

A U.P. JAL NIGAM AND ORS.
v.
PRABHAT CHANDRA JAIN AND ORS.

JANUARY 31, 1996

B [M.M. PUNCHHI AND K.S. PARIPOORNAN, JJ.]

Service Law :

C *Annual Confidential Reports—System of recording—Downgrading entries in confidential reports—Employer U.P. Jal Nigam taking a plea that both entries not adverse entries and hence not communicated to the employee—Plea turned down by the High Court—On appeal held, reasons to be recorded for downgrading and employee informed of the charge in the form of an advice—When downgrading is reflected by comparison without giving reason, it cannot be sustained.*

D CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 16988 of 1995.

E From the Judgment and Order dated 1.5.95 of the Allahabad High Court in W.P. No. 2244 (S/S) of 1994.

Rajeev Dhawan, R.B. Misra, Sudhansu, M.K. Roy and K. Misra for the Petitioners.

F S.C. Maheshwari and R.K. Jain, Ajay Bhalla, P.K. Chakraborty and Ms. Prabha Jain for the Respondents.

The following Order of the Court was delivered :

G 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.

H The first respondent was down graded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea was that down grading 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 effect him at one or the other stage of his career. A B

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 down grading 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 emphasised that even a positive confidential entry in a given case can previously 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. C D E F G

The special leave petition is, therefore, dismissed.

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U.P. JAL NIGAM AND ORS.

v.

NARINDER KUMAR AGARWAL

JANUARY 31, 1996

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[K. RAMASWAMY, S. SAGHIR AHMAD
AND G.B. PATTANAIK, JJ.]

Service Law :

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U.P. Water Supply and Sewerage Act, 1975/U.P. Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978 :

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S.97/Rules 5, 10, 18—Promotion—Junior Engineer to Assistant Engineer—Promotion in general 25% quota—5% graduates quota—Junior Engineer with degree qualification eligible to be considered—Not considered once—Next time considered but not selected—On a writ petition, High Court directing to consider his case in the 25% promotion quota—Considered and promoted—On appeals, held: In view of resolution adopting criteria of zone of consideration and the employee concerned not coming up in the zone of consideration, it cannot be found fault with—In the next selection the Committee proceeded on the premise of merit and ability and selected four persons—No circumstance brought to Court's notice that the selected candidates did not possess superior merit and ability than the employee not selected—Hence their selection not beset with any illegality—Since that employee has been considered and promoted subsequently on High Court's order, no interference called for.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3344 of 1996.

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From the Judgment and Order dated 17.1.92 of the Allahabad High Court in C. Misc. W.P. No. 14229 of 1984.

K. Madhava Reddy and Ms. Sandhya Goswami for the Appellants.

A.K. Srivastava Adv. Genl., Rajesh K. Sharma for the Respondents.

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The following Order of the Court was delivered :

Delay Condoned. Leave granted.

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The appellant-U.P. Jal Nigam was formed under the U.P. Water Supply and Sewerage Act, 1975. Consequentially, the persons working in the Local Self-Government Engineering Department of U.P. were transferred to the appellant's administrative control. In exercise of power under Section 97 of the Act, U.P. Jal Nigam Engineers (Public Health Branch) Services Regulations, 1978 (for short, 'Regulations') were framed. Rule 5 of the Regulations envisaged that :

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"5. Keeping into consideration rules 6, 17 and 18, recruitment from the following sources :

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(1) Asstt. Engineer;

A. Direct recruitment on the basis of result of competitive examination or as prescribed in part 5 of the rules for recruitment.

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But in case of emergency the Nigam can made recruitment on the basis of interview also.

Note : Initial recruitment to the post of Asstt. Engineer will be made against only temporary vacancies.

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(2) Junior Engineers and computers of the former Local Self-Govt. Department and/or in the service of Jal Nigam by promotion of those candidates who have rendered continuous service of ten years in the former LSGD and/or U.P. Jal Nigam or any other department. Temporary service will be counted for this purpose. The candidates fulfilling these conditions and also fall within the ambit of Rule 16(3) will be considered.

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Note : The details for recruitment to the post of Junior Engineer and computer is given in condition 1. But recruitment will be done in such a way that 25% of the vacancies are filled by promotion and the rest by direct recruitment. Any relaxation in this percentage will be permitted only when suitable candidates are not available.

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Rule 10 prescribes that no person will be recruited direct in the civil side unless he holds a degree in Civil Engineering or its equivalent from

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- A recognised university or he has passed part A and B of AMIE. Clause B thereof also provides that no person shall be recruited to the mechanical side on similar conditions. The ratio for direct recruitment is 75% and for promotees 25% and while calculating the vacancies, the ratio of 25% for promotees always be maintained. Rule 10(3) which is relevant for the purpose envisages that Computers and Junior Engineers in the service of former LSGD or Jal Nigam will not be promoted to the post of Asstt. Engineering (Civil) or (Mechanical) under rules 5(1) (ka) (two) unless he has passed the condition prescribed in Rule 10(1) and 10(2) of the Regulations. The note appended thereto given liver for relaxation of conditions of recruitment and can adopt any other criteria for the selection and promotion of Junior Engineers and Computers to the post of Assistant Engineer. In other words, the note enabled them only to relax the rules prescribed for passing the qualifying examination for selection to the posts of Asstt. Engineers. At this juncture, we would observe that the rule runs contrary to the settled service jurisprudence and the law laid down by this Court and deleterious to augment efficacy of service and would dry out the source to improve excellence and honest service. However, since note is not the subject matter of attack, we need not observe any further.

- Rule 18 provides the right to promotion which envisages that "For promotion to the post of executive engineer seniority will be the criteria and for promotion to the post of Asstt. Engineer, Superintending Engineer and Chief Engineer, the merit will be the criteria". The Jal Nigam in exercise of the power of relaxation under the note passed a resolution on 31.12.1983 that it is not appropriate to change the criteria every time and it is not necessary to change the basis on which selection has been made previously. Therefore, the procedure was reiterated as under :

"The preceding five years annual confidential record of each candidate shall be perused. If there are more than half good entries or entries higher than that then the candidate shall be considered fit for selection."

- According to the decision taken by the Jal Nigam in its 62nd meeting, the condition of passing the qualifying examination for candidates eligible upto 31.12.83 has been relaxed and instead the condition of gradation on the basis of service records has been made the basis for promotion. In order to determine merit, the

confidential entries of all the candidates falling within the zone of consideration be scrutinised even though their integrity has not been certified."

18 vacancies of Assistant Engineers have arisen and the erstwhile officer from LSGD or those appointed under the Nigam have been considered for promotion for 25% quota reserved for inservice candidates. Under the resolution No. 502, dated 19.5.1983, it was resolved that 10 years continuous service either in the erstwhile department or under the Nigam is a pre-condition of which 5 years in Nigam was necessary for promotion. It was also resolved that 5% of 25% was reserved for graduate Engineers who should complete 5 years of service in Jal Nigam. Following the above criteria, the candidates were considered and selected. It would appear that first selection on September 24, 1983 and the second selection in August 1984 were made.

The respondent who was appointed as a Junior Engineer in LSGD on April 12, 1973 had passed his BE degree qualifying examination on November 3, 1982. He had put in 10 years of service as J.E. as on 13.4.1983. Since he was a graduate and was eligible for promotion in general 25% quota as well as the graduates quota of 5%, but does not appear to have been considered on September 4, 1983 for selection. Against in the second selection held in August, 1984 also he was considered but was not selected. As a consequence, he filed the Writ Petition No. 14229/84.

The Allahabad High Court by order dated 17.1.1982 allowed the Writ Petition and directed to consider the case of the respondent in the 25% quota reserved for promotees for the relevant year. proceedings dated 20.2.1992 have been placed before us in which as per the directions of the Court the appellant had considered his case, an additional post was created and he was promoted in 25% quota reserved for promotees as a special case.

Shri K. Madhava Reddy, the learned senior counsel for the appellant, contended that the note to the rule referred to hereinbefore gives power to the Board to relax the criteria; the Board having relaxed the criteria considered all the persons including 54 persons who are eligible according to the norm laid down; the respondent was not considered since he did not come up within the zone of consideration. It is also contended that out of 5% quota reserved for the graduates, 17 candidates including the respondent on Serial No. 13 were considered. Since the criteria being merit and

- A ability, the more meritorious were promoted and the respondent, therefore, could not be selected. The High Court had proceeded on a wrong premise, namely, the respondent was not considered within 25% quota and he was alone the graduate eligible but was not considered for promotion. It is stated that in view of the fact that 17 candidates, who are graduates, were considered and merit and ability being the criteria, the premise on which the High Court proceeded is, therefore, not valid in law.
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Shri A.K. Srivastava, the learned Advocate General of Sikkim appearing for the respondent, contended that the respondent having duly qualified for promotion in April 1983 by which date the criteria of relaxation was not made, ought to have considered but was not considered according to the rules. Even in August 84 selection also he was not considered as he was fully qualified to be considered. Therefore, the High Court was right in granting the direction and, therefore, there is no merit in the case of the appellants.

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- E It would appear that the appellant with a view to see that all eligible persons would come within the zone of consideration for promotion adopted a general rule of relaxation and considered the cases of all the persons. But from the resolution, we are unhappy to note that even merit or integrity have been sacrificed as mentioned that they are not relevant for consideration. It is settled law that merit and integrity are the sole consideration for selecting posts and seniority would become relevant only when merit of all candidates are approximately equal. The Board seems to have taken a reverse gear, obviously to facilitate persons who are not having that much of integrity and ability. However, since the promotion given to the persons has not been put in issue, we need not express any doubt on their selection but we are unhappy to note the way in which the Jal Nigam is functioning in considering the promotion of the officers to improve excellence or to inculcate efficiency, integrity and honesty in the officers to reach higher echolons of service.
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- G It is seen that since the criteria of zone of consideration was adopted as per the resolution and 54 persons were considered and the respondent did not come up in the zone of consideration, we cannot find fault with the non-consideration of the respondent in that zone of consideration of 54 candidates. In the quota of 5% reserved for graduates, though the respondent has fulfilled the qualification and was eligible to be considered, he
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was included in the panel of the candidates, the selection was made by the committee constituted in that behalf. The committee appears to have proceeded on the premise of merit and ability and evaluated the criteria of all the 17 candidates and selected four candidates who were standing at No. 1, 2, 6 and 8. In the absence of any compelling circumstances brought to our notice to show that the selected candidates are not possessed of superior merit and ability than that of the respondent, we do not think that the selection is beset with any illegality. However, in view of the circumstances that pursuant to the direction given by the High Court, the claim of the respondent had already been considered and he has been promoted, we do not incline to interfere with the order of the High Court.

The appeal is accordingly dismissed with the above declaration of law and observations. No costs.

G.N.

Appeal dismissed.