

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.378/96

Date of order: 18.7.96

B.B.Dave : Applicant

Vs.

Union of India & Ors. : Respondents.

Mr.Shiv Kumar : Counsel for applicant.

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri B.B.Dave has prayed that the order dated 14.5.96 (Annx.A2) by which the representation of the applicant against supersession in promotion from Senior Time Scale to Junior Administrative Grade (JAG) of the Indian Postal Service was rejected may be quashed, respondent No.1 i.e. the Union of India may be directed to ignore the adverse remarks in the ACR of the applicant for the year 1993-94 and to consider the other down graded remarks as 'outstanding'. He has further prayed that the case of the applicant for promotion may be reviewed so as to place him at Sl.No.3 in the order dated 2.11.95 (Annx.A1) by which he alongwith certain others was granted promotion to JAG scale Rs. 3700-5000. It has further been prayed that the consequential benefits may also be granted to him.

2. The facts of the case, as stated by the applicant, are that he has had a brilliant academic record. He was appointed to the Junior Time Scale of Indian Postal Service Group-A vide order dated 11.12.86. He had topped the batch of the Indian Postal Service of 1986. After narrating various other matters which are not directly relevant for deciding the present O.A, the applicant has stated that vide order dated 2.11.95 (Annx.A1), the applicant was granted promotion alongwith

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several others to JAG of Indian Postal Service Group-A and his name finds place at Sl.No.12 in the said order. Persons figuring at Sl.Nos. 1 and 2 of the said order are senior to the applicant and they have been given promotion in the 'outstanding' category. The applicant's case is that his name ought to have figured at Sl.No.3 in the promotion order, in the category of 'outstanding' officers. The bench-mark for promotion to JAG of Indian Postal Service is 'very good' and such promotions are to be made on the basis of the remarks on the work and conduct of the Govt.servant in his ACRs. The post is to be filledup by selection on merit. The ACRs for the years 1991, 1992, 1992-93, 1993-94 and 1994-95 were relevant for the purpose of assessing the performance of the applicant for the purpose of promotion to JAG. According to the table incorporated by the applicant in the O.A at page 7, his performance for the financial years 1987-88 and part of 1988-89 was outstanding. For the next 3 years upto the year ending 31.3.91, it was 'very good'. For the next two years upto 2.12.91, it was 'outstanding'. For the period 3.12.91 to 31.3.92, it was 'very good' and for the financial year 1.4.92 to 31.3.93, it was 'outstanding'. For the year 1993-94, it was rated as just 'good' while that for the year 1994-95, was rated as 'very good' in the two ACRs written for that period. (In giving the above description, where the grading given by the Reviewing Officer differs from that of the Reporting Officer, the grading of the Reviewing Officer has been taken as final grading for a particular year). According to the applicant, since his ACR for the financial year 1992-93 was outstanding, the assessment of his performance as just 'good' for the financial year 1993-94 amounted to downgrading of his ACR. This downgrading was never communicated to the applicant. His further grievance is that the applicant had not completed a period of 3 months under the Reviewing Authority who had agreed

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with the Reporting Officer in upholding the grading given by the Reporting Officer as 'good' for the financial year 1993-94, and, therefore, he was not competent to review the ACP of the applicant for that year. Still however, the said ACP has been reviewed by the said Reviewing Authority. No reasons have been given for the aforesaid down grading of the ACP. The applicant made a representation to the competent authority vide Annx.A13 dated 24.2.96, apprising him of the aforesaid facts but the representation was abruptly rejected vide order dated 14.5.96 (Annx.A2), without assigning any reasons. Further, according to the applicant, the Hon'ble Supreme Court in their judgment in U.P.Jal Nigam & Ors. Vs. Prabhada Chand Jain & Ors, JT 96 (1) SC 641 have settled the controversy on the point that if an employee has earned an outstanding report in a particular year and if the grading is reduced in a succeeding year without his knowledge, without any communication to him, it would certainly be treated as adverse. He has also cited a judgment of the Allahabad Bench of the Tribunal in Uday Krishna Vs. UOI, SLJ 1996(1)(CAT) 464, and has particularly relied on para 7 thereof wherein it has been held, in substance, that uncommunicated adverse remark cannot be used for superseding the claim of an officer for promotion to higher grade and further that though generally remarks 'good' and 'average' are not treated as adverse, these remarks assume special significance when an Officer is excluded from the panel for promotion to a higher grade because the benchmark grade earned by him is not 'very good'. Further, 'good' or 'average' grading in the ACP though not per-se adverse would assume the character of adverse remarks in the context of the requirement of 'very good' benchmark to qualify for empanelment for promotion to Junior Administrative Grade and above. Since no communication was sent to the applicant regarding reducing his grading compared to the grading earned by him in the preceding year, the uncommunicated

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remarks for the year 1993-94 should be disregarded for assessing the position of the applicant for promotion to JAG. The applicant has desired that the complete records consisting of his ACRs and DPC minutes may be summoned and perused by the Tribunal in the interest of justice.

3. The applicant's grievance now is that order Annx.A1 by which he has been placed at Sl.12 in the list for promotions to JAG is erroneous in as much as the applicant has been superseded and placed below his juniors who are respondents in the O.A. The applicant is aggrieved by the downgradation of his seniority without holding an enquiry and without being given a reasonable opportunity of being heard. This action is likely to affect seriously even his future promotions.

4. During the arguments, the learned counsel for the applicant urged that in terms of the judgment of the Hon'ble Supreme Court in U.P.Jal Nigam case, supra, if the down graded entry has not been communicated to the applicant even by way of an advice, as laid down by the Hon'ble Supreme Court, such an entry has to be treated as an uncommunicated entry and thus it has to be ignored <sup>for</sup> ~~of~~ assessing the merit and performance of the applicant for the purpose of promotion. He also cited before us a judgment of the Bombay Bench of the Tribunal in Krishna Dnyanba Nandgave Vs. Union of India & Ors (1995) 30 ATC 10, wherein, in para 11 the Tribunal has referred to the judgment of the Gujarat High Court in Fernandes Vs. Central Board of Direct Taxes decided on 2.8.1983, in which the High Court held that the fall in standard which is to be treated as adverse remark must be communicated to the individual concerned and if it has not been communicated, the report containing the fall in standard has to be ignored. In this judgment the Tribunal directed that the categorisation of the officer for the year 1986 which is just adequate should be treated as 'good'.

5. As regards the representation submitted by the applicant

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vide Annx.A3, dated 24.2.96, the learned counsel for the applicant stated that it is a comprehensive representation also covering the issue relating to unjust downgrading of his performance as recorded in the ACF for the year 1993-94. The respondents while rejecting the representation have given no reasons whatsoever. Therefore, the order rejecting the representation is liable to be quashed.

6. We have heard the learned counsel for the applicant for the purpose of admission and have gone through the material on record.

7. The DPC assessed the performance of the applicant on the basis of the ACPS for the relevant years placed before it. The applicant's apprehension is that "full circumstances and contents of various ACRs of the applicant were not placed before the DPC". The applicant has indicated neither any basis nor any justification for these averments. Once the ACRs were placed before the DPC, the full facts of the case of the applicant were placed before the DPC and thereafter the DPC should make appropriate use of the contents of the ACRs for the purpose of assessment of the performance of the applicant. In this connection, we may make a reference to the judgment of the Hon'ble Supreme Court in Hutan Arvind (Smt) Vs. Union of India & Anr. (1996) 33 ATC 228. The facts of the case which were before the Hon'ble Supreme Court were that the Tribunal before whom the matter had gone earlier had seen the records produced by the respondents which included the note to the DPC and the proceedings of the DPC. The DPC in that case had met under the Chairmanship of a member of the UPSC. The Tribunal had found that the DPC had assessed the officers as 'very good' or 'good' and in some cases the assessment was placed in a sealed cover. The applicant in that case was assessed as 'good'. In this connection, the Hon'ble Supreme Court had observed as follows:

"6. The DPC which is a high level committee, considered the merits of the respective candidates and the appellant, though considered, was not promoted. It is contended by the

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learned counsel for the appellant that one K.S.Pao was the officer at the relevant time to review the performance of the appellant whereas in fact one Menon had reviewed it. The latter was not competent to review the performance of the appellant and to write the confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessment of the respective candidates is made. When a high-level committee had considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference."

8. One of the issues which has been raised in this case had also arisen in the case before the Hon'ble Supreme Court, namely that one of the officers who had acted as a Reviewing Officer in that case was not competent to review the performance of the applicant in that case and to write his confidential reports. The Hon'ble Supreme Court observed in their above judgment that it is for the DPC to consider such a matter and that when a high level committee has considered the respective merits of the candidates, they cannot interfere in the matter. Now, if the Hon'ble Supreme Court says that it cannot sit over the assessment made by the DPC, a fortiori the Tribunal cannot undertake this exercise. The observations of the Hon'ble Supreme Court as above are conclusive as to the point whether a Court can sit in judgment over the assessment of a DPC for determining the merit of a candidate for promotion. In the judgments cited by the learned counsel for the applicant delivered by different Benches of the Tribunal, the Benches came to the conclusion that the entries made in the

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ACRs deserved to be upgraded and on that basis the assessment or performance of the applicants therein had to be made or that certain remarks had to be ignored for the purpose of assessing the performance of the applicants in those cases. We are affraid, in view of the judgment of the Hon'ble Supreme Court in the case of Smt.Nutan Arvind, supra, this Tribunal cannot perform this function. It would be <sup>a</sup> different matter if it is alleged that the findings of the DPC are perverse or are not based on any material whatsoever. That is not the position in this case.

9. As regards the representation made by the applicant at Annx.A3, it is basically against his supersession in the matter of promotion to JAG of the Indian Postal Service. No doubt, no reasons have been given in the communication Annx.A2 dated 14.5.96, rejecting the representation of the applicant. However, as already held above, once the DPC, which is an independent body headed by a member of the UPSC had assessed the performance of the applicant on the basis of the ACRs, there is very little that the Administrative Authorities could have done. Therefore, noncommunication of reasons for rejecting the representation cannot be a ground for quashing the order rejecting the applicant's representation.


10. The applicant's case is that he has also sought to challenge the failure of the respondents to communicate the down graded assessment in the ACR of the applicant for the year 1993-94. But in so far as the representation Annx.A13 is concerned, there is no such clear cut prayer. What has been stated in Annx.A3 is that the Reviewing Officer was not competent to assess the performance because the applicant had not worked under him for more than 3 months. It is the applicant's grievance that the down graded entry was not communicated to him in terms of the judgment of the Hon'ble Supreme Court in U.P Jal Uigam case. However what the Hon'ble

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Supreme Court have held in that case<sup>s</sup> that reasons should be recorded in the file for downgrading the assessment of the applicant in a subsequent ACF and that these should be communicated to him in an advisory capacity. It has not been stated by the Hon'ble Supreme Court that such entry should be ignored for the purpose of making assessment of performance for promotion.

11. We have already held, that the performance of the applicant was assessed by the DFC which is an independent body on the basis of the ACFs of the applicant and it is not the allegation of the applicant that the finding of the DFC are perverse or that these are based on no material, whatsoever. In the circumstances, we find no merit in this application. It is dismissed at the stage of admission.

  
(O.P.Sharma)

Member(Adm.)

  
(Gopal Krishna)

Vice Chairman.