

In the High Court of Uttarakhand, at Nainital.

Chapter VIII, Rule 32(2) (b)
Description of case.

Writ Petition No. 1521 (S/B) of 2002

**Chandra Shekhar Jain
Vs.
U.P. Jal Nigam and others.**

Date of decision: 24th December, 2004

For the approval of :

Hon'ble Mr. Justice Irshad Hussain, J.

Hon'ble Mr. B.S. Verma, J.

- Whether the order/judgment should be (yes)
sent for reporters for reporting?

- Whether the reporters be allowed to (yes)
See the judgment?

In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 1521 (S/B) of 2002

Chandra Shekhar Jain S/o Late N.S. Jain,
Presently posted as Officiating Superintending
Engineer, Construction Circle U.P. Jal Nigam,
New Tehri, District Tehri Garhwal .. Petitioner.

Vs.

1. U.P. Jal Nigam through its Chairman
6 Rana Pratap Road Lucknow.
2. Chairman, U.P. Jal Nigam,
6 Rana Pratap Road, Lucknow.
3. The Managing Director, U.P.
Jal Nigam, 6 Rana Pratap Road, Lucknow.
4. State of Uttaranchal through its Secretary
(Pay Jal) Dehradun.
5. Chief Engineer, Level-I U.P. Jal Nigam
Dehradun .. Respondents.

**Sri L.P. Naithani, Senior Advocate, assisted by
Sri R.P. Nautiyal, learned counsel for the
petitioner..
Sri V.B.S. Negi, learned counsel for the respondents.**

Dated: 24th December, 2004.

**Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.**

(Per: Hon'ble Irshad Hussain, J.)

The petitioner preferred this petition under Article 226 of the Constitution of India for issuance of a writ, order or direction in the nature of mandamus, directing the respondents to consider him for promotion on the post of Superintending Engineer, ignoring uncommunicated down grading the annual confidential entries and also for issuance of a writ, order and direction in the nature of mandamus, directing the respondents to permit him to continue on the post of Superintending Engineer in officiating capacity, at New Tehri, the present place of his posting.

2- The petitioner was appointed as Assistant Engineer on 25-4-1973 and was promoted on the post of Executive Engineer in

November, 1980 in U.P. Jal Nigam. In the year 1996 the petitioner gave his option to serve in the hill region under the U.P. Hill Sub Cadre Rule , 1992. In the final seniority list of the Executive Engineers, published by the respondents on 6.11.2000, he was placed at serial No. 9 (Annexure-1). The criteria of the promotion to the post of Superintending Engineer is seniority-cum-merit subject to rejection of unfit. There are seven sanctioned posts of Superintending Engineer in hill sub-cadre, out of which, five are for general candidates and two for reserved candidates. In the D.P.C. held on 21-6-2002, five incumbents other than petitioner, were promoted to the post of Superintending Engineer. The petitioner had knowledge that his entries in the annual confidential record were down graded, whereby representations dated 8-2-2001 and 28-3-2001 (Annexures 2 and 3) were made, but were rejected vide order dated 28-5-2001 (Annexure-4), ignoring the guide-lines as contained in G.O. dated 26-9-1990. The petitioner was awarded some punishment on 17-5-2002 after an enquiry, which was instrumental in not considering him for promotion to the post of Superintending Engineer, pursuant to D.P.C. dated 21-6-2002. However the punishment order has been expunged by respondent No.2 by order dated 18-9-2002 (Annexure-5) and therefore there appears to be no impediment in considering him for promotion to the post of Superintending Engineer by also ignoring the un-communicated down grading entries. The petitioner had been agitating his cause for promotion but getting no favourable response the petition was filed.

3- In the counter affidavit the respondents took the stand that the petitioner was required to be informed of down-gradation when the entry reflect an adverse element and if the same was to be considered to supersede him for the promotion on the post of Superintending Engineer; that by order dated 26-5-2001 (Annexure-4) the petitioner was intimated that all G.Os. shall be fully considered and necessary action will be taken by the appropriate authority and that the writ petition is premature as no selection proceedings to the post of the Superintending Engineer are going on and whenever the selection proceedings will take place, the petitioner will be considered for promotion according to law.

4- In the rejoinder affidavit the petitioner reiterated his claim to be considered for promotion after ignoring the down-grading entries, which to his information are made with effect from 1-4-1991 as under:-

| Period | Remarks Of Reporting Officer | Remarks of Reviewing Officer | Remarks of Accepting Officer |
|--------------------|------------------------------------|------------------------------------|------------------------------------|
| 1.4.91 to 15.8.91 | Very Good | Very Good | --- |
| 17.8.91 of 31.3.93 | Excellent | Very Good | Good |
| 1.4.92 to 31.3.93 | Excellent | Good | Satisfactory |
| 22.9.93 to 31.3.94 | Good | Good | Satisfactory |
| 1.4.94 to 31.3.95 | Very Good | Very Good | Good |
| 1.4.95 to 31.1.96 | Very Good | Good | Good |
| 1.4.96 to 31.10.96 | Very Good | Very Good | |
| 1.4.98 to 12.8.98 | Very Good | Very Good | |
| 12.8.98 to 31.3.99 | Very Good | Good | Good |
| 1.4.00 to 31.3.01 | Excellent | Excellent | |

5- Further the averments made by the respective parties, it is evident that the petitioner had against him a punishment order dated 17.5.2002 which was made after an enquiry on the charges of misconduct etc. The punishment order was expunged and set aside by order dated 18-9-2002 (Annexure-5) on a representation made to the competent authority. It is the petitioner's case that the punishment order dated 17.5.2002 was instrumental in not considering him for promotion to the post of Superintending Engineer pursuant to D.P.C. dated 21.6.2002. It indicate that the down-grading of entries were not in any way having the effect of petitioner's supersession in the promotion to the post of Superintending Engineer in June, 2002. Therefore, it is the stand taken by the respondents that as the when the selection proceedings of Superintending Engineer shall be initiated the case of the petitioner will be considered according to law. Considering these aspects of the matter, there can not be any substance in the claim of the petitioner that he was without any reason not considered or was superseded in his promotion to the post of Superintending Engineer

pursuant to the D.P.C. held on 21.6.2002. The punishment awarded against him by order dated 17.5.2002 has been expunged and set aside on 18.9.2002, that is, subsequent to the said D.P.C. of 21.6.2002 and therefore as the respondents took the justified stand he is to be considered when the selection proceedings to the post of Superintending Engineer are to be initiated.

6- Learned counsel for the petitioner laid stress on the plea taken that as and when the petitioner is to be considered for promotion, the down-grading of entries never communicated to him are not required to be taken note of and considered against the petitioner. We have perused the original A.C.R. of the petitioner, produced by the respondents and it is evident that there has been down-grading of entries as reproduced above without any reason being assigned by the accepting officer and there was no communication of the same to the petitioner. Learned counsel for the petitioner pressed into service the decision of the Apex Court in the matter of U.P. Jal Nigam and others versus Prabhat Chandra Jain; (1996)-2 Supreme Court Cases 363 and also office memo dated 6.11.1996 in support of the submission that as and when the Accepting Officer/Reviewing Officer alters or down-grade the remarks, the reasons for the same shall be given and the concerned officer shall be informed for the changed or down-grading of the remarks in the A.C.R. The office memo has been issued by the Chairman of the Jal Nigam, respondent No.2. The learned counsel submitted that the directions given in the memo have not been adhered to and the petitioner was never informed of the down graded remarks referred above made by the accepting Officer.

7- The decision of the Apex Court referred above pertain to the same corporation, that is, U.P. Jal Nigam and the controversy involved in that case was also regarding the down-gradating of entries which were challenged by the incumbent of that case. The respondents opposed the petition on the ground that down-graded entry need to be communicated only if it reflects any adverse element. Considering the rules of the Jal Nigam, the Apex Court observed that “ 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 can not sustain.” The observation in the case which favoured the incumbent of that case support the argument of the learned counsel for the petitioner that the reasons were required to be given by the accepting officer while down-grading the entries as has been done above in the case of the petitioner. This is also the requirement under the memo of the respondent No. 2 dated 6.11.1996. In the face of the facts of the case, we are not inclined to accept the argument of the learned counsel for the respondents that neither the ratio of the Supreme Court’s decision nor the memo of the department can be attracted to the facts of the instant case as the down-grading of entries do not reflect adversely on the conduct of the petitioner. Considering the above aspects of the case we see no merit in this argument as no reason whatsoever had been recorded by the accepting Officer in downgrading the entries. Therefore, these downgrading entries need to be ignored as and when the petitioner is to be considered for promotion to the post of Superintending Engineer by the selection committee.

8- Similar controversy was also raised by one of the officiating Chief Engineer of the Uttaranchal Pay Jal Sansadhan Vikas Evam Nirman Nigam in writ petition no. 209(S/B) of 2003 Dr. Pramod Pandey versus State of Uttaranchal and others before this Court and by judgment dated 2-9-2003 a Division Bench disposed of the writ petition by granting the prayer that the downgraded entries made by the accepting Officer without any reason and communication for the years, 1992-93, 1993-94, 1994-95 and 1995-96 shall be ignored and not taken into account at the time of promotion/selection to the post of Chief Engineer/ M.D. In that case also the decision of the Apex Court referred above, and the office memo dated 6-11-1996, were pressed into service. Therefore, there can be no doubt that the said decision of this Court squarely apply to the facts of the instant case and the prayer in the petition as regards the downgraded entries awarded to the petitioner need to be granted.

9- So far as the other prayer is concerned, the petitioner is posted as Superintending Engineer in officiating capacity at new Tehri, and he wants that he may be permitted to continue at the present place of his posting. No cogent reason has been shown as to why the petitioner can only be retained at that place of his posting and that the right of the respondents to transfer him elsewhere can legally be curtailed.

10- For the reasons aforesaid, the petition is partly allowed and the respondents are directed that the downgraded entries of the above years shall be ignored and not taken into account at the time of the petitioner's promotion/selection to the post of Superintending Engineer. No order as to cost.

(B.S. Verma, J.)

(Irshad Hussain, J.)

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