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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 951 of 2003 *ku*

New Delhi, this the 19<sup>th</sup> day of May, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

HON'BLE MR. S.A. SINGH, MEMBER (A)

Shri K.C. Kanungo  
Deputy Inspector General,  
Central Bureau of Investigation,  
8/10 Jamnagar House Hutments,  
Akbar Road,  
New Delhi-110 011.

.. Applicant

(By Advocate: In person)

Versus

Union of India : Through

1. Secretary,  
Department of Personnel & Training (DOPT)  
North Block,  
New Delhi.
2. Shri P.C. Sharma,  
Director,  
Central Bureau of Investigation,  
Block No.3, CGO Complex,  
New Delhi.
3. The Chairman,  
Union Public Service Commission,  
Dholpur House,  
New Delhi.
4. Shri A.K. Suri,  
Joint Director (Delhi)  
CBI, ACB Delhi Branch  
Block No.4, CGO Complex,  
New Delhi.
5. Shri A.W. Digwekar  
Joint Director (STF)  
Central Bureau of Investigation,  
Block No.4, CGO Complex,  
New Delhi.
6. Shri A.K. Majumdar  
Joint Director (EOW-1)  
Central Bureau of Investigation,  
Block No.3, CGO Complex,  
New Delhi.

.. Respondents

(By Advocate: Shri M.M. Sudan, Counsel for respondent  
Nos. 1 and 2.

Shri S. Partjohi, Counsel for respondent  
No.3.

Shri G.D. Bhandari, Counsel for respondent  
No.4.)

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O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant has impugned an order dated 23.12.2002 vide which his representations dated 7.10.2002 and 28.10.2002 regarding his non-promotion to the grade of Joint Director in the CBI and also for making available some copies of documents have been turned down. The applicant has also assailed a notification dated 10.10.2002 vide which respondent No.4 has been appointed as Joint Director, CBI w.e.f. 27.9.2002. He has also impugned various notifications dated 2.4.2002 vide which respondent Nos.4, 5 and 6 were promoted as Joint Directors.

2. The grievance of the applicant is that the ACRs of the applicant which are below the bench mark have been taken into consideration by the DPC ignoring the fact that the said ACRs being adverse, being lower than the bench mark, ought to have been communicated, as per the principle of law which has been fully settled by various judgments of this Hon'ble Tribunal as well as of Hon'ble High Court and Hon'ble Supreme Court.

3. The facts in brief are that the applicant claims that he is a highly qualified and has an outstanding academic record and he had been appointed as Dy. Superintendent of Police, CBI through the Union Public Service Commission as a result of Combined Competitive Examination held for Indian Police Service in the year 1969.

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4. Applicant further claims that his working has always been not only satisfactory but commendable and that is why he had been given promotion as Superintendent of Police in October, 1984. Thereafter he was also transferred to Chandigarh as DIG, Special Investigation Cell from where he was shifted to Jammu though applicant has made a representation against his transfer to Jammu but the same was turned down.

5. The applicant also claims that he is an upright straight forward officer with absolutely clean and unblemished record of his service and his working had been appreciated by the higher officers but despite that he was not liked by some of the officers and consequence of such jealousy resulted in considerable harassment of the applicant against which the applicant had been making representation but in vain.

6. The applicant has also placed on record a copy of a letter written by Shri P.C. Sharma the then Special Director, CBI appreciating the work of the applicant.

7. The applicant further claims that he is now eligible for promotion to the post of Joint Director which is in the pay scale of Rs.18400-22400 and the post is to be filled up by holding DPC consisting of Chairman/Member, UPSC (Chairman), Secretary, DOP&T (Member) and Director, CBI (Member).

8. He further states that three posts of Joint Directors had become available for which no DPC was held in the year 2001 for departmental officers to fill up the

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vacancies although as per the rules, the DPC should have been held at regular annual intervals to draw panels for filling up the vacancies.

9. The applicant also claims that he holds all the qualifications for being promoted to the post of Joint Director.

10. It is further stated that the respondents had held a DPC in February, 2002 and promoted respondent No.6, Shri A.K. Majumdar, who happened to be senior to the applicant. Subsequently another DPC was held in August, 2002 as a result of which two officers, namely, respondent Nos.4 and 5 had been placed on select list and though respondent No.5 is senior to the applicant but respondent No.4 is junior to the applicant so this order came as blot from the blues for the applicant who was shocked beyond words to learn that he had been superseded by one of his juniors despite the fact that his performance has been appreciated and commended by the Director, CBI.

11. It is further stated that the respondents have failed to consider him during the period when he was posted at Guwahati, his performance has been appreciated and he has never been given any adverse remarks nor any adverse report was communicated to him. It is also pleaded that the persons who are posted in North Eastern Region which is a difficult area, a special weightage ought to have been given as the rules provide that those officers who are posted in North Eastern Region deserve special consideration for promotion.

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12. It is further stated that as per the law declared by the Hon'ble Supreme Court that any grading in ACR which is lower than the bench mark and may come in the way of promotion of an officer is to be deemed as adverse and has to be communicated to the concerned officer to improve his performance before expecting his promotion to the higher grade, so this rule has been violated.

13. Thus it is stated that the orders of promotion are liable to be quashed and directions be issued to the respondents to convene a review DPC for considering the case of the applicant for promotion to the post of Joint Director and if the applicant is found fit he may be promoted as Joint Director.

14. The respondents are contesting the OA. The respondents in their reply pleaded that in his representation the applicant has asked for ACRs of his counter-parts and has also asked for copies of various correspondence made by the CBI for holding DPC but this could not be supplied to the applicant because of confidentiality of the ACRs and DPC proceedings.

15. Respondents further stated that the DPC for promotion of departmental DIG to the grade of Joint Director is the subject matter of UPSC so their comments may also be considered for the same. The averments made by the applicant for treating him in a jealous manner and causing harassment are denied.

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16. As regards the letter of Shri P.C. Sharma it is submitted that the same is in reply to the new year greetings of the applicant, he appreciated the performance of the Guwahati Region which was then under the charge of the applicant but it is stated that the appreciation made by Shri P.C. Sharma has no bearing on the assessment of the ACRs of the years 1996-2000 which was considered by the DPC.

17. It is further stated that in the year 2001 there were three vacancies in the grade of Joint Director and as per Recruitment Rules departmental officers having 5 years regular service as DIG are to be considered for promotion to the grade of Joint Director, CBI but as on 1.1.2001 only 2 officers, namely, S/Shri D. Bagchi and A.K. Majumdar were completing the eligibility period of 5 years of regular service so as per Government guidelines for 3 vacancies, 10 officers are required to be named in the consideration zone. The relaxation in the eligibility period to enable a broader feeder grade was not agreed to since two officers were completing eligibility. So finally on 15.11.2001 a proposal for promotion of 2 departmental DIGs, namely, Shri D. Bagchi and A.K. Majumdar were considered against three vacancies and their names were sent to DOP&T for processing and forwarding to the UPSC for holding the DPC meeting. Names of S/Shri Bagchi and A.K. Majumdar were recommended by the UPSC for promotion but only Shri A.K. Majumdar could be promoted on 1.4.2002 as by the time the orders of the competent authority were received, Shri D. Bagchi had already retired on 31.3.2002.

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18. It is further submitted that applicant completed 5 years regular service on 26.3.2001. Again the applicant could not be considered because as per the instructions the eligibility date for determining the eligibility of officers for promotion would be the first day of the crucial year, i.e., January 1 irrespective of whether ACRs are written financial year-wise or calendar year-wise, as per Annexure R-2. Thus the left over 2 vacancies for the year 2001 were carried forward to the year 2002. Thereafter another DPC for filling the 2 vacancies of Joint Director was held in UPSC on 2.8.2002 and in this meeting of DPC names of respondent Nos.4 and 5 along with applicant were considered and after receipt of the approval of the competent authority, the respondent Nos. 4 and 5 were promoted to the post of Joint Director.

19. It is further submitted that prescribed bench mark for promotion of DIG to the grade of Joint Director is "Very Good" and only those officers who are graded as fit are to be included in the select panel prepared by the DPC in the order of their inter-se seniority in the feeder grade. Thus there shall be no supersession in promotion among those who are found fit by the DPC in terms of the aforesaid prescribed bench mark of "Very Good".

20. It is further submitted that in the meeting held on 2.8.2002 for 2 vacancies of Joint Director in CBI, ACRs for the years 1996-2000 were considered. The ACRs for the year 1996-2000 contained almost all types of gradings i.e. average, good, very good and outstanding

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and as per the instructions of Government 'average' is not adverse and the 'average' may not be taken as adverse remarks as per Government instructions in respect of an officer. At the same time, it cannot be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion.

21. It is further stated that there is no correspondence or remarks on original ACRs for the year 1996 to 2000 to show that adverse remarks, if any were conveyed.

22. Thus in nutshell the case of the respondents is that the applicant could not make up the mark for promotion.

23. The respondent No.2, UPSC has also contested the OA. The respondents also pleaded that the bench mark in this case is very good and the suitability of two senior most eligible officers including the applicant, who was at S.No.2 of the consideration zone, was assessed by the DPC on the basis of their character rolls. The applicant did not attain the prescribed bench-mark and, therefore, was assessed unfit by the duly constituted DPC. Accordingly, he was not recommended by the DPC. It is also submitted that as there were two vacancies to be filled, the DPC, therefore, proceeded further with assessing the suitability of the next eligible officer at S.No.3 of the consideration zone, as the applicant who

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was at S.No.2, was assessed unfit and the officer at S.No.3 was assessed as fit and recommended for the said promotion.

24. Private respondents have also contested the OA. Private respondent also pleaded that the applicant has asked for multiple reliefs, firstly directing the respondents to convene a review DPC within a period of one month, secondly the lower grading ACRs of the applicant lower than the bench mark may be ignored which tantamount to implied expunction and thirdly his promotion as Joint Director vis-a-vis his juniors and as such the OA is not maintainable.

25. The private respondents also pleaded that there is no allegation made by the applicant that the grading given by the DPC was given for any mala fide reason or that there has been any procedural lapse and, therefore, as per the settled law ordinarily the courts do not have the jurisdiction to interfere with or over-rule the selection made by the DPC. But since the Hon'ble Supreme Court has laid down the law that it is not within the province of the Tribunal to sit in judgment over the assessment of the DPC, save in rarest of rare cases, where findings of the DPC may be tainted with malice, thus they also pray that the OA be dismissed.

26 We have heard the learned counsel for the parties and gone through the record.



27. The main contention of the applicant was that the ACRs which are below the bench mark should have been conveyed to him and for this purpose he has heavily relied upon the judgment of the Hon'ble Supreme Court in U.P. Jal Nigam and Others Vs. Prabhat Chandra Jain and Others, 1996 (33) ATC 217 and submitted that the department was under an obligation to convey the same to the applicant and in case the same has not been conveyed, then the same are is liable to be ignored at the time of consideration of the case of the applicant for promotion.

28. The applicant has also submitted that whenever an ACR had been recorded below the bench mark then the same is liable to be conveyed to the applicant as per the law laid down in the U.P. Jal Nigam's case and in this case since the same has not been done so the OA has to be allowed.

29. We have considered this contention of the applicant, who argued the case in person.

30. We may mention that the judgment given by the Hon'ble Supreme Court in U.P. Jal Nigam's case (Supra) has been a subject matter of interpretation in various other cases and of late a Full Bench was also constituted in this Tribunal in OA Nos. 555 of 2201 and other connected cases entitled as Dr. A.K. Dawar and Others Vs. U.O.I. & Others wherein a question was raised " whether the grading of 'good' in the Annual Confidential Report, given to a Government employee, when the grading prescribed in the Bench mark is 'Very Good' for the next higher promotion post, should be treated necessarily as

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'adverse' and so required to be communicated to him in accordance with law and rules". The Full Bench answered the question as follows:-

" If there is no downgrading of the concerned person in the Annual Confidential RE port, in that event, the grading of 'good' given to the Government employee irrespective of the benchmark for the next promotion being 'Very Good' need not be communicated or to be treated as adverse".

31. So in this context we have now to examine the ACRs of the applicant. In this case the ACRs taken note by the DPC which consists of last 5 years which are as under:-

	Reporting Authority	Reviewing Authority
"1.1.1996 to 31.12.1996	Average	Average
1.1.1997 to August, 1997	Average	Good
1.8.1997 to 31.12.1997	Very Good	Good
1.1.1998 to 31.12.1998	Very Good	Very Good
1.1.1999 to 8.7.1999	Good	Good
14.7.99 to 31.12.1999	Very Good	Very Good
1.1.2000 to 31.12.2000	Outstanding	Outstanding

32. The perusal of the above chart will show that during the period in question the applicant had been consistently getting good report and only on one occasion he got "Average" which was starting period of consideration, the applicant had "Average" report so the applicant had improved from "Average" to "Good". This was not a case of steep downfall in recording of the ACR of the applicant which according to the U.P. Jal Nigam was required to be conveyed to the applicant. Since the applicant was able to maintain good for 3.1/2 years and

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thereafter he obtained "Very Good" and then "Outstanding" also but in any case it was not the case of downgrading of the officer rather the applicant had been attaining better reports in the last period of consideration, so the law, as laid down by the Hon'ble Supreme Court in U.P. Jal Nigam's case does not apply to the case of the applicant as there had never been a steep fall in the ACRs achieved by the applicant as recorded by the department. hence the same were not required to be conveyed. These reports have been considered by the DPC. On the basis of ACR the applicant had been adjudged unfit.

33. As regards the challenge to the promotion of Shri Majumdar, respondent No.6 is concerned, when the case of Majumdar was considered, at that time the applicant was not eligible and was not within the consideration zone that is why only S/Shri Majumdar and Bagchi were considered but by the time when the promotion was given, respondent No.6 could be promoted whereas Shri Bagchi by that time had already retired. However, when the case of respondent Nos.4 and 5 were considered at that time the applicant was also considered and since the applicant as per his confidential remarks could not meet out the criteria adopted by the DPC based on ACR reports of the candidates as the applicant was declared unfit whereas the other candidates including respondent No.4 who is junior to the applicant, was in the consideration zone was found fit, we do not find any violation of rules or procedural lapse by the DPC for considering all these three candidates including the applicant.

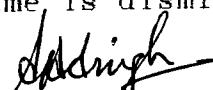
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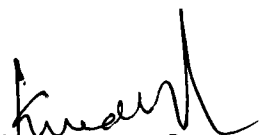
34. The only grievance, as raised by the applicant in his OA was that, the report below bench mark should be conveyed to him as per the law laid down by the Hon'ble Supreme Court in U.P. Jal Nigam's case but since this Tribunal in the Full Bench's case has also held that " If there is no downgrading of the concerned person in the Annual Confidential RE port, in that event, the grading of 'good' given to the Government employee irrespective of the benchmark for the next promotion being 'Very Good' need not be communicated or to be treated as adverse" and since in the case also we find that the applicant has not been downgraded but he had got average report only at the initial stage which is not otherwise adverse whereas in subsequent years he had been upgraded so there was no case of downgrading of ACRs as such the same is not required to be conveyed.

35. As regards special consideration for having served in difficult areas of North Eastern Region is concerned, the respondents have pointed out that though instructions do say that special consideration be given to such officer, but it does not command any relaxation to the bench mark. Applicant has also not been able to show if it provides for any relaxation in Bench Mark.

36. Thus we find no case for interference is made out.

37. In view of the above, OA has no merits and the same is dismissed. No costs.

  
( S.A. Singh )  
Member (A)

  
( Kuldeep Singh )  
Member (J)

'RKS'