

(1)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A.NO.2330/2003**

New Delhi, this the 20<sup>th</sup> day of April, 2004

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

Ms. Manju Sharma  
w/o Shri U.C. Sharma  
r/o A-66, Sector - 14, Noida  
(U.P.) working as Under Secretary  
Ministry of External Affairs  
New Delhi. ... Applicant

(By Advocate: Sh. T.C. Aggarwal)

Versus

Union of India through

1. The Secretary (AD)  
Ministry of External Affairs  
South Block  
Central Sectt.  
New Delhi.

2. The Secretary  
Union Public Service Commission  
Dholpur House  
Shajahan Road  
New Delhi. .. Respondents

(By Advocate: Sh. N.S. Mehta for Respondent No.1 and  
Mrs. B. Rana for Respondent No.2)

**ORDER**

Justice V.S. Aggarwal:-

Applicant (Ms. Manju Sharma) has been working as Section Officer. By virtue of the present application, she seeks a direction for holding a review Departmental Promotion Committee Meeting for the years 1996-97 to 2001-2002; to treat the downgraded remarks of the Annual Confidential Reports as quashed because they were not communicated to her, and promote her from the date her juniors had been so promoted.

*JS Ag*

2. It is alleged that promotion from the post of Section Officer to the next higher post of Under Secretary is to be made from the eligibility list. The matter regarding seniority had been under dispute. As a result thereof, the seniority was revised. Because of the revision of the seniority, it required holding of a review Departmental Promotion Committee Meeting for the period 1983 to 1997-98. The applicant contends that she has wrongly been ignored because her Annual Confidential Reports had been downgraded. The same had not been communicated to her and therefore, the same had to be ignored. After ignoring the same, she should be considered for promotion.

3. The application has been contested. Respondent No.1 filed its reply. It has been pointed that the claim of the applicant for promotion to the grade of Under Secretary was given due consideration by the DPC meeting held for the years 1996-97 to 2001-2002. But in view of the availability of officers with higher grading or equivalent grading being senior to the applicant, her case was not recommended. It is denied that there is a lapse in procedural formalities. A plea has also been raised that Departmental Promotion Committee is fully empowered to make its independent assessment of the officers on the basis of entries in the Annual Confidential Reports and accordingly recommended promotion for those placed higher in the order of merit.

LS Ag e

4. The Union Public Service Commission (Respondent No.2) filed its separate reply. It is admitted that the review was necessary due to revision of the seniority list of officers in the feeder grade of Section Officer by the Ministry of External Affairs in pursuance of the orders passed by this Tribunal in OA No.567/1999, decided on 10.1.2001 titled Shri Sanjay Vyas & Ors. v. Union of India & Ors. The proceedings of the review DPC were held in August, 2002 and also in September, 2002. The promotion in this case was from Group 'B' to Group 'A'. As per the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964, the select list for promotion to Grade-I is to be prepared on the basis of merit from amongst eligible officers. The context of merit and criterion for promotion has been defined in various Office Memoranda that have been so issued.

5. So far as the applicant is concerned, it was pointed that she was considered in 1996-97 and was placed at Sl. No.52 of the eligibility list and she was assessed as 'Very Good' but was not recommended for promotion for want of sufficient number of vacancies. For the year 1997-98 she was placed at Sl. No.23. Again she was assessed as 'Very Good' but not recommended for promotion for want of sufficient number of vacancies. For the year 1998-99, she was placed at Sl. No.12 and on consideration, she was assessed as 'Good' but not recommended for promotion for want of sufficient number of vacancies. In 1999-2000, she was not included in the zone of consideration and in the year 2000-2001 she was again

*Ag*

assessed as 'Good' but not recommended for want of sufficient number of vacancies and same was the position for the year 2001-2002.

6. We have heard the parties counsel.

7. During the course of the submissions, the learned counsel for the applicant argued that the applicant has been discharging the duties of Under Secretary for more than five years, which is a post of higher responsibility and, therefore, the assessment of the work and conduct of the applicant should only be made accordingly. He relied upon the decision of the Supreme Court in the case of SHIV KUMAR SHARMA & ANR. v. UNION OF INDIA & ORS., 1998 SCC (L&S) 93 and on a decision of this Tribunal in D.S. INAMDAR v. UNION OF INDIA & ORS., 1999(1) AISLJ (CAT) 130. We have gone into this controversy but it is unnecessary in the facts of the present case. The reason being that this is not one of the pleas taken by the applicant in her application. The learned counsel for the applicant has raised this plea in the rejoinder. It may be so but rejoinders are allowed to be filed to rebut any new facts asserted by the respondents. It is not a part of the Original Application. It may be that the Code of Civil Procedure does not apply to the proceedings but principles therein cannot be ignored. The fact urged cannot be allowed to be agitated. It is not purely a legal plea, therefore, the said contention is rejected.



8. The main submission made was that the Annual Confidential Report was downgraded which had not been communicated and, therefore, a review Departmental Promotion Committee meeting should be held ignoring those downgraded reports.

9. At the outset, we deem it necessary to mention that when a high level committee has considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Tribunal will not sit over the assessment made by the Departmental Promotion Committee as an appellate authority. See NUTAL ARVIND v. UNION OF INDIA & ANR., (1996) 2 SCC 488. It is also not in dispute that as held in the case of UNION PUBLIC SERVICE COMMISSION v. H. L. DEV AND ORS., AIR 1988 SC 1069 - how to categorize in the light of relevant records and what norms to apply in making the assessment, are exclusively the functions of the Selection Committee. It is not the function of the Tribunal/Court to hear the matter as if it is hearing on appeal. In this backdrop, we hold that scope of judicial review in such like matters is limited.

10. In the present case, the promotion has to be made from Group 'B' to Group 'A'. The matter is governed by the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964. A selection list for promotion to Grade-I is to be prepared on basis of the merit. The method is 'Selection'.

*LS Ag*

11. Our attention has been drawn to O.M.No.22011/6/75-Estt.(D) dated 30.12.1976, copy of which is annexed at Annexure-R-2/1. It prescribes the following procedure:

"Where promotions are to be made by selection method as prescribed in the Recruitment Rules, the officers in the field of selection, excluding those considered 'unfit' for promotion by the DPC, should be classified by the DPC as 'Outstanding', 'Very Good', and 'Good' on the basis of their merits as assessed by the DPC after examination of their respective records of service. The panel should thereafter be drawn upto the extent necessary by placing the names of the 'Outstanding' officers first, followed by officers categorized as 'Very Good' and followed by the officers categorized as 'Good'. The inter-se seniority of officers belonging to any one category would be the same as their seniority in the feeder grade."

12. Similarly, vide O.M.No.22011/5/86 dated 10.3.1989 and 10.4.1989, the following instructions have been issued:

"Wherever promotions are made for induction to Group 'A' posts or services from lower Groups, the bench mark would continue to be 'Good'. However, officers graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good', and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining inter-se seniority in the feeder post."

13. In other words, whenever promotion is made to Group 'A', the benchmark would continue to be 'Good'. However, officers graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good'.



14. In the case of U.P. JAL NIGAM & ORS. v. PRABHAT CHANDRA JAIN & ORS. 1996 SCC (L&S) 519, the Supreme Court held that whenever there is a downgrading of the Annual Confidential Report, it should be communicated. The findings read:

"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 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 downgrading 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."

LS Ag — e

15. The Full Bench of the Delhi High Court in the case of J.S.GARG v. UNION OF INDIA & OTHERS, 100 (2002) Delhi Law Times 177 (FB) had also considered the same controversy and while relying upon the decision in the case of U.P.Jal Nigam (supra), it was held that in case of downgrading of the Annual Confidential Reports, they must be communicated otherwise they have to be ignored.

16. On behalf of the Union Public Service Commission, reliance was placed on the decision of the Punjab and Haryana High Court in the case of UNION OF INDIA AND OTHERS v. M.S.PREET AND ANOTHER, Civil Writ Petition No.13024/CAT/2002, decided on 22.11.2002 and also of the same High Court in the case of UNION OF INDIA AND ANR. v. COL. TILAK RAJ & ORS., Civil Writ Petition No.18833-CAT/2002, decided on 13.5.2003 and of this Tribunal in the case of TARUN KUMAR v. UNION OF INDIA & ORS., OA No.2967/2002, decided on 25.4.2003. In all these decisions, it was held that it is not a case of downgrading and, therefore, the ratio deci dendi in the case of U.P.Jal Nigam (supra) will not apply. From the aforesaid, therefore, it would conveniently be held that if a person has been graded as 'Good' which is not a downgraded entry, in that event the remarks need not be communicated.

17. The respondents had made available unhesitatingly the Annual Confidential Reports of the applicant. It gives us the following scenario:






-----  
For the year:


1991-92	-	There are two reports both describe her as 'Outstanding'.
1992-93	-	'Outstanding'
1993-94	-	'Outstanding'
1994-95	-	'Outstanding'
1995-96	-	'Good'
1996-97	-	'Good'
1997-98	-	'Good'
1998-99	-	No ACR
1.12.99 to 2000	-	'Outstanding'
2000-2001	-	'Outstanding'

-----

18. The learned counsel for the respondents contended that in the last few years it has upgraded, therefore, communication is not required. We do not dispute this controversy but for the years as recorded above, there is a steep fall from 'Outstanding' to 'Good'. Those entries have not been communicated. It is a clear case of downgrading without communicating and, therefore, the decision referred to above particularly Sh. J.S.Garg's case (supra) comes into play. The uncommunicated downgraded entries, therefore, had to be ignored.

19. Accordingly, we allow the present application and direct that a review Departmental Promotion Committee meeting may be held in the light of the findings recorded above.

  
(S.K. Naik)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/NSNY