

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

R.A.No.84/96

IN
OA No.243/96

New Delhi: this the 12th September, 1997.

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

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

Smt. Bodhisri Shastri,
W/o Sh. Harish Chawla,
R/o AIR Hostel,
Room No.73-74,

Curzon Road,
New Delhi -1

Review... Applicant.

(By Advocate: Shri Jog Singh)

Versus

Union of India
through

1. Secretary,
Ministry of I & B,
Govt. of India,
Shastri Bhawan,
New Delhi.

2. Director General,
All India Radio,
Parliament Street,
New Delhi.

3. Director,
Electrical Service Division,
AIR Parliament Street,
New Delhi.

4. Shri Dalip Chandra,
Supervisor (Indianian Service),
All India Radio,
Parliament Street,
New Delhi

Review. Respondents.

(By Advocate: Shri Harbir Singh proxy for Shri P.K.
Gupta)

ORDER

HON'BLE MR.S.R.ADIGE VICE CHAIRMAN(A)

We have heard Review Applicant's counsel
Shri Jog Singh and Review Respondents' proxy counsel
Shri Harbir Singh in RA No.84/86 filed by Smt.

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B. Shastri seeking review of judgment dated 1.2.96 in OA No. 243/96 Smt. B. Shastri Vs. UOI & Ors.

2. In OA -243/96 applicant had sought a direction to respondents to quash the impugned order dated 26/29.9.95 rejecting her representation and also to quash promotion order dated 16.6.95 to the extent that Respondent No. 4 had been promoted to the upgraded post of Supervisor (Selection Grade) and to promote the applicant herself to the said post with effect from the date her junior had been promoted, with consequential benefits. It had also been prayed that a Clause in the Career Progression Scheme be incorporated with seniority cum-fitness as method of promotion till the notification of the recruitment rules and also to quash applicant's ACR for the period 1990-93-94.

3. That case came up for hearing on 1.2.96. None appeared for the respondents. After hearing Smt. B. Shastri's counsel, the said OA was dismissed by the impugned judgment dated 1.2.96, dictated in his presence in open court.

4. In the impugned judgment dated 1.2.96, the Bench specifically noted that they had seen the Scheme relating to Supervisor (Selection Grade) which provided that three posts out of 15 posts of Supervisors will be upgraded in the grade of Rs. 3700-5000/-. The Bench also noted that the Scheme further provided that pending formal amendments and framing of recruitment rules in this regard, the posts would be filled up provisionally under the

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provisions of the Scheme but the appointments would be treated as regular with effect from the date of the provisional appointment after the rules were notified. The Bench noted the two contentions raised by Applicant's counsel, namely the posts should be filled up by seniority and that as these were the adhoc appointments, only the principle of seniority would be followed. The Bench disagreed with these contentions noted above because the selection grade was in lieu of promotion, it could not be filled up by seniority and because the Scheme itself stated that the appointment to the post of Supervisor (Selection Grade) would be by the method of promotion on selection basis. Hence the Tribunal observed that merely because the applicant was senior to Respondent No.4 , was not an adequate ground because Respondent No.4 could have been adjudged to be a more meritorious person. The Tribunal further observed that there was no evidence to show that the post was filled on adhoc basis and therefore, seniority should count for promotion.

5. The grounds taken in the RA are;

- (i) that the promotion opportunities as envisaged in the Scheme which had become available consequent to upgradation were to be made on adhoc basis, in terms of Respondent letter dated 26.12.94 and UPSC's letter dated 31.1.95 which unfortunately could not be produced before the Tribunal on the date of hearing despite due

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diligence.

ii) As these promotions were to be made on adhoc basis, the principle of seniority should have been strictly followed.

iii) Even if the selection process was followed, applicant had an outstanding record and there was no good reason for her to have superseded by Respondent No.4.

6. Various judgments have been cited in support of the contention that the RA is maintainable.

7. The upgradation of the three posts of Supervisors (Selection Grade) itself implies that the posts were to be filled up through selection. The Bench in its judgment dated 1.2.96 had noticed that the scheme itself envisages that the appointment to the posts of Supervisor (Selection Grade) would be by promotion on selection basis. 'Selection basis' as pointed out by Respondents in their reply, means merit-cum-seniority where ~~the~~ merit is the primary consideration and those found more meritorious, were permitted to supersede the less meritorious. In the face of the wording in the scheme itself, on the basis of which the promotions were made, and which describes that the appointment to the posts of Supervisor (Selection Grade) would be by the method of promotion on selection basis and the posts would be filled up provisionally after which the appointments would be treated as regular with effect from the date of provisional appointment, after notification of the rules in consultation with DDP & T and UPSC, the fact that these promotions

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have been referred to as adhoc in correspondence between UPSC and respondents department cannot nullify the wording in the Scheme and it is therefore not possible to hold that these posts were to be filled up by any other method than through selection. Applicant had an enforceable legal right to be considered for promotion and it is not her case that she was not considered. No malafides were alleged in the OA against any person associated with the selection process. In the OA, one of the grounds taken was that the constitution of the OPC was not proper and a UPSC Member was not associated, but from UPSC's letter dated 31.1.95 it is clear that they were consulted and they pointed out that as the posts themselves had not been created, consultation with them was not necessary. In any case, this ground does not appear to have been pressed when the matter was heard on 1.2.96 for if it had been pressed, it was bound to have been discussed in the judgment.

8. In so far as the applicant's service record vis-a-vis that of Respondent No.4 is concerned, that is not something which can be agitated in an RA, the scope and ambit of which is severely limited and circumscribed by Section 22(3)(f) AT Act read with Order 47 Rule 1 OPC.

9. In fact a perusal of the grounds taken by review applicant makes it clear that in the guise of an RA she has actually sought to appeal against the impugned judgment which is not permissible in law.

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10. Under the circumstance, the RA is rejected.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN(A)

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