

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

Dated: Allahabad, This The 04th day of May, 2000

Coram: Hon 'ble Mr. S. Dayal, A.M.

Hon 'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1416 of 1992.

Along with

Original Application No. 1415 of 1992.

O.A. 1416/92

1. I.P. Mishra,
son of Sri G.N. Mishra,
General Manager,
Ordnance Parachute Factory,
Kanpur.
2. K.P. Singh,
son of Sri Naunihal Singh,
Addl. General Manager,
Ordnance Equipment Factory,
Kanpur.
3. A.K. Rastogi,
son of Sri B.P. Rastogi,
Addl. General Manager,
Ordnance Factory,
Kanpur.
4. C.P. Agarwal,
son of Late Dr. S.L. Gupta,
Addl. General Manager,
Small Arms Factory,
Kanpur.
5. G. Krishnamurthy,
son of Late Gopalakrishna Iyer,
Addl. General Manager,
Ordnance Factory,
Kanpur.
6. K.K. Sodhi,
son of Shri T.R. Sodhi,
Addl. General Manager,
Small Arms Factory,
Kanpur.

Applicants.
Counsel for the applicants:- Sri Giridhar Gopal,
Dr. R.G. Padia, Adv.

Versus

1. Union of India through the Secretary, Ministry

P.T.O.

-2-

of Defence, Production and Supply, New Delhi.

2. Union Public Service Commission, New Delhi through its Secretary.
3. Appointment Committee of Cabinet through its Secretary, Establishment Office, North Block New Delhi.
4. The Chairman,
Ordnance Factory Board,
10-, Auckland Road,
Calcutta.
5. Sri P.K. Mishra, at present posted as Deputy Director General, Ordnance Factory Board, Calcutta.
6. Shri A.K. Lamba, Addl. General Manager, High Explosives Factory, Kirkee, Pune.
7. Shri P.S. Sodhi at present posted as Deputy Director General, Ordnance Factory Board, 10-A, Auckland Road, Calcutta.

. . . Respondents.

Counsel for the respondents: Sri Ashok Mohiley, Adv.
Sri Sudhir Agarwal, Adv.

O.A. 1415/92

Vigyan Shankar son of Shri Virendra Agnihotri at present posted as Addl. General Manager, Ordnance Factory, Kanpur.

. . . Applicant.

Counsel for the applicant: Sri Giridhar Gopal, Adv.
Dr. R.G. Padia, Adv.

Versus

1. Union of India through the Secretary, Ministry of Defence, Production and Supply, New Delhi.
2. Union Public Service Commission, New Delhi through its Secretary.
3. Appointment Committee of Cabinet through its Secretary, Establishment Office North Block, New Delhi.

P.T.O.

4. The Chairman,
Ordnance Factory, Board,
10-A, Auckland Road,
Calcutta.
5. Shri P.K. Mishra, at present posted as
Deputy Director General, Ordnance Factory Board,
Calcutta, 10-A, Auckland Road, Calcutta.
6. Sri A.K. Lamba, Addl. General Manager,
High Explosives Factory, Kirkee, Pune.

....Respondents.

Counsel for the respondents: Sri Ashok Mohiley, Adv. and
Sri Sudhir Agarawal, Adv.

ORDER (Open Court)

(By Hon'ble Mr. S.Dayal, Member (A).

These are two O.As. which have been heard together because they relate to the same promotion and has the same set of facts and identical reliefs. The relief asked for in O.A. 1416/92 which was taken as the leading case areas follows:-

- (a) That the Hon'ble Tribunal be pleased to set aside the promotion and placement of respondents No. 5 6 and 7 namely Sri P.S.Sodhi, Sri P.K. Mishra and Sri A.K. Lamba and also set aside the promotion order dated 1.10.91 to this extent.
- (b) That the Hon'ble Tribunal be pleased to quash orders dated 18.6.92, 26.8.92, 17.6.92, 4.7.92 16.7.92 and 6.7.92 (Annexure A-10, A-11, A-12, A-13, A-14 and A-15 respectively) rejecting representations of the applicants.
- (c) The Hon'ble Tribunal be pleased to issue any other writ, order or direction as it may deem proper in the circumstances of the case.
- (d) Award the cost of this application to the applicants

The reliefs asked for in O.A. 1415 of 1992 are as follows:-

- (a) That the Hon'ble Tribunal be pleased to set aside the promotion of respondents No.5 and 6 namely Shri P.K. Mishra and Shri A.K. Lamba and also set aside the promotion order dated 1.10.1991 to this extent.
(Annexure-1).
- (b) That the Hon'ble Tribunal be pleased to set aside the order dated 5.9.92 which is a non-speaking order and issued without application of mind.
- (c) The Hon'ble Tribunal be pleased to issue any other order or direction as it may deem proper in the circumstances of the case.
- (d) Award the cost of this petition to the petitioner.

2. The O.A. 1415 of 1992 has been filed separately because of the sole reason that the applicant was junior to respondent No.7 in the seniority list. The applicants in O.A. 1416 of 1992 belong to years 1964, 1963, 1963, 1964, 1964 and 1963 batch of Indian Ordnance Factories Services respectively. The applicant in O.A. 1415 of 1992 belongs to 1967 batch of Indian Ordnance Service. In order to improve the prospects of promotion of officers in Group-A service a proposal for cadre re-structuring was mooted and approved in May 1990 leaving 171 vacancies of S.A.G/ Additional General Manager / Deputy Director General. These vacancies thus related to the year 1990-91. They were filled up by promotion order dated 01.10.91. It is the contention for the applicants that only those officers could have been promoted who had been working in Junior Administrative (Selection) Grade and have completed two years regular service in this said Grade. The applicants have contended that Shri A.K. Lamba and Sri P.K. Mishra who

had not completed two years service in the selection Grade of Junior Administrative Grade, were not only promoted but were put above the applicants who were far senior to them along with one Shri P.S. Sodhi who though eligible was junior to the applicants. It has been suggested by the applicants that Shri Lamba and Shri Mishra were retained in the field Gun Factory, Kanpur for about 7 to 8 years and Shri Sodhi was in Gun Carriage Factory for 26 years and their retention and their Grading suggests that they have been favoured. The applicants have challenged that there was nothing outstanding in the performance of the 3/2 respondents. It has also been said that in case of Shri A.K. Lamba the D.P.C. considered five only confidential report in the Grade of J.A.G and 3 and in the Grade of S.T.S. in the case of Shri K.P. Mishra six A.C.Rs. were in the Grade of J.A.G. and two in the Grade of S.T.S in the case of applicants six A.C.R. were considered in the Grade J.A.S.G. (functional) and ^{two} ~~xx~~ in the Grade of comparison J.A.G. Thus there was un-equal ~~exemption~~. It is also suggested that 171 posts should have been filled by preparing yearwise panel, so that the zone of consideration was not very large the applicants ~~must~~ have mentioned that the Ministry of Defence by order dated: 29.5.91 while approving cadre review sanctioned 161 additional posts of S.A.G. and simultaneously abolished 109 posts of J.A.S.G. (Functional) in which Grade the applicants have been promoted on 29.9.84. The applicants made representations against their supersession to the respondents but the same were rejected by non-speaking orders.

3. The arguments of Shri Gridhar Gopal for the applicant and Shri Ashok Mohiley for the Official respondents and Shri Sudhir Agarwal for private respondent No.5 have been heard. The pleadings on record have been considered.

The learned counsel for the applicants submitted a brief statement of facts on the basis of which he advanced his arguments.

4. The contention of learned counsel for the applicants is that the applicants in the two O.As. were at serial Nos. 11, 33, 34, 38, 54, 56 in the list of Junior Administrative Grade while the three respondents were at serial No. 27,126 and 154 in the list of J.A.G. Officers. Thus the over all rank according to the learned counsel for the applicants works out of 212, 240 and 113 respectively. The learned counsel for the applicants contends that such supersession is clearly arbitrary. He has in this connection relied upon the judgment in the case of Menaka Gandhi Vs. Union of India 1978, A.I.R. 1978 S.C. 624 in which it has been held that when an act is arbitrary, it is violative of Article 14 of the Constitution. According to this judgment has to be right, just and fair and not arbitrary fanciful or oppressive. This contention of learned counsel for the applicant has been contested by the learned counsel for the respondents who have urged that the order of promotion was strictly in conformity with the instructions issued by the Government on merger of level 1 and level 2 of Senior Administrative Grade and abolition of 109 posts of J.A.S.G. which rendered Senior Administrative Grade level 1 and level 2 and Junior Administrative Selection Grade non-existent. We shall revert to this issue later.

5. The main contention of learned counsel for the

applicants is that since the grading given to the three respondents of outstanding category adversely affected the prospects of promotion of the applicants, it should have been communicated to the applicants before it was acted upon so that the applicants had fair opportunity of matching the performance and compete in the selection on an equal footing. In making this contention the learned counsel for the applicants relied upon *Udai Krishna Vs. Union of India O.A. No. 1837 of 1994* decided on 17.8.95 by a Division Bench of Allahabad Central Administrative Tribunal. The learned counsel has relied on the following excepts in para 7 and para 8 of the order.

" To sum up any entry which adversely affects the interest of a person is adverse. The remarks 'Good' and 'Average' in the context of the recruitment of benchmark grade 'Very Good' for promotion to Junior Administrative Grade and above will adversely affect the promotion of an officer who has not earned remark 'Very Good'"

" In this view of the matter, we are inclined to agree that a 'Good' or 'Adverse' grading in the A.C.R., though not per se adverse would assume the character of adverse remarks in the context of the requirement of 'Very Good' Bench Mark to qualify for empanelment for promotion to Junior Administrative grade and above."

The learned counsel for the applicant has also relied upon *Girija Shankar Mishra Vs. Union of India (1996) 34 Administrative Tribunals Cases 43*. He has cited the following from the order of the Tribunal :

" No objective criteria have been laid down by the Government of the Department regarding distinction between 'Very Good' and 'good' while recording or grading ACRs and when such a

grading is crucial to the officer's prospects it becomes fatal and affords an opportunity to settle personal scores by the Reporting or the Reviewing Officer simply writing 'good' in the final grading instead of 'Very good'. It is contended that if 'good' is not good enough for promotion purposes, it is the duty of the CBDT and Government to even treat the good remarks as adverse and convey it to the applicant. The applicant here is indirectly challenging the very system of grading officers as 'good' or 'Very good' because by simple classification and pigeon holding of an officer into the category 'good' eliminates him from the empanelment and it is claimed that withholding of a promotion is form of penalty and without giving an opportunity to the officer to rebut his classification as 'good', principle of natural justice are violated. This line of argument is not without some force. But here is a case wherein though the performance is good, it does not take him to reach the level where he could be considered for promotion. Thus this gradation has a negative effect on his service and therefore, could be regarded as adverse in so far as his case faces a bar at the threshold itself for promotion."

The learned counsel for the applicant has also relied on O.A. 125 of 1993 Sri Bhaktadas Roy Vs. Union of India and others decided on 18.2.93

" The applicant relies upon the judgment of C.A.T. Jabalpur Bench in O.A. 291/88 in Jugal Kishore Goel Vs. Union of India and others decided on 17.5.89. It was submitted in this case that if the minimum bench mark for consideration for promotion was 'Very Good' and the ranking of the officer as good was not enough the 'Good' remarks had to be treated as adverse and had to be conveyed to the applicant. It was taken into consideration that the 'Good' remark eliminates the officer from the empanelment and bars him from

being considered for promotion. These submissions were accepted by the Tribunal as having some force. The Tribunal further held that in view of the decision of the Supreme Court in the case of Gurudial Singh Fijji the non communicated remarks had to be ignored and thereafter gave the directions for constituting the review D.P.C. We find that it would be necessary to direct the respondents to constitute the review D.P.C. and give further directions that the remarks for the year 1988-89 and 1989-90 be ignored.

The learned counsel for the applicant has relied on the judgment of Delhi High Court in Sri Gurmohan Singh vs. Union of India and others.

" It is therefore proper that whenever a report is either adverse to the public servant or, even though not strictly adverse, but may be construed as expressing any view with regard to the work or conduct of the officer which may perhaps prejudicially affect his chances of promotion or future prospects that it is communicated to the Public Servant so that he could either make an effort to improve or if he is aggrieved by it, to make a representation against it. That is the reason for the rule as well instructions which are almost of universal applications that in all cases in which adverse reports are made against a public servant, they should be communicated to the officer so that he is able to make a representation against it. It is unnecessary to decide the question as to the particular rules or instructions that would govern the petitioner decade the requirement of disclosure of an adverse remark as a condition of taking it into consideration can hardly be challenged in terms of any rules or debar any rules.

In Krishna Dnyanba Nandgave versus Union of India cited by the learned counsel for the applicant the question was as to how the remark judge ^{just} adequate be treated and whether it should be treated as adverse or not. Since this question

has no relevance in this case, this judgment is not relevant in the present O.A.

The learned counsel for the applicant has relied on G. Chenkamalam Vs. Union of India and others (1998) 37 A.T.C. 354. This order of the Tribunal relies on the Jabalpur Bench judgment of Bhakt Roy Vs. Union Of India (Supra) Udaikrishna Vs. Union of India (Supra) U.P. Jal Nigam Vs. Prabhat Chandra Jain (1996) 33 A.T.C. 217 (S.C.) the following except has been emphasised

* In the Tribunal rulings referred to earlier the Tribunal has tended to take the dictionary meaning of the word 'adverse' to arrive at the conclusion about the adverse nature of the entry. The communication of the adverse remarks is by way of the common law principle of natural justice only and has basically the specific purpose of enabling the government servant concerned to correct the defects as noticed or to seek reassessment on the question of perceived shortcoming.

5. The common ratio in all such judgments cited before us is that in some cases even a grading which was not otherwise in common parlance taken as adverse becomes adverse and such situations arise when the bench mark for promotion becomes very good and the go of a grading of good which makes him unfit for promotion. The case before us is not an official declared unfit for promotion but/ an official who though included in the panel has been overtaken by some other officials who had better grading than the officials who are applicants in this case. The learned counsel for the applicant admits that it is a new idea and that a method had to be devised so that officials could be warned against such supersession. However the very system of

grading and communication of adverse remarks envisages that the adverse remarks are to be communicated to the person whose annual confidential report contains the adverse remarks. The suggestion that the remarks given to others which are less than the best should be treated as adverse because they are likely to interfere in his career at some stage is an idea which to us does not appear to be workable and practicable. It would open ^{box} ~~pendomas~~ by way of representations which would be never ending and would delay promotions of officials hence this contention of the learned counsel for the applicant is not accepted.

7. The applicant has cited to rely upon the case of U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others J.T. (1996)(1) S.C. 641. The issue in this case was that if there is a fall in grading, the reasons for such fall should be recorded and the concerned official be informed and the change in the form of a advice. The ratio is clear but the applicability to this case ^{relief} to the ~~facts~~ in the case before us are not clear since the gradings of any of the officials considered in the D.P.C. or the assessment of the D.P.C. regarding the bench mark achieved by the official is not under challenge in present case.

8. The learned counsel for the applicants has contended that superior bench marking of outstanding and making them en-bloc senior to those who were graded as very good was arbitrary defective and subjective. This contention is clearly untenable because the applicant challenges the grading of outstanding while he seeks to maintain that all other gradings were properly made and should

-12-

remain. The fact that there were only three officers outstanding in a lot of 171 candidates also does not take away the correctness of grading of the officials who were considered for promotion to Senior Administrative Grade. The learned counsel for the applicant seeks to demolish the foundation presses and ~~presses~~ that superstructure be allowed to stand.

This is something which can not be accepted as it is clearly illogical. There are two gradings involved in this case. The first is the annual grading given to an officer whose performance is assessed by the reporting reviewing and accepting authorities and the second is over all grading arrived at by the departmental promotion committee after assessing candidate's performance. As regards the first, the grading is to be communicated to the officer to whom it is given in case the grading is adverse. Communication of a grade which can not

come in the category of adverse is outside the purview of order relating to confidential reports.

As/ the over all grading arrived at by the

Departmental Promotion Committee the same can not be communicated to the official at all. It can only result in promotion or otherwise of the persons considered.

9. The learned counsel for the applicants has also contended that the grading given to respondent No.5 to 7 has been challenged on facts. The so called challenge to the grading of the respondents on facts is an attempt by the applicants to re-write the confidential reports of the officials concerned. As we have mentioned earlier, the

contention of the applicants that the grading of outstanding should not be accepted while the gradings of very good and below be accepted. This is a proposition which can not be accepted. Over all either stock and the gradings remain or the go lock stopper barrel in which case the entire selection gets affected. We can not presume that the gradings upto very good were given in a proper manner while the grading of outstanding were given by exercise of favouritism. The annual gradings as a matter of fact are again considered by Departmental Promotion Committee and it arrives at over all gradings after taking into account not only the confidential reports but other factors including the question of punishment in departmental proceedings etc.

10. The learned counsel for the applicant has contended that the respondent No.5 and 6 were ineligible for being considered for selection in the Senior Administrative Grade. It is the contention of the learned counsel for the applicant that even on 2.7.90 separate list of Junior Administrative Grade existed for selection and ordinary grades. Secondly S.R.O. 98 of revised pay rules 1987 was amended only to merge the pay scales of Senior Administrative Grades of level 2 and level 1. It was not a merger of service or cadre. It is contended that the recommendations of Pay Commission were guidelines for amendment for service which have not been amended till date. Hence respondent No.5 and 6 be deleted from the list of promotion on the ground of un-eligibility because they had not worked for two years in the

Junior Administrative Selection Grade in terms of recruitment rules for Indian Ordnance Factories Service as on 1.6.90. We find from Annexure-1 to C.A. filed on behalf of respondent No.5 that S.R.O. 9 E was published in Gazette and promulgated rules which were called Civilians in Defence Service (Revised pay) Amendment Rules 1987. This S.R.O. was published in Gazette of March 20, 1987. At serial No.30 the two scales of Senior Administrative Grade level 2 and Senior Administrative Grade level 1 have been merged and given the scale of Rs. 5900-200-6700.

Thus on 20.3.87 the Senior Administrative Grades level 1 and level 2 ceased to exist and became only one Senior Administrative Grade. The respondent No. 5 has furnished a copy of O.M. No. 7(8)/87/D(FY-1)

dated 29.5.90 which is the order of the Ministry of Defence creating 242 new posts including 161 of Senior Administrative Grade by abolishing 109

posts of functional Selection Grade, 28 posts of senior time scale and 105 posts of junior time scale.

This Annexure to the supplementary counter reply of respondent no.5 shows that the functional Selection grade ceased to exist on 29.5.90. Thus the situation

of 29.5.90 was that there was a single Senior Administrative Grade and a Single Junior Administrative Grade. The learned counsel for the applicant had contended that Recruitment Rules for Indian

Ordnance Factories Service stipulated that promotion from Junior Administrative Grade could be made to Junior Administrative Selection Grade and promotion from Junior Administrative Selection Grade of officers having two years regular service in grade could be made to Senior Administrative Grade level 2 and only Senior Administrative Grade level 2

could be promoted to Senior Administrative Grade level 1. His contention is that these rules were current on 1.6.90 and are therefore applicable in case of promotions to Senior Administrative Grade. In this case, however, Departmental Promotion Committee for filling 171 posts of S.A.G. grade was held in February 1991 and the promotion orders were issued on 1.10.91 i.e. later than the dates given above. The existence and applicability of recruitment rules meant for the posts which had ceased to exist can not be accepted. The learned counsel for the respondents has brought to our notice the order of Bombay Bench in O.A. 254 of 1992 relating to this very selection between M.P. Gupta Vs. Secretary, Ministry of Defence, Department of Defence Production and others. In this case the applicant had challenged the selection on the ground that his juniors have been promoted and he was superseded. He had claimed that most of promotions did not have sufficient eligibility for the purpose of promotion. This was raised on the basis that the recruitment rules of 1972 were applicable. The Bombay Bench of this Tribunal had examined the issue of applicability of recruitment rules 1972 and had arrived at the finding that these rules were not applicable because there was no provision for the post of Senior Administrative Grade since the grading was not invoked at the time 1972 rules were applied. The Bombay Bench relied on the judgment of the Apex Court in State of U.P. and others Vs. Dr. M.J. Siddiqi and others, A.I.R. 1980 S.C. 1098 in which the two cadres of provincial/service 1

Medical Subordinate and provincial/ Service 2 were merged and the Government did not provide any new rules for the merged cadre. The Supreme Court observed that the old rules of 1945 could not be made applicable to the new cadre which was brought into force by merger of two cadres.

11. The learned counsel for the applicants has urged that the judgment of Central Administrative Tribunal Bombay in M.P.Gupta's case (Supra) should be considered as per incuriam because it ignored the fact that the service was not merged but only two scales were merged. We have considered this contention of learned counsel for the applicant but we are unable to convince ourselves that the cadre of Senior Administrative Grade Level 2 and Level 1 remained at the time of selection. We /also unable to convince ourselves that the cadres of Junior Administrative selection grade and Junior Administrative Grade existed at the time of impugned selection to Senior Administate Grade. Since the cadres had ceased to exist by virtue of merger/abolition of posts the applicability of recruitment rules of 1972 had also ceased to valid as per selection to Senior Administrative Grade was concerned. Hence we can not hold that the recruitment rules 1972 were to be followed in making selection to the post of Senior Admimistrative Grade.

12. The respondents have shown that in making promotions to Senior Administrative Grade on 1.10.91 they thought had followed the guidelines issued by the Government on Departmental Promotion Committees and the

suggestions of the Government in Departments of Personnel and Training O.M. No. 14017/87-EST(RR) dated 8.5.87 in which the Government had communicated that it was decided that eligibility of service for promotion from J.A. Grade level to Senior Administrative Grade Level (Merged) Scale was to be 8 years regular service in the Grade including service if any in the non functional selection grade or 17 years regular service in Group A posts out of which four years regular service should be in Junior Administrative grade. It is true that this O.M. had suggested that the departments should take consequential steps to amend the recruitment rules and the recruitment rules for Indian Ordnance Factories Service Rules have not yet been notified but promotions made on the basis of the decision of the Government communicated vide O.M. dated 8.5.87 can not be brought into question because the respondents have applied the executive instructions in a situation where the recruitment rules to Indian Ordnance Factories Service had ceased be applicable on account of re-structure of the service due to amalgamation of pay scales of Senior Administrative Grade and abolition of posts of Junior Administrative Selection Grade. We, therefore do not consider that the reliefs claimed by the applicants can be allowed. The O.As. are therefore, dismissed as lacking in merits. There shall be no order as to costs.

R. A. M. Nadeem
Member (J.).

H. A. Naseer
Member (A.).

Nafees.