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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.762/1996

New Delhi, this 5<sup>th</sup> day of July, 2000

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

V.K.Wadhwa  
C-1, A-43C, Janakpuri, Delhi .. Applicant

(Shri R.K. Shukla, proxy for Smt. B.Sunita Rao,  
Advocate)

versus

Union of India, through

1. Secretary  
M/Urban Affairs & Employment  
Nirman Bhavan, New Delhi
2. Director of Printing  
Nirman Bhavan, New Delhi
3. Dy. Director (Admn.)  
Dte. of Printing, New Delhi
4. Controller of Publications  
M/Urban Affairs & Employment  
Civil Lines, Delhi-54
5. Ms. Bandna Kar De  
Govt. of India Press  
Santragachi, Calcutta .. Resondents

(By Shri K.C.D.Gangwani, Advocate with Shri  
Rajeev Bansal, Advocate)

ORDER

Smt. Shanta Shastry

Counsel for the applicant was absent. However proxy counsel appeared and requested adjournment of the matter as the counsel was out of station. Since the matter was heard earlier and was stated as part-heard, we have proceeded to dispose of the matter on the basis of the available pleadings. When we were about to dictate the judgement, proxy counsel for the applicant submitted that he would file written submissions. The judgement was therefore reserved for orders. Learned counsel has now filed the written submissions.

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2. The applicant is seeking to quash the order dated 23.2.96 passed by the Deputy Director(Admn.) promoting applicant's juniors and ignoring the applicant for promotion to the post of Assistant Manager (Admn.) {AM(A), for short} in the Government of India Press.
3. The applicant was initially appointed as LDC in the Ministry of Urban Development w.e.f. 24.12.65. He was promoted as Accountant w.e.f. 11.12.81 and <sup>was</sup> posted in the Directorate of Printing. The applicant was due to cross Efficiency Bar (EB, for short) w.e.f. 1.12.89. However, he was allowed to cross EB w.e.f. 1.12.89 by an order dated 30.6.94.
4. The next promotion from the post of Accountant is to the post of Superintendent/Assistant Manager and Assistant Controller. The post of AM is filled up from amongst Accountants with 5 years service, Head Clerk with 8 years service and Superintendent with two years service. On 22.22.96 orders promoting Smt. Bandna Kar De, Accountant (R-5) and Ms.S.G. Kalrani, Head Clerk to the post of AM were issued. Applicant was not promoted.
5. It is the case of the applicant that he was the senior-most Accountant having longest length of service as Accountant and yet his juniors had ben promoted to his exclusion. His junior R-5 had been appointed as Accountant in July, 1988 only and she was posted in the same Directorate where the applicant was posted. According to the applicant, respondents have further filled up most of the posts of Superintendent in the
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Directorate of Publication as well as in the Government of India Press on ad hoc basis by giving promotion to the junior persons again ignoring the claim of the applicant though he is <sup>the</sup> senior most Accountant. Applicant believes that his ACRs except for the periods 1988-89 and 1991-92 are 'very good'. He contends that he was informed about adverse entries in the ACR of 1988-89 in September, 1991. Similarly adverse entries in the ACR of 1991-92 were communicated only in October, 1993. Hence these adverse entries should have been ignored while considering him for promotion to the post of AM(A) as adverse entries communicated after a long delay cannot be taken into account. Applicant made a representation against his non-promotion but without success. He has therefore prayed that the impugned promotion order dated 23.2.96 should be quashed and he should be considered for promotion to the post of AM(A) with all consequential benefits.

6. Learned counsel for the respondents submits that the applicant was duly considered for promotion by the DPC held on 9.2.76 for the post of AM(A). The bench mark for promotion is 'good'. Accordingly, DPC recommended promotion of Mrs. Bandna Kar De and Ms. Kalrani but did not recommend the applicant as he did not have the bench mark of 'good'. His performance being below bench mark there is no case. Further, respondents have clarified that in regard to filling up the post of Superintendent, name of the applicant was placed before the DPC on 28.9.94. He was at Sl.No.13 in category 'B' which included Accountants and Storekeepers. Candidates from Sl.No.1 to 8 appeared in the selection list as

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candidates from No.9 to 13 did not find any place in the selection list. As such the applicant was not selected by the DPC for promotion to the post of Superintendent. Action taken by the respondents has been strictly according to the relevant Rules. Respondents also stated that the applicant has approached the Tribunal without waiting for a formal reply to the representation submitted by him to the Secretary, Urban Development. Therefore his contention that he has exhausted all the remedies is practically incorrect.

7. We have heard the learned counsel for the respondents. Earlier when the case was heard the respondents had been directed to produce the relevant records. Accordingly the learned counsel made available the relevant records. It is seen that the applicant was not considered fit for promotion on the basis of assessment of his performance by the DPC. Applicant has a right to be considered for promotion but he has no right to be promoted if the requisite conditions are not fulfilled.

8. We have gone through the relevant records and the ACRs. Applicant is graded below the grading of 'good' required for promotion to the post of AM(A). We are satisfied that the DPC rightly did not recommend promotion of the applicant.

9. In the written submissions the learned counsel has harped on the fact that the DPC considered the adverse entries which were communicated to the applicant after a

long lapse of time and the representations against the adverse entries were pending. He has cited the judgements of the Hon'ble Supreme Court in the matters of State of UP Vs. Yamuna Shankar Mishra, 1997(4) SSC 7 and Swatantar Singh V. State of Haryana, in support of the argument that adverse remarks communicated after a long gap goes against the principles of natural justice and the employee has a right to be aware of any adverse remarks passed in his ACR immediately without any delay. The learned counsel is also relying on the judgement in the case of U.P. Jal Nigam Vs. P.C. Jain 1996 (33) ATC 217 wherein it has been held that extreme variation in gradation such as 'outstanding' followed by 'satisfactory' in the succeeding year would also reflect an adverse element which is compulsorily communicable to the concerned officer. The reasons for such a change needs to be recorded in the personal file and the employee must be informed of the same in the form of advice. This ground had not been taken in the OA. Respondents have communicated adverse entries to the applicant after a long lapse of time, i.e. 3 years in the case of ACR of 1988-89 and one and half years in the case of ACR of 1991-92. Though 'average' grading by itself is not adverse it being below bench mark of 'good' ought to have been communicated to the applicant well in time.

10. We have considered the written submissions. It is a fact that adverse entries were communicated to the applicant much later than the normal period during which adverse remarks need to be communicated. We note that

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the DPC was held on 9.2.96 to draw a panel for the post of AM(A)/Asstt. Controller (Publication). The DPC considered the ACRs for the period 1990-91 to 1994-95. He was graded below the bench mark of 'good'. Among these ACRs, adverse entries were there in the ACR of 1991-92 (upto 15.1.92). These were communicated on 18.10.93 to the applicant i.e. after one and half years. Normally adverse remarks should be communicated within the time period as per schedule. We honour the judgement of the apex court that communication of adverse remarks after a prolonged delay vitiates the effect of ACR and an inference will be drawn that the adverse remarks were meant for improvement. We are thus in agreement with the applicant that belated communication of adverse remarks in the ACR of 1991-92 on 18.10.93 affects the purpose of communication. However it is to be seen whether it has caused prejudice to the applicant. The DPC apparently had taken into consideration the CR of 1991-92 which contained adverse remarks as these were not expunged. To that extent applicant's interest is affected. At the same time a scrutiny of the ACRs of the applicant for the relevant period apart from the ACR of 1991-92 reveals that the applicant did not have 'good' grading. Even if the adverse remarks had been expunged from the ACR of 1991-92, based on the performance as reflected in the remaining ACRs, he could still not have been graded 'good', which is the bench mark for promotion. Therefore, in our view no prejudice has been caused by communicating the adverse entry after a long gap. There

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does not appear to be any valid ground to reconsider the applicant's case for promotion as on 9.2.96 when the DPC was held.

11. Similarly the ratio in the matter of U.P.Jal Nigam (supra) does not apply in this case. It is not that there was any steep downgrading in the ACRs.

12. It has been contended by the respondents that the applicant hastened to approach the court without waiting for his representations to be disposed off. As a long time has lapsed since the filing of the OA, we are inclined to overrule the contention. In the facts and circumstances of the case the OA fails. Therefore, the OA is dismissed. We do not order any costs.

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(Smt. Shanta Shastry)  
Member(A)

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

/gtv/