

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(26)

OA No. 352/97

New Delhi, this the 1st day of March, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

In the matter of:

Mrs. Sushma Jain
Addl. Legislative Counsel
Official Languages Wing
Legislative Department
Ministry of Law & Justice
Indian Law Instt. Building,
Bhagwan Das Road,
New Delhi-1. Applicant
(By Advocate: Sh. M.M.Sudan)

Vs.

Union of India through

1. Secretary
Legislative Department
Ministry of Law & Justice
4th Floor, Shastri Bhavan
New Delhi.
2. Chairman
Union Public Service Commission
Dholpur House,
Shahjahan Road,
New Delhi.
3. Shri Sunder Lal
Addl. Legislative Counsel
Official Languages Wing,
Ministry of Law & Justice
Indian Law Instt. Building
Bhagwan Das Road,
New Delhi. Respondents
(By Advocate: Sh. R.V.Sinha for official respondents
Sh. M.K.Dua for private respondents)

ORDER

delivered by Hon'ble Shri T.N.Bhat, Member (J)

This OA has been filed by Mrs. Sushma Jain,
Additional Legislative Counsel in the Official Languages
Wing of the Legislative Department, Ministry of Law and
Justice, seeking promotion to the post of Joint Secretary
and Legislative Counsel (JS & LC, for short) which had

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fallen vacant on account of temporary downgradation of one post of Additional Secretary in the aforesaid wing of the Legislative Department. The applicant had earlier also come to the Tribunal with OA No. 2084/95 assailing the recommendation of the DPC which had recommended the name of Resp. No.3, namely, Sh. ~~Sunder~~ Lal to the aforesaid post and the Tribunal had by the order dated 17.9.96 allowed that OA by quashing the recommendation of the DPC held on 18.10.95 and the action taken by the respondents pursuant thereto in promoting Resp. No.3.

2. It appears that the applicant had subsequently filed another OA, being OA No.2522/96, which assailed the DPC proceedings held in pursuance to the directions of the Tribunal in OA-2084/95, but the applicant later sought permission to withdraw OA-2522/96 and was also granted liberty to approach afresh in case her grievance remains. The applicant has now filed the instant OA stating that her grievance still remained, as the official respondents have refused to turn down the recommendation of the review DPC held later and have persisted with the action of granting promotion to Resp. No.3. It needs to be stated here that after the passing of the judgment in OA-2084/95 the official respondents held a ^{review} ~~fresh~~ DPC which again recommended the name of Resp. No.3.

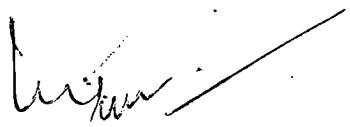
3. The applicant has assailed the fresh recommendation of the DPC mainly on the ground that two ^{three} out of the Members constituting the DPC belonged to the reserved category and this has resulted in undue favour being shown to Resp. No.3 who also belongs to the



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reserved category. Secondly, it is contended that the DPC had failed to consider the latest ACRs pertaining to the years immediately preceding the date of holding of the DPC and had wrongly considered some earlier ACRs of the applicant and Resp. No.3. According to the applicant she had secured much better gradings in the ACRs than those secured by Resp. No.3 and there was no reason why Resp. No.3 should have been preferred over her. Another point which is raised by way of amendment to the OA is that at the relevant time when the DPC met there was no post in existence against which the DPC could have proceeded with the selection, as the post of JS & LC against which the selection had earlier been made was later downgraded and Resp. No.3 was reverted to the aforesaid downgraded post. According to the applicant the post of JS & LC having remained vacant for more than one year would otherwise also lapse and cease to be in existence.

4. The respondents have filed detailed reply statements separately. The official respondents in their counter reply have denied the contentions raised by the applicant in the OA and have averred that the relevant ACRs have been taken into consideration by the DPC and on the basis of comparative assessment of the applicant and Resp. No.3 has recommended the name of Resp. No.3 and that this Tribunal cannot sit in appeal over the proceedings held by the DPC. The constitution of the DPC has also been defended by the respondents and it is stated that the mere fact that two of the members constituting the DPC belonged to the reserved category cannot render the recommendations made by the DPC invalid or otherwise improper. On the question of existence of the post



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respondents have stated that it is only as a temporary measure that the post of JS & LC was downgraded with a view to accommodate Resp. No.3 on his reversion in pursuance to the judgment of the Tribunal in OA-2084/95 and that as soon as the recommendations are accepted the post shall automatically be upgraded to its original position. It is emphatically denied that on the basis of comparative assessment the applicant would get a better grading than Resp. No.3 and it is averred that the DPC had on proper assessment of the ACRs of both the candidates recommended the name of Resp. No.3.

5. Resp. No.3 in a separate counter reply, apart from repeating the averments made by Resp. No.1 & 2, has taken the plea that the instant OA is hit by the principle of res judicata as the applicant had earlier withdrawn OA-2522/96 and thereafter no fresh cause of action has accrued to him.

6. The respondents have further taken the plea that the ACRs of both the candidates were assessed under the "failing which" clause in the Recruitment Rules which make persons with 3 years experience in the grade of Additional Legislative Counsel (ALC, for short) and, failing that, with experience of 8 years combined service in the grade of ALC and Deputy Legislative Counsel (DLC, for short) eligible for consideration. According to the respondents, since neither of the two candidates had the requisite experience in ALC's grade the DPC could have validly gone back to their ACRs as DLC's and no fault could be found with this procedure adopted by the DPC.



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7. The applicant has filed rejoinders to the counter replies filed by the two sets of respondents in which the contentions raised in the OA have been reiterated.

8. We have heard the learned counsel for the parties at some length and have perused the material on record.

9. We will first deal with the question as to whether there was a post available against which the DPC could consider the candidates. In this regard the respondents have taken the plea that since the Tribunal vide judgment dated 17.9.96 quashed the appointment of Resp. No.3 as JS & LC and since, in the meantime, post of ALC had already been filled up the only course left with the respondents was to downgrade the post of JS & LC to ALC and to appoint Resp. No.3 on his reversion to the said post. In reply, the learned counsel for the applicant has argued that the respondents already knew that the appointment of Resp. No.3 to the post of JS & LC was under challenge but that even so the respondents had deliberately filled up the post of ALC. According to the applicant the respondents had done this only with a view to present the applicant and the Tribunal with the fait accompli of the non-existence of a post to which Resp. No.3 could be reverted if his appointment to the post of JS & LC was quashed. On a careful consideration of the rival contentions we find ourselves unable to agree with the applicant's contention. We are of the considered view that the respondents have taken the most appropriate step



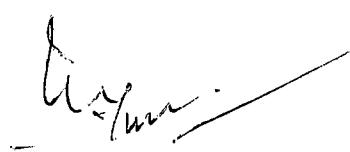
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which was possible in the circumstances by downgrading the post of JS & LC and accommodating Resp. No.3 against the downgraded post.

10. We are further convinced that the downgradation of the post of JS & LC was only a temporary measure and the respondents could validly hold a DPC for filling up the post of JS & LC in pursuance to the directions of the Tribunal. In this regard, it would be necessary to remember that a DPC can be held even for filling up an anticipated vacancy. In the instant case, the vacancy was not merely anticipated but was very much in existence but for the fact that it had to be temporarily downgraded so that Resp. No.3 could on his reversion be appointed to the downgraded post.

11. As regards the comparative merit of the applicant and Resp. No.3, we agree with the contention of the respondents that it is for the DPC to consider the comparative merit of the candidates and for this purpose to resort to giving its own gradings. We also do not find any material furnished by the applicant to support her plea that she had secured much better gradings in the different ACRs than Resp. No.3. There is no presumption that the DPC must have fallen into error in considering the various ACRs of the candidates.

12. We also find much merit in the contention of the respondents that neither of the two candidates having completed the requisite 3 years service as on the date when the original DPC was held, the review DPC could have taken into consideration their ACRs as DLC's also.



While conceding that ordinarily the ACRs of a period immediately prior to the date of holding of the DPC are ~~ordinarily~~ to be considered we do not consider it as a contravention of the rules and guidelines on the subject if the DPC considers even those ACRs which related to an earlier period, particularly so when the candidates have not completed the requisite experience in the feeder cadre. Furthermore, the DPC could have otherwise also considered the ACRs of 5 to 7 years as conceded by the applicant in the OA and there is no reason to believe that the DPC has in the instant case gone beyond the aforesaid period.

13. It further needs to be mentioned that the second DPC held after the Tribunal's judgment in OA-2084/95 was only a review DPC and only those ACRs could have been considered which were recorded prior in point of time to the date of the original DPC. Not only that but also the vacancy having arisen some time in 1993 the respondents could, therefore, validly consider even those ACRs which pertained to a period prior to 1993.

14. The applicant also seeks to make much capital out of the fact that she has undergone some training in Barbados in Legislative Drafting. But Resp. No.3 also had undergone a similar training in London. In these circumstances, it cannot be said that the applicant was per se a candidate having more merit than Resp. No.3.

15. The applicant's counsel has laid much emphasis on the point that the DPC was not properly constituted. This contention is made primarily on the

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basis of the finding recorded by the Tribunal in its judgment in OA-2084/95. In that judgment it was held that in the original DPC more than one Member belonging to the SC/ST category had been co-opted and that this would be in contravention of the office order dated 9.8.95 according to which the DPC should consist of four Members out of whom one should belong to the SC/ST category. In para 11 of the judgment it has been pointed out that the DPC should be headed by the Chairman or a Member of the UPC, the second Member should be the Secretary of the Legislative Department and the third Member should be of the level of Additional Secretary of the Legislative Department. The fourth Member has to be an officer of the appropriate level but he should belong to the SC/ST category. It was further held on facts that an additional member belonging to the SC/ST category having been co-opted in the DPC held on 18.10.95, the constitution of the DPC would be rendered illegal. However, so far as the review DPC is concerned it is not disputed that one of the ex officio Members of the DPC who came from the U.P.S.C. belonged to the reserved category and only one other officer belonging to the SC/ST category was co-opted. The office order or the other guidelines having a bearing on the subject nowhere provide that if one of the ex-officio Members of the DPC belongs to a reserved category no other Member from that category should be co-opted.

We may further add that the judgment of the Tribunal in OA-2084/95 is under challenge before the Apex Court and the SLP filed against the judgment is still pending.

A handwritten signature in black ink, appearing to read "L. M. S. N.", is written over a diagonal line.

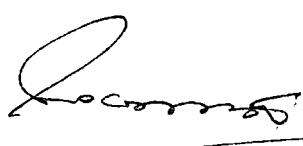
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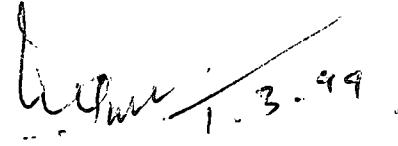
In the above view of the matter no fault can be found with the constitution of the review DPC. This ground taken by the applicant also accordingly fails and is hereby rejected.

16. On the respondent's contention regarding the plea of res judicata, we do not find much merit in it. As already mentioned, the applicant had been granted permission to withdraw OA-2522/96 with liberty to file a fresh OA. There was no condition that a fresh OA could be filed only if a fresh cause of action accrued. However, the learned counsel for the applicant has stated that it was only on 13.2.97 that the ACC approved the recommendations of the review DPC and that, therefore, a fresh cause of action did accrue to the applicant. This contention cannot be easily brushed aside.

17. In the conspectus of the facts and circumstances discussed above we find no ground to interfere with the recommendations of the review DPC as approved by the Appointments Committee of the Cabinet (ACC). Viewed as such this OA is liable to be dismissed.

18. In the result this OA is dismissed, but without any order as to cost.


(S.P. BISWAS)
Member (A)


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(T.N. BHAT)
Member (J)

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