

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

- (1) O.A.No.1702/2003
with
(2) O.A.No.1175/2003 ✓
(3) O.A.No.2547/2003

New Delhi, this the 20th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

(1) O.A.No.1702/2003:

Dr. Devinder Tewani
Chief Medical Officer (Group 'A')
Govt. of NCT of Delhi
Presently working in Govt.
Dispensary, Baljeet Nagar
New Delhi. ... Applicant

v.

Union of India: through

1. The Secretary
Govt. of India
Ministry of Health and Family Welfare
Nirman Bhawan
New Delhi.
2. Lt. Governor through:
The Chief Secretary
Govt. of N.C.T of Delhi
Delhi Secretariat
I.P.Estate
New Delhi. ... Respondents

(2) O.A.No.1175/2003:

Dr. Ritu Mathur
Chief Medical Officer
Govt. of N.C.T. of Delhi
presently working in Govt.
Dispensary
Saraswari Vihar
Delhi. ... Applicant

Versus

Lt. Governor: Govt. of NC.T. of Delhi

1. The Secretary
Govt. of India
Ministry of Health and Family Welfare
Nirman Bhawan
New Delhi.
2. The Chief Secretary
Govt. of N.C.T of Delhi
Delhi Secretariat
I.P.Estate
New Delhi. ... Respondents

(3) O.A.No.2547/2003:

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Dr. Ashish Kumar Chatterjee
s/o Dr. Gobind Lal Chatterjee
Chief Medical Officer
Govt. of N.C.T. of Delhi
presently working in
Government Dispensary
Paschim Vihar
New Delhi.

... Applicant

Versus

Lt. Governor: Govt. of N.C.T. of Delhi

Through

1. The Secretary
Govt. of India
Ministry of Health and Family Welfare
Nirman Bhawan
New Delhi.
2. The Chief Secretary
Govt. of N.C.T. of Delhi
Delhi Secretariat
I.P.Estate
New Delhi.

.. Respondents

Present: Ms. Meenu Mainee for Shri B.S.Mainee,
learned counsel for the applicant in all the
cases.

Shri T.D.Yadav for Shri Vijay Pandita
learned counsel for respondent No.2 in
O.A.No.2547/2003.

Shri Saurabh Ahuja for Shri Ajesh Luthra,
learned counsel for respondents in OA
1175/2003.

Shri V.S.R.Krishna, learned counsel for
respondents in OA 1702/2003 and OA 1175/2003.

Ms. Sumedha Sharma, learned counsel for
respondents in OA 1702/2003.

O R D E R

Justice V.S. Aggarwal:-

By this common order, we propose to dispose of
the three Original Applications No.1702/2003,
1175/2003 and 2547/2003 because the basic question
involved in all these applications are identical.

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2. By virtue of the applications that have been filed the applicants pray quashing of the order of 20.12.2002 whereby they have been ignored for being placed in the grade of Chief Medical Officer Non Functional Selection Grade [for short 'CMO NFSJ'] and for a direction to conduct a review Departmental Promotion Committee Meeting to consider their claim.

3. The applicants had all joined the Central Health Scheme. They joined the said service sometime in 1986 onwards. They earned their promotion in the Senior Time Scale after completing four years of satisfactory service in the Junior Time Scale. Promotion was further earned as Chief Medical Officer (Junior Administrative Grade). The next scale is that of Non Functional Selection Grade of Rs.14300-18300.

4. The applicants contended that in the year 2000, the Central Government had issued Dynamic Assured Career Progression Scheme for Doctors in terms of which a Doctor having worked for four years in the Junior Time Scale will be promoted to the Senior Time Scale and after putting in five years service in the Senior Time Scale will be placed in Junior Administrative Grade. Thereafter, having completed four years service in Junior Administrative Grade he or she would be placed in the Non Functional Selection Grade referred to above.

5. In accordance with the said Scheme, Doctor having 13 years of service will be placed in the grade of Non Functional Selection Grade. The applicants

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claim that they have completed more than the prescribed number of years for the Non Functional Selection Grade of Rs.14300-18300. There are 952 such Chief Medical Officers in the General Duty. In accordance with the seniority list, issued by the respondents, the applicants were well within the zone of consideration. The respondents are alleged to have ignored the applicants and adopted the method of selection in the Departmental Promotion Committee, ignoring the claims of the applicants.

6. The applicants contend that it is an upgraded post and therefore the selection method could not be adopted. The scale should have been granted on basis of seniority subject to fitness. Furthermore, it is asserted that their Annual Confidential Reports have been downgraded without communicating the remarks and in any case once the remark awarded is 'Good' which is below the benchmark, the impugned order is liable to be quashed.

7. The applications have been contested. The main reply has been filed in OA 1702/2003. The basic facts have not been disputed. It had been asserted that in General Duty Medical Officer sub cadre of Central Health Scheme, the promotion from Medical Officer to Senior Medical Officer was time bound without linkage to vacancies on basis of 'seniority-cum-fitness' on completion of four years regular service as Medical Officer. Promotion from Senior Medical Officer to Chief Medical Officer is also time bound without linkage to vacancies on basis

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of seniority-cum-fitness on completion of six years regular service in the grade or on completion of ten years combined service as Medical Officer or Senior Medical Officer of which at least two years shall be as Senior Medical Officer. Promotion from Chief Medical Officer to Chief Medical Officer (NMSG) was vacancy based and limited to 30 per cent of senior duty posts on completion of 14 years regular service in Group 'A' service on basis of criteria and procedure prescribed by the Government from time to time. The Department of Personnel & Training's guidelines dated 9.10.1989 governing the promotion to NMSG, were being followed. It provides, inter alia, that the Departmental Promotion Committee should consider the last five years of Annual Confidential Reports of the officers to satisfy that their overall performance was 'Good' and he or she has at least two 'Verygood' gradings in the last five years.

8. After 5.4.2002, it has been provided that in the General Duty Medical Officers of Central Health Service, Medical Officers will be promoted to Senior Medical Officer on completion of four years of regular service. Senior Medical Officer with five years of regular service as Senior Medical Officer will be promoted to the post of Chief Medical Officer and after completion of four years as Chief Medical Officer or on completion of 13 years regular service in General Duty Medical Officer they would be promoted to Chief Medical Officer (NMSG). The said order of 5.4.2002 provides further that other conditions for effecting promotion will be governed by the provisions

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of Central Health Scheme Rules, 1996 as amended from time to time and instructions of Department of Personnel & Training.

9. It has been pleaded that overall grading of the officer is determined by the Departmental Promotion Committee on basis of their own observation taking into account the performance of the officer as reflected in the Annual Confidential Reports of the past five years. The Departmental Promotion Committee has to decide whether benchmark prescribed has been attained or not? The communication of adverse remarks is relevant only to the entries made in the Annual Confidential Reports for the particular years.

10. During the course of the submissions, the learned counsel for the applicants, in the first instance, contended that it was only upgradation of the posts and, therefore, the method of selection so adopted could not have been adopted.

11. In support of their claim reliance has been placed on the decision of the Supreme Court, in Contempt Petition (Civil) No.304/1999 in Civil Appeal No.1481/1996 titled All India Non-Scheduled Caste/Scheduled Tribe Employees Association (Railway)

v. V.K. Agarwal & Ors. The Supreme Court held:

"It appears from all the decisions so far that if as a result of re-classification or re-adjustment there is no additional posts which are created and it is a case of upgradation, then the principle of reservation will not be applicable. It is on this basis that this Court on 19th November, 1998 had held that reservation for SC & ST is not

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applicable in the upgradation of existing posts and Civil Appeal No.1481/1996 and the connected matters were decided against the Union of India. The effect of this is that where the total number of posts remained unaltered, though in different scales of pay, as a result of re-grouping and the effect of which may be that some of the employees who were in the scale of pay of Rs.550-700 will go into the higher scales, it would be a case of upgradation of posts and not a case of additional vacancy or post being created to which the reservation principle would apply. It is only if in addition to the total number of existing posts some additional posts are created that in respect of those additional posts the reservation will apply, but with regard to those additional posts the dispute does not arise in the present case. The present case is restricted to all existing employees who were re-distributed into different scales of pay as a result of the said upgradation.

The Union of India shall re-work the seniority in the light of the clarification made today and report back within 6 weeks from today.

List after 6 weeks."

12. There is no dispute with the said proposition but the question which had come up for consideration is that whether the applicant can take advantage of the same or not? On 5.4.2002 in pursuance of the recommendations of the Fifth Central Pay Commission regarding Dynamic Assured Career Progression Scheme for officers of Central Health Services the order was issued and the relevant portion of which reads:

"I am directed to say that the Vth Central Pay Commission in para 52.15 of its report has recommended a Dynamic Assured Career Progression (DACP) Scheme for officers of the Central Health Service (CHS). The matter has been under consideration of Government of India for some time. After careful consideration the Government of India have accepted the recommendation and decided that hereafter in CHS promotion to various grades will be as under.

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2. (i) In the General Duty Medical Officer (GDMO) sub cadre, Medical Officer (Rs.8000-13500) will be promoted to Senior Medical Officer (Rs.10000-15200) on completion of 4 (four) years of regular service. Senior Medical Officer with 5 (five) years of regular service as Senior Medical Officer will be promoted to the post of Chief Medical Officer (Rs.12000-16500) and after completion of 4 (four) years in Chief Medical Officer grade, officer will be promoted to the post of Chief Medical Officer (Non-Functional Selection Grade) (Rs.14300-18300). Thus on completion of 13 years of regular service in the GDMO sub cadre of CHS, Officer of GDMO sub cadre will be promoted to Chief Medical Officer (Non Functional Selection Grade) (Rs.14300-18300)."

This clearly show that after 13 years of service a person can only be promoted to Chief Medical Officer (NFSG). It cannot, therefore, be termed that it was simply upgradation of a particular post. Promotion by itself would invoke certain procedure to be adopted.

13. The Department of Personnel & Training had issued necessary instructions dated 9.10.1989. The relevant portion of these instructions read:

"Subject: Selection Grade in Group A Service - Guidelines to be followed by the Selection Committee - Instructions on.

A reference is invited to this Department's O.M. No.22038/1/88-Estt.(D) dated 6.7.88 on the above subject. The instructions contained therein have been carefully reviewed. It has now been decided, in supersession of the existing instructions, that for appointment to the Selection Grade in Group A Services which is non-functional, the following procedure and criteria shall be followed:-

(i) An internal committee will be constituted to review the cases of officers for "NFSG" and to make suitable recommendation.

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(ii) The Committee shall consider the last five ACRs of the officers.

(iii) Ordinarily the Committee shall accept the final grading given by the Reporting/Reviewing/Accepting authority in each ACR unless there are good reasons to depart from that grading.

(iv) The Committee should satisfy itself that the overall performance of the officer was good and that he has atleast two "very good" gradings in the last five ACRs. Such an officer would be considered suitable for NFSG."

14. These facts clearly negative the first plea of the applicant that it was upgradation of the same post. In fact, we need only to re-emphasise that the method of appointment and grant of Non Functional Selection Grade has already been mentioned in the earlier instructions. It is, therefore, futile to attempt that the method of selection could not be adopted by the Departmental Promotion Committee.

15. Somewhat similar situation had arisen before this Tribunal in Dr. S.Akhatar v. Union of India in OA No.716 of 1991, decided on 10.2.1997 and it was held that a person could not earn promotion simply on basis of seniority keeping in view the Office Memorandum issued by the Department of Personnel & Training dated 9.10.1989 which we have reproduced above.

16. Confronted with this position, the learned counsel relied upon the decision of the Supreme Court in the case of U.P. Jal Nigam and Others v. Prabhat Chandra Jain and Others, (1996) 33 ATC

217. The Supreme Court held:

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1. What we say in this order shall not only cover the case of the first respondent but shall also regulate the system of recording annual confidential reports prevalent in the U.P. Jal Nigam - the first petitioner herein.

2. The first respondent was downgraded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea was that downgrading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same to the employee and attract a representation. This argument was turned down by the High Court, as in its view confidential reports were assets of the employee since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately had earned an 'outstanding' report in a particular year which, in a succeeding one and without his knowledge, is reduced to the level of 'satisfactory' without any communication to him, it would certainly be adverse and affect him at one or the other stage of his career.

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 undesirable situation. All the same the

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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 obvious from the aforesaid that the Apex Court was basically dealing with the relevant rules/instructions in U.P. Jal Nigam's case (supra). Otherwise also the Court was confined to the controversy where persons Annual Confidential Reports are downgraded or they are below a particular benchmark. The respondents have made available the Annual Confidential Reports of the applicants. Even if for the sake of arguments, we accept the contention of the applicants that there was downgradation of their Annual Confidential Reports and that it should have been communicated still the applicant did not earn two Verygood reports. In that situation, in any event, the Departmental Promotion Committee rightly ignored the applicant. When a Departmental Promotion Committee has acted in accordance with the instructions we find little ground to interfere. We have already reproduced the relevant instructions on the subject pertaining to the applicants which prescribed that a person should have at least two 'Verygood' reports in the Annual Confidential Reports of the last five years. The applicants had earned 'Good' reports and they were never below to remark of 'Good'. They did not have two Verygood reports in last five years. Therefore, to contend that decision in the case of

U.P. Jal Nigam (supra) will come into play, will not apply or help to the applicants in the peculiar facts of the case.

17. In any event, the learned counsel contended that even if the reports were 'Good' which is below the benchmark and had not been communicated they are adverse, and in support thereof relied upon the decision of the Bombay High Court in the case of Dr. Binoy Gupta v. The Union of India & Others in Writ Petition No.3641 of 2002, decided on 27.8.2002.

18. We have already held that there is no benchmark prescribed. The applicants had earned 'Good' reports. All the reports are positive in nature. The instructions that have been issued and reproduced above, have not been challenged. Acting on the same, the claim of the applicants have been ignored. When there is no benchmark prescribed, and the only methodology being adopted is that there should be two 'Verygood' reports in the last five years Annual Confidential Reports, the applicants cannot press into above said decision of the Bombay High Court to their benefit.

19. Reliance has further been placed on the decision of this Tribunal in Shri V.S.Arora v. Union of India & Others, OA 1570/2001, decided on 7.5.2002. This Tribunal held that if there is a report which is below the benchmark and not communicated, the same can be ignored and should not be taken into account. We have strong reservations about the said decision but

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even if we look into the same and ignore it, the net results is still the same, as from the perusal of the Annual Confidential Reports of the applicants, it is evident that they did not earn two 'Verygood' reports in the last five years.

20. On the contrary, we refer with advantage to the Division Bench decision of the Delhi High Court in the case of Rajinder Kumar v. Union of India & Others, 2001(91) Delhi Law Times, 170 wherein it was held that in such like situation, it cannot be taken to be adverse entry which requires communication.

21. In face of these facts, the Original Applications, being without merit must fail and are dismissed. No costs.

(S.A. Singh)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/

ATTORNEY
S. Rangarajan
वरिष्ठ, वकील
Examiner, Judicial Bench
केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal
नियुक्ति, नई दिल्ली
Civil Bench, High Court