

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No.611 of 05

Date of order : 03.03.2009

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Shri Amit Kushari, Member [A]

Dr. Hemant Kumar Shinde, S/o Shri Janardhan Tukaram Shinde, permanent resident – C/o Shri J.T Shinde, 2/2, Chandrodya Society, CST Road, Chembur, Bombay, at present C/o Commandant 12th Bn. SSB, Valmikinagar, Bihar.

....Applicant

By Advocate : Shri G. Bose [Sr. Advocate]

Vs.

1. The Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. The Director General, SSB, Ministry of Home Affairs, R.K. Puram, New Delhi.
3. The Joint Deputy Director [EA – IV] Directorate General, , SSB, Block,V [East] R.K. Puram, New Delhi.
4. The Inspector General Govt. of India, Ministry of Home Affairs, Directorate General, SSB, Block,V [East] R.K. Puram, New Delhi.
5. The Deputy Inspector General [EA] Govt. of India, Ministry of Home Affairs, Directorate General, SSB, Block,V [East] R.K. Puram, New Delhi.
6. The Assistant Director [EA -IV] Govt. of India, Ministry of Home Affairs, Directorate General, SSB, Block,V [East] R.K. Puram, New Delhi.
7. Dr. R.D. Gari, now posted as CMO [NFSG], SSB, Sitamarhi.

....Respondents

By Advocate : Shri A.R. Pandey

O R D E R [Oral]

S. Srivastava, M (J):- By means of this OA the applicant has challenged the order dated 22.11.04 [Annexure A/1] and order dated 5.7.05 [Annexure 2/1] communicating the Departmental Promotion Committee [DPC in short] proceedings dated 11.2.04 and 21.4.05 whereby he has been superseded by his junior Dr. R.D. Gari for promotion to the post of Chief Medical Officer, [CMO



in short] (Non-Functional Selection Grade.)

2. The facts of the case are that the applicant was appointed as Medical Officer in SSB [Sashastra Seema Bal], under the Ministry of Home Affairs, Government of India on 04.12.89. He was promoted to the rank of Senior Medical Officer with effect from 24.1.96 and further as Chief Medical officer [CMO in short] with effect from 4.12.99 on 04.11.1999. DPC which met on 11.2.04 and 21.4.05 for considering promotion of eligible CMOs to the rank of CMOs [NFSG] found the applicant ' unfit' on account of his overall grading below bench mark ' Very Good'. Therefore, he failed to secure promotion as CMO [NFSG]. The applicant was communicated the fact that DPC had found him 'unfit' by letter dated 22.11.04 and 5.7.05 as contained in Annexure A/1 and A-2/1 respectively. The applicant's grievance is that the ACRs containing below bench mark grading were never communicated to him, and thus, the principle of natural justice has been violated.

3. We have heard learned counsel for the parties and perused the ACRs and DPC proceedings dated 11.2.04 and 21.4.05

4. The OA proceeds on the basis of law laid down by the Apex Court as well as five Members bench of the Tribunal to the effect that the gown grading from 'Very Good' to 'Good' amounts to adverse entry as it affects the promotion of an officer and therefore requires to be communicated. It is an admitted fact that the 'average' or 'good' grading secured by the applicant were not communicated. Thus, the contention of the applicant is that un-communicated adverse entries were taken into account by the DPC, and therefore, it amounts



to violation of principle of nature justice.

5. The Hon'ble Apex Court in Civil Appeal No. 7631 of 02 [Dev Dutt vs. Union of India & Ors] in this very context, has laid down as follows:-

" 45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service [other than the military], certainly has civil consequential because it may affect his chances for promotion or get other benefits [as already discussed above]. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

6. A five Member Bench of Tribunal in OA 24 of 07 vide its judgment dated 07.05.2008 in the case of Ashok Kumar Aneja vs. Union of India & Ors has held as follows:-

" 35.- Resultantly, we approve the view taken by the Ahmedabad bench in OA 673 of 04 holding that downgrading from 'Very Good' to 'Good' and similar downgrading does amount to making of an adverse entry. Mandatorily , these are required to be communicated to the persons who stand to be affected thereby. The reference is answered as above."

7. In view of the law laid down by the larger Bench of the Tribunal and the Apex Court, the contention of the applicant must be upheld, i.e., non-communication of entries below the benchmark grade ought to have been communicated because the same have affected his promotion bearing civil consequences.

8. On perusal of the original record, we have found that during the years 1997-98 to 2001-02 [five years] taken into account by DPC held on



11.2.04 and years 1999-2000 to 2003-04 considered by DPC held on 21.4.05, the applicant has earned 'Very Good' grading partly only. Mostly, he has been awarded 'Good' or 'average' grading. However, there is no doubt that law of land is that if an employee secures below bench mark grading, the same has to be communicated to him, treating the same as adverse. Therefore, whatever worth it be, the grading below bench mark had to be communicated before taking them into consideration by DPC for the purpose of his promotion. Such non-communication was violative of Article 14 of the Constitution of India.

9. Resultantly, We, therefore, direct that the entries below the bench mark be communicated to the applicant within a period of two months from the date of receipt of copy of this judgment. On being communicated, the applicant may make representation, if he so chooses, against the said entries within one month thereafter, and the said representation will be decided within two months thereafter. If his entries are upgraded, the applicant shall be considered for promotion retrospectively by the DPC within three months thereafter. If the applicant gets selected for retrospective promotion, he should be given notional promotion, with all consequential benefits except back wages.

10. In the result, the OA is disposed of accordingly, without any order as to the costs.


[Amit Kushari] M [A]

/cbs/


[Sadhna Srivastava] M [J]