

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1570/1996

(2)

New Delhi, this the 16th February, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER (A)

Mrs. Tahera Ajmal W/O Ali Imam,
R/O B-85 Pandara Road,
New Delhi.

... Applicant

(By Shri M. P. Raju, Advocate)

vs.

1. Union of India through
Secretary, Ministry of Law,
4th Floor, Shastri Bhawan,
New Delhi.
2. U.P.S.C. through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.
3. Joint Secretary,
Vidhi Sahitya Prakashan,
Legislation Department,
Ministry of Law,
Indian Law Institute Building,
Bhagwan Das Road,
New Delhi.
4. Dy. Secretary,
Vidhi Sahitya Prakashan,
Legislation Department,
Ministry of Law,
Indian Law Institute Building,
Bhagwan Das Road, New Delhi.
5. Shri A. K. Gupta,
Sub-Editor,
Vidhi Sahitya Prakashan,
Legislature Deptt.,
Ministry of Law,
Indian Law Institute Building,
Bhagwan Das Road,
New Delhi.

... Respondents

(By Shri N. S. Mehta, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

It is undisputed that the post of Assistant Editor is a selection post. By the present O.A. applicant seeks to

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impugn the promotion granted to respondent No.5 from the post of Sub Editor to the post of Assistant Editor in 1996. It is pointed out by applicant that she was appointed as Sub Editor in 1977 whereas respondent No.5 was so appointed much later in 1983. According to her, the vacancy to the post of Assistant Editor fell vacant during 1993-94. However, the same was not filled up at that time but was filled up only in 1996. This appointment, according to applicant, was delayed mala fide so as to put in adverse remarks in her ACRs and excellent remarks in the ACRs of respondent No.5 in order to oblige him in preference to applicant.

2. In our judgment, aforesaid averments have been made without any basis. No material has been pointed out to substantiate the allegation. It is undisputed that both applicant as also respondent No.5 possess the requisite qualifications of having put in eight years' service as a Sub Editor both in 1993-94 when the vacancy arose as also in 1996 when the vacancy was filled up. Merely because a vacancy arose in 1993-94 does not mandate the same to be filled up at that stage itself. Even if a vacancy arises, no employer can be directed to fill up the same. It is the discretion of the employer whether to fill up the same and when to fill up the same. As far as the promotion which has been granted, the moment it is conceded that the same is a selection post, no exception can be had at the instance of applicant based on her seniority in the cadre of Sub Editors. The departmental promotion committee has considered both the candidates on their respective merits and found respondent No.5 to be eligible for promotion in preference to applicant. Similarly, the decision of the departmental promotion

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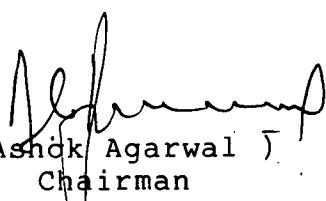
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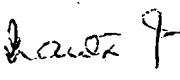
committee cannot be successfully assailed merely on the ground that the same consisted of three members as against the requisite number of four members. In the case of **Ishwar Chandra v. Satyanarain Sinha & Ors.**, AIR 1972 SC 1812, it has been observed, thus :

"5.....If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute a valid meeting and matters considered thereat cannot be held to be invalid."

Hence, if one member was short at the time of consideration, the same would not render the decision liable to be assailed. As far as the rules in question are concerned, the same provide for the constitution of the departmental promotion committee. The same do not provide for a quorum and hence in terms of the aforesaid decision of the Supreme Court, the decision cannot be successfully assailed.

3. Present O.A., in the circumstances, we find, is devoid of merit. The same is accordingly dismissed. There shall, however, be no order as to costs.


(Ashok Agarwal)
Chairman


(Shanta Shastry)

Member (A)

/as/