

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2834/2002

New Delhi this the 11th day of May, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. R.K. UPADHYAYA, MEMBER (ADMN)

Shri J.C. Sharma,
Office Supdt.
National Gallery of Modern Art,
New Delhi-110003.

-Applicant

(By Advocate Shri S.C. Luthra)

-Versus-

Union of India through,

1. The Secretary,
Deptt. of Culture,
Shastri Bhawan,
New Delhi-110001.

2. Director,
National Gallery of Modern Art,
New Delhi-110003.

3. Shri A.V.R. Pillai,
Administrative Office,
National Gallery of Modern Art,
New Delhi-110003.

-Respondents

(By Advocate Shri J.B. Mudgil)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 10.9.2002, whereby on a review DPC he has not been found fit for promotion to the post of Administrative Officer.

2. Applicant has approached this Court earlier in OA-3219/2001 and by an order dated 4.10.2001 directions have been issued to the respondents to pass a detailed and speaking order. Accordingly, in the orders passed by respondents applicant has been found unfit for promotion as per his record.

3. Admittedly, the post of Administrative Officer is a selection post having bench mark as 'Good'.

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4. Learned counsel for applicant assails the impugned order on the ground that the review DPC was not properly constituted as the Chairman was not present, which is reflected from the impugned orders, which are minutes of the DPC where the signatures of another Member and Chairman are not present and the order only reflects signature of the Director.

5. Another ground is that the grading in the ACR for the period 1995-96 has been tempered with and grading of 'Good' has been converted into 'Average'.

6. Learned counsel for respondents, on the other hand, denies the aforesaid contentions and produced before us copy of the DPC record as well as personal file of applicant containing his ACR for the period from 1993 to 1998.

7. We have carefully considered the rival contentions of the parties and perused the material on record.

8. In so far as the first ground to assail the impugned order is concerned, we find that whatever has been conveyed to applicant is in pursuance of the directions of this Court in OA-3219/2001 and as a communicating authority the signatures of Director appears in the order. On perusal of the minutes of the review DPC held on 29.1.2002 where the presence of not only Chairman, i.e., Joint Secretary, Department of Culture, but also of Members are acknowledged. The minutes of the review DPC in original show signature of

Chairman as well as of two Members. The grievance of applicant that the Chairman was not present is not well founded.

9. As regards tempering of ACR is concerned, we have perused the ACRs for the year 1995-96 the grading has been given as 'Average' and 'Good' has been scored off with the signature of the reporting officer. This has been agreed to by the reviewing officer as well. In our considered view, there is not tempering but inadvertently the grading of 'Good' has been rectified at the time of recording of ACT. The individual column as to the assessment does reflect the average performance of applicant, which coincide with the grading of 'Average'. The reviewing officer's comments also substantiate the performance as 'Average'.

10. There is no merit in the aforesaid contention of applicant.

11. In the case of denial of promotion, it is trite that the Tribunal in a judicial review cannot act as an appellate authority for want of any procedural illegality and mala fides. Being a selection post, applicant having failed to make the grade is rightly declared unfit for promotion. We, therefore, do not find any infirmity in the orders passed by the respondents. The OA is accordingly dismissed. No costs.



(R.K. Upadhyaya)
Member (A)



(Shanker Raju)
Member (J)