

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR**

Original Application No.724 of 2004

Jabalpur this the 3rd day of August, 2005

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr.A.K. Bhatnagar, Member (J)

D.N. Verma, S/o Shri Purshottam Singh Verma, aged 56 years, Sub Postmaster, Raipur Kutchery Raipur, P/R of Qr.No. D-119, P & T Colony, Tagore Nagar, City/Post: Raipur, Thana: Tikrapara, Raipur, Tehsil/Distt. Raipur (C.G.)

Applicant


By Advocate Shri S.T.H. Rizvi

Versus

1. Union of India, Rep. through the Secretary, Ministry of Communications, Govt. of India, Deptt. Of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Chhatisgarh Circle, Raipur.
3. The Director Postal Services O/O The CPMG, CG Circle, Raipur.
4. The Sr. Supdt. Of Post Offices Raipur Division, Raipur.
5. The Sr. Postmaster, Raipur H.O.
6. Shri L.R. Sharma, S.P.M. Raipur Ganj, Raipur.
7. Shri A.R. Yadav, S.P.M. Mahasamund.
8. Shri K.R. Sarvan, S.P.M. Dhamtari.

Respondents

By Advocate Shri S.P. Singh



O R D E R

By Hon'ble Mr. A.K. Bhatnagar, Member (J)

By this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for following reliefs:-

"In view of the facts mentioned in paras 5, 6 and 7 above, the applicant prays for the following reliefs:

- (i) The illegal and arbitrary orders passed by the DPS Raipur on accounts of the grounds taken in para-6 above, ignoring the name for selection of the applicant to the post of HSG-I, may kindly be quashed.
- (ii) The CR's of the applicant from the year 1995-96 to 2003-04 alongwith the minutes of the DPC for selecting the officers for HSG-I posts may kindly be ordered to be produced for inspection of this court as there is descrepency in non-selection of the applicant in violation of principles of natural justice.
- (iii) The Sr. Postmaster Raipur may kindly be directed to communicate the adverse remarks 'average' given to him in the years 1997-98, 1998-99 and 1999-2000 which has affected his due promotion and to afford an opportunity to the applicant to represent against the adverse remark.
- (iv) Thereafter a Review DPC may kindly be directed to be convened for assessing the suitability of the applicant for promotion to HSG-I post, ignoring the adverse remarks of 'Average' which was given without any basis and grounds and reasons were not recorded in the CR's of the applicant.
- (v) The Review DPC so constituted may kindly be directed to give his independent opinion for selection of the applicant in respect of grading on the overall examination/assessment of the service records and CR's of the applicant without being influenced by the gradings given by the reporting officer.
- (vi) That the remarks grading the applicant as 'average' which the department thinks not to be adverse may be adjudged as equal to 'Good' and further processes for assessing the suitability of the applicant for promotion be taken.
- (vii) If the applicant is found suitable by the DPC for promotion to the post of HSG-I, the



DPS/SSPO's Raipur may kindly be directed to issue promotional orders within a short period from retrospective dates and with all consequential benefits.

- (viii) Liberty may kindly be granted to the applicant to approach this Hon'ble Tribunal again in case, he is still aggrieved by the orders of the DPS/SSPO's Raipur.
- (ix) The cost of this suit may kindly be awarded to the applicant.
- (x) Any other relief, which this Hon'ble Tribunal seem just and equitable in the circumstances of the case, may kindly be granted."

2. The brief facts giving rise to this O.A. are that the applicant has been working in the Postal Department since 19.04.1965, first as Postal Assistant and thereafter finally promoted as H.S.G.-II(BCR) P.A. Raipur H.O. w.e.f. 01.10.1991(annexure A-3). The name of applicant finds place at serial no.85 of the M.P. Circle Gradation list dated 01.07.1997, whereas names of his juniors S/Shri Lalaram Sharma, Ajit Ram Yadav and K.R. Sarwan were shown at serial no.375, 380 and 419 respectively. The applicant was due for promotion to the cadre of H.S.G.-I as per list of eligible officials, issued by Circle Office, Bhopal(annexure-4) in which name of the applicant was placed at serial no.46(page 2). The post of H.S.G.-I is a selection post for general line officials. Howsoever selection is to be made by the D.P.C. The mode of promotion by the D.P.C. is 'selection' and the prescribed bench-mark for the post of H.S.G.-I is "Good", which the D.P.C. shall determine and grade the officer as "Fit" or "Unfit" only. The applicant was due for promotion for the post of H.S.G.-I since the year 2002 but the D.P.C. did not select him for want of prescribed bench-mark in the year 2002, 2003 and 2004. The A.C.Rs of the applicant were written by the S.S.P.O's/Senior Postmaster, Raipur since 1995-96 to 2003-04 and the following gradings were given in the Confidential Reports of the applicant:-

"1995-96	:	Nil
1996-97	:	Very Good



1997-98	:	Average
1998-99	:	Average
1999-2000	:	Average
2000-2001	:	Good
2001-2002	:	Satisfactory
2002-2003	:	Good
2003-2004	:	Very Good

Due to above mentioned illegal and arbitrary gradings of 'Average', the applicant could not be selected and promoted to the post of H.S.G.-I. Therefore, he filed this O.A.

3. Learned counsel for the applicant submitted that in the confidential reports of the applicant, the Reporting Officer has failed to give a general assessment of his duties as a Government servant and has given the gradings of "Average" arbitrarily, which became a hindrance to his promotion and the applicant was superseded right from the year 2002 onwards. The applicant was given adverse entry of "Average" for the year 1997-98, 1998-99 and 1999-2000 without making any actual assessment but in the routine manner. The reasons were not recorded either by the Reporting Officer or by the D.P.C. for super session. Learned counsel further submits that un communicated adverse remarks cannot be considered without affording reasonable opportunity of representing against the same and the D.P.C. itself failed to record reasons for super session. The D.P.C. has not conducted the proceedings in a proper manner and rules of natural justice were violated, therefore, applicant is entitled for his due promotion from the year 2002 with all consequential benefits. The D.P.C. placed reliance only on the grading given by the Reporting Officer in the A.C.R., which was stereo type in nature without making any effort to assess the actual working of the applicant, and graded the applicant as "Unfit" for promotion to H.S.G.-I. Learned counsel further pointed out that the grading of "Average" has adversely

affected the applicant in his promotion. Learned counsel submitted that if the remark is going to affect the future prospects or in denying the monetary benefits, that should be communicated to the employee concerned. Learned counsel finally submitted that as per annexure A-9 i.e. Govt. of India, Department of Personnel and Training Office Memorandum No.22011/3/88-Estt.(D), dated 11.05.1999 whereby the D.P.C. finds that the adverse remarks in the confidential report of an officer have not been communicated to him but the adverse remarks are of sufficient gravity to influence their assessment of the officer concerned, then the D.P.C. shall defer consideration of the case of the officer, provided these remarks have been recorded in any of the confidential reports pertaining to three immediately preceding years, prior to the year in which the D.P.C. is held, and direct the cadre controlling authority to communicate the adverse remarks to the officer concerned so that he may have an opportunity to make a representation against the same. The D.P.C. failed to observe the aforesaid instruction of the Govt. of India ignoring the valuable rights of the applicant for making representation against such adverse remarks and down grading him from "Very Good" to "Average".

4. On the other hand learned counsel for the respondents denying the claim of the applicant, filed counter affidavit and submitted that as there were no adequate eligible official of H.S.G. II cadre for consideration for promotion to H.S.G. I cadre, hence all the officials who have got financial up gradation under BGR scheme including the applicant were considered as eligible for promotion to H.S.G.-I cadre. Learned counsel further submitted that the post of H.S.G.-I is a selection post based on seniority-cum-selection. The said D.P.C. met on 29.07.2002 but did not find the applicant fit for promotion to H.S.G.-I as per the prescribed bench mark. Another D.P.C. met on 12.12.2003 for consideration of the

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officials for promotion to H.S.G.-I i.e. feeder grade for promotion to the cadre of H.S.G.-I as per the instructions dated 12.11.2002 and the D.P.C. again did not find the applicant fit for promotion hence he could not be placed for further consideration for promotion to H.S.G.-I. Learned counsel further pointed out that as the applicant could not be promoted to H.S.G.-II and H.S.G.-I, he straight away filed the present O.A. without exhausting the remedy available to such officials. Learned counsel for the respondents inviting our attention on paragraph-10 of the counter affidavit, which is reply to paragraph no.5(vii) of the O.A., submitted that the confidential record is a very secret record and there was no occasion for the applicant to see it, as such, the applicant has discussed imaginary assessment of himself about his performance and grading in paragraph no.5(vii). For promotion to H.S.G.-I, confidential reports for the year 1997-98 to 2001-02 were taken into account during the D.P.C. met in 2002 and for notional promotion to the cadre of H.S.G.-II w.e.f. 01.07.2000 the confidential reports for the year 1995-96 to 1999-2000 were taken into account. The applicant was not found fit for promotion by the D.P.C., so he could not be promoted. The case of the applicant was considered for notional promotion w.e.f. 01.02.2001 by the next D.P.C. met in 2004. He was found fit for promotion on the basis of confidential reports for the last five years from 1997-98 to 2001-02 in respect of H.S.G.-II cadre and for the year 1999-2000 to 2003-2004 in respect of H.S.G.-I respectively. Therefore, no illegality has been caused to the applicant by the department.

5. We have heard the learned counsel for the parties and perused the record available before us. We have also gone through the original record filed by the respondents in respect of the applicant. We have gone through the minutes of D.P.C. held on 29.07.2002 in which applicant was at serial no.3 and was given the gradings as 'average' in 1997-98, 'average' in 1998-99,

'average in 1999-2000, 'Good/Very Good in 2000-2001 and 'Satisfactory' in the year 2001-02, on the basis of which D.P.C. has not recommended the applicant for promotion to H.S.G.-I. It is an admitted fact that promotion to the post of H.S.G.-I was based on selection-cum-seniority. The D.P.C. met on 29.07.2002 and considered the gradings given to the concerned employee along with the applicant. The applicant was awarded 3 "Average" gradings from 1997 to 2000 and in the year 2000-2001 he was awarded "Good/Very Good" and in the year 2001-02 he was given the grading as "Satisfactory", therefore, he was not found fit for promotion to H.S.G.-I. In the case of U.P. Jal Nigam and others Vs. Prabha Chandra Jain and others 1996(33) A.T.C. 217 SC., it has been held that even in such circumstances, an extreme variation in gradation such as "Outstanding" gradation in one year followed by "Satisfactory" in the succeeding year, held, may reflect an adverse element compulsory communicable-Reason for such a change must be recorded in the personal file and the employee must be informed of the change in the form of advice-Otherwise the downgrading cannot be sustained. In our considered view, the above ratio given in U.P. Jal Nigam(supra) is not applicable in the present case. In the case of Manik Chand Vs. Union of India and others{O.A.No.559/01 decided on 23.07.2002} 2002(3) A.T.J.268, the following issue was resolved:-

"In the case of selection, where a particular bench mark has been prescribed, whether any gradings in the ACR which fall short of bench mark need to be communicated to the reportee even though the grading/report perse may not be adverse."

The reference was answered in the negative and considered view of the Full Bench is that it is not necessary to communicate the non adverse remarks or grading to the concerned Government servant. Besides, the Government servant only has a right to be considered for promotion and not right for actual

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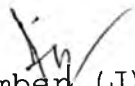
promotion or selection. There is also a similar Judgment in the case of U.O.I. and others Vs. M.S. Preet W.P.13024/CAT/2002, decided on 22.09.2002. Moreover in the case of Anil Katiyar(Mrs.) Vs. U.O.I. and others 1997(1) S.L.R. 153(S.C.), the Hon'ble Apex Court has held in para-4 as under:-

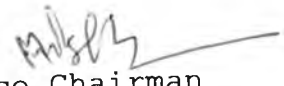
"Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the D.P.C. and that it would not sit in Judgment over the selection made by the D.P.C. unless the selection is assailed as being vitiated by malafide or on the ground of it being arbitrary."

From the above, it is clear that this Court cannot sit in appeal over the D.P.C. and scope of judicial review in these types of cases is very limited.

6. In the present case, we find that the bench mark for promotion to the post of H.S.G.-I was 'Good'. The D.P.C. was convened on 29.07.2002 and the applicant having 3 'Average', 1 'Good/Very Good' and 1 'Satisfactory' was not found fit for promotion to the post of H.S.G.-I. Therefore, in our considered view he is not entitled for promotion to the post of H.S.G.-I.

7. Under the facts and circumstances and placing reliance on the above cited Judgments, we find that the applicant has no case, therefore, O.A. is dismissed. No order as to cost.


Member (J)


Vice Chairman

/M.M./