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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2750/2003

Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr.S.A. Singh, Member(A)

New Delhi, this the 27th day of October, 2004

B.D. Baweja,
S/o late Shri D.C. Baweja,
R/o B-3/399, Paschim Vihar,
New Delhi-63

....Applicant

(By Advocate: Shri D.P. Sharma)

Versus

1. Union of India through
The Secretary,
Ministry of Communication & Information Technology,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-1
2. The Secretary,
Department of Personnel & Training,
Ministry of Public Grievances, Personnel and Pension,
Department of Personnel and Training,
North Block, New Delhi
3. Union Public Service Commission,
Through the Secretary,
Dholpur House,
Shahjahan Road, New Delhi
4. Shri L.R. Shahadadpuri,
Flat No.11, Type-IV, Sector-III,
Sadiq Nagar, New Delhi-49

....Respondents

(By Advocate: Shri K.R.Sachdeva, for respondents 1 and 2
Ms.Abhilasha Dewan, proxy for Mrs.B. Rana,
for respondent 3
None for respondent 4)

OrderJustice V.S. Aggarwal, Chairman

The applicant Shri B.D. Baweja joined as an Assistant in the year 1968. In 1979, he was promoted as Section Officer. On 29.10.91, he was promoted and appointed to Grade-I (Under Secretary) of Central Secretariat Service (CSS) on ad-hoc basis. He continued to serve in that capacity on an equivalent post of Assistant Director General on ad-hoc basis.

2.A common seniority list of Section Officers was released on 3.12.97. The name of the applicant was below A.K. Dhingra and above D.S. Pahwa. Vide DOP&T order of 12.8.2002, select lists for the year 1991, 1992 and 1993 besides 1994, were released for promotion of Section Officers to the grade of Under Secretary. Applicant contends that junior to him Shri L.R. Shahadadpuri has been shown to have been promoted ignoring his claim. It is his grievance that as per Office Memorandum of 8.2.2002, the mode of promotion to Grade-I CSS is Selection and benchmark is 'Good'. The applicant has never been communicated any adverse remarks and he has an unblemished record and thus he could not have been ignored. In addition to that, the applicant contends that because in his case the relevant benchmark is 'Good' and no adverse remarks have been communicated, it cannot be read against him.

3.By virtue of the present application, the applicant seeks quashing of the order of 13.11.2002 whereby his claim has been

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rejected and he seeks a direction to hold a review DPC as per rules.

4. In the reply filed by the Union Public Service Commission (UPSC), it has been asserted that the Departmental Promotion Committee has full discretion to devise its own methods and procedure for objective assessment of the suitability of the candidates who are to be considered by them. The Selection Committee had considered 692 seniormost eligible candidates for the year 1991 against 230 vacancies, 460 seniormost candidates for the year 1992 against 153 vacancies, 346 seniormost eligible candidates for the year 1993 against 115 vacancies and 312 seniormost eligible candidates for the year 1994 against 101 vacancies. In accordance with the CSS Promotion Regulations, the DPC is required to classify such of the officers as 'Outstanding', 'Very Good' and 'Good'. The recommendations of the Selection Committee together with up-to-date confidential reports are forwarded to the Commission. In accordance with sub-regulation 7, the Select List has to be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding', then 'Very Good' and thereafter from amongst those similarly classified as 'Good'. In accordance with the said principle, the Selection Committee which met in May-June, 2002 had prepared the Select List. The applicant had been graded as 'Good'. The persons who are graded as 'Very Good' and above had been promoted.

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5. In the separate reply filed by the Union of India, almost a similar plea has been taken. It is not disputed that applicant had joined the service as an Assistant. He was promoted as a Section Officer during the year 1979. His approved service in the grade of Section Officer will count from 1.7.1979. His name was covered in the filed of Selection List of Grade-I of CSS. It was considered in the year 1991. As per the CSS promotion to Grade-I and Selection Grade Regulations 1964, the DPC is required to classify each officer as Outstanding, Very Good and Good. Thereafter, select list is to be prepared. Persons are picked from record as Very Good and Outstanding and thereafter only those who have good record, are picked. The applicant could not be promoted because of the said grading.

6. Before proceeding further, a brief resume of the CSS can be taken note of. It consists of the following grades:

| Grade | Classification |
|-----------------------------------|--------------------------|
| Selection Grade (Deputy Secy.) | Group A' |
| Grade - 1 (Under Secy.) | Group 'A' |
| Section Officers' Grade | Group 'B' - Gazetted |
| Assistants' Grade | Group 'B' - Non Gazetted |

7. The mode of recruitment to the said grades is:

| Grade | Mode of recruitment | Quota | Feeder Grade for promotion/source |
|-------|---------------------|-------|-----------------------------------|
|-------|---------------------|-------|-----------------------------------|

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| | | | of recruitment |
|---|---|--------------------------|---|
| Selection Grade of CSS (Deputy Secretary) | | 100% | Under Secretaries having 5 years qualifying services on the basis of Seniority cum fitness. |
| Grade I of CSS (Under Secretary) | Promotion | 100% | Permanent SOs/Private Secretaries of Central Secretariat Stenographers' Service (CSSS) |
| Section Officer | i) Direct Rectt. ii) Promotion (a) Seniority-cum-fitness (b) Limited Deptt. Com. Exam (LDCE) | 20% 80% 40% 40% | Civil Service Exam Assistants Assistants & Steno Gr. 'C' of CSSS |
| Assistants | i) Direct Rectt. ii) Promotion (seniority-cum-fitness) | 50% 50% | Graduate Level Exam Upper Division Clerks |

8. The process of preparation of seniority list had been initiated by issuing the common eligibility list of Section Officers. There has been a long protracted litigation in this Tribunal and in the Supreme Court. Suffice to say that the Supreme Court had directed that seniority list should be redrawn and it was issued on 3.12.97. It is thereafter that the process of selection had started.

9. Learned counsel for the applicant had urged that the benchmark for the said promotion is 'Good'. The applicant had met the said benchmark. He relied upon the instructions of the Government of India dated 8.2.2002 and on basis of the same urged that once he had met the benchmark, even if other persons

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had better Confidential Reports, they could not score a march over him.

10. In our opinion, the said contention has to be rejected. This is for the reason that the instructions have been issued on 8.2.2002. The promotions had to be effected for the year 1991 onwards.

11. Reliance was being placed on paragraphs 2.1 and 3.2 of the Office Memorandum of 8.2.2002 which read as under:-

"2.1 As per the existing (aforementioned) instructions, in promotions up to and excluding the level in the pay-scale of Rs.12,000-16,500 (excepting promotions to Group 'A' posts/services from the lower group), if the mode happens to be 'selection-cum-seniority', then the bench-mark prescribed is 'good' and officers obtaining the said bench-mark are arranged in the select panel in the order of their seniority in the lower (feeder) grade. Thus, there is no supersession among those who meet the said bench-mark. Officers getting a grading lower than the prescribed bench-mark ("good") are not empanelled for promotion."

"3.2 'Bench-mark' for promotion

The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC."

It is on the strength of these instructions that the abovesaid argument has been put forward. Reliance further has been

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placed on the same instructions which permit immediate steps to be taken to amend the Rules/ Regulations in light of the said instructions.

12.To appreciate the said argument, reference can well be made to Rule 12 of the Rules framed under Article 309 of the Constitution. We need not delve in detail because Rule 12 prescribes the method to fill up the vacancies. Sub-rule (4) permits the select list to be prepared. The procedure for preparing and revising the select lists is to be such as may be prescribed by regulations made by the Central Government in the Department of Personnel and Administrative Reforms.

13.The Regulations had been framed in pursuance of the power conferred under sub-rule (4) to Rule 12 of the Rules. Clause (4) to Regulation 5 of the Regulations reads:-

"(4) the Selection Committee shall classify such of the officers included in the filed of selection as are considered fit for appointment to Grade I as 'outstanding', 'very good' and 'good', on the basis of merit.

Note:- While considering the cases of officers belonging to the Scheduled Castes and Scheduled Tribes, the Selection Committee shall be guided by such instructions as may be issued by the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs from time to time."

14.Keeping in view the aforesaid and the fact that instructions have ^{not} been given retrospective operation, the claim of the applicant on that count cannot be held to be having any basis.

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15. In that event, the plea had been put forward that no adverse remarks had been communicated and, therefore, the applicant could not be made to suffer in this regard. 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) 2 SCC 363. In the cited case, there was downgradation of the ACRs. The Supreme Court held:

"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 down grading 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 emphasized 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

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difficulty in accepting the ultimate result arrived at by the High Court."

16. The Full Bench of the Delhi High Court in the case of J.S. Garg v. Union of India & Others, 2002 (65) Delhi Reported Judgments 607 (FB) again took up the matter wherein the Annual Confidential Reports of the applicant after being "Verygood" have been down graded. The judgement of the U.P. Jal Nigam (supra) was referred to by the Full Bench and held that the uncommunicated downgraded remarks could not have been considered. The findings of the Full Bench of the Delhi High Court reads:

"13. The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to pose upto itself a right question so as to enable it to arrive at a correct finding of fact with a view to give a correct answer. The question which was posed before the learned Tribunal ~~was posed before the learned Tribunal~~ was not that whether the petitioner had been correctly rated by the DPC? The question, as noticed hereinbefore, which arose for consideration before the learned Tribunal as also before us was as to whether having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. (supra), as also Rule 9 of the CPWD Manual the concerned respondents had acted illegally in not communicating his 'fail in standard'. It is now trite that the Court of the Tribunal cannot usurp the jurisdiction of the Statutory Authority but it is also a settled principle of law that the jurisdiction of this Court to exercise its power of judicial review would arise in the event it is found that the concerned authority has, in its decision making process, taken into consideration irrelevant fact not germane for the purpose of deciding the issue or has refused to take into consideration the relevant facts. The learned Tribunal, in our opinion, while holding that having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors., the DPC could ignore categorization, committed a serious error in usurping its jurisdiction. Once such

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categorizations are ignored, the matter would have been remitted to the DPC for the purpose of consideration of the petitioner's case again ignoring the remarks 'Good' and on the basis of the other available remarks. This position stands settled by various judgments of the Supreme Court."

17. The confidential dossiers of the applicant had been made available in a sealed cover to us. In order to maintain the secrecy of the same, we are not reproducing the same but suffice to say that at times, the applicant got 'Very Good' or 'Outstanding' reports. They were downgraded for the subsequent years which has not been communicated. In accordance with the ratio decidendi of the decision referred to above which binds this Tribunal, when there is a downgrading, necessarily the same should have been communicated. The proceedings of the DPC does not indicate that it had been so done. The downgraded uncommunicated Confidential Reports can be ignored. Resultantly, it would be in the fitness of things and appropriate to quash the impugned order and give directions to re-consider his claim in accordance with law and to hold a review DPC.

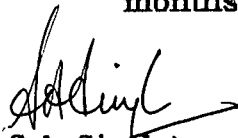
18. For these reasons, we pass the following order:

- a) impugned order qua the applicant is quashed;
- b) qua the applicant, it is directed that review DPC may be held as per law in light of findings above;


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c) we do not dispute the right of the DPC to assess and make the gradings but if there is any deviation that has to be made from the record of the Confidential Reports, specific reasons should be given; and

d) this exercise should preferably take place within six months from today.


(S.A. Singh)
Member(A)

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(V.S. Aggarwal)
Chairman