

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A./T.A. No. 427/96 /19 Decided on: 11.4.96

Mrs. Krishna Day, ..... APPLICANT(S)  
(By Shri K.C. Mittal Advocate)

VERSUS

U.O.I. & Ors. .... RESPONDENTS  
(By Shri M.M. Sudan Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI/SMTX~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

*S.R. Adige*  
(S.R. ADIGE)  
Member (A)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

O.A. No.427 of 1996

New Delhi, dated the 11<sup>th</sup> April, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Mrs. Krishna Day,  
W/o Dr. N.Day,  
Asstt. Director,  
National Archives of India,  
Janpath,  
New Delhi-110001. .... APPLICANT

(By Advocate: Shri K.C. Mittal)

VERSUS

1. Union of India through  
the Secretary,  
Ministry of Human Resources Dev.,  
Dept. of Culture,  
Shastri Bhawan,  
New Delhi.
2. The Director General,  
National Archives of India,  
Janpath,  
New Delhi.
3. U.P.S.C.,  
Dholpur House,  
New Delhi. .... RESPONDENTS

(By Advocate: Shri M.M.Sudan)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Mrs. Krishna Day,  
Asst. Director (ad hoc), National Archives of  
India, New Delhi has prayed that the DPC held  
by the respondents on 4.1.96 for the post of  
Asst. Director (Records & Publication) be  
declared illegal and contrary to rules and be

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quashed and the respondents further be directed to consider the case of the applicant afresh in the light of the law laid down by the Hon'ble Supreme Court.

2. The applicant was appointed as Asst. Archivist in 1972 and was promoted as Archivist in 1977. She was promoted as Asst. Director Archives (Records & Publication) on ad hoc basis w.e.f. 6.4.94 and is continuing as such. In the seniority list of Archivists her position is No.3, all excepting two above her having retired or being promoted.

3. According to her, six vacancies arose on different dates in 1991, 1992 and 1993 and as per the Recruitment Rules for the post of Asst. Director Archives prior to the amendment of these Rules on 27.4.93, 50% of the posts were to be filled up by direct recruitment and 50% by promotion. By the amendment of 27.4.93, 100% of these posts were made promotion posts.

4. The applicant has alleged in this O.A. that the DPC which met on 4.1.96 to consider the case for promotion was not properly constituted ~~that~~<sup>as</sup> the vacancies were illegally clubbed together, and that despite having a uniformly good record of service with no adverse remarks communicated to her, she apprehends that the DPC has <sup>th</sup>passed her over for promotion to the post of Asst. Director Archives.

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5. The respondents have contested the O.A., contending that the D.P.C. has acted strictly in accordance with law and no judicial interference is warranted in this matter.

6. We have heard Shri K.C. Mittal for the applicant and Shri M.M. Sudan for the respondents. We have also perused the materials on record and given the matter our careful consideration.

7. At the outset we note that this O.A. is premature. It is <sup>1</sup>directed against the recommendations of the DPC. No <sup>1</sup>order pursuant to the DPC's recommendations have been impugned or even appended, and the O.A. has been filed merely on the basis of apprehended reversion, unsupported by any material or documents. The DPC is itself a recommendatory body, and its recommendations have to be considered and a decision taken thereon by the competent authority, before any cause of action would possibly arise. Hence at this stage any grievance of the applicant <sup>1</sup>is arising out of the DPC proceedings would also be hypothetical.

8. However, in the interest of justice we have also heard the counsel on both sides on the merits of the case. The first ground taken by applicant's counsel Shri Mittal is that one vacancy arose on 31.10.91; one on 31.8.92, two on 11.3.93; and one on 31.3.93 i.e. five vacancies arose prior to amendment of the Recruitment Rules

on 27.4.93 raising the promotion quota from 50% to 100%, and only one vacancy arose after 27.4.93 i.e. on 3.5.93. It is contended that 5 of the 6 vacancies should therefore have been filled according to the pre-amended Recruitment Rules by which only 50% were available for promotion, and consideration by the DPC of all six vacancies for promotion was therefore illegal and warrants judicial interference. No rule or instruction has been cited in support. The judgment in Y.V.Rangaiah's case 1983(1) SLR 789 has been invoked in ~~support~~<sup>support</sup>, but in that case the petitioners' complaint was that by delaying the preparation of the list of approved candidates till after the rules were amended, their chance for consideration for appointment to the higher post was adversely affected. It was in that context that the Hon'ble Supreme Court held that vacancies which occurred prior to the amended rules, were to be governed by the old rules. In the present case the respondents have stated that for the vacancies which arose in 1991 and 1992 action could not be taken to fill up the posts as the Recruitment Rules were under review, to give maximum benefit to the departmental officer<sup>s</sup> and it was ~~off~~<sup>of</sup> the amendments in 1993 that a consolidated proposal for filling up the vacancies was sent to UPSC. Manifestly that case is not ~~applicable~~<sup>applicable</sup> in the facts and circumstances of the present case. Hence this ground fails.

9. <sup>1</sup>Next it has been contended that no yearwise panels were prepared by the DPC and all the vacancies were clubbed. A bare perusal of the DPC minutes dated 4.1.96 which was presided over by a member of the UPSC, and which is taken on record, makes it clear that yearwise panels were prepared and the vacancies were not clubbed together. This ground therefore also fails.

10. <sup>1</sup>Next it has been urged that the Joint Secretary, Dept. of Culture who was one of the members of the DPC, whose composition has been statutorily determined in the Recruitment Rules itself, did not participate and hence the entire proceedings of the DPC are vitiated. In this connection our attention has been invited by respondents' counsel to the UPSC's letter dated 19.12.95 intimating that the DPC meeting would be held on 4.1.96. In reply to that, the <sup>1</sup>Dept. informed the UPSC that the Jt. Secretary would not be able to attend the DPC meeting as he would be away on tour. Such a contingency has been envisaged in paragraph 15 of DPAR's O.M. dated 10.4.59 which contains consolidated instructions on the functions and composition of DPC's, their frequency, the preparatory action to be taken, the procedure to be followed, etc. This paragraph lays down that the DPC proceedings are legally valid, not withstanding the absence of any of its members other than the Chairman provided that <sup>1</sup>was inval~~id~~<sup>id</sup>, but he

absented himself for one reason or the other, and no deliberate attempt was made to exclude him. In the present case the Jt. Secretary was invited by UPSC's letter dated 19.12.95 and there was no deliberate attempt to exclude him. Shri Mittal has asserted that these instructions violate The statutory rules constituting the DPC and cannot be allowed to do so. We note that DPACR's O.M. dated 10.4.89 has not been impugned and we are unable to accept this argument. Paragraph 15 of that O.M. merely takes into account the practical situation that may arise when one or the other member of the DPC may not be available. That paragraph <sup>lays down</sup> ~~provides~~ that provided the quorum is otherwise complete, the DPC proceedings will not be declared invalid merely because one or the other member is absent, provided no deliberate attempt was made to exclude him. This O.M. merely supplements the statutory rules and the absence of the Jt. Secretary from the DPC deliberation on 4.1.96 can by no means be said to vitiate those deliberations. This ground also therefore fails.

11. ~~The~~ Next it has been urged that instead of the Dy. Secretary who was one of the DPC members, a Director in the Ministry participated in the DPC deliberations on 4.1.96. The DPC minutes on record indicate clearly that it was the Dy. Secretary and not the Director who participated. This ground also fails.

12. Next it has been urged that at per Recruitment Rules for promotion to the grade of Asst. Director, Archivists with 8 years service in the grade are alone eligible and as per DPAR's O.M. dated 10.4.89 while normally five years past service should be assessed, in cases requiring qualifying service of more than five years, the DPC should see the records for the years equal to the required qualifying service, which was not done in the present case. It is not<sup>^</sup> doubt true that in the Respondents' reply (para 1), they have stated that the records of those coming within the zone of consideration were considered for the preceding five years, but respondents' counsel Shri Sudan has asserted<sup>^</sup> at the bar that this averment was made inadvertently, without ascertaining the actual position. In this connection he has filed letter dated 21.3.96 from the UPSC to the Secretary, HRD Ministry which is taken on record, making it clear that for each of the years<sup>^</sup> in question for which panels were prepared, namely 1991-92; 1992-93 and 1993-94 the CRs for the preceding 8 years of the candidates were considered by the DPC. Prima facie we have no reason to disbelieve the contents of this letter. Hence this ground also fails.

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13. Lastly it has been urged that the applicant had a good record of service throughout, and was never communicated any adverse entry, and hence could not have been recommended for supercession by the DPC. It is not denied that the post of Asst. Director is a Group A post to be filled by selection. In promotion to a selection post, the fact that no adverse remarks have been communicated is not crucial. In this connection DPAR's O.M. dated 10.3.89 on the subject of procedure to be observed by DCP's provides (para 2.3.1) that

"Wherever promotions are made for induction to Group 'A' posts or services from lower groups, the bench mark would continue to be 'good'. However, officers graded as 'outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post".

In the present case, we note from a perusal of the D.P.C. minutes dated 4.1.1996 that the D.P.C. has carefully graded the candidates coming within the zone of consideration for each recruitment year. It is well settled that the Tribunal cannot substitute its own grading for that of the D.P.C and under the circumstances, if upon a consideration of the preceding eight years service record of each candidates who came within the zone of consideration for a particular recruitment year, the D.P.C. graded a candidate higher than

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the applicant for that year, the applicant cannot legitimately complain. In that background, the Hon'ble Supreme Court's ruling in U.P. Jal Nigam Vs. P.C.Jain JT 1996 (1) 641 does not advance the applicant's case at all, as it is not relevant in the facts and circumstances of the present case.

14. In the result this O.A. besides being premature, lacks merit. It is dismissed. No costs.

*A. Vedavalli*

(DR. A. VEDAVALLI)  
Member (J)

*S.R. Adige*

(S.R. ADIGE)  
Member (A)

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