

Central Administrative Tribunal
Principal Bench

(5)

Original Application No.686 of 2003

New Delhi, this the 29th day of July, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member (A)

Oscar Kerketta
First Secretary
Embassy of India
Indische Botschaft
Tiergartenstrasse 17
10785 Berlin.

...Applicant

(By Advocate: Shri P.P. Khurana, Senior Advocate
with Shri Amit Anand)

-Versus-

Union of India through
Secretary,
Ministry of External Affairs,
South Block,
New Delhi.

...Respondents

(By Advocate: Shri H.K. Gangwani)

O R D E R (ORAL)

By Justice V.S. Aggarwal:

The applicant is an Indian Foreign Service Officer. By virtue of the present application, he seeks a direction to the respondents to grant him promotion to Grade-IV of the Indian Foreign Service with effect from the date his juniors were promoted with consequential benefits.

2. The sole argument pressed before us on behalf of the applicant is that the confidential reports of the applicant have been downgraded which had not been communicated to the applicant and, therefore, they should be ignored and review DPC in this regard should be held.

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3. The respondents contest the claim of the applicant. As per the counter reply filed, it has been pleaded that the application is barred by time. It has also been pleaded that as per the relevant instructions and prescribed procedure, the DPC has assessed the suitability of the officer. As per the rules and instructions only if there are adverse remarks the same are conveyed to the officers and not otherwise. The DPC has discretion to devise its own method and procedure for objective assessment and suitability of the candidates who have to be considered. It is competent to arrive at its own conclusion.

4. We have heard the parties' counsel.

5. The first and foremost plea raised on behalf of the respondents is that the claim of the applicant is barred by time. The present application has been filed on 24.3.2003. The applicant had represented pertaining to his promotion and the said representation had been rejected on 19.12.2002, copy of which is Annexure A-1. The contention that applicant was ignored on 3.8.2000 for the first time and, therefore, to that extent his claim is barred by time, is not tenable for the reason that even pertaining to the said DPC the claim was only rejected on 19.12.2002. Resultantly, since, from the date of rejection of the claim, the application has been filed within one

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year, we hold that it cannot be termed to be barred by time.

6. Reverting back to the other controversy about downgrading of the confidential reports of the applicant, we refer with advantage to certain precedents on the subject:

7. The Supreme Court in the well known decision rendered in the case of U.P. Jal Nigam and Ors. v. Prabhat Chandra Jain and Ors., 1996 (33) ATC 217, has held:

"3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All what is required by the Authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an

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undesirable situation. All the same the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

It is abundantly clear without any pale of controversy that the Supreme Court was basically dealing with a matter where there was a steep fall in recording of the confidential reports and otherwise also not only the Supreme Court was concerned with the relevant rules of the U.P. Jal Nigam but the said Court held that if there is a downgrading, in that event, a person who has reached the optimum level must be conveyed the same.

8. This decision of the Supreme Court was followed by a Bench of the Guwahati High Court in the case of Donatus Engzanang v. State of Mizoram, 2001 (2) ATJ 467. The Full Bench of the Delhi High Court in the case of J.S. Garg v. Union of India & Others, 2002 (65) Delhi Reported Judgments 607 (FB) also took up the matter wherein the Annual Confidential Reports after being 'Very Good' had

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been downgraded. The Judgement of the U.P. Jal Nigam (supra) was referred to by the Full Bench and it was held that the uncommunicated downgraded remarks could not have been considered. The Full Bench held:

"13. The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to pose unto itself a right question so as to enable it to arrive at a correct finding of fact with a view to give a correct answer. The question which was posed before the learned Tribunal was not that whether the petitioner had been correctly rated by the DPC? The question, as noticed hereinbefore, which arose for consideration before the learned Tribunal as also before us was as to whether having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. (supra), as also Rule 9 of the CPWD Manual the concerned respondents had acted illegally in not communicating his 'fall in standard'. It is now trite that the Court of the Tribunal cannot usurp the jurisdiction of the Statutory Authority but it is also a settled principle of law that the jurisdiction of this Court to exercise its power of judicial review would arise in the event it is found that the concerned authority has, in its decision making process, taken into consideration irrelevant fact not germane for the purpose of deciding the issue or has refused to take into consideration the relevant facts. The learned Tribunal, in our opinion, while holding that having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. the DPC could ignore categorisation, committed a serious error in usurping its jurisdiction. Once such categorisations are ignored, the matter would have been remitted to the DPC for the purpose of consideration of the

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petitioner's case again ignoring the remarks 'Good' and on the basis of the other available remarks. This position stands settled by various judgments of the Supreme Court."

To the same effect is the Single Bench decision of the Delhi High Court in the case of Madhu Bala Dham v. Delhi Development Authority in Civil Writ Petition No.5761/2003, decided in January, 2004."

9. In the face of the aforesaid precedents, it is obvious that when the person is downgraded and the same is not communicated to the said person, he can reasonably complain that the said confidential reports should be ignored.

10. The respondents' learned counsel has made available to us in a sealed cover the confidential reports record of the applicant. The same reads as under:-

Period of Report Grading			Reporting Officer	Reviewing Officer
From	to			
04/94	03/95	Very Good	Homai Saha	TCA Rangachari
04/95	06/95	Very Good	Homai Saha	TCA Rangachari
07/95	03/96	Good	Susmita G.Thomas	Ranjan Mathai
04/96	03/97	Good	Amar Sinha	Ranjan Mathai
04/97	09/97	NRC	No sole supervisor	
09/97	03/98	Good	Nalin Surie	Nalin Surie
04/98	03/99	Good	Nalin Surie	Nalin Surie
04/99	03/00	Good	Nalin Surie	Nalin Surie
04/00	09/00	Pending		
09/00	03/01	Average	A.K. Pandey	R. Sen.
04/01	03/02	Average	A.K. Pandey	R. Sen.

11. Perusal of the same clearly reveals that from the year 1996-1997 from 'Very Good', he was downgraded to 'Good'. Thereafter there is further

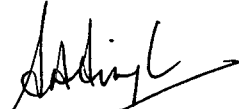
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downgrading. In the year 2000 ~~the same is pending.~~

12. The respondents' contention that since there are no adverse entries, therefore, they are not required to be communicated, has no significance because of the decision of the Hon'ble Supreme Court rendered in the U.P. *Jai Nigam & Ors. vs. Prabhat Chandra Jain & Others*, (1996) 2 SCC 363. Admittedly the bench mark was 'very good' for the said post. The downgraded entries have not been communicated and necessarily they should be ignored. Resultantly, we dispose of the present original application directing:

- a) The impugned order is quashed.
- b) A review DPC be held in the light of the findings given above. We make it clear that so far the Departmental Promotion Committee is concerned, it has to consider the claim of the applicant on merits.


(S.A. Singh)
Member (A)

/na/


(V.S. Aggarwal)
Chairman