

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 182/2006

This the ~~11~~ day of December, 2008

**Hon'ble Mr. M. kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Smt. Anita Gupta aged about 52 years wife of Shri Sushil Gupta resident of C-1/203, Sector G, Jankipuram, Lucknow (presently working as Scientist 'D' (Superintending Hydro Geologist) in Central Ground Water Board, Govt. of India, Ministry of Water Resources, Northern Region, Sector B, Bhujal Bhawan, Sitapur Road Yojana, Lucknow-226021.

Applicant

By Advocate: Sri R.C. Singh.

Versus

1. Union of India, through the Secretary, Ministry of Water Resources, New Delhi-110001.
2. Central Ground Water Board, Govt. of India, Ministry of Water Resources, Bhujan Bhawan, NH-IV, Faridabad (Haryana), through its Chairman.
3. Chairman, Central Ground Water Board, Govt. of India, Ministry of Water Resources, Bhujan Bhawan, NH-IV, Faridabad (Haryana),
4. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi, through its Secretary.
5. Dr. Saleem Romani, Chairman, Central Ground Water Board, Bhujal Bhawan, NH-IV, Faridabad.

Respondents

By Advocate: Sri S. Kumar for Sri Yogesh Kesharwani.

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application has been filed with a prayer for a direction to either expunge or ignore the un-communicated adverse remarks/

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gradings below the bench mark recorded in the Annual Confidential Reports (ACRs) for the years 2000-01, 2001-02, 2002-03 and also for a direction to the respondent NO. 5 restraining him from initiation/review or acceptance of the ACRs of the applicant from the date of filing of this application and also for a direction to consider her case for promotion to the post of Regional Director (Scientific) ignoring uncommunicated adverse remarks/ adverse gradings in the ACRs before her juniors are promoted to that rank.

2. The relevant facts of this case are stated below:-

The applicant was working as Scientist 'D' (Senior Hydro geologist ,Group 'A') w.e.f. 1.1.1996 and was one of the candidates for promotion to the post of Regional Director in the Central Ground Water Board (CGWB) carrying the pay scale of Rs. 14300-18300/- .The bench mark for selection to this post is 'Very Good' and the applicant who was at Sl.No. 4 in the gradation list of Scientist 'D' was hopeful of selection as five vacancies were available for the year 2005. As per the recruitment rules, the posts of Regional Director (Scientific stream) are to be filled up by way of promotion from among the officers in Scientist 'D' grade having five years of regular service. The applicant fulfilled the eligibility criteria.

3 She apprehended that her ACRs for the years 2000-01, 2001-02, 2002-03 did not have the requisite grading of 'Very Good'. She alleges personal bias against respondent No. 4 who was her supervisory officer for this period and submits that bias of the supervisory officer has been reflected in the ACRs and that she was not objectively reported upon. Having come to know of this downgrading in her ACRs, she made a representation on 17.1.2006 to the Chairman, CGWB. She was asked on 27.1.2006 to disclose the source from which she got such confidential information about her grading in the ACRs. She replied that her information was on the basis of hear say and that she did not have any documentary evidence to



support her apprehension. She has cited the decisions of the Hon'ble Supreme Court in ***U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others reported in (1996) 2 SCC 363, Udai Krishna Vs. Union of India reported in (1996) 33 ATC 802, Gurdial Singh Fiji Vs. The State of Punjab and others reported in 1979***

(1) SLR 804 and Charan Singh Azad Vs. State of Maharashtra and others reported in 2001(1) All India Service Law Journal page 97 and Ram Babu Vs. Union of India and others reported in 2001(2) All India Service Law Journal page 9. The ratio of all these judgments is that the Govt. servant should be afforded an opportunity to represent against any adverse remarks or any entry which is below the bench mark before such entries are acted upon and the employees is visited with adverse civil consequences by way of denial of promotion etc.

4. Counsel for the applicant has placed before us the latest judgment of the Hon'ble Supreme Court in the case of Dev Dutt Vs. Union of India and others reported in 2008 AIR SCW 3486 , in which it was observed that "In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average , good or very good) in the Annual Confidential Report of a public servant, whether in civil , judicial , police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O, requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders."

In the operative part of the judgment, the Hon'ble Apex Court directed that the below bench mark entries should be communicated to the Govt. servants and that he should be permitted to make a representation for its upgradation. If the up-gradation is allowed, the Govt. servant should be considered for promotion.

5. The respondents have submitted that this application is pre-mature. Since there has not been any communication to her, she could not presume that the gradings in her ACRs are below the bench mark. It is not open for the applicant to seek legal redress merely on the ground of apprehension without any basis. They have cited the judgment of Hon'ble Supreme Court dated 22.11.2005 in the case of **Union of India Vs. Major Bahadur Singh in Civil Appeal No. 4482 of 2003** in which it was held that the decision in U.P. Jal Nigal (Surpa) had no universal application and that it was intended for employees of the U.P. Jal Nigam. On the basis of this decision, the DOP&T had issued an O.M. on 28.3.2006 which has reiterated the existing instructions that the over all grading even though it is below the bench mark prescribed for promotion to the next higher grade should not be communicated.

6. Be that at it may, we would like to bring the legal position as enumerated in Dev Dutt Case (Supra), to the notice of the respondents. It is true that this application is pre-mature in nature and the interim relief passed in this case has stayed the process of selection. However, we would like to direct that if there are entries in the ACRs of the applicant, which are below the bench mark but not communicated so far; those should be communicated to the applicant and an opportunity should be given to her for making representation for their upgradation and only after her representation is decided, the process of selection should be taken up.



7. In the result, O..A. is disposed of with the directions given above.

No costs.

A. K. Mishra
(DR. A.K. MISHRA)
MEMBER (A)

HLS/-

M. Kanthaiah
(M. KANTHAIAH)
MEMBER (J)

16.12.08