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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.**

O.A./T.A. No. 419 of 1997

Decided on: 6/09/97

Mrs. Krishna Dey ..... Applicant(s)

(By Shri V.K. Garg Advocate)

Versus

U.O.I. & Others ..... Respondent(s)


(By Shri R.V. Sinha Advocate)

**CORAM:**

**THE HON'BLE SHRI DR. JOSE P. VERGHESE, VICE CHAIRMAN**

**THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)**

1. Whether to be referred to the Reporter or not? y
2. Whether to be circulated to the other Benches of the Tribunal?

  
(K. MUTHUKUMAR)  
MEMBER (A)

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 419 of 1997

New Delhi this the 6<sup>th</sup> day of October, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN  
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Mrs. Krishna Dey  
W/o Dr. N. Dey,  
Assistant Director,  
National Archives of India,  
Janpath,  
New Delhi-110 001.

...Applicant

By Advocate Shri V.K. Garg.

Versus

1. Union of India through the  
Secretary,  
Ministry of Human Resource Development,  
Department of Culture,  
Shastri Bhavan,  
New Delhi.
2. The Director General,  
National Archives of India,  
Janpath,  
New Delhi.
3. Union Public Service Commission,  
Dholpur House,  
New Delhi through its  
Secretary.
4. Shri P.S. M. Moideen.
5. Shri S.K. Khatri.
6. Shri P. Anand Raj.
7. Shri K.K. Sharma
8. N.P. Sharma
9. Shri Pramod Mehra ...Respondents

(Respondent Nos. 4 to 9 to be served through  
the Director General,  
National Archives of India,  
Janpath,  
New Delhi.)

By Advocate Shri R.V. Sinha

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ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant challenges the order dated 22.5.1996 whereby he was reverted from the post of Assistant Director of Archives to that of Archivist (General) with retrospective effect from 25.4.1996 and also challenges the appointment of respondent No.4 to 9 to the post of Assistant Director on the ground that they are her juniors. Her earlier application O.A. 427 of 1996 was rejected on the ground that it was premature and also on merits, and by the directions of the Apex Court, the applicant has filed the present petition for fresh adjudication of the matter on merits.

2. Applicant was promoted as Assistant Director (Archives) on an ad hoc basis with effect from 6.4.94. and this ad hoc promotion continued till the impugned order reverting her on 25.4.96 to the lower post of Archivist (General). The applicant claims that she was, eligible for promotion to the post of Assistant Director (Archives) since 1991 as she was eligible under the Recruitment Rules. The Recruitment Rules were amended in April, 1993 and as per this amended rules, the post of Assistant Director (Archives) was to be filled only by Departmental Promotion failing which by transfer on deputation. Under the earlier rules, there was a provision for both direct recruitment as well as by promotion in the ratio of 50:50. It is contended that there are six vacancies between 1991 and 1993 and the department had not filled up these vacancies either by advertisement or promotion. The applicant's case is

that when the department proceeded to fill up the vacancies only on the basis of amended rules, which came into force with effect from 25.4.93 they should have applied the rules prior to its amendment for the vacancies which arose upto April, 1993. By not applying the pre-amended rules, the respondents denied the applicant the right of consideration of appointment by direct recruitment for which also she was eligible in terms of those Recruitment Rules.

3. The main grounds on which the applicant assails the action of the respondents are as follows:-

(i) Although the applicant is sufficiently senior at S.No.3 in the seniority list and had never been communicated any adverse remarks and had obtained a bench-mark of 'Good' in the overall grading, her seniority was not given a weightage. She alleges that she should have been selected by virtue of the provisions of O.M. dated 10.4.1989 where seniority was given weightage even in the selection post and grading should not be relevant.

(ii) If there was a dilution in the grading, that should have been treated as adverse entry and she should have been communicated. In the absence of such intimation, she has reasons to believe that her record of service throughout was very good and there was no dilution of record.

(iii) The DPC did not follow the guidelines for filling up year-wise vacancies and there had been clubbing of vacancies. The DPC had also proceeded on

On the basis of the Amended Rules of 1993 for all the vacancies whereas the applicant was eligible for consideration on the basis of the pre-Amended Rules and the selection was made in a consolidated manner without identifying the year-wise vacancies and the relevant zone of consideration of eligible candidates. There was a delay in consideration of the DPC and the instructions of DOP&T were not followed.

4. In the reply filed by the respondents, it is stated that the applicant was initially appointed as Assistant Archivist Grade-II (Non-Gazetted) on regular basis with effect from 21.4.1972 and was appointed as Assistant Archivist Grade-I on ad hoc basis w.e.f. 23.1.1976. Subsequently, she was appointed on the recommendation of the Union Public Service Commission to the post of Archivist (General) (Group-B) on a regular basis w.e.f. 11.8.1977. She was appointed as Assistant Director (Archives) on ad hoc basis w.e.f. 6.4.94. but her appointment could not be continued as DPC recommended the names of other officers who were in the zone of consideration. The DPC in its meeting held on 4.1.1996 had followed the selection procedure as per the Recruitment Rules and did not recommend her name for promotion on regular basis. She was, therefore, reverted as Archivist. The respondents contend that the applicant has no basis for retrospective consideration for direct recruitment and departmental promotion under the old rules. The delay in filling up vacancies on a

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regular basis as per conditions specified in the Recruitment Rules, was due to administrative reasons and procedural delays in convening the DPC. Amended Recruitment Rules were notified in April, 1993 and the process of convening DPC was taken up and even after the notification of the Amended Rules, DPC could be held only on 4.1.1996 for consideration of all the vacancies year-wise. In terms of the revised Recruitment Rules, the post of Assistant Director (Archives) was to be filled up only by selection method. In the DPC, candidature of the applicant was considered for all the vacancies year-wise as she was within the zone of consideration in the assessment for the years 1991-92, 1992-93 and 1993-94. The DPC, however, could not recommend her case although she was graded as "Good", the other officers who were within the zone of consideration were graded as "Very Good" and the instructions contained in para 6.2.2. to 6.3.1. of the DOP&T O.M. dated 10.4.89, 20.6.89 and as amended by O.M. dated 13.7.89, 13.9.90 and 14.9.92 were strictly followed by the DPC. The assessments made by the DPC/UPSC were based on the annual dossiers of the CRs of the officers who were in the zone of consideration as per the Recruitment Rules. The applicant could not be recommended as she was graded as "Good" whereas other candidates who were in the zone of consideration were graded as "Very Good" and were included in the select panel and were later on appointed as Assistant Directors. In the light of this, the respondents contend that there had been no violation of the procedure followed in this regard and the applicant has no case.

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5. We have heard the learned counsel for the parties and have perused the records.

6. Respondents have also annexed the proceedings of the DPC held on 4.1.1996. In regard to the contention of the applicant that her case is a one of supersession and her seniority has not been given a weightage even in a selection post, it is seen, that the respondents have themselves admitted that the bench-mark for selection was "Good" and the applicant had secured a bench-mark grading as "Good". However, we find that the promotion is to the post of Assistant Director Group 'A'. As far as the present DPC is concerned, this is for promotion of the post of Archivist (General) (Group-B) to the Group "A" post of Assistant Director. The applicant contends that in such selection, seniority should be given a weightage and the gradings are not relevant at all. We are unable to accept this contention. We find that para 6.3.1. of the consolidated instructions on the Departmental Promotion Committees issued by the Department of Personnel & Training under their O.M. dated 10.4.1989 as amended from time to time, prescribe as follows:-

"6.3.1. Principles to be observed and preparation of panel- The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:-

Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a

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bench-mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group "C", Group "B" and Group "A" posts upto (and excluding) the level of Rs. 3,700-5,000 excepting promotions for induction to Group "A" posts or services from lower groups, the bench-mark would be 'Good'. All officers whose overall grading is equal to or better than the bench-mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of 'Good'.

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. (emphasis added)

7. It is an admitted position that the applicant was to be considered for induction to Group 'A' post of Assistant Director from the lower Group 'B' post of Archivist (General). Although she had secured bench-mark grade as "Good" in the assessment by the DPC, she could not be placed in the panel as there were other officers who were graded as "Very Good" and had to be included en bloc senior to her upto the number of vacancies.

8. We have seen the DPC proceedings along with the panel filed by the respondents as Annexure R-IV. We find that the DPC has not clubbed the vacancies but had

considered and empanelled on the basis of the year-wise vacancies and separate panels have been prepared year-wise. In 1991-92, there was only one general vacancy. Although the applicant was at S.No.3 in the zone of consideration, she was assessed as "Good" whereas the official at S.No.1, who was assessed as "Very Good" was placed in the panel for that year. For the panel for 1992-93 there were two general vacancies and one ST vacancy. The applicant was in the zone of consideration and was graded as "Good" but the candidates who had secured "Very Good" had to be placed en bloc to senior to her and, therefore, all the three vacancies were filled in this manner including the reserved vacancy. For the panel of 1993-94 also, there were two vacancies and the same position obtained in the matter of grading and the persons who had obtained "Very Good" grading had to be placed in the panel and accordingly two such persons were placed in the said panel. The applicant secured only "Good" grading again in this year also and accordingly cannot have superior claim over those persons who have been placed in the panel.

9. Regarding the contention of the applicant that the respondents should have invoked the unamended Recruitment Rules retrospectively for 1991-92 and 1992-93 vacancies, which provided for direct recruitment also, we find that although there were vacancies, no promotions were made. It is not the case of the

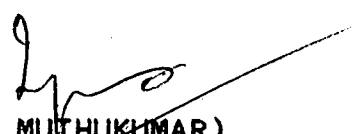
applicant that meetings of DPCs were held during these periods and her case was not considered. By the time the department held the DPC though belatedly due to administrative difficulties and due to delays in the constitution of DPC, Recruitment Rules had been amended providing for promotion by selection only and for the year 1991-92, 1992-93 vacancies, there had been no selection at all till the meeting of DPC which was held on 4.1.96. There is no allegation of mala fide in these delays in the constitution of DPC. There was also no direct recruitment during this period. Therefore, the applicant's claim for selection by direct recruitment retrospectively is not tenable. Further, the instructions to the DPC for preparation of panels as per para 6 above, were applicable in respect of earlier vacancies even under the pre-amended Rules.

10. Regarding the other grounds taken by the applicant that the respondents should have taken into account the ratio of the decision in U.P. Jal Nigam Vs. P.C. Jain, JT 1996 (1) 641, we find that this ground is not well taken. From the facts on record, we find that there had been no dilution in the grading of the applicant. She has been getting grading as "Good" only for all the years in question and, therefore, the case of U.P. Jal Nigam (Supra) has no application in this case. We also find that the DPC has correctly followed the prescribed procedure and there had been no violation of any rules or procedure.

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11. In the conspectus of the above discussion, we do not find any merit in the application. The application is, therefore, dismissed. The parties shall bear their own costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

  
(DR. JOSE P. VERGHESE)  
VICE-CHAIRMAN

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