

(8)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 385 of 2005

....., this the 5th day of September 2006

CORAM :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER**

Hari Shankar Mishra,
S/o. Late Shri A.P. Mishra,
Resident of 813/D, Baghambari Gaddi,
Allahpur, Allahabad, Serving in
Ordinance Depot, Allahabad as
Senior Store Keeper.

... Applicant.

(By Advocate Mr. S. Lal)

versus

1. Union of India through Secretary to the Government, Ministry of Defence, New Delhi - 110 011.
2. The Director General Ordinance Services (O.S-8C), Army Headquarters, D.H.Q. P.O., New Delhi - 110 011
3. Officer Incharge, Army Ordnance Corps Records, A.O.C. Record Office, Secunderabad.
4. Commandant, Ordinance Depot, Allahabad. ... Respondents.

(By Advocate Mr. S. Singh)

**ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

The short question is whether grading below the bench mark should

b/w

necessarily communicated before taking into account the same for promotion to the higher post is the question. The applicant relies upon the decision of the Principal Bench in the case of Shyam Lal vs Union of India, 2005(1) ATJ 22, which was based upon the decision of the Apex Court in the case of U.P. Jal Nigam and others vs Prabhat Chandra Jain & Ors (1996) 2 SCC 363 in this regard and the decision of the Apex Court in the case of Mohd. Ahmed vs Nizam Sagar Factory, (2005) SCC (L&A) 62 in respect of arrears of pay and allowances for the period of wrongful denial of promotion.

2. The admitted facts of the case are as under:-

(a) The applicant was initially appointed as Storekeeper on 07-10-1980 and was promoted as Senior Storekeeper w.e.f. 16-06-1997. The next promotion in the ladder was Store Superintendent and in the 2004 panel for the said post, juniors to the applicant figured in whereas the applicant's name could not be found. A logical representation from the applicant was the result of supersession in September, 2004, followed in its close heels another in October, 2004 and on the basis of records the applicant was informed that he could not meet the required standard by the DPC held in August, 2004 and as such was not included in the panel. The applicant has challenged his supersession primarily on the ground that when no adverse remarks were communicated, there is no question of supersession. In other words, if his performance in any of the past years which were considered by the DPC was

below Bench Mark, the same should have been communicated and if not, it should not have been taken into account.

3. Respondents resisted the OA. They have contended that as the DPC did not find him suitable he was not selected. However, they have not denied the fact that no adverse remarks were communicated to the applicant.

4. Rejoinder, reiterating the facts/averments as contained in the O.A was also filed by the applicant.

5. In a supplementary affidavit filed by the respondents in 2005, it has been stated that the applicant was considered for promotion to the post of Stores Superintendent in 2005 and by order dated 23-07-2005, the applicant was promoted to the said post.

6. Arguments were heard and documents perused. The applicant, as stated in para 1 above heavily relied upon the decision of the Principal Bench in the case of Shyam Lal, which took into account the decision of the Full Bench of the Hon'ble Delhi High Court in the case of J.S. Garg vs Union of India & Others 2003(65) Delhi Reported Judgments 607 (FB), which in turn placed 'strict reliance' upon the decision in the case of Jal Nigam. The Principal Bench.

(11)

7. Admittedly no remarks were communicated. However, in 2005 the applicant was promoted. The question, therefore, is whether the applicant is entitled to the claim for promotion as Store Superintendent in the 2004 panel itself as no adverse remarks were communicated. Subsequent to the decision of the Full Bench in the case of J.S. Garg by the Hon'ble Delhi High Court and equally after the decision in the case of Shri Shyam Lal by the Principal Bench, based on the said decision of the Full Bench and the decision of U.P. Jal Nigam, the Apex Court has held in the case of ***Union of India v. Major Bahadur Singh, (2006) 1 SCC 368***, as under:-

".... U.P. Jal Nigam case1 has no universal application. The judgment itself shows that it was intended to be meant only for the employees of U.P. Jal Nigam only."

8. The above decision should, therefore, be taken as clarification to the earlier decision in the case of U.P. Jal Nigam, which was relied upon by the Hon'ble Delhi High Court and in turn by the Principal Bench.

9. Taking into account the above decision of the Apex Court, when the instant case is viewed, it is evident that UP Jal Nigam case cannot be applied without referring to any other rules on the subject applicable to the facts of the case. The Govt. have issued instructions to the effect that "average" grading need not be communicated and at the same time, as the grade

"average" is not a distinguished grade, the same shall not be taken as to entitle the individuals to promotion. (In this regard, ^{Para 6.1.3 of 2} Ministry of Personnel O.M dated 10-04-89 is relevant.

10. Notwithstanding the above, if the applicant has a comfortable grading in the past say very good and above save a particular year, when the mercury has a deep decline, inasmuch as the grading happened to be 'average', then there would be a need to communicate the same to the applicant. And, if in the subsequent period too, the reports are very good and above, the same would be a pointer to show that the applicant's grading as average in the sandwiched period, may not reflect the correct grading and perhaps, accentuated by any personal feuds. In that event, the DPC should consider the overall grading. In other words, where there is an isolated remark of 'average' and for the rest of the years the grading is at least two grades higher than average, communication of the adverse remarks becomes a must and if not communicated, the same should not be taken into account.

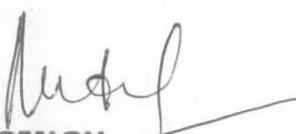
11. In the instant case, it is not known whether the applicant's gradings in the past were very good and/or above and it is only in one year he was graded as average. If so, the respondents may have to ignore the grading of average, when the same has not been communicated, and promote the applicant to the grade of Store Superintendent in the 2004 panel itself. Instead, if the past gradings were only 'good' or mixed with 'good' and above

6W

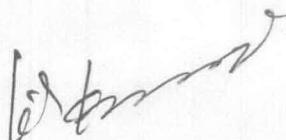
and in the decline is only by one grade, no action need be taken.

12. In view of the above, the OA is disposed of with a direction to the respondents to verify from the ACR whether the non promotion of the applicant was due to his average grading for one year whereas his gradings for the rest of the years were 'Very Good' and above and if so, review DPC be conducted to consider the case of the applicant without taking into account the 'average' grading. Instead, if for the other years the gradings were only 'good' the applicant being not entitled to promotion on the basis of Bench Mark, he be communicated accordingly. This drill be performed within a period of two months from the date of communication of this order.

No costs.



A.K. SINGH
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER