of 2000-2001 and again decline. The fall of the mercury level thus was gradual and not 'steep' say from Outstanding/Very good to 'average or satisfactory' in which event alone, communication could be considered necessary. In this regard, the Apex Court has in the case of **State of U.P. v. Yamuna Shanker Misra, (1997) 4 SCC 7**, at page 12 observed:

In U.P. Jal Nigam v. Prabhat Chandra Jain⁵ (SCC at p. 364, para 3), this Court had held that while writing the confidential reports, if the officials were to be downgraded from the previous reports,

"... 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 that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice."

12. Thus, there is no mandatory requirement of communication of the downgrading of the report in the instant case.
13. Considering the extent of grading gained by the officer it is clear that the respondents have not

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acted with a bent of victimisation as alleged by the applicant in the O.A., nor could the applicant make out a case on any other grounds. The O.As being devoid of merits, the same are dismissed.

14. Under these circumstances, cost is made easy.