

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 524 of 2006

Tuesday... this the 20th day of March, 2007

CORAM:

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

Dr. M. Shanavas,
Technical Officer (T5),
Central Plantation and Crops Research Institute,
Regional Station, Kayangulam,
Krishnapuram P.O., Alappuzha District.

... Applicant.

(By Advocate Mr. R. Rajashekharan Pillai)

versus

1. The Indian Council of Agriculture Research,
Krishi Anusandhan Bhavan, PUSA,
New Delhi - 110 012 -
Represented by the Secretary
2. The Director,
Central Plantation Crops Research Institute,
Kasaragod.
3. The Assessment Committee for Technical
Personnel (Category III), represented by its
Chairman, 2nd respondent.
4. The Competent Authority of Assessment Committee
for Technical Personnel (Category III), represented
by the 2nd respondent.

... Respondents.

(By Advocate Mr. T.P. Sajan)

The Original Application having been heard on 12.2.07, this
Tribunal on 20.3.07 delivered the following :



ORDER**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

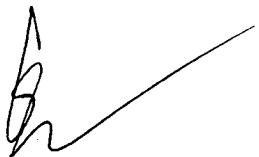
The question involved in this OA is whether, on the ground of securing only one Very Good Grade in the five ACRs instead of a minimum of three, the applicant could be denied his promotion to T-6 Grade, whereas, the procedure for assessment is by taking into consideration other factors, such as material furnished in the five yearly assessment proforma, performance records files, Bio-data and career information and CCRs. That the applicant was not communicated the grade lower than the Bench Mark is another ground.

2. Capsulated facts of the case:

(a) The applicant is working as T5 Technical Staff in the Soil Research Wing in the Regional Station Central Plantation Crops Research Institute, Kayamkulam. As per rules, a career advancement Scheme is provided which reads as follows:

"There shall be a system of merit promotion from one grade to the next higher grade irrespective of the occurrence of vacancies in the higher grade or grant of advance increment(s) in the same grade, on the basis of the assessment of performance. The person concerned will be eligible for consideration for such promotion or grant of advanced increment(s) after the expiry of the number of prescribed years of service in the grade as detailed in the succeeding paras."

Para 6.4 reads :-

The provisions relating to category barrier for assessment promotions from T-5 grade of category II to T-6

grade of Category III have been revised as in the following paras" :

- a. Technical personnel in T-5 grade (6500-10500) and possessing essential qualifications prescribed as herein further under notification of 3.2.2000 for category III for direct recruitment shall be eligible for assessment promotion to T6 (8000-13500) grade after completing five years of service in T-5 grade.
- b. T-5 Technical personnel who do not possess the essential qualification as for direct recruitment prescribed herein and under the notification of 3.2.2000 for category III shall be eligible for assessment promotion to T-6 grade after completing 10 years under the notification dated 3.2.2000 for direct recruitment to Category II (T3) however such technical personnel in T-5 grade who do not possess the qualification prescribed under the notification dated 3.2.2000 for direct recruitment to Category II (T-p3) shall not be eligible for further assessment promotion to Category III of the Technical services.

(b) The procedure for assessment is by taking into consideration the following aspects :

- a. The material furnished in the five yearly assessment proforma.
- b. Performance record files maintained by the technical personnel (for this purpose a suitable proforma shall be devised by the Director/Secretary, ICAR).
- c. Bio-data and career information (various posts held etc of the technical personnel throughout their service in the ICAR)
- d. CCRs for the past five/seven years.

(c) The applicant was directed to submit his proforma for five year assessment highlighting the achievements and qualifications of



the applicants in the prescribed format to be placed before the 3rd respondent. However, the Selection Committee did not favour the assessment promotion to the applicant; instead two advanced increments were sanctioned him. Out of the five persons who have been considered for conferment of T-6 Grade, the applicant alone was discriminated in declining the T-6 grade and all the rest have been granted with T-6 grade. It appears that the 2nd respondent has not considered the contributions of the applicant in the field of soil science section where his contribution was remarkable. Hence he made Annexure A-II representation against the restriction of his promotional avenue. It has been intimated by Annexure A-III order that the competent authority has rejected the applicant's claim. The gamut and gravamen of the intimation is as under :

"Five yearly assessment in respect of Dr. Shanavas was conducted in consonance with the provisions contained in the Technical Service Rules under the ICAR/documents placed before the duly constituted assessment Committee with due regard to the grading recorded in his ACR for the relevant period. As Dr. Shanavas could not secure the required grading which would entitle him to career advancement, the Assessment Committee held on 23.09.2005 will not recommend merit promotion to T-6 grade in his case."

(d) Anything which is adverse to the applicant's promotional prospectus, which is fixed as Bench mark is bound to be communicated, and it is absolutely mandatory. The applicant had addressed a representation to the first respondent vide Annexure



A-IV. The representation of the applicant was not considered by the first respondent as is discernible from the tone and tenor with which the office of the 2nd respondent has answered the same vide Annexure A-5.

3. Respondents have contested the O.A. Their version is as under:-

(a) The following criteria will be adopted for the five yearly assessment of Technical Personnel in Category III :

- Professional performance in relation to the duties and tasks assigned.
- Spirit of co-operation and team-work and support to scientific work
- Personal/behavioral abilities/attributes
- Managerial/Organisational abilities/attributes

(b) The assessment Committee shall take into consideration the following:

- The five yearly assessment proforma furnished by the technical personnel
- Bio-data and career information of the technical personnel throughout their service in the ICAR
- CCRs for the past 5 years.

(c) As per Council's letter No. 18(5)/98-Estt.IV dated 22.04.1998 the technical personnel who possess any three "Very Good" ACR grading may be considered for five yearly assessment promotion.

(d) The applicant submitted a representation dated 25.10.2005

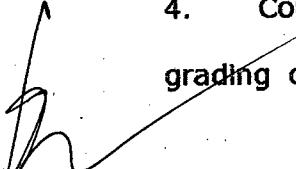
to the competent authority against the denial of promotion and requested to review the decision of the competent authority

(e) The representation dated 25.10.2005 was carefully considered by the competent authority.

(f) The competent authority having satisfied that there is no miscarriage of justice in the process of assessment which warrants review, his request was rejected and the decision communicated.

(g) The applicant did not possess the required grading during the relevant period. As regards the communication of adverse remarks, it is submitted that only adverse remarks recorded in the ACR need be communicated to the Government servant as per extant rules. When the nature of entry does not reflect any adversity that is not required to be communicated. When the grading is of going a step down like falling from 'Very Good' to 'Good' that may not ordinarily be an adverse entry, since both are a positive grading, and need not be communicated to the applicant as per the extant rules.

4. Counsel for the applicant contended that when communication as to down grading of the ACR has not been made to the applicant, that year's report



cannot be taken into account while assessing the suitability of the applicant. He has relied upon a decision of the Ahmedabad Bench of the Tribunal in Vijayshankar vs Union of India decided on 29-07-2005 (reported in Swamy's News 12/2005 S-65).

5. Counsel for respondents argued that while consideration during assessment would be given to all the four aspects as earlier stated, if a candidate has acquired less than three Very Good Grade in his five years' ACRs, then he would not be promoted.

6. Arguments were heard and documents perused. The post for which the applicant is to be considered is comparatively a higher post. Admittedly, the Departmental Promotion Committee has to consider the four aspects mentioned earlier. One of them is the reports for five years and in respect of the same as per order dated 2-04-1998, there shall be a minimum of three Very Good (or above) in a total of five years. Material furnished in the five yearly assessment proforma also contains the recommendations of the reviewing authority. Performance record files maintained by the technical personnel would reflect the efficiency of the individuals in the professional arena and bio-data and career information would reflect the overall career progress of the applicant and its pace. And, in that manner, the ACR would reflect the overall performance of an individual, as reported and reviewed by the higher authorities. While it is not exactly known as to whether there has been any minimum standard prescribed in respect of the first three aspects, it is with regard to ACR that three Very

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good (or above) out of five as the Bench mark has been the prescription. Concurrent fulfillment of the required standard seems to be the policy. And any deficiency in one aspect would not be offset by sufficiency in the other. If in the ACR, an individual fulfills the requirement but in any one or more of the other three, he is found deficient, then he will not be afforded the promotion, but he would be considered for advance increments as per the rules. But if in the ACR, he is found deficient, as in the present case, since, it is the concurrent requirement, consideration of other aspects would only be an academic exercise. Thus, non consideration of other aspects, when the applicant has obtained only one Very Good instead of five cannot be held to have prejudiced the applicant.

7. The next question to be considered is whether there is a requirement of communication of the downgrading of the Report. Earlier, in the case ***U.P. Jal Nigam v. Prabhat Chandra Jain, (1996) 2 SCC 363***, the Apex Court has held as under:-

1. What we say in this order shall not only cover the case of the first respondent but shall also regulate the system of recording annual confidential reports prevalent in the U.P. Jal Nigam the first petitioner herein.
2. The first respondent was downgraded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea was that downgrading entries in confidential reports cannot be termed as adverse entries so as to oblige the Nigam to communicate the same to the employee and attract a representation. This argument was turned down by the High Court, as in its view confidential reports were assets of the employee since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately had earned an 'outstanding' report in a particular year which, in a succeeding one and without his knowledge, is reduced to the level of 'satisfactory' without any

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communication to him, it would certainly be adverse and affect him at one or the other stage of his career.

3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any aduerseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of aduerseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perillously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court.

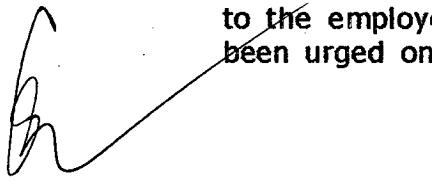
8. It has been clarified in the case of ***Union of India v. Major Bahadur Singh, (2006) 1 SCC 368***, "U.P. Jal Nigam case has no universal application. The judgment itself shows that it was intended to be meant only for the employees of U.P. Jal Nigam only." At the same time, the Apex Court has, in this case, remitted the matter back to the High Court for consideration of the grievance of the writ petitioner and the grievance is "non communication of the



adverse remarks". Again, in this case, after recording the above the Apex Court has further held:-

9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

9. Thus, if the situation in two given cases is alike, the law involved is comparable, then decision in one can easily be adopted in the other. Viewed from this angle, in the case of Jal Nigam, the Apex Court has stated, "The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry." In the case of the applicant also, the respondents has rules, whereunder adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. Even in respect of downgrading, in the case of Jal Nigam, the High Court had stated that if the mercury level has a steep decline from Outstanding to satisfactory, the same should be communicated. This has been explained by the Apex Court as under:-


" We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry

does not reflect any aduerseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice." (emphasis supplied)

10. Thus, though not instructions exist as to communicate downgrading of the ACR, if there be a steep decline in the grading, the same should be communicated. In the case of Vijay Bhaskar, the Tribunal has considered the following decisions before arriving at a decision in that case:-

- (a) U.P. Jai Nigam vs Prabhat Kumar Jain
- (b) Manik Chand vs Union of India 2002(3) ATC 268 (FB of the Tribunal)
- (c) R.L. Butail vs Union of India (1970) (2) SCC 876
- (d) Gurdial Singh Fijji vs State of Punjab and others (1979) 2 SCC 368.

Ultimately, the Tribunal has come to the decision "**We find that for the year 1999-2000 there was a steep fall in the grading of the applicant compared to the previous year of 1998 – 99**" (from Outstanding to Good). Telescoping the same in the case in hand, it would be seen that though there has been a decline, the same is not 'steep decline'. Hence, non communication of the downgrading cannot be said to be illegal nor can it be stated that consideration by the DPC of the grading Good without communication of the same to the applicant is illegal.

11. The applicant has been awarded increments instead of promotion on the

basis of the assessment and as such, the Department cannot be faulted with.

The applicant having not made out a case, the OA is dismissed. No costs.

(Dated, the 20th March, 2007)


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

CVR.