

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1704/99

199

T.A.No.

DATE OF DECISION 24.12.99

K.D.Maiti

..... Applicant

Sh.A.K.Behra

..... Advocate for the  
Applicant(s)

VERSUS

UOI through the Secretary  
Department of Statistics and  
Programme Implementation M/O Planning

..... Respondent(s)

Sh.K.R.Sachdeva

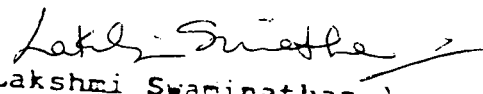
..... Advocate for the  
Respondents.

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The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The Hon'ble Smt. Shanta Shastri, Member(A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

  
(Smt. Lakshmi Swaminathan )  
Member(J)

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Central Administrative Tribunal, Principal Bench

Original Application 1704 of 1999

New Delhi, 24th December, 1999

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)  
Hon'ble Mrs. Shanta Shastry, Member (A)

K.D.Maiti, S/o Shri B.B.Maiti, Aged about 42  
years, R/o B-57, Manavasthali Apartments, 6,  
Vasundhara Enclave, Delhi-110096 - Applicant

(By Advocate - Shri A.K.Behra)

Versus

Union of India through the Secretary,  
Department of Statistics and Programme  
Implementation, Ministry of Planning,  
Sardar Patel Bhawan, Sansad Narg, New  
Delhi-110001 - Respondents

(By Advocate Shri K.R.Sachdeva)

O R D E R (Oral)

By Mrs. Lakshmi Swaminathan, Member (J) -

The applicant, who is working with the respondents as an officer in the Senior Time Scale (STS) in the Indian Statistical Service (hereinafter referred to as 'the Service') is aggrieved by the order dated 10.5.1999 passed by the respondents promoting certain other officers to the Junior Administrative Grade (JAG) of the Service wherein his name does not figure.

2. One of the main contentions raised by the applicant is that though a DPC met on 23.2.1999 for consideration of the eligible officers of the Service, they have not considered his ACR for the year 1997-98 which, according to him, should have been done. Shri A.K. Behra, learned counsel for the applicant has submitted that the applicant's ACR has been ignored but ACRs of his juniors have been considered. He has, therefore, alleged that the respondents have not acted

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fairly in holding the DPC proceedings. He has also contended that they have not given the necessary certificate or given the reasons justifying their not submitting the ACR for 1997-98 before the DPC as required under the Govt. of India, Department of Personnel & Training OM dated 10.4.1989. Learned counsel has prayed that in the circumstances of the case, a direction may be given to the respondents to hold a review DPC in respect of the applicant, after rectifying the mistake so that the review DPC may consider the applicants's ACR for 1997-98 which admittedly has now become available, i.e. after the DPC was held in February, 1999.

3. We have seen the reply filed by the respondents and heard Shri K.R.Sachdeva, learned counsel. In their reply they have submitted that the applicant's ACR for 1997-98 was not available on the date when the DPC was convened. However, according to them the DPC has correctly assessed the officers as per the relevant instructions of the Govt. of India and the applicant should have no grievance whatsoever. Learned counsel has drawn our attention to the Department of Personnel & Training's Order dated 10.3.1989 on the procedures to be observed by DPCs. He relies on the provisions of paragraph 2.2.1(a) read with sub-para (c). He has submitted that under sub-para (c) of this paragraph it has been clearly stated that where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any

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case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per sub para (b). He has<sup>0</sup> contended that five years' CRs of the applicant had been considered in the same way as the number of CRs of his juniors. As his ACR for 1997-98 was not available, the DPC had correctly taken into account the applicant's CRs from the year 1992-93 till 1996-97, i.e. for five years. He has, therefore, submitted that there was no illegality of non-compliance of the relevant instructions/ guidelines in the DPC proceedings.

4. Another ground taken by the learned counsel for the respondents is that the applicant's contention that he had no role whatsoever to play in the maintenance of ACRs in time is a wrong statement because it was up to him to submit his resume for the year in the ACR in time. He has submitted that in the present case the applicant has submitted his resume/self assessment for 1997-98 only on 30th July, 1998 though strictly in accordance with the guidelines he ought to have submitted the same before April, 1998. He has, therefore, contended that the applicant cannot place the entire responsibility for completion of the ACR for the year 1997-98 on the shoulders of the respondents as he himself has submitted the self assessment late by three months from April i.e. on 30.7.1998. He has, therefore, prayed that there is no substance in the OA and the same may be dismissed.

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5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. The respondents have relied heavily on the DOPT's OM dated 10.3.1989, the relevant portion of this OM [para 2.2.1 (c)] reads as follows :

"Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account."

In the present case, admittedly, applicant's ACR for the year 1997-98 was not placed before the DPC which met on 23.2.1999 which was completed by the respondents only on 16.4.1999. However, it is not disputed that the applicant had submitted his self assessment to the respondents on 30.7.1998 although with delay of three months. We find that the respondents have given no reasons for the further delay of seven months for completion of the ACR before the DPC met in February, 1999. The argument of the respondents' counsel that as the applicant was on Central deputation and they had been sending repeated reminders does not appear to be sufficient reason for the delay of seven months caused at their end i.e. by the Union of India. Apart from this, the respondents were well aware that they have fixed the meeting of the DPC on 23.2.1999 and they should have got the ACR of the applicant for the year 1997-98 completed in time.

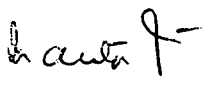
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7. We also find force in the contentions of Shri A.K.Behra, learned counsel, that the respondents have also not fully complied with the instructions contained in DOPT's OM dated 10.3.1989. This OM provides, inter alia, that the ACR folder is to be checked whether the ACRs for the relevant years are available and if the ACR for a particular year is not available, valid and justifiable reasons should have been given. In this regard, Shri K.R.Sachdeva submits that this applies only to DPC proceedings held by the UPSC. However, as mentioned above, we find that after receipt of the applicant's resume/ self appraisal in the end of July, 1998 the respondents themselves have inordinately delayed the completion of ACR for the year 1997-98. It is also to be borne in mind that these instructions have to be followed and applied in a fair and reasonable manner, considering the fact that they affect the career of a Government servant.

8. Paragraph 2.2.1(c) of the aforesaid O.M. no doubt permits the DPC to consider the CR for the preceding year, provided the CR has not been written. In this case it is not the respondents' case that the relevant CR has not been written but that it had not been completed in time, for which, taking into account the facts of the case, the respondents cannot also contend that they are not responsible. In any case, they had nearly seven months to get the ACR for 1997-98 completed before the DPC met on 23.2.1999.

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9. In the above facts and circumstances of the case the application succeeds and is allowed. Respondents are directed to hold a review DPC in respect of the applicant for considering him for promotion to the post of JAG, taking into account his ACR for 1997-98. In case he is found fit, he shall be entitled to all the consequential benefits of the promotion, including the difference in arrears of pay and allowances and seniority from the date his immediate junior was so promoted. Necessary action shall be taken by them within a period of three months from the date of receipt of a copy of this order. Parties to bear their own costs.

  
(Mrs. Shanta Shastri)  
Member (A)

  
(Mrs. Lakshmi Swaminathan)  
Member (J)

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