

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1802/2003

New Delhi, this the 13 day of January, 2004

Hon'ble Shri Kuldip Singh, Member(J)  
Hon'ble Shri S.K. Naik, Member(A)

Harish Chander Kochhar  
23, Rajaouri Garden  
New Delhi-110 027 .. Applicant  
(Shri G.S.Lobana, Advocate)

versus

Union of India, through

1. Secretary  
Dept. of Telecommunication  
Sanchar Bhavan, New Delhi
2. Nirmal Sarup, Staff No.263  
Director, BSNL (Plg. & NS)  
9th Floor Stateman House  
Barakhamba Road, New Delhi
3. B.B. Singh, Staff No.264  
Advisor (HRD) Telecom Commission  
Sanchar Bhavan, New Delhi
4. Secretary, Department of Personnel & AR  
North Block, New Delhi .. Respondents

(Shri R.N. Singh, Advocate)

ORDER

Shri S.K. Naik

By virtue this OA, applicant has assailed the order dated 20th June, 2003 inasmuch as it does not include his name for promotion to the grade of Adviser of ITS Group A and also sought a direction to the respondents to convene a review DPC and consider his case for promotion to the said grade by ignoring all the ACRs in which adverse/below bench mark remarks were not communicated to him.

2. Briefly stated, the applicant who joined Telegraph Engineering Service (TES) group A on 27.11.1967, was promoted from time to time and lastly elevated to the

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level of Chief General Manager Grade of HAG-I of ITS group A and posted as Principal GM. Mumbai. Thereafter, he was transferred and posted BSNL Corporate Office, New Delhi on 28.2.2003 on deemed deputation basis on his own grade. Apprehending that his service interest may be adversely affected for next higher promotion to HAG-II, applicant made a representation on 17.4.2003, which has not been replied to so far. However, he was shocked to know from the impugned order dated 20.6.2003 that two of his juniors (Respondent No.2 and 3) have been promoted ignoring his superior claim. According to him, the benchmark for next promotion is "very good" but the respondents have downgraded him in violation of DoPT instructions with malafide intention to promote his juniors. In support of his contention, applicant has placed reliance on a number of judgements decided by the apex court as well as this Tribunal. Hence, the present application seeking the aforesaid reliefs.

3. Respondents in their reply have contested the case and have stated that the DPC which met on 19.12.2002 in the UPSC for the vacancies for the year 2003-2004 found the applicant unfit as per his record of performance. Placing reliance on the judgment of the apex court in the case of UOI Vs. K.V. Janakiraman AIR 1991 SC 2010 and also DoPT guidelines, they have stated that the applicant has only a right to be considered, which depends upon several circumstances. According to them, this Tribunal in OA 2967/2002 in the case of Tarun Kumar Vs. UOI involving an identical issue, declined to interfere. They have further stated that applicant's representation

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dated 17.4.2003 has already been replied to on 25.6.2003. They have denied that applicant was downgraded by the DPC to deny him promotion and that only the grade of only 'below average' is required to be communicated to the officer concerned and not the gradings of 'good' or 'average'. Thus, there was no violation of DoPT guidelines nor is there any illegality in the impugned order, as alleged by the applicant and, therefore, the OA be dismissed.

4. We have heard the learned counsel for the parties at length, considered the pleadings, carefully gone through the the various judgements relied upon by both the counsel and also the ACR folder of the applicant along with the DPC proceedings furnished by the respondents' counsel.

5. Even though it is not clear from the proceedings of the DPC held on 19.12.2002 as to what procedure it has adopted in giving overall assessment to the officers considered for promotion, when the bench mark for promotion to the the grade in question is 'very good', nor is there a comparative statement giving grading of each officer for the previous five years, perusal of ACR folder in respect of the applicant reveals that he has been graded as under:

1.4.1996 to 21.3.1997 ..	'Very good'
1.4.1997 to 31.3.1998 ..	'Very good'
1.4.1998 to 3.7.1998 ..)	'Very good'
8.10.1998 to 31.3.1999 ..)	'Good'
1.4.1999 to 31.3.2000 ..	'Average'
1.4.2000 to 11.7.2000 ..)	'Good'
12.7.2000 to 31.3.2001 ..)	'Very good'

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Thus it is clear from the above that for major part of the previous five years of ACR, the applicant has been graded as 'very good' which is the bench mark required for promotion to the next grade as per Respondent's own version and also as per the guidelines issued by DoPT. Therefore, it is not clear as to how the DPC assessed the applicant as 'unfit' for promotion. That apart, in the absence of any comparative statement prepared by the DPC about the gradings obtained by each officer considered for promotion for the relevant period, we are not in a position to understand as to how the overall assessment has been made by the DPC. In this connection, learned counsel for the applicant has particularly drawn our attention to the decisions dated 16.8.2000 in OA 456/2000, 2.4.2002 in OA 1016/2001 and 3.7.2002 in OA 367/CH/2000 touching upon the issue of bench mark, in which directions were given to the respondents to conduct review DPC taking into account the gradings awarded to the applicants therein in their ACRs and consider their promotion accordingly. As per applicant's counsel, applicant's case is covered by these decisions and therefore a similar direction can be given herein also.

6. We are aware of the legal position that Tribunal/Court should not ordinarily interfere with the decision of Selection Committee which consists of experts on the subject and that Tribunal cannot substitute itself in place of the Selection Committee and make its own reassessment. However, in the instant case, having regard to the decisions referred to above in para 5 and also for the reasons mentioned in para 4, we are of the considered opinion that ends of justice would be duly met

Ans

if a direction is given to the respondents to conduct a review of the DPC held on 19.12.2002 and reconsider the case of the applicant for promotion, keeping in view the fact he has obtained the bench mark of 'very good' for a major part of five years. We order accordingly. If he is found fit by the review DPC he shall be given promotion from the date when his juniors have been so promoted. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

7. There shall be no order as to costs.

Naik  
(S.K. Naik)  
Member(A)

Kul  
(Kuldip Singh)  
Member(J)

/gtv/