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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 816/2003

New Delhi, this the 16th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

Shri R.S. Gill
Assistant Director (AO) (Ops.),
Directorate General, SSB,
Block V East, R.K. Puram
New Delhi - 110 066. ... Applicant

(By Advocate: Sh. V.S.R. Krishna)

Versus

Union of India through:

1. The Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 001.
2. The Director General
Special Service Bureau
Block V [East], R.K. Puram
New Delhi - 110 066.
3. Shri J.S. Chambial
Deputy Inspector General
SSB Hqrs.
Block-V (East)
R.K. Puram
New Delhi - 110 066.
4. Shri G.R. Marwaha
Deputy Inspector General
National Commission for SCs and STs
Loknaik Bhawan
Khan Market
New Delhi. .. Respondents

(By Advocate: Sh. B.S. Jain for Respondents 1 & 2;
None for Respondents No. 3 and 4)

O R D E R

Justice V.S. Aggarwal:-

Applicant Shri R.S. Gill joined the service of the Government of India as Circle Organiser on 29.4.1974. He was promoted as Sub-Area Organiser which is a Group 'A' (Gazetted) post and was again promoted as Joint Area Organiser on 23.12.1991. On 27.03.1991, he was further promoted as Area Organiser



on 23.12.1991. The applicant is the proud recipient of a number of awards and commendations such as the Uttam Sewa Praman Patra.

2. Under the recruitment rules, the next promotion post for Area Organisers is that of Deputy Inspector General for which eight years of regular service in the grade of Area Organiser, and a total of 17 years of service in the Gazetted rank is prescribed. The promotion has to be made by the method of "Selection".

3. The applicant contends that respondents convened a Departmental Promotion Committee Meeting for promotion to two clear vacancies in the grade of Deputy Inspector General pertaining to the year 2000. The meeting was held on 27.11.2000. The applicant had the requisite number of years of service in the feeder grade. As per the Office Memorandum of 10.4.1989, according to the applicant, for the said post the benchmark has to be 'Very Good'. The officers who were graded 'Outstanding' would rank en bloc senior to those who were graded as 'Very Good'.

4. The Departmental Promotion Committee Meeting had to consider the Confidential Reports for five preceding years of the concerned officers. There were eight officers in the order of seniority, namely:

S.No. No.	Name & Designation	Date of apptt. As AO
	S/Shri	
1.	H.N.Singha (ST)	05.03.1984
2.	J.S.Chambial	07.11.1991
3.	B.K.Anand	06.11.1991



4.	G.R.Marwaha	26.11.1991
5.	G.N.Deka (ST)	12.12.1991
6.	I.C.Sharma	04.11.1991
7.	Kishori Lal (SC)	07.11.1991
8.	R.S.Gill	23.11.1991

5. The grievance of the applicant is that after considering their cases, Departmental Promotion Committee recommended Respondents No.3 and 4 for promotion. The Departmental Promotion Committee not only took into consideration the Annual Confidential Reports of five years but also illegally took into consideration even the Annual Confidential Reports which were for longer period and in this process, the applicant alleges that though he had a better record, could not be selected. By virtue of the present application, he seeks quashing of the orders of 5.3.2002 and 01.5.2001. As a consequential relief he prays that respondents should hold a review Departmental Promotion Committee strictly in accordance with the relevant rules and Department of Personnel and Training's instructions so that he is promoted.

6. In this regard, we deem it necessary to mention that the applicant had submitted a representation which had been rejected by the following order dated 5.3.2002:

"SUBJECT:- PROMOTION TO THE RANK OF DIG.

Shri R.S.Gill, Area Organiser may please refer to his application dated, 12/11/2001 addressed to the Secretary to the Govt. of India, MHA, regarding his supersession in promotion to the rank of DIG.

2. Shri R.S.Gill, Area Organiser is hereby informed that the contention of Shri Gill is not well founded as he stood at Sl. No.8 of the seniority list and



officers senior to him have been promoted. Therefore, no injustice has been done to him.

3. This issues with the approval of the Home Affairs vide their Dy. No.1164 dated 28/1/2002."

7. The application has been contested. Respondents No.1 and 2 contend that the Departmental Promotion Committee meeting took place on 27.11.2000 to consider the promotion of the eligible Area Organisers. It recommended the names of the Respondents No.3 and 4 for promotion. They were senior to the applicant. The applicant had not been superseded. The respondents relied upon the decision of the Jammu & Kashmir High Court rendered in the case of B.K.Anand v. Union of India & Others, Civil Writ Petition No.127/2001, decided on 24.4.2001.

8. We have heard the parties' counsel and seen the relevant record.

9. Learned counsel for the applicant contended that though the applicant admittedly was junior to the private respondents but as per the relevant Government of India's guide-lines regarding procedure to be followed by the Departmental Promotion Committees in respect of promotion by method of 'Selection', the persons who are having 'Outstanding' record will supersede the persons having 'Very Good' record. According to the learned counsel, the Committee ~~might~~ ^{could not have} considered eight years Confidential Reports. They in fact should have considered five years records of the Annual Confidential Reports. They violated the Office Memorandums in this regard and it has caused prejudice to the applicant.

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10. Our attention, on behalf of the respondents, was drawn towards the decision of the Jammu & Kashmir High Court in the case of Shri B.K. Anand (supra). The Jammu & Kashmir High Court had observed:

"In the context of present case it may be appropriately noted that the D.P.C. in a case like the present one was required to consider the ACRs of all eligible persons for an equal number of years, which in fact they have done. Reason being that ACRs for the year 1992-93 till 1998-99 have been considered in case of all the 8 officers and it was thereafter that their suitability for promotion based on their service record was assessed. Minutes of the D.P.C. recorded suggest that D.P.C. has made its own assessment also in addition to what was contained in the ACRs of all the 8 officers and on an overall examination has come to the conclusion that except petitioner and person at serial no.1, all other officers made "Very Good" bench mark; whereas in case of these two officers it was "good". A perusal of the ACRs of petitioner suggests that barring his ACRs of 1992-93, all the three authorities namely initiating Authority, Reviewing Authority, as well as Accepting Authority, have made their own assessment after making his assessment and then assessed the grading of the petitioner.

So far legal proposition that an uncommunicated adverse ACR can not be taken into account while assessing the merit of a candidate like petitioner is concerned, there can be hardly any dispute with it. Reason being that such an action is opposed to the principles of fair play, natural justice as well as good conscious. This is what has been the general consensus and outcome of the cases, referred to herein above. The question would be whether in the circumstances of present case it can be said that there is any adverse ACR which was not communicated to the petitioner. At the risk of repetition it may be observed that there was no such adverse ACRs which ought to have been conveyed."

11. A perusal of the cited decision clearly shows that it has simply been observed that the Departmental Promotion Committee in such like matters

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were required to consider the Annual Confidential Reports of eligible persons for the years equal to the required qualifying service, which they have done. There is no definite finding that instead of 5 years, 8 years confidential reports are considered, the applicant would be effected thereto. Therefore, we find that neither the decision of the said Court help the respondents nor go against the contentions of the applicant.

12. The Government of India, Department of Personnel & Training had issued OM No.22011/7/98-Estt.(D), dated 6.10.2000. The Office Memorandum notes the earlier instructions and the recommendations of the Fifth Central Pay Commission and the final decision that has been arrived at. We reproduce the same for the sake of the facility:

"The DPC should assess the suitability of the employees for promotion on the basis of their Service records and with particular reference to the CRs for five preceding years irrespective of the qualifying service prescribed in the Service/Recruitment Rules. The 'preceding five years' for the aforesaid purpose shall be decided as per the guide-lines contained in the DoP & T O.M. No.22011/9/98-Estt. (D), dated September 8, 1998, which prescribe the Model Calendar for DPC read with OM of even number, dated June 16, 2000. (If more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year)."

13. The present instructions, therefore, prescribe that the Departmental Promotion Committee should assess the suitability of the employees on basis of their service record. It prescribes further that particular reference should be made for the Confidential Reports of five preceding years

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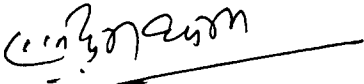
irrespective of the qualifying service prescribed in the recruitment rules. When the OM refers to the expression 'with particular reference to the CRs for five preceding years', it makes clear that there is no fetter on the powers of the Departmental Promotion Committee to consider the earlier Confidential Reports. At the risk of repetition we mention that particular reference has to be made for five preceding years but not that the others can be totally ignored.

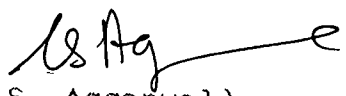
14. The respondents' learned counsel has made available, in a sealed covers, the proceedings of the relevant Departmental Promotion Committee and the Confidential Reports of the applicant and the private respondents. We have gone through the same. We have seen the grading which clearly shows that though they went beyond five years which we have referred to above, is not illegal. Grading of the applicant was identical like private respondents. There were no mala fides that have been attributed in this regard.

15. For these reasons, we find that the plea of the learned counsel for the applicant is without any merit.

16. No other arguments have been advanced.

17. Resultantly, the OA must fail and is dismissed. No costs.


(R.K. Upadhyaya)
Member (A)


(V.S. Aggarwal)
Chairman