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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2/2001

New Delhi, this the 7th day of March, 2007

**Hon'ble Mr. Mukesh Kumar Gupta, Member (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)**

1. Dr. Mrs. Madhu Bala Sharma,
w/o Shri Ashok Kumar Sharma,
R/o 2A, Gasta Flats,
B-3, Paschim Vihar,
New Delhi- 110 063. ...Applicant
(By Advocate: Shri K.C. Mittal)

Versus

1. Union of India
Ministry of Tourism and Culture,
Shastri Bhawan, New Delhi.

2. Anthropological Survey of India through
Its Director Dr. R.K. Bhattacharya,
27, Jawahar Lal Nehru Road,
Calcutta - 700 016.

3. Dr. G.C. Ghosh,
Deputy Director,
Anthropological Survey of India,
Eastern Regional Centre, An S.I.
2, Riplon Street,
Calcutta-700 016.

4. Mr. Deepak Tyagi,
Joint Director,
Anthropological Survey of India,
27, Jawahar Lal Nehru Road,
Calcutta - 700 016.

5. Dr. Swaran Singh,
Deputy Director,
Anthropological Survey of India,
N.W. Regional Centre,
192/1, Kaulagarh Road,
Dehradun - 245 195. ...Respondents

(By Advocate: Shri S.M. Arif)



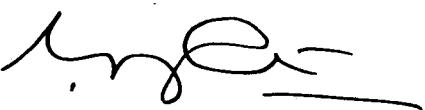
ORDER

By Mr. V.K. Agnihotri, Member (A)

In this OA the applicant has challenged the promotion of respondent no. 3 as Deputy Director, resulting in her supersession, and sought the following reliefs:-

- (a) To quash and set aside the promotion order dated 25.10.2000 of respondent no. 3 and declare the same as illegal.
- (b) To direct the respondent nos. 1 and 2 to constitute a review DPC to consider the applicant for promotion to the post of Deputy Director from the date her junior was promoted. The Annual Confidential Reports (ACRs, for short) of the applicant as well as of respondent no. 3 of the year 1995-96, 1996-97, 1997-98 and 1999-2000 be set aside and the same may be ordered to be re-written by any competent person, having knowledge of the technicality of the work done by the applicant as well as of respondent no. 3.

2. The brief facts of the case, devoid of all frills and flair, are that the applicant was selected for the post of Anthropologist in the Anthropological Survey of India (ASI, for short) (R-2 in this OA) through the Union Public Service Commission, vide letter dated 15.01.1978. The applicant joined as Anthropologist in the year



1980 and was initially posted at Nagpur. In January, 1985, the applicant was transferred to Dehradun. The applicant was promoted as Superintending Anthropologist in November, 1994 and continued at Dehradun where, in addition to her research work (detailed in para 4.3 to 4.16 of the OA), she also discharged the duties of the Head of Office (HOO, for short), North West Regional Centre at Dehradun (NWRC, for short), from 07.03.1994 to 14.12.1995 and again from 18.06.1996 to 02.11.1998. However, in the year 2000, the applicant was superseded and her junior (respondent no. 3) was promoted as Deputy Director (Physical). Hence the OA.

3. The applicant also filed additional affidavits dated 06.11.2001, 09.09.2002 and 14.01.2003. Subsequently, she filed MA No. 2256/2004 seeking permission to file an amended OA, which was contested by the respondents, but was allowed by this Tribunal, vide order dated 01.08.2005, with cost.

4. The applicant has stated that in February, 1994, Dr. B.R. Rizvi, Superintending Anthropologist at Dehradun, who was also the HOO at that time, was sent on deputation to Minorities Commission and was relieved on 28.02.1994. Thereupon, the applicant resumed the charge of the HOO, North West Regional Centre, Dehradun on 07.03.1994, vide order dated 01.03.1994. Dr. Rizvi had handed over the charge to Sh. K.S.V. Narsimhan (JAO). Sh. K.S.V. Narsimhan, in turn handed over File No. 23-



/70-Genl. (Arms & Ammunition list and some keys) to the applicant only on 04.05.1995, after he was transferred to Mysore.

5. She has further stated that after taking over headship it was found by her that several persons were misappropriating the funds through medical bills. Medical bills to the tune of Rs. 1000/- to Rs. 1500/- p.m. were being submitted whereas, according to the reimbursement rules, an employee was entitled to claim only of Rs. 1000/- per annum at the maximum, which could be enhanced by 5% to 10%. Prior to taking over as the HOO by the applicant, the medical bills of large amounts were being submitted and sanctioned. The applicant, realizing the situation, referred the medical bills to the Headquarters at Calcutta for instructions of the competent authority, vide O.M. dated 12.08.1995. This lead to an unpleasant situation within the Members of the Association and Dr. V.K. Tandon (Assistant Anthropologist) even instigated the staff to go on agitation on the issue. The practice of verifying the wrappers and bottle checking was also introduced by the applicant from the month of April, 1995, by which genuinity of the claim could be certified and this was accepted by respondent no.

2. Just after the introduction of this practice, there was a drastic fall in the claims of medical reimbursements. The number of medical bills was reduced from 35 to 10 per month on an average.

6. It has been submitted that the applicant, being HOO, was provided with a telephone at her residence on 08.07.1994, which



was being used by Dr. B.R. Rizvi as HOO at his residence, prior to the applicant. The office had been informed by Dr. B.R. Rizvi that there was no STD facility available on that phone but the bills used to be exorbitant and, after checking, it was found that STD facility was being availed by Dr. B.R. Rizvi unofficially and he was claiming bimonthly bill to the tune of Rs. 8000/- to Rs. 10000/-. The applicant, when she learnt about it, reported the matter to respondent no. 2 and got the STD disconnected herself. However, no action was taken by respondent no. 2 against Dr. B.R. Rizvi nor any recovery of Government dues was made presumably because Dr. Rizvi had owed allegiance to the Deputy Director in the head office; rather the applicant was verbally told by Mr. Deepak Tyagi, Joint Director (respondent no. 4) that the bills claimed by Dr. Rizvi were not to be paid by the applicant, so why did she worry.

7. The applicant has further stated that one Dr. S.H.M. Rizvi, Anthropologist (P), who belonged to Lucknow, who was and even now is very close to respondent no. 4, was sent on tour to conduct field work in Uttarkashi along with Sh. Ramesh Sahni, STA (P), by the applicant in August, 1995. But at the last moment, he changed the venue of field work from Uttarkashi to Malihabad, on his own, where he had his ancestral property, without obtaining prior permission from the competent authority. The point selected for field work was not according to the reference point as per



project designs (letter dated 11.02.1995). Since he changed the programme himself, which came to notice only after he had gone to Malihabad, his tour had to be regularized as a special case with the condition that the field work in Uttarkashi would be completed before 31.12.1995. He was also given a warning not to repeat the same in future, vide letter dated 05/06.09.1995. But the tour of Uttarkashi was not completed before December, 1995. During his tour to Malihabad, he submitted some apparently bogus bills of contingent expenditure and T.A. The said contingent bills were firstly passed by the respondent no. 2 on the request of respondent no. 4, despite objections by the applicant. The said bills were again sent back to respondent no. 2 for re-examination, vide letter dated 19/20.05.1997 and then, after rechecking, necessary deductions were made from the bills. The applicant, on the one hand, was doing all her best to stop misuse and misappropriation of funds whereas, on the other hand, respondent no. 4, was becoming annoyed with the applicant and was threatening to spoil her career if she would continue to object to the working and misappropriation of funds by any means.

8. It has been further submitted that after return from field work on 30.09.1995, Dr. S.H.M. Rizvi reported that he had lost a portfolio containing binoculars, contingency receipts, keys, service stamps, identity cards and a torch while coming from Dehradun Railway Station to Kaulagarh road as per the copy of FIR. A

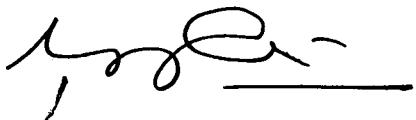


Committee was constituted to find out the truth of the matter. The Committee, having thoroughly studied the case on the basis of relevant documents placed before it, noted that Dr. S.H.M. Rizvi, Anthropologist (Physics), vide his application dated 05.10.1995, informed that a portfolio bag containing various articles was lost from the auto-rickshaw on way to Kaulagarh road from Railway Station Dehradun while coming back from tour to Mahilabad (Annexures 1 & 2 of the report). But, of those items, service postage stamps and identity card were subsequently returned to office and he also produced the lost receipts with his TA/DA and contingency claims. Certain other contradictions too deterred the Committee from given credence to the story of the loss of the costly items, such as, briefcase along with binocular and two-cell torch. Despite the critical observations made by the Committee, no further action was taken against Dr. S.H.M. Rizvi presumably because of the instructions of respondent no. 4, who was the immediate boss responsible for taking further action. According to the applicant, similarly, Dr. V.K. Tandon committed several irregularities in purchase and accounts of several equipments and materials, including costly chemical antisera, which expired before it could be issued and for which the blame was put on the applicant. The whole episode was conveyed by the applicant to respondent no. 2, vide letter dated 29.11.1995 and immediately after this letter, respondent no. 4, convinced the Director to take away the charge of HOO from the applicant. The applicant also



took note of several other irregularities committed by other officials.

9. The applicant has concluded that respondent no. 4, over a period of four years, till the time applicant was HOO, got biased against the applicant because of the fair acts of the applicant, which were contrary to the wishes of respondent no. 4. It was unfortunate that the ACR writer of the applicant for the period from 1994 to 1998 was the same person, i.e. respondent no. 4. It can be well imagined what comments might have been written by him in the ACRs of the applicant for the period 1994-98. In the year 1998, one Dr. Swaran Singh (respondent no. 5), was posted as HOO, N.W. Regional Centre, Dehradun. He too started to harass the applicant in various ways (para 4.28 of the OA). Actually, according to the applicant, respondent no. 5 was intentionally sent/posted by respondent no. 2 in Dehradun to harass the applicant because the promotion of the applicant was to be made through DPC considering the ACRs only. Respondent no. 5 also developed a weakness for the applicant and consequently, after eight months' gap, as an allurement, the applicant was made Officer In-charge of Physical Anthropology Section; Physical Anthropology Laboratory; Chairman of Purchase Committee; Convener, Book Selection Committee and a stenographer was also attached to her, all within a period of ten days i.e. from 28.07.1999 to 09.08.1999. But after about 2



avoided to file the total records including the ACRs of the applicant as well as of Shri G.C. Ghosh (respondent no. 3). As such, adverse inference is bound to be drawn by the Tribunal.

11. The answering respondents had filed a counter on 25.05.2001 to the original OA. They also filed counters dated 13.05.2002 and 15.01.2003 to the affidavits filed by the applicant. They have, however, filed a fresh counter dated 24.05.2006 (registered on 21.08.2006) to the amended OA.

12. The answering respondents have stated that the case of promotion of the applicant to the post of Deputy Director (Physical) was considered by the Union Public Service Commission. The post of Deputy Director is a selection post. The suitability of the candidates is judged according to the overall performance as well as merit on the basis of ACRs of the eligible candidates. Therefore, the contention of the applicant that she had been denied promotion to the post of Deputy Director arbitrarily, with *mala fide* intentions and illegally is baseless and motivated.

13. The answering respondents have further submitted that non-selection of respondent no. 3 to the post of Anthropologist in the year 1978 does not necessarily indicate that respondent no. 3 is less meritorious. Respondent no. 3 possesses Ph.D Degree in Anthropology (1976) and has a number of books and scientific



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papers published in Indian as well as foreign journals (Annexure R-1), besides holding academic responsibilities in the ASI in various capacities. Respondent no. 3 has also acted as a moderator, paper setter, member of the Expert Committee, Guest Lecturer at various Universities and Academic bodies (Annexure R-II). Therefore, the contention of the applicant that she is more meritorious than respondent no. 3 is baseless.

14. It has been further averred that the claim of the applicant that her academic and research records are far superior to those of respondent no. 3 is her own assessment and, therefore, without any substance. The contention of the applicant that respondent no. 3 did not conduct any field work in connection with the 7th, 8th and 9th National Plan Projects is totally false and shows her ignorance about the research programmes of this Survey. Respondent no. 3, since his appointment, has been intimately associated with all the Plan Projects and conducted fieldwork in connection with the All-India Anthropometrics Survey, All-India Bio-Anthropological Survey, People of Indian (Physical Part) and Genetic Structure of Indian Population. Besides, he was a Coordinator of the 9th Plan projects and Bio-Culture Linkages among the population of the SAARC countries (Annexure R-III). The respondents have extensively rebutted the claims of the applicant regarding her various achievements. They have simultaneously extolled various achievements of respondent no. 3.



15. The respondents have submitted that the allegations made by the applicant in respect of respondent no. 4 are totally false and baseless and as such they cannot be accepted in the absence of valid documents.

16. They have further stated that the applicant has made allegations against respondent no. 5, who was her immediate superior. These allegations are based on the imagination of the applicant, without any document. It is further submitted that the applicant has failed to maintain the office decorum and has brought charges against her superior without any substance.

17. The applicant had filed a rejoinder on 04.09.2001 to the original counter of the respondents, reiterating and elaborating on various averments made in the original OA. She had specifically attempted to highlight the fact that during the period of 5 years, preceding the meeting of the DPC held on 17.09.2000, she had done considerable amount of research work and should, therefore, have been promoted. The applicant has not filed any rejoinder to the fresh counter filed by the respondents to the amended OA.

18. In the course of the oral arguments, Shri K.C. Mittal, learned counsel for the applicant, gave a complete rendition of the Report of the Committee set up to investigate the complaint of the applicant relating to her sexual harassment by respondent no. 5.



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In deference to the elaborate efforts of the learned counsel, we would like to quote the concluding part of the Report as follows:-

"The long and the prolonged suffering that Dr. Sharma underwent since Dr. Singh assumed the charge of NWRC could have been averted through intervention at a level above that of Dr. Singh, when particularly Dr. Singh in his deposition before the CC emphatically made the admission that all his doings in his official capacities were under information of the H.Q.s.

The distinctiveness of Sex being the governing mode of human relations in family, office, church, temples, institutions etc. one cannot underplay that any affection of suffering undergone by a lady officer, Dr. Sharma being the case here, even if there is no explicit evidence of gender-specific overtures, would take the form of sex-determined harassment. It is pertinent to mention here that a non-congenial work atmosphere in the work place, as borne out by the facts stated by the investigation reports and other learned members of the committee was adverse for Dr. Sharma, as a result of which she could not find her way about in conducting herself in the capacity of Superintending Anthropologist.

The judgement in this regard as offered by other members including that of Sanhita may be considered as a pointer to the fact that there was non-congenial environment in which she was thrown, apart from other divergent or convergent viewpoints of the said members.

The CC concludes on the basis of the views of majority of the members including that of SANHITA that, it would be the gravest of the fallacies of judgement in not giving due regard to the sexual dimension of harassment



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concretely experienced in the milieu of communication inter-woven with phobias and obsessions and, resulting therefrom, non-congenial workplace."

Thus a case of sex-determined harassment of the applicant by respondent no. 5 was established. It was pointed out by the learned counsel that, as a follow up of this Report, respondent no. 5 was issued a Charge Memo for a minor penalty under Rule 16 of the CCS (CCA) Rules, 1965. The disciplinary proceedings concluded with the award of a censure to respondent no. 5. However, he has been subsequently promoted.

19. Learned counsel for the applicant further stated that, for the reasons mentioned in the OA, the ACRs of the applicant for the period 1994-1998 were spoiled by respondent no. 4 and for the subsequent relevant period, i.e. 1999-2000, the ACR was spoiled by respondent no. 5. He also alleged that in the last ACR, there was some overwriting too. He argued that there was a nexus between respondent no. 4 and respondent no. 5 and since the applicant had exposed some of the wrong doings of respondent no. 4, he had specifically sent respondent no. 5 as HOO to NWRC, Dehradun to harass the applicant. In reply to a specific query from the Bench, the learned counsel for the applicant stated that the applicant has since been promoted as Deputy Director in 2006.



20. Shri S.M. Arif, learned counsel for respondent nos. 1 & 2 and proforma respondent no. 3, stated that the matter of promotion of the applicant was considered by a duly constituted DPC of the UPSC. He also stated that respondent nos. 4 and 5 were only the Reporting Officers and final gradings in the ACRs was done by the Head of the Organization. He further stated that the applicant had never made any complaint regarding spoiling of her ACRs to the authorities. He also argued that the relief sought, relating to re-writing of ACRs by some competent persons, is untenable. Furthermore, it is only a matter of assessment of applicant's performance for promotion and, hence, there is no merit in her prayer that the ACRs of respondent no. 3 should also be re-written.

21. Respondent nos. 4 & 5 were not represented by any counsel.

22. We have heard the learned counsel for the parties and perused the material on record. We have also perused the proceedings of the DPC meeting held on 17.09.2000. We have perused the complete ACR dossier of the applicant, which was supplied by the respondents as per our direction. We have also perused the ACRs of respondent no. 3 for the period 1993-94 to 1998-99, which were taken into consideration by the DPC.

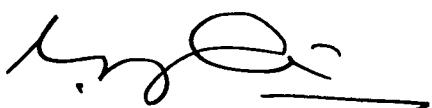
23. At the outset, we would like to state that it is not within the competence of this Tribunal to adjudicate on the issue of



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months, when respondent no. 5, realized that the applicant was not going to submit him physically to oblige his immoral and nasty demands, all these offices were withdrawn within 10 days in October, 1999. To hide his heinous act, respondent no. 5 withdrew the charges on the pretext of applicant's inability to run these portfolios, which was another ploy to assassinate the applicant's character and career. The applicant has stated that respondent no. 5 had caused administrative harassment to her on the instructions of respondent no. 4. Respondent no. 5, at that point of time, was also her reporting officer. She, therefore, lodged a complaint against immoral acts of respondent no. 5 before the National Commission for Woman at New Delhi. On their direction a Committee was constituted to enquire into the matter. After enquiry, a report was submitted by the Committee specifically holding that respondent no. 5 had harassed the applicant sexually and administratively. Respondent no. 5 had specifically admitted during the enquiry that whatever administrative harassment was caused by him to the applicant, it was on the instructions of his seniors, i.e. respondent nos. 2 and 4.

10. The applicant has further submitted that she has been deprived of her promotion due to illegal and *mala fide* acts of the respondents, who had damaged her ACRs to get her superseded, which has been indirectly admitted. It is a matter of record that despite several directions of this Tribunal, the respondents have



administrative/sex-determined harassment of the applicant. We can only look at the impact of it, if any, on the assessment of the applicant, relevant in the matter of her promotion.

24. The issues before us, therefore, are:

- (i) Whether there was any glaring/visible aberration in the assessment of the applicant in the ACRs of the relevant period, i.e. from 1993-94 to 1998-99; and
- (ii) Whether the DPC proceedings are in order?

25. From a perusal of the ACRs of the applicant, it is seen that she was assessed as 'Good' during all the relevant five years (1993-94 and 1998-99). From the perusal of the ACRs of the applicant for the period preceding the assessment period, we find that between 1990-91 to 1992-93, she had received only 'Fair' grading by Reporting as well as Reviewing Officers, who were different from those who had reported upon and reviewed her ACRs for the relevant period mentioned above. Thus, there was no down- grading of the ACRs, as such, in the case of the applicant during the relevant period. Of course, we do find that certain observations have been recorded by the Reporting Officer in the ACR of the applicant for the year 1994-95, which should perhaps have been communicated to the applicant as 'adverse remarks'. However, even if, for argument's sake, we remove the ACR of the applicant for the year 1994-95 from consideration and replace it



with one for an earlier year pertaining to the period 1992-93, for the reasons aforementioned, it would not advance the case of the applicant.

26. According to the Recruitment Rules, the post of Deputy Director (Physical) in the ASI is a selection post. The DPC, which met on 17.09.2000, understandably assessed the applicant as 'Good' whereas respondent no. 3 was rated as 'Very Good'. From the perusal of the ACRs of respondent no. 3 for the relevant period, we find that the grading given by the DPC to him does not suffer from any infirmity.

27. We also do not find any merit in the prayer of the applicant that the ACRs for the relevant period of the applicant and of respondent no. 3 should be rewritten by a competent person, since we do not think that duly appointed superiors/supervisors of the applicant are *prima facie* technically incompetent.

28. Taking the totality of the facts and circumstances of the case into consideration, we come to the conclusion that there was no glaring/visible aberration in the assessment of the applicant for the relevant period, i.e. from 1993-94 to 1998-99. In particular, there was no down-grading of her ACRs. We also come to the conclusion that the proceedings of the DPC do not suffer from any infirmity. In the circumstances, we do not consider it necessary to interfere with the decision of the respondents.



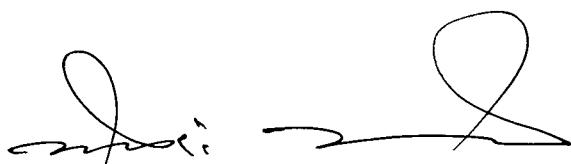
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29. In the result, OA is devoid of merit and is, therefore, accordingly dismissed. There will be no order as to costs.

30. Before parting with the case, we would like to invite attention to various incidents and episodes of irregularities committed at the ASI, to which the applicant had drawn the attention of superior authorities and, in some cases, her suggestions for corrective action were accepted. We get a distinct impression that all is not well with the administration of ASI. This Tribunal, of course, has no jurisdiction to give any findings or directions in this regard. We, therefore, hope that respondent no. 1 shall take stock of the situation for appropriate action.



(V.K. Agnihotri)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

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