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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

O.A.No:184/2003

This the 29th day of March 2005

CORAM

**HON'BLE SHRI J K KAUSHIK, JUDICIAL MEMBER
HON'BLE SHRI M K MISRA, ADMINISTRATIVE MEMBER**

M.S.Yadav
S/o Late Shri Mangal Singh
R/o Village Kharkhara, Post
Office Dharu Hera, District
Rewari (Haryana). Last posting
At G.P.O., Delhi.

(By Advocate Sh. K.K.Shah)

...Applicant

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Union of India through
The Secretary, Ministry of Communications
and I.T., Department of Posts, Dak Bhawan
Sansad Marg, New Delhi.

2. The Director General (Posts), Dak Bhawan
Sansad Marg, New Delhi.

...Respondents

(By Advocate Mr. M.Godara, proxy
for Mr. Vinit Mathur)



O R D E R

Per Hon'ble Shri M K Misra, Administrative Member

Applicant Shri M S Yadav, an employee of the Postal Department retired on superannuation on 31.3.2003 from the post of J.T.S. He was denied the promotion by the respondents vide order dated 7.4.2003. Thus being aggrieved thereby, he made a second journey to this Tribunal with the following prayer:-

- a) That this OA may kindly be allowed with costs.
- b) That by issuance of an order of direction the respondents may please be directed to accord notional

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promotion to the applicant from 1.9.2000 when many other juniors were promoted to the post of JTS Group A officers.

- c) That all the consequential benefits may please be awarded to the applicant from the date of his promotion i.e. 1.9.2000.
- d) That the other relief which this Tribunal deems just and proper in the case may kindly be awarded to the applicant.

2. The brief facts of the case are that the applicant was promoted in PSS group 'B' cadre on 28.11.89 and his seniority was placed at serial no. 219 in the seniority list dated 1.1.95. He stated that due to non-formation of regular DPC, no promotion in JTC grade 'A' could be made amongst the eligible candidates in PSS group 'B' officers. Therefore, among others, the applicant was promoted to JTS on ad-hoc basis. As per the extant policy, the vacancies of JTS were to be filled up in the ratio of 1:3 by direct and by promotion respectively. Therefore, the applicant was promoted to the post of JTS group 'A' officer on 5.3.96 and continued till 10.8.98 as per the eligibility criteria prescribed in the Recruitment Rules, i.e., the promotion could be made out of the persons who were promoted earlier on ad-hoc basis. On the basis of regular DPC, the applicant could not be promoted on the post of JTS group 'A' officer till 10.8.98 although few officers junior to him were given regular promotion in that grade. Therefore, the applicant made a representation on 15.9.98 to the competent authority to consider his case favourably as juniors were given promotion. The representation was rejected

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by the competent authority on the ground that the applicant did not become eligible on the particular date for the promotion in the cadre of JTS group 'A' officer. The claim of the applicant is that had there been a regular DPC at regular intervals, he would have been promoted w.e.f. 1.9.2000. Therefore, he is entitled to get the promotions atleast on notional basis with all consequential benefits. The ad-hoc promotions were made on account of the fact that no DPC was held in the year 1995, 1996 & 1997. Further, the respondents did not worked out the number of vacancies yearwise and, therefore, the procedure laid down for holding DPC and working the number of vacancies for such DPC was not followed by the respondents. The bench mark for promotion in the grade of JTS group 'A' Officer was 'Good' only in the ACR. Therefore, the applicant was eligible for promotion to that cadre. The respondents did not consider this point in the case of the applicant. It was further stated that the applicant submitted a memorial to the President of India on 7.3.2002. In the meantime, another promotion order dated 1.9.2000 was made but in that promotion order, the name of the applicant was not included. Aggrieved by this order, the applicant again made a representation on 2.1.2001 to the competent authority for consideration. Not getting any redressal from the respondents, the applicant made the first journey to this Tribunal through OA 297/2001 and the Tribunal passed the order on 8.1.2003 directing the respondents' department to consider and dispose of the representation dated 2.1.2001 of the applicant within a



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period of three months from the communication of that order by way of passing a speaking order. The respondents' department rejected the claim of the applicant vide order dated 7.4.2003 on the ground that the applicant did not fulfil the bench mark, i.e., 'Good' for promotion to the post of JTS Group 'A' Officer. The claim of the applicant is that since the applicant was promoted on ad-hoc basis on the basis of last three ACRs, therefore, his bench mark, i.e., 'Good' must be there at that point of time. Therefore, the ground taken by the respondents' department is not correct and justified. Therefore, a request was made that the ACRs folders may be examined by this Tribunal to find out the exact position with respect to the bench mark relevant for the promotion. However, the applicant got promotion in that cadre w.e.f.30.1.2002. He further contended that since no communication in respect of down grade was made by the respondents' department to the applicant at the relevant time, therefore, no prejudice should be caused to him which may result into injury in detrimental to the cause of the applicant.

3. Learned counsel for the respondents in their reply submitted that as per the direction of this Tribunal vide order dated 8.1.2003 in OA 297/2001, the representation of the applicant was considered by the competent authority by passing a speaking order on 7.4.2003. The applicant was intimated as per the above order that he could not be extended the benefit of promotion in the cadre of Group 'A' JTS Officer because the applicant could not make the bench mark as per the rules

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framed by the DPC. The respondents department also submitted the relevant records of the DPC for the perusal of the Tribunal. The learned counsel for the respondents also submitted that as per Recruitment Rules, the appointment to the JTS cadre shall be made by selection on merit from amongst officers regularly promoted to the Postal Service Group 'C' with 3 years of regular service in that grade on the recommendations of the duly constituted DPC in consultation with the Union Public Service Commission (UPSC). Although, the applicant was working in JTS Group 'A' on purely ad-hoc basis but the same did not confer upon him any right for regular promotion in JTS Group 'A' because ad-hoc service rendered in that grade is not to be counted for regular promotions. As per the DPC guidelines in force at that time, the promotion to JTS group 'A' from PSS group 'B' was made on the basis of selection on merit. Therefore, the Officer who were graded 'Outstanding' by the DPC would be placed en block senior to those who were graded 'Very Good' and the officers who were graded 'Very Good' would be placed en block senior to the officers who were graded 'Good' as per the availability of the vacancies. Accordingly, the junior would also be promoted if he has been graded higher than his senior. It was further contended by the respondents that the ad-hoc promotion was given on the basis of vacancy available and to meet the shortfall at particular time in the cadre and such promotion is not based on ACRs. Therefore, the claim of the applicant that since he was promoted on ad-hoc basis on ACRs is

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without any substance. The UPSC convened the DPC and the grading was made by the DPC itself. The respondents further submitted that the number of vacancies, namely, 140 were not the result of accumulative vacancies of past years but was due to the amendment in Recruitment Rules 1997, according to which interchange-ability in JTS and STS posts on temporary basis was introduced and thereby 1/3 of total sanctioned strength in JTS group 'A' was to be filled through promotion and, therefore, the name of the applicant appeared in the consideration zone because of the above amendment. The regular DPCs were held during 1994 - 1997. The respondents further submitted that the communication is made in respect of only adverse remarks and in the case of the applicant since there was no adverse remarks, therefore, no communication was made to him about his down grade.

4. We have considered at great length the pleadings of both the parties and also perused the material available on record. We have also perused the confidential records of the DPC produced by the respondents' department during the course of hearing of the case. Besides, we have also considered the findings given in various judgments by the Hon'ble Supreme Court, High Court and also of the Tribunal as mentioned by the learned counsel for the applicant during the course of hearing. A brief mention of the same is as under:-

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1. M.K.Rajyana v. The UOI & Ors. (DB, Civil Special Appeal (Writ) 121/98 (High Court of Rajasthan).
2. Hav. Ram Singh v. UOI & Ors. (Mil LJ 2000 J&K 82)
3. Uday Krishna v. UOI (1996) 33 Administrative Tribunals Cases 802.
4. Vinod Kumar Sangal v. UOI & Ors. (1995) 4 SCC 246
5. Smt. Shanti Devi v. The State of Haryana & Ors. (1989 (3) SLR 284).
6. Smt. T.K.Aryavir v. UOI & Ors. (2003 (1) ATJ 130.
7. Zafar Iqbal v. UOI & Ors. (1996 (2) ATJ 461.

In the above rulings, the respondents were supposed to communicate the remarks to the delinquent applicants if they were below the bench mark for promotion to the higher grade as they were prejudicial to the applicants and since no communication was made in these cases, the Tribunal interfered in the proceedings of the DPC.



5. The respondent department has produced before this Tribunal the Minutes of the DPC meetings. As per the Minutes of the DPC held on 26th to 28th June, 2000, it is observed that number of vacancies in 1997-98 were 140 (20 for SC/ST), in 1998-99 were 15 (General), in 1999-2000 were 7 (2 for SC) and in 2000-2001 vacancies were 25 (4 for SC). The applicant in 1997-98 was awarded 'Average'. In 1998-99, he was further awarded 'Average'. In 1999-2000, his grading was 'Average' and in 2000-2001, he was again graded 'Average'.

6. From the above discussion, it is observed that the applicant was below the bench mark for promotion. Therefore,

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he was not re-commended for promotion by the DPC held in association with the UPSC. It is also observed that for each year, the vacancies were worked out and regular DPC meetings were held under the guidance of the UPSC from time to time. The applicant was not awarded promotion because he got the grade of 'Average' which is the below bench mark, i.e., 'Good', whereas the promotions were made (seniors or juniors to the applicant) on the basis of the bench mark. Thus, we do not find any deficiency or irregularity in the DPC proceedings. Therefore, no interference is called for by this Tribunal in the matter of DPC proceedings and their findings.

7. Regarding the communication by the respondents to the applicant with respect to down grade, i.e., below the bench mark, it is worth mentioning that it is not necessary for the respondents to communicate such down grading to the applicant because it is not an adverse remarks. Only adverse remarks are to be communicated as per the prescribed procedure by way of following the principle of natural justice. A Full Bench decision of this Tribunal in the case of **Manick Chand v. UOI & Ors.** (2002 (3) ATJ 268) supports our view. The Full Bench has considered this point at a great length and came to the conclusion in the following manner: -

"15. The entire object of the ACR is to assess the performance of the subject employee during the year. For purpose of promotion by selection, normally the ACRs of the five preceding years are taken into consideration. The DPC fixes its own norms and makes an independent assessment and arrives at a grading taking into account



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the totality of performance. Thus, if a government servant has consistently good record, but does not have the bench mark, the DPC does not hold him suitable. Further, whether a good positive entry is adverse or not, comes to light only when a meeting of the DPC takes place and independent assessment is made by the DPC. If such grading arrived at DPC, were to be communicated to the concerned Government servant perhaps, no purpose would be served except to bring it to the knowledge of the concerned person, because the entries in all the five ACRs which were considered by the DPC will have to be communicated, if they are treated as adverse, even though they may not be adverse in the strict sense. Therefore, the Government servant cannot be expected to improve his performance during the previous four years, if informed after a period of five years. The improvement can come about only for the year immediately preceding the year when the meeting is held. Therefore, conveying of the remarks for improving the performance for promotion may not serve the purpose, because the assessment by the DPC is not to be communicated. Further, the ACRs form the basis for clearing the Government servant for Efficiency bar, Promotion, Regularisation and continuation in service also. In fact, the Supreme Court has held in Baikuntha Nath Das (supra) that even where a person is retired compulsorily under FR 56 (j), it is not liable to be quashed by a court, even if communicated adverse remarks in the ACRs were taken into consideration for compulsorily retiring the Government servant. Considering this position, in our considered view, there is no need to communicate the non-adverse remarks or grading to the concerned government servant. Besides, the Government servant only has a right to be considered for promotion and not right for actual promotion or selection. Therefore, it cannot be said that only principles of natural justice will be violated if the grading/entry below the bench mark are not communicated to the government servant.

16. Further it is also to be seen whether it would be practicable to communicate every remark/grading in all the ACRs continuously in respect of all the persons. There will be thousands of employees, in whose cases, such entries may need to be communicated. It would require scrutiny of the ACR dossier to find out whether the person concerned would meet the bench mark or not. Also not every person would be eligible for promotion. Only those, who would be coming in the zone of consideration will need to be considered. Also, it will depend upon the number of vacancies. Thus, communication of remarks/grading, which are not adverse perse, but which fall short of bench mark could be a gigantic exercise requiring lot of man power and consuming lot of time. The effort may not be commensurate with the result to be achieved.



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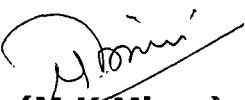
17. That apart, in our considered view, in the matter of selection, what matters is comparative merit, the better person wins. It is likely that a person may achieve the bench mark grading and yet may not get selected. It is a competition among the eligible candidates when it comes to selection. Considering the above discussion and the practical difficulties involved, we hold the view that it is not necessary to communicate the remarks/gradings which are not below the bench mark prescribed for promotion to a particular post in respect of selection posts. There is no quarrel for communication of those grading/remark, which have been down graded or whether there is a steep fall as has been held in U.P.Jal Nigam (supra) and Gurudayal Singh Fijji (supra).

18. Having regard to the discussion and the reasons recorded above, we answer the reference before us in the negative. The matter shall now go before the Division bench to decide the OA based on the above decision."



8. Accordingly, we are of the view that there was no violation of the principle of natural justice and since the applicant was considered below the bench mark for promotion to the grade of JTC Gr. 'A' Officer, the claim of the applicant is frivolous and without any substance.

9. In view of the above discussions, we are of the considered view that the OA sans merits, hence it is dismissed. No order as to costs.


(M.K.Misra)
Administrative Member

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(J.K.Kaushik)
Judicial Member

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Part II and III destroyed
in my presence on 8/1/14
under the supervision of
section officer 11 as per
order dated 18/1/13

Section officer (Record)

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