

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD.

ORIGINAL APPLICATION NO. 769 OF 1999.

ALLAHABAD THIS THE 22th DAY OF SEPTEMBER 2004.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.

Hon'ble Mr. D.R. Tiwari, Administrative Member.

Prem Shankar Gupta aged about 51 years S/o Shri V.N. Ram, at present posted as Manager G.R.T.U. Raiwala Dehra Doon.

.....Applicant.

(By Advocate : Sri K.K. Mishra)

Versus.

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Quarter Master General, Army Headquarters, New Delhi.
3. Brig. V.P. Singh, Deputy Director General Military Farm, Quarter Master General Branch Army Headquarters, P.K. Puram, New Delhi.
4. Senior Record Officer, M.F. Records, Delhi Cantt, Delhi.
5. Sri O.P. Yadav, Farm Officer, at present posted at M.F. Binaguri.

.....Respondents.

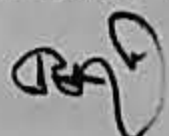
(By Advocate : Sri Rajiv Sharma)

ORDER

(By Hon'ble Mr. Justice S.R. Singh, V.C)

Heard Sri K.K Mishra learned counsel for the applicant and Sri R Sharma learned counsel for the respondents.

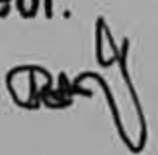
2. The applicant, presently posted as Manager, Military Farm, Srinagar (J.K.) was amongst the 14th eligible Managers considered for promotion to the grade of Farm Officer. It is not disputed that promotion to the grade of Farm Officer is made on the basis of selection on merit. The D.P.C. held on 14th March 1997, found Sri B.P. Bharadwaj, Sri R.C. Tyagi, Sri Y.S Jachkerary, Sri Sahooker (S.C.) fit for promotion to the grade of Farm officer on consideration of confidential report and discipline status of 14 eligible Managers. The applicant, it would appear, from appended minutes of meeting held on 14.03.1997 produced before us during the course of argument, was found 'unfit' for promotion. The applicant in the assessment by the D.P.C, was rated 'average', whereas, Sri B.P. Bharadwaj, Sri R.C. Tyagi, Sri Y.S Jachkerary were rated as 'Very Good'.



Scheduled caste candidate Sri Sahoo was rated as 'Good'. The bench mark for promotion was good.

3. The argument advanced by Sri K.K. Mishra learned counsel for the applicant is that in the year 1990-91, the applicant was rated 'Good', whereas in 1991-92, 1992-93 and 1993-94 he was rated 'Average' by Reviewing Authority through the reporting officer had rated him on much higher position. Thereafter upto December 1994 he was rated as 'Good'. The average entry, it is submitted by the applicant, is tantamount to down grading, the applicant in comparison to assessment in the year 1990-91 and being entry below bench mark ought to have been treated as adverse and communicated to the applicant but the same were not communicated and therefore, the decision taken by the D.P.C. on consideration of down graded entries is vitiated. Learned counsel for the applicant has placed reliance on the judgment of U.P. Jal Nigam and others Vs. Prabhat Chandra Jai and others, (1996) 2 Supreme Court Cases 363 besides the decision of this Bench in A.P. Singh Vs. Union of India and others 2004 (1) A.T.J. 421 in support of his contention that denial of promotion on consideration of uncommunicated down graded entries would be vitiated.

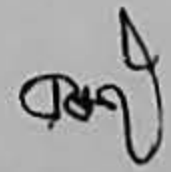
4. Sri R Sharma learned counsel for the respondents, on the other hand, has urged that Jal Nigam (supra) case has no application to the facts of the present case. He has placed reliance on the decision of Mumbai Bench of Central Administrative Tribunal in O.A. No.238/03 decided on 05.12.2003. Learned counsel for the respondents has also submitted that the applicant was considered in the year 1997-1998 but he was not found fit for promotion. Aggrieved by this, he had filed the writ petition in the Patna High Court which was disposed of with a direction to the Competent Authority to decide the representation of the applicant. Representation/appeal preferred by the applicant in pursuance to the direction given by the Patna High Court for promotion to grade of Farm Officer was considered as per direction of Quarter Master General. The review D.P.C held on 14.03.2004 did not find him fit for placing in the select list in the year 1997-98 and proceeding of the Review D.P.C was approved by Quarter Master General (Q.M.C). The representation/appeal preferred by the applicant was, accordingly rejected vide order dated 20.03.1999, a copy of which has been annexed as Annexure A-15. Learned counsel for the respondents further urged that the present O.A. is liable to be dismissed in view of the fact that the order Annexure A-15 has attained finality as there is no relief claimed in respect thereof.



5. Having heard counsel for the parties, we are of the view that contents in Annexure A-15 dated 20.03.1999 will not come in way of the applicant for taking the decision in respect of his claim for promotion for the year 1996-97. It cannot be gain said that down graded entries which were taken into consideration by D.P.C in its meeting held on 14.03.1997, must have been taken into consideration in the subsequent year as well. In the circumstances, therefore, if it is found that the applicant was illegally denied promotion in Farm Officer grade for the year 1996-97 due to consideration of uncommunicated adverse entries, he would be entitled to relief claimed in this O.A. On perusal of original service records, we find that in the year 1990-91, the applicant was rated as 'Good'. In the subsequent years, he was rated as 'Average' by Reviewing Officer. The Reporting Officer had rated the applicant as 'Excellent' in the year 1991-92, 1992-93, 1993-94, The Reviewing Authority gave no reasons for grading the applicant as 'Average'. We are of the view that the grading below prescribed Bench mark is tantamount to adverse entry and ought not to be considered without affording an opportunity to the concerned individual to represent his case. We are of the view that it would meet the ends of justice if the applicant is communicated the entries and afforded an opportunity to represent against these entries.

6. Accordingly, the OA. is disposed of with a direction that in case the applicant prefers representations against the entries for the year 1991-92, 1992-93, 1993-94, the Competent Authority shall consider the same within 3 months and thereafter convene the Review D.P.C for considering the fitness of the applicant for promotion to the grade of Farm Officer with two months next thereafter.


Member-A


Vice-Chairman

Manish/-