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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.34/1999

New Delhi this the 15th day of December, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Smt. Usha Kiran Goel,
W/o Sh. R.P. Goel,
R/o Type-IV, Plot No.91,
North West Moti Bagh,
New Delhi.Applicant

(By Advocate Shri M.K. Gupta)

-Versus-

1. Union of India through
its Secretary,
Ministry of Information & Broadcasting,
Shastry Bhawan,
New Delhi-110 001.

2. Union Public Service Commission,
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110 003.Respondents

(By Advocate Sh. R.P. Aggarwal) ORDER

Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant is aggrieved by her non-promotion to the Junior Grade IIS Group 'A', her reversion and for not holding review DPC for considering her for promotion.

2. To state the facts in brief: The applicant initially joined as Reference Assistant in Collective Works of Mahatma Gandhi (CWMG for short). She was thereafter inducted into Central Information Service (CIS) in 1977 and was promoted to the post of Assisant Editor, Group 'B', grade III post. During 1993, there was strained relationship between the applicant and other colleagues qua the Chief Editor of CWMG. The applicant alongwith others made complaint against the said officer and true to her apprehension, the said officer though retired on 30.6.95, has spoiled her CR for the year 1994-95. Her representation made to the higher authority against the

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adverse remarks was, however, rejected on 23.8.95 and thereupon she filed a memorial to the Hon'ble Minister which was accepted and by the memo dated 3.7.97 the adverse remarks have been expunged. On 10.5.95 she along with 46 officials were promoted to officiate in junior grade of IIS Group 'A' on ad hoc basis for a period of three months or till the posts are filled up on regular basis. But she was continued until 10.6.97 when 57 officials in the said grade were regularised, including her juniors but she was reverted by the impugned order dated 17.6.97 to her substantive post of senior grade Group 'B'. Since subsequently by order of the Tribunal the applicant's promotion in the senior grade of IIS was revised by order dated 9.6.97, a review DPC was held in September, 1997 for considering for promotion to junior cadre IIS Group 'A' for the vacancies arose in 1991, 1992, 1993 and 1994 but she was again not recommended for promotion due to "want of sufficient number of vacancies" by order dated 4.11.97.

3. Thus, the present OA is brought aggrieved by the order of reversion as well as aggrieved by her non-promotion, even in pursuance of the review DPC held in September, 1997.

4. The learned counsel for the applicant Sh. M.K. Gupta forcefully contends that the case of the applicant was considered by the DPC held in April-May, 1997, taking into consideration the adverse CR for the year 1994-95 where adverse entries were written against the applicant. Pending her representation made against the said CR, (disposed of only on 3.7.97 expunging all the adverse remarks), the DPC was held in April/May, 1997.

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Hence, the assessment of the applicant was vitiated. Even in the review DPC held in September, 1997 the assessment was made on the basis of the gradation given by the reporting officer taking into consideration the adverse remarks, though they stood expunged. Hence, once again the assessment was not correctly made. It is the case of the respondents that expunction of adverse remarks from the ACR of 1994-95 necessitated holding of review DPC, but in the mean time, as the seniority of the applicant stood revised the DPC for the years from 1990-91, 1991-92 and 1992-93 were also reviewed wherein her ACR of 1994-95, after the adverse remarks were expunged, was considered but she was not recommended for promotion. Further the DPC for the years 1995-96 and 1997-98 held on 26.8.98 did not also recommend her name for promotion.

5. We have given careful consideration to the contentions raised and the records produced. The undisputed facts are that the promotion to junior grade IIS Group 'A' is governed by the Indian Information Service Group 'A' Rules 1987 and the basis for promotion is merit-cum-fitness, i.e., on selection basis. The vacancies arose during 1990-91 to 1994-95 were left unfilled due to the pendency of litigation as to the fixation of seniority of the officers in the senior grade, i.e., in Group 'B' of IIS. After the seniority list has been finalised, the DPC was held in April/May, 1997 for regular appointment with retrospective effect from 1990-91 to 94-95. The DPC considered the case of the applicant for promotion but she was not recommended.

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6. We have perused the ACRs of the applicant and we find that all the adverse remarks made against her in the said ACR stood expunged in view of the above memo dated 03.07.1997 received from the Minister. But the Reporting Officer's grading of 'average' given in view of the adverse remarks remained the same! It is to be noted that the applicant's ACR was written in June 1995 and the gradation of 'average' given by the reporting officer has also been accepted by the reviewing officer in his remarks made on 7.7.95. As a result, we find that the expunction of the remarks did not have any favourable effect upon the CRs of the applicant. In our view, therefore, the applicant was not properly considered for promotion either by the DPC held in April-May, 1997 or Review DPC held in September, 1997. The applicant's memorial against the adverse entries was pending, when the DPC was held in April/May 1997. Hence the DPC had taken into consideration the adverse remarks as well as gradation of 'average' given to the applicant. The remarks had been expunged only on 3.7.97 as seen from the CR of 1994-95 itself. While the memorial of the applicant given to the Minister was under consideration by the Minister the adverse remarks should not have been taken into consideration. Secondly, even in the review DPC held in September, 1997 the minutes do not contain any statement to indicate that the gradation of average which was given on the basis of adverse remarks was not under consideration for the assessment of the applicant. Thus, even during the review DPC as well as in DPC held on 26.08.1998, the applicant's assessment was not properly made. We, therefore, find merit in the grievance of the applicant that no proper assessment was made after the expunction of the remarks from the CR of 1994-95.

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7. In view of the foregoing the OA succeeds. The impugned order dated 17.6.97 and 04.11.1997 are quashed in so far as the applicant is concerned with all consequences. The respondents shall convene a review DPC for selection of the officers for promotion to the junior time scale of IIS (Group 'A') totally taking out of consideration the grading of average given by the reporting officer and agreed to by the reviewing officer in 1995, in accordance with rules for the years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96, 1996-97 and 1997-98 with all consequential benefits.

8. The O.A. is allowed with costs of Rs.5,000/- (Rupees Five Thousand only).

(Govindan S. Tampli)
Member (A)
'San.'

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)