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Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 604/99

New Delhi this the 23rd day of February, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Smt. Ruby Bahl
W/o Shri A.K. Bahl
R/o D-742, C.R. Park,
New Delhi-110019

...Applicant

(By Advocate: Shri R. Doraiswamy)

Versus

1. Union of India
through Secretary to the Govt. of India
Deptt. of Electronics, Electronics Niketan
6, CGO Complex, New Delhi.
2. Shri S.C. Aggarwal,
Deputy Director,
Deptt. of Electronics, Electronics Niketan
6, CGO Complex, New Delhi.
3. Smt. Pushpa Gilani,
Deputy Director,
Deptt. of Electronics, Electronics Niketan
6, CGO Complex, New Delhi.
4. Shri N.K. Kapoor,
Deputy Director,
Deptt. of Electronics, Electronics Niketan
6, CGO Complex, New Delhi.
5. Shri Sat Vir Singh,
Deputy Director,
Deptt. of Electronics, Electronics Niketan
6, CGO Complex, New Delhi.
6. Shri Ram Nath Ram,
Deputy Director,
Deptt. of Electronics, Electronics Niketan
6, CGO Complex, New Delhi.

...Respondents

(By Advocate: Shri K.C.D. Gangwani with
Shri K.K. Patel)

ORDER (Oral)

By Mr. R.K. Ahooja, Member (A)

The applicant has been working as a
Section Officer on regular basis since 27.5.1986.
From 27.8.1991 to 25.8.1995, she worked as a
Deputy Director on deputation basis. She reverted

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back as a Section Officer for the period 1.9.95 to 27.7.97 but from 28.7.1997 she was again promoted as Dy. Director on adhoc basis. She has continued as such till 21.7.99 and she was reverted on the appointment of regular Dy. Director by the impugned order. The grievance of the applicant is that though she was seniormost had a meritorious record and had also officiated for a long period in the higher post, she has been over-looked by the respondents in favour of her juniors.

2. The respondents submit that the case of submit that the case of the applicant has been considered by the duly constituted DPC. As per the Recruitment Rules the post is to be filled through a selection process. A DPC had after assessment of the records and after holding interviews found the private respondents to be more meritorious and, therefore, as the case of the applicant has been duly considered she can have no ground for any grievance.

3. We have heard the counsel. Learned counsel for applicant draws our attention to the decision of the Full Bench of this Tribunal in OA No. 306/90 S.S. Sambhus Vs. Union of India and ors. decided on 29.10.1991 (copy of which has been placed at Annexure A-11) also re-produced in "Full Bench judgments" Bahri Brothers" Vol-II page-178. In that case the selection was to be

made to the post of Assistant Surveyors, Works. The controversy related to the assessment of the merits of persons who had been working in the feeder cadre and those who had been promoted for long periods in the higher post on an adhoc basis. The Tribunal observed that comparing the quality of performance of a candidate at a lower level with the quality of performance at the higher level on equal footing will be comparing the incomparables and will be not only illegal, irrational but also violative of Article 14 of the Constitution. The Full Bench held that the only appropriate solution to such an anomaly would be to give one higher grade to the assessment of those who had officiated in the higher post on an adhoc basis for the relevant period. Learned counsel points out that this decision of the Full Bench has received endorsement from the Supreme Court in Shiv Kumar Sharma and Another Vs. Union of India & Ors. SC SLJ 1998 (1) P.156. In that case Supreme Court had reiterated its earlier decision in Prem Shankar Gupta Vs. Union of India in which it was stated as follows:-

"We are satisfied that the formula evolved by the full Bench of the Central Administrative Tribunal is the proper and just one having regard to the facts and circumstances of the case and the practicalities of the situation."

4. Learned counsel argues that in terms of the law laid down by the Full Bench in the

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aforesaid case which has also been confirmed by the Hon'ble Supreme Court, it was incumbent upon the DPC to raise the grading of the applicant in her ACRs for the period she had served as Dy. Director on deputation on adhoc basis. He submitted that the DPC fell into error by not following this procedure and thus persons who had only received higher gradings while working in the lower post as Section Officer, received preference over the applicant.

5. Shri Gangwani learned counsel for respondents sought to distinguish the aforesaid judgment from the fact and circumstances of the present case. He pointed out that as per the Govt. of India instructions dated 10.3.89, no weightage is to be given for officiating in the higher posts while assessing the record of an officer at the time of promotion. He also submitted that in the case of S.S. Sambhus (Supra), the issue raised was between those who had been working in class-III and class-I. In the present case the difference is between Class-II and Class-I only.

6. Learned counsel also pointed out that even in this case the Tribunal had directed that the DOPT should consider review and modify the instructions contained in OM but this has not so far been done and; therefore, the aforesaid instructions having not been quashed and set aside, they would still be in force.

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7. We have carefully considered the aforesaid arguments and submissions made by the counsel on both sides. Even though the DOPT has not modified instructions in terms of the directions given by the Full Bench, they would be deemed to have been modified in terms of the ratio laid down in the order of the Tribunal which has also received confirmation from the Supreme Court in Prem Kumar Gupta's case. Therefore, the DPC in such situations would be required to raise the grading of an officer for the period of appraisal in the higher post while comparing the case of that officer with those who had not officiated similarly.

8. In order to ascertain whether the DPC had followed this procedure, we had also sought the records from the respondents. We perused the records which have been placed before us. We find that the DPC has not raised the gradings of the applicant for the period she had worked as a Dy. Director on adhoc basis. We also find that for the aforesaid period she has been graded as "Very Good" and this grading has been accepted as such without being raised further. We are, therefore, of the view that the case of the applicant has not been correctly considered by the DPC in terms of the law laid down by the Full Bench of the Tribunal in S.S. Sambhus (Supra).

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9. Accordingly we direct that the case of the applicant should be re-considered by holding a review DPC within a period of three months. The DPC will consider the ACRs of the applicant for the period she worked as Dy. Director in terms of the decision of this Full Bench in S.S. Sambhus's case. If thereafter the DPC recommends the applicant for promotion as Dy. Director on regular basis she will be entitled to all consequential benefits i.e. she would be given promotion from the same date as her next junior. No order as to costs.

R. K. Ahooja
(R.K. Ahooja)
Member (A)

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

cc.