

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED : Allahabad this the ^{17th} day of August 1995

Original Application No. 1837 of 1994.

Udai Krishna,
aged about 35 years,
son of Sri Giridhar Gopal,
Senior Superintendent,
Railway Mail Services,
'A' Division, Allahabad..... Applicant.
(By Advocate Sri K. C. Sinha)

Versus

Union of India,
through Secretary,
-Cum-Director General Posts,
Ministry of Communication,
New Delhi..... Respondent.

CORAM :- Hon. Mr. S. Das Gupta, Member-A.
Hon. Mr. T. L. Verma, Member-J.

O R D E R

(By Hon. Mr. T. L. Verma, Member-J)

1. The applicant, after completion of a brilliant academic career and a brief stint as a Lecturer in the Allahabad University, Allahabad joined as a direct recruit to the Indian Postal Service of 1984 batch. He got his first promotion in due course with effect from 6.2.1989. He became due for promotion to the next

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higher scale of Rs. 3700-5000/- (Junior Administrative Grade) in 1994. According to Rule, promotions are made to higher grade on the basis of remarks recorded on the work and conduct of the Government servants in their Annual Confidential Rolls. The applicant, it is stated, has never been communicated any adverse entry which might have been reflected in his ACRs. The self-appraisal sheets, which were submitted by the applicant, forming part of the ACRs, show outstanding performance of the applicant. As disagreement of the Reporting Officer of the Reviewing Officer with the self-appraisal report of the applicant has not been communicated, he reasonably expected his promotion to Junior Administrative Grade in the normal course. To the utter surprise of the applicant, the respondents have superseded the applicant by promoting 7 of his juniors by order dated 13.12.1994 (Annexure-A-6). According to the applicant, his supersession is unwarranted, arbitrary, capricious and malafide and against the principles of natural justice. Hence this application for quashing the order dated 13.12.1994 and issuing a direction to the respondents to take action for promoting the applicant alongwith his batchmates who have been promoted by order dated 13.12.1994 with all consequential benefits and privileges.

2. The respondent, while opposing the claim of the applicant, has in ~~the~~ counter-affidavit stated that the departmental Promotion Committee (DPC for short) after careful appraisal of the ACRS of the

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applicant, did not consider him fit for promotion to Junior Administrative Grade and that he came under 'adverse criticism' both in the year 1993 and 1994 based on the report of the Post Master General, Allahabad.

3. Heard the learned counsel for the parties and perused the record. According to instructions contained in para 6.3(ii) of the DOP&T OM No. 22011/5786-East dated 10.4.1989 for promotion to the post in the level of Rs. 3700-5000/- the Bench-mark grade should be 'Very Good'. The posts in the scale of Rs. 3700-5000/- and above it would thus appear are filled by selection on merit. We had called for the ACR dossier of the applicant as well as the DFC minutes to scrutinise whether the DFC had made a fair assessment of the merit of the applicant while considering him for promotion to the Junior Administrative Grade. We have perused the DFC proceeding and the ACR Dossier of the applicant and we find that the following gradings have been given to the applicant:-

<u>Period of ACR</u>	<u>Grading given by</u>		
	<u>Reporting Officer</u>	<u>Reviewing Officer</u>	<u>Accepting Authority</u>
1988-89 (1.4.88 to 31.3.89)	Good	Good	---
1989-90 (28.6.89 to 31.3.90)	Very Good	Very Good	Good
1990-91 (7.5.90 to 31.3.91)	Average	Average	---
1991-92 (1.4.91 to 31.3.92)	Average	Average	---
1992-93 (1.4.92 to 31.3.93)	Very Good	Very Good	---
1993-94 (1.4.93 to 31.3.94)	Very Good	Very Good	---

4. According to the guide-lines for categorisation of officers by Departmental Promotion Committee, the assessment is to be made on the basis of the majority of remarks recorded on the work and conduct of the Officers during the relevant period i.e. during five years immediately preceding the year in which he is being considered for promotion. The DPC met on 6.12.1994 and 7.12.1994 for considering promotion against vacancies pertaining to the year 1994-95. The CRs of the applicant pertaining to the year 1989-90, 1991-91, 1991-92, 1992-93 and 1993-94 are relevant for the purposes of assessing the grade of the applicant by the DPC. From perusal of the remarks, recorded during the aforesaid period, it would appear that the applicant has earned two 'Very Good', ~~and~~ one 'Good' and two 'average' ^{reports} ~~remarks~~. The DPC has, thus, assessed the applicant as 'Good' on the basis of the remarks recorded in his ACRs during the relevant period. The assessment of the merit of the applicant by the DPC thus, cannot be said to be unfair or arbitrary.

5. The learned counsel for the applicant next argued that the decision of the DPC in regard ^{to} ~~with~~ the applicant has been vitiated because extraneous material has been used for assessing the merit of the applicant. It was stated that the averments made in the counter-affidavit that the applicant was subjected to adverse criticism during the period 1993 and 1994 by Post Master General, Allahabad under whom he was working during that period, is not reflected in his ACRs and as such could not have been taken into consideration for assessing the

merit of the applicant. We are not impressed by this argument of the learned counsel for the applicant because the DPC has not used any material other than the remarks recorded in the ACRs of the applicant, for assessing his merit. The DPC, thus, has not committed any error in assessing the merit of the applicant. In the aforesaid view of the matter, decision in Prabhat Verma Vs. Union of India ; reported in 1988(SLR)page 642, Union of India Vs. Mohan Lal Gupta, reported in 1988(SLR) page 633 relied upon in support of the above arguments have no relevance hence need no discussion.

6. It was next argued that some of the officers promoted by impugned order dated 13.12.1994 had adverse entries but, they have been promoted despite adverse entries and as such the applicant's supersession by his juniors is arbitrary as well as discriminatory. It was also submitted that Misc. Application No.131 of 1995 was filed for summoning the DPC proceedings and ACRs of Officers, junior to the applicant, who were considered for promotion, along with the applicant to demonstrate that persons having adverse remarks, have been promoted. The request for summoning the ACRs of junior Officers who have been promoted was turned down by order dated 9.2.1995. The applicant, if he was aggrieved by the aforesaid order, should have moved the higher Court for reversing the same and should have obtained a direction for summoning the ACRs of the juniors also. That not having been done, he cannot now be

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permitted to argue that rejection of his application for summoning the ACRs of the junior Officers has prejudiced him. The learned counsel for the applicant has referred to the decision of Chandigarh Bench of the Central Administrative Tribunal in Naresh Chandra Bashistha Vs. State Govt. of Haryana reported in 1989(10) Administrative Tribunals Cases page 713 in support of his argument that the ACRs of junior officers who have superseded the applicant, should have been summoned. We have perused the judgment of the Chandigarh Bench of the Tribunal and we find that in the case before the Chandigarh Bench the names of juniors, who according to the applicant, had earned adverse remarks and who had been promoted by arbitrary categorisation, had been mentioned, in the petition. He had also asserted that adverse reports had been conveyed to him a number of times. In the case before us except the ~~allegation~~ ^{allegation} that the applicant had reasons to believe that some of the officers promoted in the list of 13.12.1994 had adverse remarks, but, they have been allowed to be promoted, there is nothing else to support this allegation. On the basis of this averment only, summoning of the ACRs of junior Officers who have superseded the applicant, in our opinion, was not at all necessary. There is no allegation of malafide against any of the members of DPC. The assessment made by the DPC of the merit of the applicant is based on the ACRs of the applicant, and as such the assessment of the merit of the applicant as made by the DPC by no stretch of imagination can be said either capricious, unfair or malafide. We therefore, find absolutely no

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merit in this contention of the applicant and for that reasons, ^{rejection of} the request of the applicant for summoning the ACRs of the juniors who have been promoted by the impugned order, is perfectly justified.

7. It was also contended that the grading of the applicant as 'Good' and 'Average' in the context of the Rule that ^{for} promotion to the grade of Junior Administrative and above, bench mark grade should be 'Very Good' assumes the character of adverse report and as such should have been communicated before the same was used by the DPC. It was submitted that uncommunicated adverse remark can not be used for superseding the claim of an Officer to higher grade. Generally, remarks 'Good' and 'Average' are not treated as adverse but, these remarks assume special significance when a Government Officer is excluded from the panel for promotion to a ^{higher} ~~particular~~ grade because the Bench Mark grade earned by him is not 'Very Good'. There is no statutory definition of word "ADVERSE ENTRY". We have, therefore, referred to some of the standard dictionaries to ascertain the meaning of adverse entry. In Biswa's On Encyclopaedic Law Dictionary and Mitra's Legal Dictionary 'Adverse' means opposed to one's interest, un-favourable, harmful, detrimental and prejudice. According to Random House Dictionary 'adverse' means antagonistic in purpose or effect, adverse criticism, opposing one's interest. In Corpus Juris Secundum Vol. XXVIII page 634 'Adverse' means unfavourable, detrimental. To ^{run up} ~~summon~~ any entry which adversely affects the interest of a person is

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adverse. The remarks 'Good' and 'Average' in the context of the requirement of bench^{mark} 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". It is needless to say that the career prospects of a subordinate officer largely depends upon the work and character assessment by reporting officer/reviewing officer/accepting authority. In this connection, we, would like to refer to the following observations of Hon'ble Mr. Sabyasachi Mukherji(J) as he then was, in R. S. Dass Vs. Union of India ; reported in 1987(S.C)page 593 :-

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"It can not be said now-a-days , if one is aware of the facts and currents of life, that simply because categoridation and judgment of the service record of officers are in the hands of senior officer is a sufficient safeguard. There has been considerable erosion in instremise sense of fairness and justice in the senior officers by all concerned. From the instances of conduct of many, some of senior officers and men in high position, it cannot be said that such erosion is not only unjustified."

Similarly, the Hon'ble Supreme Court, in S.Ramchandran Raju vs. State of Orissa ; reported in 1994 (28) Administrative Tribunals Cases page 443 has made the following observations :-

"This case would establish as a stark reality that writing confidential reports baars onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or

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proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the Officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy."

8. In view of the falling moral and ethical standard and having regard to the observations made by Hon'ble Supreme Court in the judgment referred to above the possibility of an unscrupulous Officer, who does not possesses enough courage to invite open confrontation with the subordinate but, at the same time intends to settle personal score by spoiling his career prospects, may give remarks which may not be communicable but, at the same time mar prospects of his promotion to higher grade, cannot be ruled out. The Officer becomes victim of bias and prejudice of the such an unscrupulous reporting Officer and will come to know of the mischief only after five years when the damage is already done. In this view of the matter, we are inclined ^{to agree} that a 'Good' or 'Average' grading in the ACR, 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.

9. In holding the above view, we are, however, confronted with the contrary view taken by Patna Bench in B. P. Singh Vs. Union of India & others ; reported in 1994 (28) Administrative Tribunals Cases page 601. It has been, inter-alia, held in the said case that 'Good' grading in the ACR does not by itself pose, a threat to the continuance of the employee in the post, he is holding. The same, therefore, cannot be termed as 'Adverse'.

10. We are unable to subscribe to the view expressed by Patna Bench of the Tribunal for the reason we have discussed above, and also because the issue germane to such cases is not threat to the continuance in service, but, the threat to the career prospect of the employees concerned. It is also pertinent to mention that the Supreme Court, ^{in the} decision referred to by Patna Bench in support of the view taken on this issue, has not considered this specific question. We were seriously considering to refer this issue for adjudication by a larger bench. We, however, refrained from making such a reference for the present as we are disposing of this application on other grounds pleaded by the applicant. We would, however, like that the Department of Personnel, which is the nodal department of the respondent, examines this issue in the light of the observations made above to consider to formulate safeguard against such victimisation.

11. We have noticed from the ACRs that the reporting Officer and the Reviewing Officer have graded the applicant as 'Adverse' in their report for the year 1990-91 and in the column 'General Assessment' with reference to his strength and weakness the remark recorded is 'Officer takes leave very frequently'. This remark can

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not be taken as the strength of the officer hence it has necessarily to be treated as his weakness. This remark, therefore, assumes the character of adverse remark. It should, therefore, ^{have} been communicated to the applicant. This does not appear to have been done.

12. We have also noticed that the grading 'Very Good' for the period 28.6.1989 to 31.3.1990, as given by the reporting officer and endorsed by the reviewing officer has been downgraded to 'Good' by Accepting Authority. It was argued that downgrading of 'Very Good' remark to 'Good' by the Accepting Officer amounts to adverse remark and as such should have been communicated to the applicant before the same was taken into consideration for assessing his merit by the DPC. Since this remark has not been communicated to the applicant, taking the said remark into consideration by the DPC, vitiates the assessment of the merit as done by the DPC. Similar question came up for consideration before Jabalpur Bench of the Central Administrative Tribunal in Mohan Gupta vs. State of M.P. reported in (1994) 26 A.T.C. page 878. The Jabalpur Bench of the Tribunal has held :-

"Before we part, we may also mention that the High Court of Madhya Pradesh, in the case of Shivanand Prasad vs. Union of India, has held that downgrading the remarks by the reviewing authority without recording reasons and which has bearing on the promotion avenue of an individual, amounts to adverse remarks and if not communicated to the concerned officer, the same have to be ignored. Therefore,

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the downgrading done by the reviewing authority in the year 1989-90 has to be adjudged in the light of the judgment of the High Court as well as the observations made by us in the body of the judgment. We can understand the reviewing authority expressing opinion about the performance of an officer for good reasons but, altering down gradation without recording reasons has to be ignored.

13. We have perused the ACR Dossier of the applicant and we find that the accepting authority has not given sufficient reason for downgrading the remarks from 'Very Good' to 'Good'. The reason given for down-grading the remark is "The officer is slightly overrated". The Accepting Authority was required to give the specific reason for disagreeing with the grading given by the reporting Officer endorsed by the Reviewing Authority. The remark does not indicate the ground on the basis of which he has downgraded the remark from 'Very Good' to 'Good'. The downgrading of the remark by the accepting authority thus, cannot be said to be based on sufficient cause. In fact, ~~no~~ no reason while downgrading from 'Very Good' to 'Good' has been assigned. While agreeing with the view rendered by the Jabalpur Bench of the Tribunal in Mohan Gupta's case (Supra) that downgrading the remark from 'Very Good' to 'Good' without assigning any reason amounts to adverse remark, We do not consider it appropriate to order that the same should be ignored. We are of the view that ~~because~~ the aforesaid two remarks, which according to us are adverse in nature should have been communicated to

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the applicant, and representation, if any, filed for expunction of the same should have been disposed of before the remarks were allowed to remark in the ACR of the applicant. It is settled principle of law that uncommunicated adverse remark can not be used for superseding the claim of an Officer for promotion to higher grade. That being so, the assessment of the merit of the applicant by DPC on the basis of the aforesaid uncommunicated adverse remarks, is vitiated.

14. In the result, this application is allowed in part and the respondent is directed to communicate the adverse remark for the year 1990-91 and the downgrading of the remark 'Very Good' to 'Good' by the Accepting Authority pertaining to the year 1989-90 to the applicant within a period of one month from the date of communication of this order. Representation if any, filed by the applicant for expunction of the said remarks be disposed of within a period of two months from the date of receipt of the representation and if the remarks /gradings are modified as a result of the representation, a review DPC, to consider afresh empanelment of the applicant, be convened for the Junior Administrative Grade.

There will be no order as to cost
J. M.
 J.M.

A.M.
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