

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 461/95

New Delhi this the 1st day of October 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

Amit Shankar
S/o Late Shri Vidya Shankar
R/o H-86, Moti Bagh II
New Delhi.

...Applicant

(By Advocate: Shri S.K. Bisaria)

Versus

1. Union of India
through, Secretary,
Ministry of Defence
South Block,
New Delhi.
2. Joint Secretary (Training & CAO)
P-2, C-II Hutmants
DHQ, Post office,
Dalhousi Road,
New Delhi.
3. D.P.S. Rajput
C/o Jt. Secretary (Training & CAO)
P-2, C-II Hutmants
DHQ Post Office, Dalhousi Road
New Delhi.
4. Shri Anand Kumar
C/o Jt. Secretary (Training & CAO)
P-2, C-II Hutmants
DHQ Post office, Dalhousi Road,
New Delhi.

...Respondents

(Shri Trilochan Rout, Sr.
Administrative, Departmental
representative)

ORDER (Oral)

By Reddy, J.-

The applicant has been working in the post of Junior Translator in Armed Forces Hqrs since 14.9.89 in the grade of Rs. 1400-2600. Vacancies arose in the cadre of Sr. Translator in the grade of Rs. 1640-2900 which is the next post in the hierarchy for which the applicant is

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entitled to be promoted. According to the recruitment rules the post of Sr. Translator is to be filled up by 70% promotion quota from amongst the junior translators. The post of Sr. Translator is a non-selection post based on seniority-cum-fitness. The eligibility for promotion is 5 years of experience in the cadre of Junior Translator. In the seniority list of junior translators as on 1.4.94 the applicant was shown at Sr. No. 4. Respondent No. 3 & 4 were shown at Sr. Nos 7 & 3. Thus the Respondent No. 3 is junior to the applicant. In the DPC held on 20.12.94 for the purpose of promotion to the post of Sr. Translators the applicant and respondent No. 3 & 4 alongwith others have been considered for promotion. He was not promoted whereas respondent No. 3 & 4 have been promoted alongwith others. It is the case of the applicant that the adverse remarks which have been communicated to him have been expunged and that all the ACRs are free from any adverse remarks. He is, therefore, entitled for promotion. It is also the grievance of the applicant that Respondent No. 4 was in-eligible to be considered for promotion as he did not possess 5 years experience as Junior Translator. Questioning the action of the respondents in not promoting the applicant the present OA is filed. Respondents 1 & 2 filed the counter affidavit. It was averred that the DPC after careful scrutiny of the service records, recommended 5 persons to the posts of Sr. Translator and out

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^{the remaining two,}
of them the applicant was assessed as 'not yet fit'. It is also averred that the absence of adverse remarks does not guarantee promotion made on non-selection basis.

2. It is, therefore, argued by the departmental representative who is appearing on behalf of R-1 & 2, that the applicant was given the gradation of 'Average' during the relevant periods. Hence he was rightly found unfit for promotion. It is also contended by him, ^{that} during the years 1991-92 in the ACRs adverse remarks have been shown against the applicant which were communicated to the applicant and on the basis of overall assessment of the applicant's ACRs the DPC has rightly not recommended his name for promotion.

3. None appears for respondents 3 and 4 nor any counters filed by them.

4. Two points arise for our consideration in this OA. One is whether the applicant was rightly found unfit for promotion to the post of Senior Translator and the second is whether respondents No. 3 and 4 were eligible to be considered for promotion and their promotion was not illegal. The respondents relies upon the guidelines framed by Department of Personnel & Training dated 10.4.89. Paras 6.1.2 to 7 deal with the guidelines for DPCs while considering the eligible persons for promotion. It is not in dispute that the

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promotion to the post of Senior Translator is by way of non-selection method. Para-7 makes it clear that for promotion on 'non-selection' basis the DPC need not make a comparative assessment of the records. It should categorise the officers as 'fit' or 'not yet fit' on the basis of assessment of their record of service. While considering an officer 'fit', guideline in para-6.1.4 should be borne in mind. It says that "Average" performance of an officer should not be taken as adverse remark but it is stated that the average performance can not be regarded as complimentary to the officer. It is the case of the respondents that the DPC which met on 20.12.94 has considered the ACRs of the applicant and found, on the basis of his performance and the gradation, as 'not yet fit'. Hence he was not recommended for promotion. It is also urged by the respondents that for the year 1991 there were adverse remarks against the applicant and the same having been considered, he was not recommended for promotion. However, it is strenuously contended by the learned counsel for applicant that the adverse remarks made for the year 1991-92 had been expunged in 1993. In order to satisfy ourselves we have perused the DPC records including the ACRs of the applicant for the year 1991-92. It is true that in the ACR of the year 1991-92 adverse remarks regarding late coming to the office was shown but at the bottom of the said remarks a remark was made in 1993 stating that he was now regular. We are, therefore, of the view that the sting of the

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remarks must have been removed. The gradations given to the applicant have been ~~taking~~ ^{on} into consideration by DPC. For the years from 1989-90 and 1992-93 the gradation of "Good" has been shown and for the years 1990-91, 1991-92, and 1993-94 the gradation of "Average" was shown against the performance of the applicant. Noticing the above gradation the DPC has found him 'not yet fit' as seen supra. In the guidelines given by the D.O.P&T it is clear from para 6.1.4 that the "Average" gradation could not be taken as adverse remark in respect of an officer. It is a different matter if the 'Average' performance cannot be regarded as complimentary to the officer. In para-7 of the guidelines it is also made clear that "While considering an officer 'fit', guidelines in para 6.1.4. should be borne in mind. Hence the applicant who was not having adverse remarks except that he was having the gradation for three years 'Average' and for two years 'Good', the applicant cannot be found as 'unfit' for promotion. Hence by combined reading of para 6.1.4 & 7 of the guidelines which are mandatory for the DPC to be kept in mind while considering the promotion by way of Non-Selection Method, the applicant should have been found fit. The categorisation of the applicant as 'not yet fit' is wholly contrary to the guidelines and hence illegal. He is, therefore, entitled for promotion.

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5. Since we have taken the view that the applicant is entitled to be recommended for promotion the second contention was not pressed by the learned counsel for the applicant.

6. In the circumstances, we direct the respondents to consider the case of the applicant for promotion to the post of Senior Translator w.e.f. 20.12.94 with all consequential benefits. This exercise shall be completed within a period of four months. The O.A. is accordingly allowed. No costs.

Shanta Shastray
(Mrs. Shanta Shastray)
Member (A)

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

cc.