

Central Administrative Tribunal, Principal Bench

OA No.2015/96

New Delhi this the 1st day of May, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Dr. (Mrs.) Bina Bansal,
W/o Dr. P.K. Bansal,
R/o H.No.835, Sector-37,
Faridabad (Haryana).

...Applicant

(By Advocate Shri G.D. Gupta)

-Versus-

1. Union of India through the
Secretary to the Govt. of India,
Ministry of Labour &
Chairman, Standing Committee,
(Employees State Insurance Corporation),
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
 2. Director General,
Employees State Insurance
Corporation, ESIC Building,
Punchdeep Bhawan, Kotla Road,
New Delhi.
 3. The Medical Commissioner,
Employees State Insurance Corporation,
Punchdeep Bhawan, Kotla Road,
NEW Delhi.
 4. Sh. S.N. Tiwari, Director (Vigilance),
North Zone, Employees State Insurance
Corporation, Headquarter Kotla Road,
New Delhi.
 5. Director (Medical), Delhi
Employees State Insurance Corporation,
Basai Darapur, New Delhi.
- ...Respondents

(By Advocate Shri G.R. Nayyar)

O R D E R

By Reddy, J.-

The applicant while working as Chief Medical Officer in the Employees State Insurance Hospital, Okhla Phase-I was alleged to have committed certain irregularities. She was proceeded with in a departmental enquiry and by order dated 9.12.94 she was imposed the penalty of stoppage of three increments without cumulative



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effect. The said order was confirmed by the appellate authority by order dated 9.12.96. The present OA is filed challenging, on various grounds, the chargesheet and the above punishment order. In the OA the applicant also sought a direction to consider her for promotion to non-functional selection grade as if the punishment order was not there, with all consequential benefits. 16

2. The respondents filed the counter-affidavit and contested the OA.

3. The learned counsel for the applicant Shri G.D. Gupta, however, did not press before us the main relief of quashing the order of punishment. Hence, the OA is liable to be dismissed.

4. The learned counsel for the applicant, however, submits that the order of promotion of the applicant is not in accordance with law. The DPC^{which} met in February 1998 for considering the applicant for promotion with retrospective effect has not considered the case of the applicant properly. It was argued that the reporting officer had not given reasons^{of} down-grading in the yearly reports, if they are below the bench mark required for the purpose of promotion and also communicated the reasons to the applicant so as to enable her to be more careful in the discharge of her duties. It was argued that the applicant should have been promoted with effect from 1.1.98 as she was considered for promotion with effect from 1.1.98.

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5. The learned counsel for the respondents submits that in the absence of any adverse entries in the confidential reports the question of communication of the same did not arise. As regards the second submission it was stated that since the DPC met on 1.7.98 for consideration of the applicant for promotion, as only by that date she was completing her penalty, the promotion to the applicant was given from the said date. 17

6. We have considered the submissions made by the learned counsel and perused the records produced by the learned counsel for the respondents.

7. In fact, the promotion of the respondent was given subsequent to the OA and ^{since} the order of promotion was not questioned, no arguments should have been entertained. All the same, we have allowed to raise, the arguments.

8. The penalty that was imposed on the applicant by order dated 9.12.94 was stoppage of three increments without cumulative effect. ~~Since~~ the three increments were withheld, i.e., for the year 1.7.95, 1.7.96, and 1.7.97, the DPC met in February, 1998 to consider the applicant for promotion to the non-functional selection grade w.e.f. 1.1.95 and onwards. The DPC after perusing the ACRs and the other service records found that the applicant was suitable for promotion and was promoted w.e.f. 1.7.98. The learned counsel for the respondents has produced all the relevant ACRs and the minutes of the DPC. We have perused the same. The applicant was considered for promotion for the year 1995 but she was found unfit. The same was the case for the years 1996 and 1997. She was considered again for promotion

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in 1998. Though she was found fit but she was not promoted w.e.f. 1.1.98 as she was undergoing penalty, we find that she did not satisfy the required bench mark for the ^{earlier} relevant years. On the basis of this the learned counsel for the applicant seeks to contend that the gradation below the bench mark amounts to adverse remark and the applicant is entitled for communication of the reasons. We do not agree. This is not an instance where the applicant has obtained the optimum gradation and suddenly for the next year her gradation has come down to the lowest level only in such a case, we may agree, ~~for~~ the reasons to be recorded and communicated. It is well to remember that the reporting officer will not be in ~~his~~ possession ^{of} all the yearly reports of the concerned officer before him so that he should compare the gradation with the earlier reports. The question of giving reasons for every down-grading of gradation, appears to us, wholly unrealistic. The learned counsel for the applicant, however, places strong reliance upon U.P. Jal Nigam & Others v. Prabhat Chandra Jain & Others, JT 1996 (1) SC 641. We have perused the judgement carefully. The observations made in this case, in our view, are confined to the employees of U.P. Jal Nigam, the petitioners in that case. Even in this case it is clearly observed that if the gradation is going down from 'very good' to 'good' that may not ordinarily ^{be} an adverse entry, since both are positive gradings. It is further observed:

"The High Court to justify its view has given an illustration that if an employee legitimately had earned an 'outstanding' report, in a particular year which, in a succeeding one, and without his knowledge, is reduced to the level of 'satisfactory' without any communication to him, it would certainly be adverse and ~~a~~ffect him at one or the other stage of his career."



The above observations are made justifying the illustration given by the High Court, which is as under:

"All what is required by the Authority recording confidential in the situation is to record reasons for such down grading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of ~~be~~ writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such."

9. Thus, it appears that if there is step down-grading from 'outstanding' to 'satisfactory' then only it may be necessary to record reasons and communicate the same to the employees even though such gradations have no sting of adverseness. In the present case the down-gradation is only a step below from 'very good' to 'good', 'good' to 'satisfactory' etc. In the circumstances the contention of the learned counsel is wholly devoid of merit and we are of the view, that there was proper consideration of ACRs by DPC.

10. From the perusal of the DPC proceedings it is clear that the applicant was considered fit for promotion as on 1.1.98. She was, however, given promotion only w.e.f 1.7.98 after she completed the punishment. ~~The Applicant completed the penalty on 1.7.97, therefore~~ she is entitled to be promoted with retrospective effect from 1.1.98 as she was found fit for promotion from that date.



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11. In view of the aforesaid discussion we direct
the respondents to grant promotion to the applicant w.e.f.
1.1.98 instead of 1.7.98. The OA is dismissed, subject to
the above observations. No costs.

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(SMT. SHANTA SHASTRY)
MEMBER (ADMNV)

'San.'

V. Rajagopala Reddy

(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)