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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 228 of 2006

Wednesday this the 14th day of May, 2008

**Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

Param Hans Singh, S.E., S/o Sri Kalpnath Singh, Presently posted as Director (Pers & Legal) Chief Engineers, Air Force Bamrauli, Allahabad-211012.

Applicant

By Advocate Sri Vinod Kumar

Versus

1. Union of India through Secretary, M/o Defence, South Block, New Delhi-110011.
2. Engineer in Chief, Army Head Quarter Kashmir House, DHQ PO, New Delhi-110011.
3. Director General (Pers), Kasmir House, New Delhi.
4. Chief Engineer, Central Command, Lucknow.
5. C.E. (AF) Bamrauli, Allahabad-211012.
6. U.P.S.C. through its Secretary, Dholpur House, New Delhi.
7. MES No. 113337 Shri K.P. Pillai, ACE Headquarter, Chief Engineer, Central Command, Lucknow.
8. Sudesh Dhiman, Retd. D.G. (Pers) C/o Engineer in Chief, Army Head Quarter, Kashmir House, DHQ PO, New Delhi-110011.
9. Sri A.K. Bajaj, Additional Chief Engineer, E-in-C Branch, Kashmir House, Defence Headquarters, New Delhi.

Respondents

By Advocate Sri Saurabh Srivastava

ORDER

By K.S. Menon, Member (A)

The applicant Shri Param Hans Singh, presently posted as Director (Pers & Legal) in the Office of Chief Engineer (Air Force) Bamrauli, Allahabad, has filed this O.A. challenging the Order dated 24.08.2005 by which it has been communicated to him that in compliance of the Order dated 03.06.2005 passed by this Tribunal in O.A. No. 641 of 2005 his representation dated 15.04.2005 has been considered by the competent authority and the same has been rejected

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on the grounds that the D.P.C. did not consider him fit for inclusion in the panel of candidates eligible for promotion to the post of Additional Chief Engineer. The impugned order is annexed as Annexure-A I to the O.A.

2. The facts of the case in brief are that the applicant was initially appointed as Assistant Engineer E (B/R) in 1975 after passing the Combined Engineering Services Examination conducted by U.P.S.C. in 1972. He was subsequently promoted as Executive Engineer in 1984 and then as Superintending Engineer in 1997. According to the applicant he had an excellent service record and had also been deputed to attend certain specialized courses and was a recipient of the Engineer-in-Chief, commendation card. The DPC for promotion to the post of Additional Chief Engineer was held in April 2005 and to his utter surprise the applicant found that he was not put on the panel for consideration to the post of Additional Chief Engineer. Applicant submits that no adverse remarks were communicated to him all these years and given his track record, there was no possibility of his exclusion and apprehends that the D.P.C. has not seen the case in its proper perspective. The seniority list of Superintending Engineer, for 2005-2006 and the list of those selected by the D.P.C. (on 13.04.2005) are at annexure A-5 and A-6 to the O.A. The applicant has cited the following Judgments of different Courts alongwith relevant citations/case laws and relevant paragraphs, wherein it has generally been held that anything adverse against the delinquent official should be communicated to him so that the irregularity if any can be rectified:

- (a) U.P. Jal Nigam Vs. Prabhat Chandra Jain (1996) 2 SCC 363;
- (b) State of U.P. Vs. Yamuna Mishra, AIR 1997 SC 3671 and 1996 (8) SCC 762;
- (c) JT 1996 (2) 569 S.B.I. Vs. K.N. Kher
- (d) JT 1995 (8) SC 450
- (e) JT 1994 (5) SC 459 S.R. Raju Vs. State of Orissa.
- (f) 1997 (4) SCC 7
- (g) 1997 (2) SCC 368 Gurudial Singh Fiji Vs. State of Punjab.

The situation appears to have been further complicated because officers junior to the applicant were promoted above the applicant. Being aggrieved the applicant filed a statutory appeal dated 15.04.2005 (Annexure A-7). No action was taken by the respondents, so he had no option but to file the present OA. This OA was disposed of by this

Tribunal vide order dated 03.06.2005 with directions to respondent no.1 to decide the appeal of the applicant with a reasoned and speaking order within four months (Annexure A-8). The respondents complied with the aforesaid order by passing the impugned order dated 24.08.2005 which the applicant contends is not a reasoned and speaking order and is devoid of any grounds for non inclusion of his name in the list for promotion. He has also alleged that one of the members of the DPC i.e. respondent no.7 was biased towards him details of which have been enumerated at paragraph 12 of the O.A.

3. The applicant has also alleged that the impugned order dated 24.08.2005 has not been issued by respondent no.1 as directed by this Tribunal vide order dated 3.6.2005. The order has been signed by one Shri A. K. Bajaj (respondent no.9) who was junior to the applicant and also one of the candidates for selection to the post of Additional Chief Engineer to which he was subsequently promoted. The applicant therefore argues that the impugned order suffers from infirmities and deserves to be quashed and set aside (Annexure A-14).

4. The respondents on notice have filed their counter reply. Their main argument is that the applicant was not given any adverse remarks in his ACR, as such there was no requirement of communicating the same to him. In support of their argument, the respondents state that their contention is squarely covered by the judgment of the full bench of CAT dated 16.04.2004 in OA No.555 of 2001 (Dr. A. Dawan versus U.O.I. & Others) along with his other connected OAs' held

"If there is no downgrading of the concerned person in the ACR, in that event the grading 'Good' given to the Government employee irrespective of the benchmark for the next promotion being "Very Good" need not be communicated or to be treated as adverse".

This judgment was relied upon by CAT Mumbai in its judgment dated 16.09.2004 in OA No.838/2003 (Shri Nazir Hussain Khan versus U.O.I & Others). Responding to the applicants' allegation that the respondent no.7 was biased towards him and has, therefore, influenced the DPC they say is totally baseless as respondent no.7 was neither connected with the constitution of the DPC nor was he a member of the said DPC which was chaired by a Member of the UPSC. On the issue of the applicants averments in para 4 (13) to (16) of the OA wherein certain allegations have been made regarding procedural irregularities on the part of UPSC, the respondents while rejecting the same have drawn the attention of this court to DOPT, OM dated 20.06.1989 and

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corrigendum dated 13.07.1989 which states that DPC should not be guided merely by over all grading, if any, that may be recorded in the ACR but should make its own assessment on the basis of entries in the ACR. Respondents therefore urge that the O.A. is without any merit and is misconceived and it should be dismissed.

5. We have heard Sri Vinod Kumar, learned counsel for the applicant and Sri Saurabh Srivastava, learned counsel for the respondents and carefully scrutinized the pleadings on record and the original documents pertaining to the DPC proceedings which were subsequently shown to the Court.

6. The crux of the matter is whether grading given in an ACR, which is below the benchmark prescribed for that category of promotion is to be considered as adverse/effecting the officers' chances of promotion and consequently should it be communicated to the officer or not. The counsel for the parties have put forth several conflicting views duly supported by several Judgments of various Courts. To begin with it would be appropriate to see the relevant provision of DOPT's orders on the subject, which is as under: -

"6.2.1 Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence-

- (a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion.
- (e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.

6.3.1 *Principles to be observed and preparation of panel:* - The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel: -

- 1[(a) *Mode of Promotion:* - In the case of 'selection' (merit) promotion, the hitherto existing distinction in the nomenclature ('selection by merit' and 'selection-cum-seniority') is dispensed with and the mode of promotion in all such cases is rechristened as 'selection' only. The element of selectivity (higher or lower)

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shall be determined with reference to the relevant benchmark ("Very Good" or "Good") prescribed for promotion.

- (b) *'Benchmark for promotion: - The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed benchmark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed benchmark) by the DPC shall be included and arranged in the select panel in order to their *inter se* seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed benchmark) by the DPC shall not be included in the select panel. Thus, there shall be no super session in promotion among those who are graded 'fit' (in terms of the prescribed benchmark) by the DPC."*

From the above provisions it is clear that the D.P.C. makes its own assessment on the basis of the grading under various parameters or attributes and checks for any inconsistency with the over all grading. In short, the DPC takes an overall view of each officer and not merely based on the over all grading. **This entire exercise is offcourse carried out in respect of those officers who meet the aforesaid benchmark.** If the applicant in this O.A. did not meet the prescribed benchmark in the ACRs for the years the ACRs were considered by the D.P.C. the D.P.C. was well within their rights to have graded him unfit and consequently omitted his name from the panel. The applicant is under the impression that since it had been communicated to him vide the impugned order dated 29.08.2005 that there were no adverse remarks in his ACR, he should have been considered for empanelment and subsequent promotion.

7. It is considered essential at this juncture to see what is meant by the term 'adverse' and 'downgrading'. Both these terms are synonymous as downgrading of an ACR is considered to be adverse. Downgrading of an ACR implies that the grading of an officer is reduced from the category given by the Reporting Officer to a lower category by the Reviewing Officer. This happens when the Reviewing Officer feels that the Reporting Officer has been too generous with his grading although it is not commensurate with the officer's performance in that year. Downgrading can take place in individual columns for the attributes as well as in the overall grading. In either case, if the Reporting Officer and the Reviewing have given adverse comments in the ACR for a particular year it needs to be communicated to the officer concerned as per procedure prescribed in the rules. However, if the grading for a particular year is 'Very Good' and the subsequent year it is

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'Good' this does not connote down gradation, as the grading is given each year on the basis of targets assigned and its achievement or on the quality of overall performance of the officer for that particular year only, hence comparison with the previous year is not to be made. A distinction also needs to be made regarding an adverse entry and a below the benchmark grading. In the instant case, the benchmark for promotion to the post of Additional Chief Engineer is 'Very Good'. Grading 'Good' is in this case is admittedly below the benchmark, but by no stretch of imagination can it be construed as adverse. Benchmarks are assigned based on the promotion post and the number of vacancies generally available, especially in selection/merit cases, there is a necessity for fixing a threshold line. An officer's performance in a year may be 'Good' but he does not meet the prescribed benchmark of 'Very Good' he loses out in the merit list or the panel that is prepared out of the candidates who meet the benchmark requirements. An adverse entry/grading on the other hand connotes the quality of the officer's performance and is required to be communicated, so that his shortcomings are brought to his notice so as to give him an opportunity to rectify such shortcomings and improve.

8. In the above mentioned scenario, it can safely be concluded that as the applicant did not meet the benchmark requirements prescribed for consideration for promotion to Addl CE, the respondents have rightly not empanelled him for such a promotion. In the process of such an exercise if officers junior to the applicant have been empanelled and subsequently promoted by virtue of meeting the prescribed benchmark, the respondents cannot be faulted.

9. The applicant has relied upon the Judgment in U.P. Jal Nigam Vs. Prabhat Chandra Jain. The Supreme Court has subsequently held that the Judgment in U.P. Jal Nigam's case applies only to the employees of U.P. Jal Nigam and does not have universal applicability. All the other Judgments cited by the applicant as in paragraph No.2 above are clearly distinguishable from the facts and circumstances of this case. Besides as brought out above this is not a case of downgrading but consideration of a properly assessed ACRs wherein the over all grading is 'Good' and was therefore not required to be communicated. Therefore, the said Judgments do not cover the case in the present O.A. Even in the Larger Bench decision by the Principal Bench of Central Administrative Tribunal in O.A. No. 24 of 2007 Ashok Kumar Aneja Vs.

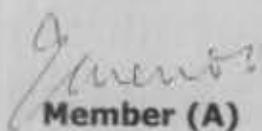
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Union of India and others, which considered all aspects of the matter and held at Para No. 41 as follows: -

41. While the Courts are to be extremely careful in exercising the power of judicial review in dealing with assessment made by Departmental Promotion Committees, the executive is also to bear in mind that, in exceptional cases, the assessment of merit made by them is liable to be scrutinized by Courts, within the narrow Wednesbury principles or on the ground of *mala fides*. The judicial power remains but its use is restricted to rare and exceptional situations. We are making these remarks so that Courts or tribunals may not by quoting this case as an easy precedent-interfere with assessment of merit in every case, Courts and Tribunals cannot sit as appellate authorities nor substitute their own views to the views of Departmental Promotion Committees. Undue interference by the Courts or Tribunals will result in paralysing recommendations of Departmental Committees and promotions. The case on hand can be a precedent only in rare cases."

10. In view of the above, we are of the considered opinion there has been no illegality or arbitrariness in the procedures adopted by the respondents and the D.P.C., which considered the case of the applicant and found him unfit as he did not meet the prescribed benchmark of 'Very Good' in his ACRs. Accordingly, we do not find any valid ground to interfere with the impugned order dated 24.08.2005. Consequently, the applicant's petition for being considered for promotion from Addl CE to CE from the date his juniors were promoted is also without any basis and fails. In any case, the applicant's case for promotion to CE from Addl. CE was considered in pursuance of this Tribunal and the High Court of Allahabad's directions and was not approved on grounds of not meeting the mandatory criteria as laid down in Recruitment Rules SRO-95 of 10th July 2004.

11. In view of the above, the O.A. is devoid of merit and is accordingly dismissed. No costs.



Member (A)



Member (J)