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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.27/03

Friday this the 28th day of April, 2006

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

P.K.Krishnankutty,
S/o.P.K.Kandai,
Padoor House, Manakkodi P.O., Thrissur.
Presently working as Lab Attender, Grade II,
CPCRI, Kannara, Thrissur

...Applicant

(By Advocate Mr.Balakrishnan Gopinath)

Versus

1. Central Plantation Crops Research Institute,
represented by its Director,
CPCRI, Kasargode – 671 124.
2. Assistant Administrative Officer,
CPCRI, Kasargode.
3. Scientist In-charge,
CPCRI Research Centre,
Kannara Unit, Kannara, Thrissur District.
4. K.Pandurange,
S.S.Grade II (Lab Attender),
CPCRI, Kasargode.
5. A.Sanjeeva,
JTA (T-1),
CPCRI, P.O.Kudlu, Kasargode – 671 124.
6. K.Raghavan,
JTA (T-1),
CPCRI, P.O.Kudlu, Kasargode – 671 124.
7. M.V.Sreedharan,
JTA (T-1),
CPCRI Research Centre,
Hire Halli, Karnataka.

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8. V.P.Joy,
JTA (T-1),
CPCRI, Kasargode.
9. Director General,
CPCRI, Kasargode,
Indian Council of Agricultural Research, New Delhi.
10. Union of India rep by Secretary to the Government,
Ministry of Agriculture, Government of India,
New Delhi.
11. Departmental Promotion Committee
for the post of Junior Technical Assistant,
represented by its Chairman, CPCRI,
Kasargode. ...Respondents

(By Advocate Mr.P.Jacob Varghese)

This application having been heard on 15.3.2006 the Tribunal on 28.
4.2006 delivered the following :

ORDER

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

This is the second round of litigation by the applicant for promotion to the post of JTA with effect from 23.12.1999. A DPC was held on 25.10.1999 and based on its recommendations, four (4) Supporting Staff were promoted to the post of T-1 (JTA) superseding the applicant vide order dated 23.12.1999. Aggrieved by the said order, the applicant had earlier filed O.A.309/00.



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2 This Tribunal while considering his prayer found that the DPC proceedings held on 25.10.1999 for promotion of JTAs were defective and the following observations were made.

"7 On a perusal of the DPC proceedings, we find that no criteria is laid down by the DPC for conducting the proceedings. Even though in the statement attached to the proceedings certain "indexes" and "characters" had been adopted with certain marks by the DPC, no authority for adopting the said "indexes" and "characters" had been stated therein. It had also not been brought out anywhere in the proceedings as to what is the bench mark prescribed for the selection. When a post is to be filled up on selection basis, it is on the basis of the candidates appearing for selection fulfilling certain prescribed standards bench mark. Once a person fulfills the prescribed standard, all those who satisfy the prescribed standard will be arranged in the order of seniority. From a perusal of the DPC proceedings, we are unable to make out whether there was any prescribed standard at all.

8 Further in the reply statement an averment was made that the conclusions of the DPC was on the basis of the annual confidential reports of the applicant for the preceding 5 years whereas on a perusal of the DPC proceedings, we find that the confidential reports from 1992-93 onwards had been considered for a period of 5 years ie., upto the year 1996-97 whereas the DPC was conducted on 25.10.99. No reason had been stated in the DPC proceedings as to why the Confidential Reports of the 5 years from 1992-93 onwards to 1996-97 only had been taken and not the 5 years upto the year 1998-99 when the DPC was conducted in October, 1999.

Accordingly, the O.A. was disposed of by Annexure A-2 order dated 27.3.2002 and the promotions made pursuant to the said DPC proceedings dated 25.10.1999 were set aside and respondents were directed to constitute a review DPC to consider the candidates afresh and conduct the DPC proceedings in accordance with the law and to prepare a fresh select list.

3 Pursuant to the aforesaid direction of this Tribunal dated 27.3.2002, the respondents have issued the Annexure A-3 impugned office order dated 27.9.2002. The respondents have stated in the said order that the

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review DPC was held on 19.9.2002 and took note that as per the DoPT instructions in force, when the mode of promotion is "selection-cum-seniority" based on the prescribed bench mark "good", the promotion to the Grade T-1 (JTA) is to be made on the basis of 'selection' as per TSR. In the absence of overall grading, namely, "very good", "good" etc. in the CRs of Supporting Personnel under consideration, Committee made its own evaluation on the basis of the entries under various attributes, namely, (1) Intelligence (2) Amenability to discipline (3) Honesty/Integrity (4) Punctuality & (5) Devotion to duty. The Committee after evaluating the performance of the candidates with reference to their ACRs for the period from 1994-1995 to 1998-1999 considering their seniority in the grade and taking into consideration the fact that the promotion is based on "selection-cum-seniority" with bench mark "good" has recommended the names of the following persons in the order of seniority for promotion to the post of T-1 (JTA) against the vacancies that existed as on the date of the earlier DPC held on 25.10.1999.

(1) Shri.A.Sanjeeva, SS Gr.II (Mazdoor) (2) Shri K.Raghavan, SS Gr.I (Mazdoor) (3) Shri.M.V.Sreedharan, SS Gr.I (Mazdoor) (4) Shri.V.P.Joy, SS Gr.I (Mazdoor).

The DPC did not recommend the name of the applicant as he did not possess the required bench mark "good" for the period under consideration i.e. 1994-1995 to 1998-1999. His overall performance as reflected in the evaluation statement was also not satisfactory for recommending his candidature for promotion to the post of JTA over other candidates.

4 The applicant is further aggrieved by the Annexure A-4 Office Order



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dated 6.12.2002 by which his another junior the 4th respondent (Shri.K.Randuranga) has been promoted to the post of T-1 (JTA) on the recommendation of the DPC held subsequently on 16.11.2002.

5 In the earlier order of this Tribunal dated 27.3.2000 the entire facts of the case have been recorded and they are not necessary to be repeated here.

6 According to the respondents, the DPC/Review DPC strictly followed the guidelines prescribed by the DOP&T as mentioned below:-

1. While merit has to be recognised and rewarded, advancement in an officials career should not be reproduced as matter of course but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process.
2. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each Department Promotion Committee. The DPC should assess the suitability of the officials for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years.
3. 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 some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.
4. Having regard to the levels of the posts to which promotion are to be made by Selection-cum-seniority, the nature and importance of duties attached to the post a bench mark grade would be determined for each category of posts. For all Group C and Group B posts the bench mark would be "Good".
5. Each Departmental Promotion Committee while considering the suitability of officers for promotion to posts for which the benchmark has been determined as "Good" would grade the official as "Good" "Average" and "unfit" only. Only those officials who obtain the grading of "Good" will be included in the panel in the order of their seniority in the lower grade subject to availability of vacancies.



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7 The applicant challenged the aforesaid Annexure A-3 and Annexure A-4 orders mainly on the ground that in the absence of any adverse remarks in the ACRs for the period from 1994-1995 to 1998-1999 communicated to him, grading him below the bench mark of 'good' was a malafide action. According to the applicant the uncommunicated adverse entries and lower grading could not be used against him in denying his just promotion and even lower grading also should have been communicated to him before it was used as a input for denying him the promotion.

8 The applicant has also submitted that the 4th respondent at the time of his appointment did not even possess the basic qualification of SSLC and acquired it only in 1994. As per the Recruitment Rules, 5 years of service after acquiring the required qualification is a requirement for being considered for the post of Junior Technical Assistant and the 4th respondent became qualified only in 1999.

9 The applicant has, therefore, sought the following reliefs in this OA :-

1. Call for the records leading up to Annexure A-3 and Annexure A-4 and quash the same.
2. To declare that the applicant is entitled to be promoted with effect from 28.12.1999 which was the effective date of promotion of the applicant's juniors.
3. To direct the respondents 1 to 3 to promote the applicant to the post of Junior Technical Assistant with effect from 28.12.1999.
4. In the facts and circumstances of this case, grant to the applicant exemplary costs.
5. Grant such other and further reliefs as are just, proper and necessary or may be prayed for.

10 The applicant has filed a rejoinder reiterating his grounds taken in



the O.A. Respondents have filed an additional reply statement in which they have stated that the applicant has since been promoted as T-1 (JTA) vide Annexure R-1 order dated 1.3.2005 and he reported for duty on 1.4.2005. They have also reiterated their submissions made in their reply statement. Despite notice to all the party respondents, they have not appeared or represented in the present proceedings. Contesting parties have submitted their argument notes which have been taken on record.

11 We have also gone through the ACRs of the applicant and the DPC proceedings made available by the respondents. The reasons given by the review DPC for not recommending the name of the applicant for promotion to the post of JTA is that on evaluation of his ACRs, the Committee found him not possessing the bench mark 'good' for the period from 1994-95 to 1998-99 and his overall performance as reflected in the ACRs evaluation was not satisfactory. The entries made under the various attributes like intelligence, amenability to discipline etc. vary from every year. Some are good, some are satisfactory and some are average. But none of them were intended to be adverse or at least none of them were intimated to the applicant as adverse entries.

12 We have heard Advocate Shri Blakrishnan Gopinath for the applicant and Advocate Mr. P.Jacob Varghese for the respondents 1-3,9&11. Since the Confidential Reports of the Supporting Staff did not have the overall grading of "Very Good", "Good" etc. the DPC has taken upon itself the task of grading them on the basis of entries under various attributes viz., (i) Intelligence (ii) Amenability to discipline (iii) Honesty/Integrity (iv) Punctuality (v) Devotion to duty in the CRs of the candidates. In the process the



applicant was given 230 points whereas his juniors arrayed as Respondents 5,6,7 & 8 were given 315, 320, 325 and 285 points respectively. For each attributes, the DPC granted 5,10 and 15 points which were equivalent to 'Average', 'Good', 'Very Good' respectively. Maximum points for the 5 attributes were 75. According to the assessment of DPC, one who gets 25 points in a year is to be treated as 'average' for that year and 50 points as 'good' and 75 points as 'very good'. The applicant received 55, 60, 50, 35 and 30 points respectively for the years 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99. Obviously, the applicant has secured the grading 'good' for three years and average for two years. Hence his cumulative average of the 5 years grading cannot be 'average' as assessed by the DPC but it has to be 'good'. The respondents 5 to 8 who were junior to him and who were graded as 'good' and above were recommended for promotion in the order of their seniority.

13 Now the first question for consideration is when superior authorities of the government servants, namely, the reporting Officer and the Reviewing Officer have not considered any of the entires made in the C.Rs as adverse in nature, can those very same entries become adverse at the hands of the DPC members. The second question is, even if the DPC is right in its evaluation of the ACRs of the applicant grading him below the bench mark of 'good' which is an adverse entry, can such entries be held against him for denying the promotion without having them communicated to the applicant at any time before the DPC meeting. In our considered view the answers to both the questions are in the negative. The ACR which is not adverse according to its author cannot be termed as adverse



by a different authority saying that the cumulative effect of evaluation of various entries would make it below the bench mark and hence adverse. In this case neither the Reporting Officer or the Reviewing Officer has considered the various entries made against the respective attributes as adverse. At least, none of those entries have been communicated to the applicant as adverse. Only when an entry in the CR is communicated to the government employee as 'adverse', he will have the opportunity to make a representation against it and got it expunged if the authority concerned is satisfied with the explanation given by him. If such an opportunity is denied to him, it cannot be remedied at a later stage without prejudice to the interest of the government servant. As held by the Apex Court, the uncommunicated adverse remarks in CR cannot be acted upon for denying promotion to the government servants. The DPC by its own standard also should have assessed the applicant as 'good' for the 3 years ACRs under consideration as he had secured 50 points and above for ACRs of 1994-95, 1995-96 and 1996-97.

15 The law laid down by the Apex Court in this regard is quite clear. In the case of **Gurdial Singh Fiji Vs. State of Punjab and others (1979) 2 SCC 368** the principle is well settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the

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person concerned, whether the adverse report is justified. In **Brij Mohan Singh Chopra Vs. State of Punjab (1987) 2 SCC 188**, the Apex Court has held:

"....There is no doubt that whenever an adverse entry is awarded to a government servant it must be communicated to him. The object and purpose underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. Making of a representation is a valuable right to a government employee and if the representation is not considered, it is bound to affect him in his service career, as in government service grant of increment, promotion and ultimately premature retirement all depend on the scrutiny of the service records...."

In **U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, (1996) 2 SCC 363** the Apex Court held:

"We need to explain these observations of the High Court. The Nigam has rules, where-under 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 emphasized that even a positive

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confidential entry in a given case can perilously 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 Niagam we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

16 In this view of the matter, we find merit in the contentions of the applicant. When the applicant approached this Tribunal earlier vide OA No.309/2000 for redressal of the very same grievance, this Tribunal vide order dated 27.3.02 found that the DPC did not follow any prescribed standard in the assessment of C.Rs. Therefore, the Respondents were directed to constitute the Review DPC to consider the five candidates considered by the DPC on 25.10.99 and to conduct the proceedings in accordance with the law to prepare the select list. The Review DPC, according to the impugned order dated 27.9.2002, has once again not recommended the applicant for promotion as he did not have the required bench mark of 'good' for the period for 1994-95 to 1998-99 and his overall performance as reflected in the ACRs was not satisfactory. This conclusion of the Review DPC is obviously on the basis of the uncommunicated adverse entries in the C.Rs which cannot be held against him for his promotion. We, therefore, quash and set aside the Annexure.A3 Office Order dated 27.9.2002. Since this is a second round of litigation by the applicant for the same cause of action which has arisen 6 years back and since he has already been promoted as T-I (JTA) subsequently w.e.f 1.3.2005 we do not consider it expedient or

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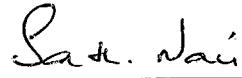
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in the interest of justice to direct the respondents to constitute another Review DPC for a fresh consideration. Consequently we declare that the applicant is entitled to be promoted as T-I(JTA) w.e.f. 25.12.1999, ie., the date from which his juniors have been so promoted but he shall not be entitled to arrears of pay and allowances. The respondents are directed to issue necessary orders promoting the applicant notionally from 28.12.1999, within two months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 28th day of April, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

S.


SATHI NAIR
VICE CHAIRMAN