

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 804 of 2003

Jabalpur, this the 6th day of August, 2004

Hon'ble Mr. Sarveshwar Jha, Administrative Member
Hon'ble Mr. Madan Mohan, Judicial Member

Shri Gopal Chandra Manna
S/o Late Shri Kishori Mohan Manna
Aged 46 Years,
General Manager(Sough),
Technical and Development Circle,
Residency Road,
Jabalpur(M.P.)

APPLICANT

(By Advocate - Smt. S. Menon)

VERSUS

1. Union of India
Through Secretary
Ministry of Communication and
information Technology,
Department of Telecommunications,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi. 110 001
2. Member(Services)
Department of Telecommunications,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi 110 001
3. Chief General Manager,
Bharat Ratna Bhim Rao Amedkar
Instituted of Telecom Training
(BRBRAITT) Ridge Road,
Jabalpur(M.P.)
4. Shri P.K. Khindri
Ex Chief General Manager,
86-R, Model Town,
Jalandhar City-144003(Punjab)
5. Chief General Manager,
Technical and Development Circle
(MP) Bharat Sanchar Nigam Ltd.
Residency Road,
Jabalpur(M.P.)

RESPONDENTS

(By Advocate - Shri Om Namdeo)

O R D E R

By Sarveshwar Jha, Administrative Member -

Heard the learned counsel for both the sides.

S. Menon

2. This application has been filed by the applicant seeking regular promotion to SAG of ITS Group 'A' from a date when his juniors came to be promoted, by a Review D.P.C. Prayer has also been made for a direction for production of all relevant records pertaining to promotion/regularisation of the officers to Senior Administrative Grade of Indian Telecom Service Group 'A' vide order dated 21.7.2003 (Annexure-A+24). As the applicant has alleged malafiad against respondent No.4 in grading the applicant below benchmark for the year 2000-2001 and 2001-2002 he has also prayed for a direction being given to the respondents to exclude his ACRs for the said years for all purposes including promotion.

3. The facts of the matter, briefly, are that the applicant who is an ITS officer belonging to the SAG of the service and who held the post of Director (Information & Computer) at Telecommunication Engineering Centre, New Delhi during February, 1995 to December, 1996; who was posted as Director (Computers) at Bharat Ratna Bhim Rao Ambedkar Institute of Telecom Training (B.R.B.R.A.I.T.T.), Jabalpur and held the post up to March, 2001; and thereafter he was posted as Deputy General Manager (E.S.II), Jabalpur and further General Manager, West Bengal Kolkata during February, 2002 to September, 2003, was posted as General Manager TNG circle, Jabalpur in September, 2003 and has been continuing as such till date. He has claimed unblemished service record and his work has been appreciated by the authorities on having achieved targets prescribed by them. He has referred to as having undergone courses on "Computerised Telecom Applications" in China and also training in Canada. He refers to other achievements to his credit different sub paragraphs of Paragraph 4 of the OA. Accordingly, as submitted by him, he was promoted to senior Administrative Grade of the service on ^{basis} adhoc/vide office order dated 6.2.2002

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(Annexure-A-15). As alleged by the applicant trouble in his case started with his posting as Chief General Manager, B.R.B.R.&I.T.T Jabalpur w .e.f. 8.5.1999 to 23.4.2002 when he has to function under the control of respondent no.4; he has alleged that during the said period he was not been given the appropriate ACRs by the said respondent for the reasons as stated in paragraph 4.8. of the OA. according to him, the respondents no.4 had malafide and vindictive attitude against him who did not accede to his command. A specific reference in this regard has been made by him to his submissions in paragraph 4.8.(c). While it is not necessary to give details of specific incidents which have allegedly given rise to bias on the part of the respondent no.4 against the applicant, but it has emerged that the applicant is quite convinced that he has not been recommended for regular promotion to SAG service due to the confidential reports given by him during 2000-2001 and 2001-2002. He has submitted that the reporting officer whose reports constitute the basis for consideration of an officer for promotion has to be fair in his assessment of performance of the officer reported upon. He should not nurse any malice against such an officer; he has contended that the confidential reports written by such officer who has malice cannot be acted upon to deny promotion opportunities unless it is communicated to the official concerned so that he has an opportunity to improve the work and conduct to explain the circumstances leading to the said report. Since no such opportunity was given to him, any action based on such report/reports, according to him, is illegal. Accordingly, he has pleaded that the action of the respondents denying him promotion to SAG of the service is illegal and improper and, therefore, is liable to be interfered with by the Hon'ble Tribunal. Hence, this OA.

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In support of contention of the applicant his learned counsel has referred to certain decisions of the Hon'ble Apex Court. The specific reference in this regard is made to relevant part of the decision of the Hon'ble Apex Court in the case of P.K. Shastri Vs. State of M.P. as reproduced by the applicant in paragraph B of the OA which is reproduced as under :-

"..... Be that as it may, we think that the CRs of an Officer are basically the performance appraisal of the officer and go to constitute vital service record in relation to his career advancement. Any adverse remark in the CRs could mar the entire career of that Officer. Therefore, it is necessary that in the event of a remark being called for in the confidential records, the authority directing such remark must first come to the conclusion that the fact situation is such that is imperative to make such remarks to set right the wrong committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the CRs.

The learned counsel has also referred to the decision of the Tribunal in Dr. Bhardwaj V Union of India and others, passed on 9.7.2003 in OA No. 270/99 as reported in Swamy news, December, 2003 page 51, in which it has been held as under :-

" An uncommunicated adverse remark cannot as a general rule be acted upon by the employer to the prejudice of the employee. The rules and administrative instructions generally put an obligation on the authorities to communicate the adverse remarks to the employee to enable him to make a representation. Even if the rules or administrative instructions are silent on this aspect, the principles of natural justice require such a communication".

The learned counsel for the applicant has also relied on the decision of the Lucknow Bench of the Hon'ble Tribunal in the case of Kalyanesh Kumar Bajpai V Union of India and others, decided on 10.10.2000 in OA No. 523/1998 in which a direction has been given to hold a review DPC to consider the case of the applicant who had been given ACR below the benchmark of

very good. It has also been held by the Tribunal: " In case the applicant and representation of/against the adverse entries/against the gradings of below/bench mark is accepted a review DPC shall be held

within a period of 2 months from the date on which the representation of the applicant is accepted and the applicant shall be considered for promotion to the SAG level by the review DPC w.e.f. 12.3.98, i.e. the date on his which/immediate juniors were promoted. If on such reconsideration by the review DPC, the applicant is found fit for promotion, he will be entitled ^{to} all the consequential benefits. Reference in the said orders of the Tribunal has also made to the judgment of the Hon'ble Apex Court in the case of U.P. Jal Nigam and others Vs. Prabhat Chand Jain and others (1996) 2 SCC 363 ^{in which the Hon'ble Apex Court} took the view that a positive entry like 'good' may damage the promotional aspects of an officer and hence needs to be communicated. In the case of Udai Krishna V Union of India and others, (1996) 33 ATC 802 the Allahabad Bench of this Tribunal, observed as under:-

" We are inclined to agree that 'good' or 'average' grading in the ACR though not per se adverse would assume the character of adverse remarks in the context of the requirement of benchmark of 'very good' to qualify for empanelment for promotion".

The learned counsel for the applicant has prayed that the benefits as given in the said OAs and as in the decisions of the Hon'ble Supreme Court as referred to may also be given to the applicant, as ~~in~~ ^{under} his case also is covered under the said decision.

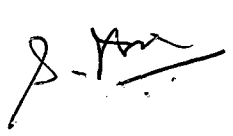
4. The respondents, however, have submitted that the case of the applicant was considered in the DPC against vacancies for the year 2003 and 2004 when he was assessed 'unfit'.[^] Accordingly, he could not be promoted to the said grade. On receipt of a representation from the applicant, his case was examined in the Department and he was informed of the position vide letter dated 29.9.2003 (Annexure R-1). The respondents have referred ^{to} the decision of the Hon'ble Supreme Court in the case of Jankiramn (AIR 1991 SC 2010) in which it has been held that " an employee has no right

to promotion. He has only a right to be considered for promotion. The promotion to a post, and more so to a selection post, depends upon several circumstances. To qualify for promotion the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest".

5. In the para-wise reply they have clarified that the applicant has been promoted on adhoc basis to the Senior Administrative Grade, applying the method of seniority-cum-fitness and, therefore, the same has no relation to his regular promotion ^{to} the grade in which selection criteria are to be applied in ~~the~~ the bench mark ~~is~~ prescribed is 'very good' for an officer to be declared fit by the DPC. On the allegations which have led ~~to~~ to malice and acrimony on the part of the respondent no.4 towards the applicant, the respondents have clarified ~~the~~ the position particularly in respect of purchase of computers, in which they have informed that the change of charge ~~from~~ from computer faculty to ES-II faculty of the applicant was on administrative urgency ~~and was not~~ by malice. According to them, grading of an officer is based on annual performance as reflected in the ACRs. While they have denied ~~the~~ the allegations made by the applicant in different paragraphs, they have reiterated that in the ^{three} ~~the~~ meetings ^{which} ~~were~~ held against the vacancy ^{for} ~~year~~ 2003-2004 on 30th June, 1st and 2nd July, 2003. The case of the applicant was duly considered with reference to the instructions contained in the Department of Personnel and Training O.M. No. 35034/7/97-Estt(D) dtd. 8.2.2002 (Annexure-R-2) and suitable reply was given to him vide Annexure-R-1. The respondents, in support of their submission, have also produced the minutes of the meeting of the DPC as held on 30.6.2003, 1/2.7.2003 and ~~the~~ same have been

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perused by us. We find that the minutes show only the over all assessment of the officers concerned and not yearwise assessment. The applicant has been considered by the committee and under the assessment column against his name the word 'unfit' has been mentioned. We have also perused the ACRs for the years 2000-2001 and 2001-2002 and we have found that the same has been written by respondent no.4 (Shri P.K.Khindri) for the year 2000-2001. The ACR for the period 2001-2002 (up to 12.2.2002) has also been written by the same officer, i.e. respondent no.4. It is thus confirmed that the information of the applicant as to who has written his ACRs for 2 years is correct. While it is not clear, to say specifically, as to what assessment was assigned to this report or as to how this report was assessed by the DPC, it could certainly be said that a report is assessed not on the basis of the over all grading which is assigned by the reporting officer against one column but on the basis of the total report which is given to an officer by him against different individual column/attributes as provided for in the relevant columns. It is for the DPC to form its own opinion on the over all grading given by the reporting officer; such instructions are also available for guidance of DPCs. It is also common knowledge that DPCs are free to base their assessment about an officer also on the over all assessment of the performance of the officer concerned and not on assessment of his performance in any particular year. It is observed that the learned counsel for the applicant has cited certain decisions giving benefit to the applicants in the relevant cases on the basis of reports given to them as have not been found to meet the bench mark, and also that directions have been given in such cases for reviewing the matter by the Review DPCs on the ground that such reports as



mentioned above having not been conveyed to the officers concerned have ultimately resulted in such officers being not promoted to the relevant grade(including SAG) of the service. On closer examination, it is found that while cases relied upon by the learned counsel for the applicant are not exclusively and entirely relevant to the case of the applicant, it is found that in the interest of justice and particularly the principles of natural justice, it will be reasonable and rational to allow the same benefit to the applicant also. This becomes more logical in view of the fact that we do not have any information on whether the ACRs in question had affected in any way the over all grading of the applicant, not enabling him to meet the bench mark required for promotion to SAG of ITS group 'A'.

7. Having regard to the facts and circumstances of the case and also keeping in view the oral submissions as made by the learned counsel for the parties and after perusing the records as produced by the respondents before the Bench, we are of the considered opinion that it would be in the interest of justice that the matter as raised in this OA is remitted to the respondents with a direction that they reconsider the matter relating to the promotion of the applicant to the SAG of ITS group 'A' by convening a meeting of the Review DPC in the light of the decisions given by the Hon'ble Supreme Court as also different Benches of this Tribunal as referred to by the applicant/his learned counsel. The respondents are further directed to hold the review DPC within 2 months from the date of receipt of a copy of this order and further that the case of the applicant shall be considered in the review DPC with reference to the date of promotion of his immediate junior in the service/grade. He will also be eligible for consequential benefits in the event of having ^{been} found fit for promotion by the

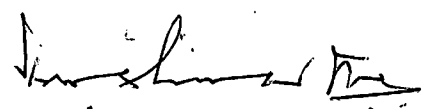
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Review DPC, as held by the Lucknow Bench of this Tribunal
in similar case/as referred to above in OA No. 523/98.

Ordered accordingly. No costs.


(Madan Mohan)
Judicial Member


(Sarveshwar Jha)
Administrative Member

SKM

पृष्ठंकन सं ओ/व्या..... दि.
पलिलिपि अद्यो धिल:-

- (1) सचिव, उच्च न्यायालय वार एडमिनिस्ट्रेशन, जयलपुर
- (2) आदेशदात्री/डी.डी.सी./मु.....के कार्यालय Smt S. Menon
- (3) प्रत्यक्षी/डी.डी.सी./मु.....के कार्यालय am Namdeo
- (4) वरिष्ठ, सं.प्र.अ., जयलपुर न्यायालय
सूचना एवं आवश्यक कार्रवाई हेतु PHD 16-8-94
रजिस्ट्रार

Issued
on 16.8.94
PS