

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 331 of 2005

Thursday, this the 19<sup>th</sup> day of July, 2007

**C O R A M :**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

K. Satheesan,  
S/o. Late K.N. Menon,  
Deputy Director (Retired),  
Central Water Commission,  
Residing at Lakshmi Niwas,  
SRM Road, Cochin – 18.

... Applicant.

(By Advocate Mr. M.R. Rajendran Nair, Sr. with Mr. Balakrishnan Gopinath)

versus

1. Union of India represented by  
The Secretary,  
Ministry of Water Resources,  
Shram Shakti Bhawan, New Delhi – 110 001
2. The Central Water Commission,  
Represented by its Chairman,  
Sewa Bhawan, R.K. Puram, New Delhi. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

**O R D E R**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

**The issue:** Whether the non promotion of the applicant to the Junior Administrative grade against vacancies which arose on or after 1998 in accordance with CWE (Group A) Services Rules, 1995 is illegal?

2. The satellite issues that are required to be considered before considering the above issue are as under:-

(a) When the Recruitment Rules contain certain prescription over the minimum years of service in the feeder grade for promotion, whether the UPSC can modify the same to the detriment of the applicant?

(b) Whether grading below the bench mark for promotion to the Junior Administrative Grade should necessarily be communicated?

3. Facts as contained in the O.A.:

(a) The applicant, a qualified Engineer, joined the Central Water Commission in October, 1971 and was regularized in the Group A service in April, 1984 as Assistant Director. He was then promoted to the cadre of Dy. Director/Executive Engineer of the Central Water Commission Group 'A' Service on 10-09-1993. The seniority position of the applicant in that grade is No. 21 in the seniority list vide Annexure A-1. This post is the feeder grade for promotion to the Junior Administrative Grade. He was afforded the non functional selection grade to Senior Time Scale vide Annexure A-2 order dated 13-02-2004. This shows that as of 13-02-2004, it was by the DPC that the applicant was found suitable to the grant of N.F.S. Grade.

(b) Provision exists for consideration for promotion to the Junior Administrative Grade of officers who have put in 14 years of service on regular basis and further an experience of 5 years on regular basis as Dy. Director. This requirement stood fulfilled by the applicant as early as 10-09-1998, he having joined been inducted in Group A service as of October, 1984 and having been functioning as Dy. Director since 10-09-1993. Thus, from 1998 onwards he was ripe to be considered for promotion to the J.A. Grade, subject only to his name falling within the zone of consideration according to the number of available vacancies.

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(c) Vacancies accumulated since 1994 were sought to be filled up in 2002. For the vacancies arisen in 2002, the ACR dossiers to be considered are those of 2000 – 2001, 1999-2000, 1998-1999, 1997-1998 and 1996-97. The applicant was coming within the consideration zone of vacancies of 2002. These vacancies together with further vacancies which arose after 2002 upto 2004 were not filled in till end 2004.

(d) According to the estimate of the applicant, his confidential reports for these years graded him 'very good'. And the grade 'Very Good' happens to be the Bench Mark for consideration of candidates for promotion to the Junior Administrative Grade. There are no adverse remarks against the applicant. Panel containing 35 names of those who have been promoted to the Junior Administrative Grade was published on 20-10-2004, where the name of the applicant did not figure in while those of some of the juniors to the applicant (Sl. No. 11 to 35) figured in. The applicant penned a representation on 25-10-2004 ventilating his grievance of his not having been considered and promoted and requesting the authorities to look into the same and he be promoted to the Junior Administrative Grade keeping his position in the original seniority list, vide Annexure A-4. Simultaneously, he had opted for, due to personal reasons, retirement under Rule 48 of the CCS (Pension) Rules, 1972 with a request that he be relieved w.e.f. 30-11-2004, vide Annexure A-5. This was accepted vide Annexure A-6 order dated 30-11-2004. The applicant on the same date i.e. 30-11-2004 sent an expeditor to his earlier representation dated 25-10-2004 (Annexure A-4), vide Annexure A-6. In response to the representation of the applicant vide Annexure A-6, the respondents have, vide the impugned order dated 14-01-2005 communicated that the case of the applicant was considered by the DPC convened by the Union Public Service Commission, for promotion to the Junior Administrative Grade of Central Water Engineering (Group

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A) Service along with other eligible officers, however, was not found fit for promotion by the DPC and thus his case was not recommended by the DPC. Thus the applicant is aggrieved as the respondents have not considered and promoted the applicant against the vacancies which arose on or after 1998.

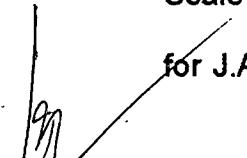
4. **Version of the Respondents:** The facts as contained in the OA as regards the service particulars, are by and large endorsed in their own version, vide para 2. The applicant was granted non functional Selection Grade in 2004 on the basis of his performance, the minimum being gradings of 5 'good', of which two should be of 'very good' grade. For further promotion to the J.A.Grade, the applicant was considered by the DPC for the vacancies of 2004-05 on 13-09-2004 and as per the DOPT's instructions, the required benchmark for the said post is 'Very Good'. In the case of the applicant, the DPC took into account the ACRs of the applicant from 1998-99 to 2002-2003 and the DPC found the applicant 'unfit' as the grading of the applicant as per the ACR for 01-07-2001 to 31-03-2002 and from 01-04-2002 to 31-03-2003 was 'good'. Thus, the applicant has not fulfilled the requirement of the grading of 'very good' for five years and hence he was not promoted. Contention of the applicant that he was coming within the zone of consideration for vacancies of 2002 was specifically denied vide para 9 of the counter. The applicant was not communicated any adverse remarks as his performance was not adverse, but at the same time they were not of that standard prescribed for being held to be fit to be promoted to the post of Junior Administrative Grade.

5. **Rejoinder to the reply:** In his rejoinder, the applicant had contended that applicant's seniors upto SI No. 11 (viz. one Shri V.R.K. Reddy) were considered

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and promoted in 2001 and his seniority position should have been within the consideration zone for the year 2002 as there 10 vacancies in 2002, which were considered by the DPC. Non convening of DPC for these years on time was not due to any fault of the applicant but was due to the lethargy of the respondents. Thus, when against 2002 vacancies, the applicant was to be considered, the grading of ACR in 2001 – 2002 and thereafter is of least relevance. Had ACRs upto 2001 been considered, the applicant would have sure fulfilled the requisite gradings for promotion to the Junior Administrative Grade. Again, down grading from 'very good' to 'good' tantamounts to an adverse entry as the consequence of such downgrading has an adverse impact on the applicant's promotion prospects. And, non communication of the adverse remarks incapacitates the respondents from considering such uncommunicated remarks as held in the case of *Gurdial Singh Fiji's* case (1979 (1) SLR 804). The impugned order is also against the law laid down by the Apex Court in the case of *U.P. Jal Nigam* (1996 (2) SCC 363).

6. **Additional Reply by the respondents:** The reason for not holding the DPC for previous years from 1994 – 95 was that certain litigations were pending. Again, earlier, there were two scales of Junior Administrative Grade (i.e. (i) Junior Administrative (Ordinary grade) in the scale of pay of Rs 3,700 – 5,000 and (ii) Junior Administrative Grade (Selection Grade ) Rs 4,500 – 5,700). The V Central Pay Commission recommended NFSG and JAG instead of two grades in the JAG as above. Accordingly, 5 years of regular service in the Senior Time Scale was prescribed for promotion to the NFSG grade and 9 years prescribed for J.A.G. Further, for being found fit for promotion to the above grades, while 2



out of 5 preceding years' ACR gradings should be 'Very Good', while the rest minimum 'good' for promotion to the NFSG, the requirement for promotion to JAG was 'Very Good' for all the five years. Amendment to Recruitment Rules is a time consuming process. In fact, in the DPC meeting held in 2001, those STS officers who were considered and promoted to the JAG were initially placed only in the normal replacement grade of Rs 12,000 – 16,500. As regards the applicant's position in the consideration zone for the vacancies of 2002, out of many vacancies from 1994 onwards, only 4 vacancies belonged to 2001-2002 and the applicant was not within the consideration zone. And with the revised norms of nine years, the applicant could be considered for promotion in the September, 2004 DPC meeting, which considered the vacancies upto date and the applicant not fulfilling the required grade of five 'very good' for five years anterior to the date of DPC, he was not recommended for promotion. As regards non communication of adverse remarks, as per government instructions, only adverse remarks are to be communicated. There was no 'down grading' as contended by the applicant the reporting officer's grading good having been endorsed upto the reviewing officer level. There is, thus, no violation of any of the instructions regarding communication of adverse remarks.

7. **Arguments by the senior counsel for the applicants:** The learned Senior Counsel argued that as per the respondents, the prescription of five years for promotion to the JAG as per Recruitment Rules had been modified by the UPSC to nine years, while recruitment rules remained unamended. Again, as per the respondents, there was no need to communicate the remarks, when the grading was 'good'. It is under these circumstances, the following questions

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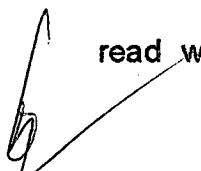
arise:-

(a) When the Recruitment Rules contain certain prescription relating to the minimum years of service in the feeder grade for promotion, whether the UPSC can modify the same to the detriment of the applicant?

(b) Whether grading below the bench mark for promotion to the Junior Administrative Grade should be communicated?

8. The learned Senior Counsel argued that Recruitment rules being of Statutory in character, no amendment by way of executive instructions could take place as mere executive instructions which are of non statutory character cannot be elevated to the level of statutory character. Thus, prescription of 9 years by the UPSC as eligibility condition for STS officers to the JAG is illegal as the same has not been as per the Recruitment Rules. As regards non communication of remarks, the senior advocate argued that notwithstanding the fact that in strict terms the remarks were not adverse, yet, in view of the fact that the grading was less than the one prescribed for promotion, the same should have been communicated. The senior advocate relied upon the decision dated 28<sup>th</sup> April, 2006 by this Tribunal in OA No. 27/03 which referred to the decision by the Apex Court of *Gurdial Singh Figgi (supra)* and *UP Jal Nigam's case (supra)*.

9. **Arguments by the respondents:** Counsel for respondents argued that there is no illegality in the decision taken by the Respondents relating to nine years' prescription and that by virtue of the latest decisions by the Apex Court, read with O.M. dated 28.03.2006 of the DOP&T, there is no need to



communicate reports for those years where the grading is average and above, but below the minimum benchmark. He has relied upon the following decisions of the Apex Court:-

- (a) J.T. 2007 3 SCC 361
- (b) (2006) 1 SCC 368

10. **Discussion:** Arguments were heard and documents perused. Three aspects are to be considered.

- (a) Whether the applicant was within the consideration zone as of 2002 vacancies.
- (b) Whether the Respondents are well within their rights to prescribe 9 years service in the Senior Time Scale for promotion to the Junior Administrative Grade, without carrying out the amendment in the Statutory Recruitment Rules.
- (c) Whether the reports of good should be communicated when benchmark is Very good.

11. As regards (a) above, Respondents have, in para 3 of their additional reply statement, stated as under:-

"3. In respect of the averments made by the applicant in para 3 of the rejoinder that his seniors were considered for promotions against the vacancies for the year 2001 by the DPC upto Sl. No. 11 of the seniority list, viz., namely Shri V.R.K. Reddy and that there were 10 vacancies in the year 2002 which were considered by the DPC, it may be mentioned that the DPC held in 2001 had considered promotion of officers for the vacancies commencing from the year 1994-95 onwards. For the year 2001-02, there were only 4 vacancies out of 121 vacancies pertaining to the years 1994-95 to 2001-02, and the applicant was not in the zone of consideration. Further, for the vacancies pertaining to the 2002-03 onwards, the DPC could not be held immediately as the revised Recruitment Rules were yet to be notified. Since vacancies were again piling up,



a DPC was, however, convened in September, 2004, pending amendment of the Recruitment Rules and the 'Mode of Recruitment' for conducting the DPC provided by the UPSC was in line with the Vth Pay Commission's recommendations and the modalities finalised by the Government i.e. nine years of eligibility criteria for promotion. The DPC convened in September, 2004 had considered suitability of 43 eligible officers for 35 vacancies pertaining to the year 2002-03, 2003-04 and 2004-05. Since the applicant did not complete 9 years regular service as on 1.1.2002, i.e. crucial date of eligibility for the vacancies of 2002-03 (the applicant was promoted to the STS on 10.09.1993), he was not eligible for promotion to the JAG for the vacancies of 2002-03. thus, he could be considered for promotion for the vacancies pertaining to the year 2003-04 and he was found 'unfit' as his CR assessment was below bench mark..."

12. The above clearly manifests that in so far as the vacancies of 2002 are concerned, there were only 4 vacancies and the applicant was not within the consideration zone. Two officers above the name of the applicant figured in the panel for 2004 vacancies (vacancies accumulated from 2002), vide Annexure A-3. The name of the applicant would have figured in the consideration zone for the four vacancies of 2002 and the reason for non inclusion of the applicant's name in the DPC held prior to 2001 was not on account of the fact that the applicant did not have nine years of service in the STS grade but only on account of the fact that he was not within the consideration zone when the DPC met to consider the vacancies upto 2001. Again, as per the respondents the name of the applicant was not within the consideration zone for the four 2001 - 2002 vacancies. Thus, the earliest time when the applicant could be considered for promotion to the post of JAG was against the 2002 - 2003 vacancies, for which five ACRs anterior to 2003 were to be considered. In their reply, the respondents had stated that nine years stipulation for consideration had resulted in the applicant not being considered for the 2002-2003 vacancies and thus, it was in respect of 2003-04 vacancies that the applicant could be considered.

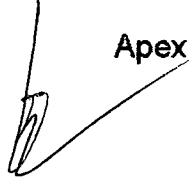


According to the respondents, the ACRs considered were for the following years and the respective gradings were as under:-

(a) 2002 - 2003	:	Good
(b) 10.7.2001 to 31.3.2002	:	Good
(c) 11.4.2000 to 28.1.2001	:	Very Good
(d) 1.4.1999 to 31.3.2000	:	Very Good
(e) 1.4.1998 to 31.3.1999	:	Very Good

13. The applicant's seniority in the consideration zone is 18. Even if we examine whether the applicant could have been considered for the vacancies of 2002-03, taking into account only five years' of service in STS grade, then again his ACRs from 1997-98 to 2001-02 would have been considered where again he had one 'good'. This incapacitates his from being held 'fit' for promotion for the vacancies of the year 2001-02. It is only when the applicant could have come within the consideration zone against vacancies for the year 2000-01 or anterior that he would have got grading of 'very good' for all the five years. That not being the case here, even if we hold that the respondents ought to have considered only five years' of experience in STS for eligibility for promotion to the Junior Administrative grade, the applicant would not have been benefited by the same. Thus, the satellite question at para 1(a) above need not be answered.

14. As regards the satellite question at para 1(b) above, the applicant relies upon the decision of this Tribunal in O.A. No. 27 of 2003 which was based on the decision in the case of *Gurdial Singh Fiji* (supra) and *U.P. Jal Nigam* (supra). However, counsel for the respondents relies upon subsequent decisions of the Apex Court in the case of *Major Bahadur Singh* (supra) wherein the Apex Court



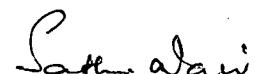
has held that U.P.Jal Nigam does not have universal application. Further, vide O.M. dated 28th March, 2006, the DOP&T has stated that the Ministry should ensure that any challenge to the existing instructions in regard to the communication of adverse remarks in any Court taking shelter in the Supreme Court judgement in U.P. Jal Nigam or any other judgement based on U.P. Jal Nigam judgement is properly defended keeping in view the declaration of the Hon'ble Supreme Court in *U.O.I. vs. Major Bahadur Singh*. Thus, we are in agreement with the submissions made by the counsel for the respondents that there is no need to convey the grading of the applicant as the same is not 'adverse' though below the bench mark.

15. In view of the above, in so far as the contention of the applicant that he ought to have been considered against the vacancies of 1998 and thereafter is to be negatived to the extent that the applicant was not eligible to be considered till 2002-03 and in so far as consideration of the applicant against 2003-04 is concerned, as he had not obtained the grading of 'very good' for five years, he has been rightly not recommended for promotion by the DPC. Thus, the O.A. is devoid of merit and is, therefore, dismissed.

16. No costs.

(Dated, the 19<sup>th</sup> July, 2007)

  
Dr. K B S RAJAN  
JUDICIAL MEMBER

  
SATHI NAIR  
VICE CHAIRMAN

cvr.

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Original Application No. 331 of 2005**

**Wednesday, this the 10th day of June, 2009**

**CORAM:**

**Hon'ble Mr. George Paracken, Judicial Member**  
**Hon'ble Ms. K. Noorjehan, Administrative Member**

K. Satheesan, S/o. late K.N. Menon, Deputy Director  
 (Retired), Central Water Commission, Residing at  
 Lakshmi Niwas, SRM Road, Cochin-18. ....

**Applicant**

**(By Advocate – Mr. N. Reghuraj)**

**V e r s u s**

1. Union of India, through the Secretary,  
 Ministry of Water Resources, Shram Shakti Bhawan,  
 New Delhi - 110 001.
2. The Central Water Commission, Represented by its  
 Chairman, Sewa Bhavan, R.K. Puram,  
 New Delhi. ....

**Respondents**

**(By Advocate – Mr. Thomas Mathew Nellimoottil)**

The application having been heard on 10.6.2009, the Tribunal on the same day delivered the following:

**O R D E R**

**By Hon'ble Mr. George Paracken, Judicial Member -**

This is a remanded case from the Hon'ble High Court. In the Original Application, his grievance was against the Annexure A-8 order dated 14.1.2005 rejecting his representation dated 30.11.2004 regarding promotion to the grade of Director/Superintending Engiener in the Junior Administrative Grade of the Central Water Engineering Services (Group-A) Service. 2. His contention was that the down grading of ACR from 'Very Good' to 'Good' tentamounts to adverse entry in his ACR as it adversely affects his prospects for promotions. He argued that the non-communication of those adverse ACRs was against the principles laid down by the

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Applicant in the cases of Gurdial Singh Fiji Vs. State of Punjab & Ors., 1979 (2) SCC 368 and U.P. Jal Nigam & Ors. Vs. Prabhat Chandra Jain & Ors., 1996 (2) SCC 363.

2. According to the respondents he was considered by the DPC convened by the UPSC for promotion to the Junior Administrative Grade of the Central Water Engineering (Group A) Service alongwith other eligible officers. However, he been found "not fit" for promotion by the DPC and, therefore, he was not placed in the panel recommended for promotion. The contention of the respondents was that the applicant was granted non-functional selection grade in 2004 on the basis of his last five ACRs and the required bench mark was 'Good' and that there should be at least two 'Very Good' grading in the last five ACRs. For promotion to the grade of Junior Administrative Grade, he was considered by the DPC on 13.9.2004 for the vacancies of 2004-05. As per the instructions of the Department of Personnel & Training, the required bench mark for the said post was 'Very Good'. However, in the case of the applicant, the DPC took into account his ACRs from 1998-99 to 2002-03 and found that he was "unfit" as the grading of ACR for 10.7.2001 to 31.3.2002 and 1.4.2002 to 31.3.2003 were only 'Good'. Thus the applicant has not fulfilled the requirement of grading of 'Very Good' for two years and hence was not promoted. The respondents have also stated that the applicant was not communicated any adverse remarks as his performance was not adverse to be affected for promotion to the Junior Administrative Grade.

3. Agreeing with the contention of the respondents, this Tribunal vide order dated 19.7.2007 dismissed the OA holding that it was not necessary to communicate the grading below the bench mark for promotion to the Junior Administrative grade. The operative part of the order is reproduced hereunder:

"14. As regards the satellite question at para 1(b) above , the applicant relies upon the decision of this Tribunal in O.A. No. 27 of 2003 which was based on the decision in the case of *Gurdial Singh Fiji* (supra) and *U.P. Jal Nigam* (supra). However, counsel for the



respondents relies upon subsequent decisions of the Apex Court in the case of *Major Bahadur Singh* (supra) wherein the Apex Court has held that U.P.Jal Nigam does not have universal application. Further, vide O.M. dated 28th March, 2006, the DOP&T has stated that the Ministry should ensure that any challenge to the existing instructions in regard to the communication of adverse remarks in any Court taking shelter in the Supreme Court judgement in U.P. Jal Nigam or any other judgement based on U.P. Jal Nigam judgement is properly defended keeping in view the declaration of the Hon'ble Supreme Court in *U.O.I. vs. Major Bahadur Singh*. Thus, we are in agreement with the submissions made by the counsel for the respondents that there is no need to convey the grading of the applicant as the same is not 'adverse' though below the bench mark.

15. In view of the above, in so far as the contention of the applicant that he ought to have been considered against the vacancies of 1998 and thereafter is to be negatived to the extent that the applicant was not eligible to be considered till 2002-03 and in so far as consideration of the applicant against 2003-04 is concerned, as he had not obtained the grading of 'very good' for five years, he has been rightly not recommended for promotion by the DPC. Thus, the O.A. is devoid of merit and is, therefore, dismissed. "

4. The applicant challenged the aforesaid order of this Tribunal before the Hon'ble High Court of Kerala in WP No. 15604 of 2008. The Hon'ble High Court remitted the case to this Tribunal for fresh disposal stating that point raised by the petitioner is covered in his favour by a subsequent judgment of the Apex Court in Dev Dutt Vs. Union of India & Ors., 2008 (8) SCC 725. In the aforesaid judgment the Apex Court held that any decision which may have a civil consequence and affects the rights of a person, the principles of natural justice would at once come into play. In State of Maharashtra Vs. Public Concern for Governance Trust, 2007 (3) SCC 587 also, the Apex Court held as under:

"39. ... In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play."

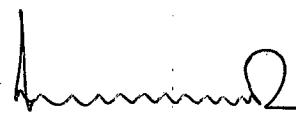
Based on the aforesaid principles of natural justice, the Apex Court has held that non-communication of the adverse entries to a public servant whether he is in civil, judicial, police or any other service (other than the military) certainly has civil consequence because it may affect his chances for promotion or get other benefits. Such non-communication would be



arbitrary and violative of Article 14 of the Constitution of India. Therefore, the Apex Court has directed the respondents in the said case that the 'good' entry shall be communicated to the appellant and on being communicated the appellant may make a representation, if so chooses against the said entry and thereafter the said representation will be decided. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the departmental promotion committee and if the appellant get selected for promotion retrospectively he will be given higher promotion with arrears of pay and interest.

5. Following the aforesaid judgment, we also allow the present OA and direct the respondents to communicate the "good" entry in the applicant's ACRs for the period 2001-2002 and 2002-2003 within a period of two months from the date of receipt of a copy of this order. On being communicated, he may make a representation, if so chooses against the said entry within two months thereafter and said representation will be decided by the competent authority within two months thereafter. If his entry is upgraded, the applicant shall be considered for promotion retrospectively by the DPC within three months thereafter and if the applicant get selected for promotion retrospectively he shall be given all consequential benefits including arrears of salary. There shall be no order as to costs.

  
(K. NOORJEHAN)  
ADMINISTRATIVE MEMBER

  
(GEORGE PARACKEN)  
JUDICIAL MEMBER

"SA"