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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2043/2002

New Delhi, this the 28th day of February, 2003

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri C.S. Chadha, Member(A)

Dr.(Kum) Karabi Dey Biswas, JRO
GS/SI-Dte(SI-2), Army Hqrs.
Ministry of Defence, New Delhi .. Applicant

(Shri N.B.Joshi with Shri Santanu Ghosh, Advocates)

versus

Union of India, through

1. Secretary
Ministry of Defence
New Delhi
2. Joint Secretary
Ministry of Defence
C-II Hutments, Dalhousie Road
New Delhi
3. T.S. Chidambaram, STA
4. D.J.Gedam, STA
GS/SI-DTE(SI-2)
Ministry of Defence, New Delhi .. Respondents

(Shri S.M. Arif, Advocate for R-1 and R-2
Shri K.B.S. Rajan, Advocate for R-3 and R-4)

ORDER

Shri C.S. Chadha

The case in brief is that the applicant is working as a Senior Technical Assistant (STA) in the respondent-department and her next promotion is available to the rank of Junior Research Officer (JRO). Although not related to the applicant in any way, the Department held the DPC for promotion to the rank of JRO on 28.8.1999. In that DPC, as the number of vacancies for which the DPC was held did not entitle the applicant to come into the zone of consideration. Some persons affected by the aforesaid DPC filed OA No.256/2001 before this Tribunal to which the applicant was not a party. In that OA the applicants had challenged the validity of the DPC held on 28.8.1999 and the Tribunal vide its order dated



19.11.2001 allowed that OA and directed the department to hold a review DPC meeting for the vacancies arising in the year 1996-97 and 1997-98 in accordance with the Rules of 1995 applicable to the concerned promotion. In that OA, the Department had taken the stand that the Rules of 1995, which were infirm and incorrect on certain legal issues were under revision. The Tribunal, however, decided that in view of the revision not having taken place, vacancies of 1996-97 and 1997-98 should be filled in accordance with the applicable Rules i.e. 1995 Rules.

2. It would be pertinent to point out that the Rules actually were reframed in the year 2000. Despite the order of the Tribunal to consider afresh filling up of vacancies of 1996-97 and 1997-98 under the old Rules, departmental did not immediately react to the order of the Tribunal and soon after receiving the order of the Tribunal, went ahead with the DPC held on 3.11.2002 under the new Rules and promoted the applicant to the post of JRO. When the department analysed the consequences of the decision of the Tribunal in OA 256/2001, it realised that if the DPC were to be convened according to the old Rules, certain persons including R-3 and R-4, who were earlier overlooked when the applicant was promoted on 3.11.2002, would be found fit under the 1995 Rules and therefore there would be no vacancy available for promotion of the applicant. Having realised this problem, they tried to solve the dilemma, apparently, by getting the formal approval from the Tribunal for the consequences which would ensue and which have now been challenged in this OA. They filed MA 330/2002 in OA 256/2001 seeking certain clarifications in an effort to enable the Tribunal to give a direction that if by virtue

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of the review DPC under 1995 Rules, the applicant or others had to be reverted it may be so done. The Tribunal did not deem it fit to give any further clarification and held that its order dated 19.11.2001 did not need any clarification and if any consequential action had to be taken it may be done in accordance with law and applicable Rules. After dismissal of the MA, Respondents No.1 and 2 held the review DPC on 28.5.2002 in accordance with 1995 Rules for the vacancies of 1996-97 and 1997-98 and realised that the applicant would not come in the panel for promotion to the rank of JRO. This was apparently due to the fact that 1995 Rules required the qualification of Diploma in Interpretation whereas this was not an essential requirement of the revised Rules of 2000. By virtue of the same, R-3 and R-4, who possessed the requisite qualification, though junior to the applicant, got into the panel. As a consequence, the department realised that no vacancy was available for the applicant and therefore she should be reverted. Accordingly, they issued a show cause notice to her on 28.5.2002, the date on which the revised panel was drawn up and accordingly the result of the review DPC was also communicated to all concerned. After giving the applicant an opportunity to show cause, she was reverted to the post of STA on 22.7.2002. It is this reversion order which has been challenged in this OA. Applicant has also challenged the constitutional validity of the 1995 Rules and has sought quashing of the same.



3. The main questions to be decided in this case are two-fold. Firstly, whether Rules of 1995 need to be struck down as unconstitutional and consequently whether the order of reversion of 22.7.2002 was illegal and therefore deserves to be quashed.

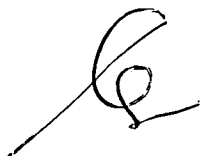
4. As regards the constitutional validity of the 1995 Rules, the same should not now be in question as the Department itself had revised the Rules and framed fresh Rules in the year 2000 considering the Rules of 1995 as infirm on certain grounds. Therefore, the relief claimed, that the Rules of 1995 be quashed, does not remain the question to be decided by us. Moreover, action taken by the review DPC on 28.5.2002 in accordance with 1995 Rules was strictly in execution of the direction of the Tribunal in OA 256/2001. The Tribunal had itself directed Respondents No.1 and 2 to hold review DPC meeting for the vacancies of 1996-97 and 1997-98 in accordance with the then existing Rules i.e. Rules of 1995. Therefore, we are of the firm opinion that there was no infirmity in the action taken by the respondent-department in holding fresh DPC on 28.5.2002 in accordance with the 1995 Rules and those rules need not be quashed, as they are not existence any more.

5. As regards the question of illegality of the reversion order passed against the applicant, we cannot hold that the action was illegal inasmuch as the Government, having committed a mistake, can always rectify the same. Any illegality committed by the Government cannot be perpetuated for all time to come and what is required in such a case is to give a show cause notice and give the concerned official an opportunity to



be heard. We find that such an opportunity was given and therefore we cannot agree that there is any infirmity on the part of the respondent-department in reverting the applicant as a consequence of the lack of a vacancy.

6. Apart from the two legal issues decided above, the third issue which needs our consideration is the prayer of the applicant's counsel to consider applicant's promotion on the ground that she lost her promotion after having remained on that post for nearly six months in fortuitous circumstances apparently due to the mistake of the department. The Department received a copy of the order of the Tribunal in OA 256/2001 in November/December, 2001 and without analysing the consequences held review DPC according to the new Rules on 3.1.2002 by which the applicant was promoted. Had the department carefully analysed the consequences of the order of the Tribunal dated 19.11.2001 before holding a DPC under the new rules, it would have realised that no vacancy would be available for the year 2001-2002 after the earlier vacancies were filled up in accordance with the direction of the Tribunal. Had this been done, promotion of the applicant on 3.1.2002 and consequential unfortunate reversion of the applicant as STA would not have taken place. Learned counsel for the applicant therefore pleaded that she should be promoted despite the fact that the Department had taken the plea that there was no vacancy. He pointed out that in the R/Rules as given at Annexure R-2, there are 28 sanctioned posts of JRO and further it has been clarified that these vacancies are subject to work-load of the Department. Learned counsel therefore argued that an extra vacancy can easily be



created to accommodate the applicant, who had been duly promoted but reverted due to certain fortituous circumstances.

7. Learned counsel for the respondents, without verifying from the Department, immediately reacted by stating that there is no need to create such a vacancy.

8. During the course of arguments, the applicant, who was present in the court, informed her counsel who ultimately informed us that despite 28 sanctioned posts of JRO, only 25 incumbents are presently in position and, therefore, it is possible for the department to accommodate her. Our suggestion to the learned counsel for the respondents that if there are vacancies she may be accommodated was also turned down. We agree that the applicant does not have a right to be promoted as JRO having once been promoted but reverted because of the lack of a vacancy. However, we feel that the department should consider her case sympathetically because she was found fit in the DPC held on 3.1.2002 and also worked as JRO for six months after her promotion, without any blemish.

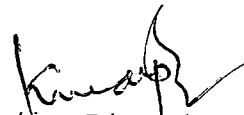
9. In the above circumstances, the OA cannot succeed, and is therefore rejected. However, we would like to give a direction to respondent-department to consider the applicant for promotion as JRO, in her turn in accordance with the Rules of 2000 again immediately if posts are still unfilled as pointed out by the learned counsel for the applicant during the course of arguments.



10. OA is disposed of with the above direction. No order as to costs.



(C.S. Chadha)
Member(A)



(Kuldip Singh)
Member(J)

/gtv/