

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 2207/94

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T.A.No.

DATE OF DECISION 29.6.1999

Smt. Prem Kundra

....Petitioner

By Advocate Shri G.D. Gupta

....Advocate for the
Petitioner(s)

VERSUS

Govt. of NCT, Delhi & Ors.

....Respondent

By Advocate Shri S.K. Gupta,
proxy for Shri B.S. Gupta.

....Advocate for the
Respondents.

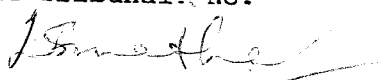
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The Hon'ble Shri S.R. Adige, Vice Chairman(A).

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

~~The Hon'ble Smt. Lakshmi Swaminathan, Member (J)~~

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


(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 2207/94

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New Delhi this the 29 th day of June, 1999

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Smt. Prem Kundra,
wife of Shri S. Singh,
R/o B-5/195, Safdarjung Enclave,
New Delhi.

... Applicant.

By Advocate Shri G.D. Gupta.

Versus

1. Government of National Capital Territory of Delhi through its Chief Secretary, 5, Sham Nath Marg, Delhi-54.
2. The Chief Secretary, Govt. of NCT of Delhi, 5, Sham Nath Marg, Delhi-54.
3. The Director, Directorate of Training & Technical Education, 'C' Block, Ist Floor, Vikas Bhawan, ITO, IP Estate, New Delhi-02.
4. The Principal, Aryabhut Polytechnic, G.T. Karnal Road, Delhi.

... Respondents.

By Advocate Shri S.K. Gupta, proxy for Shri B.S. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has challenged, inter alia, the validity of the order passed by the respondents dated 26.8.1992 withholding two increments with cumulative effect in pursuance of the charge-sheet dated 22.5.1992 and rejection of the appeal by the appellate authority by order

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dated 7.2.1993 although the penalty was modified to the extent that it has been reduced to withholding of increments for a period of two years with non-cumulative effect.

2. The applicant while working as Studio Assistant with the respondents, had been issued the aforesaid charge-sheet and the impugned penalty orders after holding a disciplinary proceeding against her. In para 3 of the O.A. the applicant has also submitted that during the course of her service as Studio Assistant in Architecture, she improved her qualifications and graduated in December (sic), 1990. During the course of arguments, Shri G.D. Gupta, learned counsel for the applicant, has submitted that the date given in the application, namely, December, 1990 is a mistake and it should read as May, 1990. The applicant has also submitted that the respondents have accepted the recommendations of "Madan Committee" set up by the Government to review the staff structure of Engineering Institutions. She has submitted that she should also have been considered for promotion to the upgraded post of Lecturer in Architecture with effect from December, 1990 when she obtained her graduation in Architecture which the respondents have failed to do on the ground that the departmental proceedings were pending against her at that time. Learned counsel for the applicant has very vehemently submitted that this fact is not correct because the charge-sheet had been issued to the applicant only on 22.5.1992 on which the penalty of withholding of increments for a period of two years had been imposed on 26.8.1992 whereas she was actually qualified for being considered for promotion to the post of

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Lecturer after she obtained her graduation in Architecture in accordance with the acceptance of the Madan Committee recommendations which they have implemented in the case of other similiarly situated persons.

3. With regard to the charge-sheet and departmental inquiry held against the applicant on the ground of misconduct, Shri G.D. Gupta, learned counsel, has submitted that the impugned orders are perverse as they have not considered the defence taken by the applicant. He has also submitted that orginally the charges levelled against the applicant were framed under Rule 14 of the CCS (CCA) Rules, 1965 which were later on converted under Rule 16, on the grounds that she tampered with the fitness certificate by way of changing the date in the same and she had obtained the passport without obtaining NOC from the department. He has also submitted that some of the charges were not tenable, for example, Charge No. (iii) that she obtained passport without obtaining NOC from the deapartment which was received later on. He has submitted that the second limb of the charge-sheet had been dropped. With regard to the question of arrest of the applicant, he has submitted that as she had obtained anticipatory bail, she had not thought it necessary to inform about her arrest, as according to her she was never arrested. Learned counsel has also submitted that the applicant had not been given reasonable opportunity to defend her case. He has submitted that in the circumstances the penalty order imposed on the applicant should also be quashed. However, during hearing, Shri G.D. Gupta, learned counsel, has submitted that irrespective of the findings of the disciplinary authority and the penalty imposed on the

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applicant in the disciplinary case, in view of the facts stated in para 3 of the O.A. the applicant now prays that she may be considered for promotion to the post of Lecturer in implementation of the recommendations of the Madan Committee. He has submitted that although the fact of non-promotion has been mentioned in the pleadings in the O.A., however, admittedly due to inadvertence a specific prayer has not been made in the prayer clause, but his contention is that the Tribunal may under paragraph 8(c) grant this prayer even if the prayer for quashing of the penalty order dated 26.8.1992 is disallowed. Learned counsel has relied on the judgement of the Supreme Court in Union of India & Ors. Vs. Dr. (Smt.) Sudha Salhan (SLJ 1993(2) 265) which has followed the judgement in Union of India & Ors. Vs. K.V. Jankiraman & Ors. (1991 (4) SCC 109).

4. We have seen the reply filed by the respondents and heard Shri S.K. Gupta, learned proxy counsel. He has submitted that the respondents have correctly passed the impugned penalty order which has been upheld in appeal with modification on 7.2.1993, and the Review Application filed by the applicant has also been rejected. He has submitted that the O.A. is without any merit because in the absence of any procedural irregularities or absence of any evidence, which is not the case here, the Tribunal in exercise of the powers of judicial review should not reappraise the findings of the competent authority and act as if it is an appellate authority to reassess the merits of the case or quantum of punishment. He has, therefore, submitted that the O.A. may be dismissed as the main reliefs sought by the

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applicant are only with regard to quashing of the penalty orders passed by the disciplinary and appellate authorities.

5. Learned proxy counsel for the respondents has also very vehemently opposed the submissions of Shri G.D. Gupta, learned counsel with regard to any consideration of prayer for grant of promotion post to the applicant, on the ground that this has not been made part of the prayer in the O.A. He has submitted that the applicant cannot now be granted this relief without proper pleadings in this regard. The respondents have submitted in Para 4.3 of the reply that the 'Madan Committee' report gave benefit of promotion to all eligible candidates but in the case of the applicant, she could not be given the benefit because disciplinary proceedings were pending against her. This fact has been vehemently denied by the applicant in the rejoinder filed by her on 26.7.1995 wherein she has, inter alia, stated that she was entitled to promotion in December, 1990 whereas the charge-sheet was issued only on 22.5.1992 and, therefore, there was no inquiry pending against her at the relevant time and she could not be denied ^{the ~~the~~} promotion. However, Shri S.K. Gupta, learned proxy counsel in reply has stated that even then the applicant did not care to amend her prayer clause in the O.A. and it is only during the oral submissions that Shri G.D. Gupta, learned counsel has pressed this prayer that he would even be satisfied if this ^{prayer ~~the~~} alone is granted by the Tribunal.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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7. Having regard to the settled law on judicial review of disciplinary proceedings as held by the Supreme Court in a catena of judgements (See for example **Union of India Vs. Parmananda** (AIR 1989 SC 1185) and **N. Rajarathnam Vs. State of Tamil Nadu** (1997(1) SLJ 10), as we do not find the **impugned penalty** orders either perverse or mala fide or arbitrary or against the evidence adduced before the competent authority or suffering from any procedural irregularities, there is no justification to interfere in the matter. Accordingly, the main prayer to set aside the penalty order dated 26.8.1992 as modified by the appellate authority's order dated 7.2.1993 is rejected.

8. As mentioned above, the learned counsel for the applicant during hearing has stressed on the facts given in Paragraph 3 of the O.A. regarding the omission on the part of the respondents to promote the applicant as Lecturer in Architecture w.e.f. December, 1990 (sic) when she obtained her graduation in that subject, in accordance with the Madan Committee recommendations accepted by the respondents. No doubt, the applicant has failed to make a specific prayer based on these facts in Paragraph 6, even after the reply was filed by the respondents on 30.5.1995 and rejoinder of the applicant filed on 26.7.1995. However, in MA 2455/98 filed on 24.11.1998, the applicant has prayed for allowing the amendment in the prayer clause together with the additional grounds and to file documents in support thereof with regard to her promotion to the upgraded post of Lecturer. In the reply to MA, the respondents have submitted that it was only on 7.2.1992 that the applicant had informed them that she had passed

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Part-I, II and III Examination of the Indian Institute of Architecture. The Department accordingly wrote to the Association of India University and the Ministry to confirm about the equivalence of this qualification to Bachelor's degree in Architecture and the reply was received in 1992 by which time chargesheet had already been issued and hence there was no question of promoting her at that time. They have submitted that there are no grounds for modifying the earlier application to seek additional relief and they have opposed the MA on the grounds that she has raised a new issue of promotion as in the MA. They have also stated that they were considering initiating another departmental proceeding against her for unauthorised absence but in view of her explanation to the show cause notice that she was under treatment, the case was dropped. They have, therefore, prayed that MA 2455/98 may be dismissed. In the rejoinder to the MA, the applicant has controverted the submissions made by the respondents, reiterating her request that as she has passed the requisite examination of the Indian Institute of Architecture, she may be granted the reliefs as prayed for in the MA read with the O.A.

9. The above facts have to be seen in the light of the ^{relevant} statutory provisions. Section 22 of the Administrative Tribunals Act, 1985 provides the procedure and powers of Tribunal. Sub-section (1) provides, inter alia, that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to other provisions of the Act and Rules, the Tribunal shall have power to regulate its own procedure. Sub-section (2) further provides that the Tribunal should

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decide every application on perusal of the documents and after hearing such oral arguments as may be advanced. In para 3 of the O.A. the applicant has referred to her obtaining the qualification which entitles her for consideration for promotion to the upgraded post of Lectuer, which has been stated by the respondents to have been denied to her on the ground that disciplinary proceedings were initiated against her vide memo dated 22.5.1992. This fact according to her being incorrect, as there were no proceedings contemplated or initiated against her, she should have been considered for promotion in 1990. The averments made in the reply filed by the respondents that because of unauthorised absence from work and extension of leave beyond 3.10.1997, they had contemplated proceeding against her which was later on dropped is not relevant here as it relates to a period much after her claim arising in 1990. The absence of a specific ground and prayer for promotion to the post of Lecturer in 1990 is a procedural aspect but the respondents were aware of these facts and they have given their reply. In the facts and circumstances of the case, it cannot also be stated that this claim is not consequential or related to the Departmental proceedings challenged in the O.A. nor has this objection been taken by the respondents under Rule 10 of the CAT (Procedure) Rules, 1987. Therefore, taking into account the public interest to avoid multiplicity of litigation, the prayer made in MA 2455/98 to amend the prayer clause with regard to applicant's claim for promotion is allowed, subject to what is stated below.

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10. From the documents placed on record, it appears that there was no disciplinary proceeding contemplated or initiated against the applicant in 1990 as the Charge Memo itself is dated 22.5.1992. Hence, the contention of the respondents that she could not be given the benefit of promotion as Lecturer as given to other eligible persons because of pending disciplinary proceedings cannot be accepted and is accordingly rejected. In Dr.Smt. Sudha Salhan's case (Supra), the Supreme Court has held as follows:

"3. The Tribunal has found it as a fact that on the date on which the Departmental Promotion Committee met to assess the case of the petitioner, she was neither under suspension nor was any charge sheet issued to her. The Tribunal, consequently, replying upon its own Full Bench decision as also a decision of this Court in New Bank of India Vs. N.P. Sehgal & Anr. (JT 1991(1) SC 498), allowed the Original Application and issued the directions noted above.

4. The question, however, stands concluded by a Three Judge decision of this Court in Union of India & Ors. Vs. K.B. Jankiraman & Ors. (1991(4) SCC 109, in which the same view has been taken...."

The appeal filed by the Union of India in that case was accordingly dismissed. Following this judgement of the Supreme Court, when admittedly no chargesheet was issued nor any departmental proceeding pending against the applicant on the relevant date in 1990 till 22.5.1992, the respondents could not have rejected ^{is} ~~the~~ case of the applicant for due consideration by the Departmental Promotion Committee.

11. In the facts and circumstances of the case, the O.A. ^{succeeds} partly/~~is~~ disposed of with the following directions:-

- (a) Prayer to set aside penalty order is rejected;

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- (b) Respondents to consider the case of the applicant for promotion to the upgraded post of Lecturer, taking into account the acquisition of the necessary qualifications, in accordance with the Madan Committee recommendations, rules and law, within two months from the date of receipt of a copy of this order. In case, the applicant is found suitable, she shall be given notional promotion to the post of Lecturer from the date her immediate junior was regularly promoted. However, she will be entitled to payment of arrears of pay and allowances on the higher post only w.e.f. 1.1.1999 i.e. after one month of filing M.A. 2455/98. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige

(S.R. Adige)
Vice Chairman (A)

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