

✓ CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. No. 2538 of 1994.

New Delhi, this the 8th day of June, 1995.

HON'BLE MR J. P. SHARMA, MEMBER (J)

Hon'ble Mr B. K. SINGH, MEMBER (A)

Mrs Anil Katiyar, Asstt. Govt. Advocate, at Supreme Court Central Agency Section, Deptt. of Legal Affairs, Ministry of Law Justice and Company Affairs, New Delhi.

.. .. Applicant.

(Mr R. K. Anand, Sr. Advocate with Mr M. P. Shorawala, Adv.)

vs

1. Union of India through the Secretary to the Govt. of India, Ministry of Personnel and Pensions, North Block New Delhi.
2. The Secretary to the Govt. of India Ministry of Law Justice and Company Affairs, Department of Legal Affairs, Shastri Bhavan, New Delhi.
3. Union Public Service Commission, through Chairman, Shahjahan Road, New Delhi.
4. B. K. Prasad Asstt. Govt. Advocate, Central Agency Section, Supreme Court of India, Govt. of India Department of Legal Affairs, New Delhi.

... .. Respondents.

(Official respondents through Mr M. Chandrasekhar, Addl. Solicitor General with Sh. Madhav Panikar, Advocate and the Private respondent through Mr. Naresh Kaushik, Advocate).

ORDER

PER B. K. SINGH, MEMBER (A)

This application (OA No. 2538 of 1994) is directed against the proposed promotion of respondent No. 4 Shri B. K. Prasad to the post of Deputy Govt. Advocate in the pay-scale of Rs. 3700-5000

from the post of Assistant Government Advocate, based on the recommendation of the D.P.C., presided over by a member of the U.P.S.C. dated 14.11.1994. The admitted facts are that the applicant and respondent No.4 are both Assistant Advocates working in the Ministry of Law, Justice and Company Affairs, Department of Legal Affairs, Govt. of India in the pay scale of Rs.3000-4500. It is also admitted that respondent No.4 is senior to the applicant in the gradation list.

As a result of a post of Deputy Government Advocate falling vacant, formalities for filling up that post were finalised and both the applicant and respondent No.4, who fell within the zone of consideration, were sponsored by the Department alongwith their bio-data for promotion to the vacant post of Deputy Govt. Advocate.

The main ground for challenging the recommendation is that the post of Dy. Govt. Advocate is a selection post where merit takes precedence over seniority and since the applicant has earned two 'outstanding' remarks in 1990-91 and 1991-92 and 'Very Good' in 1992-93 and respondent No.4 has been graded only as 'Very Good', as such the applicant should have been recommended on the basis of her 'outstanding' record of service and performance. In this connection, the applicant has also cited office memorandum filed as Annexure 'C', which reads as under:

" In making promotions, it should be ensured that suitability of the candidates for promotion is considered in an objective and impartial manner...."

The applicant's grievance is that the

[not indicate that the members of the D.P.C. recommendations of the U.P.S.C. ~~has~~ followed the guidelines issued by the Department of Personal and Training from time to time and as such aggrieved by this recommendation, the applicant filed this O.A. on 9.12.1994 praying for the following reliefs:

- "(a) quash the order, if any, of the selection of the respondent No.4, for the post of Dy.Govt. Advocate, taken on the basis of the meeting of the Departal Promotion Committee on 14.11.1994 and headed by the members of U.P.S.C. and order for review of the decision by the said Departmental Promotion Committee,
- (b) to restrain the respondent No.1 to 4 from appointing the respondent no.4, as Dy.Govt. Advocate in the Central Agency Section of the Supreme Court of India for looking after the litigation of the Govt. of India,...."

On notice, the respondents filed the reply and contested the application and grant of relief prayed for.

We have heard Mr R.K. Anand, Senior Advocate for the applicant with Mr M.P. Shorawala, Advocate and Mr M. Chandershekharan, Addl. Solicitor General and Mr Naresh Kaushik, Advocate for the the official respondents and the private respondent, respectively, and perused the record of the case and the A.C.Rs of the applicant and respondent No.4.

The learned counsel for the applicant argued that though respondent No,4 is senior but the applicant is more meritorious as reflected from the A.C.Rs and merit has to be judged in an objective and impartial manner and the D.P.C. did not make proper assessment of the merit of the two candidates. The learned Sr. Advocate said that since A.C.Rs of both the candidates have already been summoned, the

123
Court should satisfy itself about the contentions made by the applicant in O.A. and reiterated in rejoinder regarding the superiority of the remarks earned by her. The seniority cannot be the basis of selection in a case like this. He also alleged legal malafides on the part of the D.P.C. in recommending respondent No.4. He vehemently and vigorously argued that the service record of the applicant is better and superior to that of respondent No.4 and if this is not proved on the basis of the ACRs, he will not have a case at all.

The learned Addl. Solicitor General argued that both the candidates were assessed as 'Very Good' by the D.P.C. and in a situation like this where all things are equal, seniority has to be given due weightage and this is exactly what was done in this case. The recommendation of the D.P.C., according to him, is based on objective and impartial assessment of both the candidates in the zone of consideration and that Tribunal cannot interfere unless the recommendation is found to be arbitrary and discriminatory in nature. He further argued that the D.P.C. has followed the guidelines issued by the DO PT and, therefore, the recommendations cannot be faulted with. We have perused the records produced by the department in a sealed cover and it is true that Shri B.K. Prashad has been graded as 'Very Good' by the reporting/reviewing/ authority but no remarks have been recorded by the accepting authority during the three years period. Thus, in his case, his ACR. for three years clearly indicates that he has been graded by both the officers, that is, reporting and the reviewing officer as 'Very Good'. The resume submitted

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14

by the applicant about his work has been accepted by the Reporting Officer and various columns also indicate that his overall performance in the various fields of activities and his relationship with superiors and subordinates have been adjudged as 'Very Good'. As regards the applicant, remarks for 1991 is certainly 'Outstanding' and this has been accepted by the reviewing officer but unfortunately there is no remark from the accepting authority. The remarks in case of the applicant Smt. Katyar are 'outstanding' grading by the reporting and the reviewing officer only. There is no remarks of the accepting authority, either on the grading or the attributes of the applicant. The remarks for the year 1991-92 do not seem to have been recorded separately although the resume, which she has submitted is from 1.4.1991 to 31.3.1992 but the reporting officer, who has recorded the remarks on 18.8.1993 has graded her as outstanding. The remarks do not flow from the various parameters filled up by the reporting officer. The reviewing officer has recorded his remarks on 9.9.1994 and has endorsed the remarks of the Reporting Officer but in this case also there is no remark of the accepting authority. The Grading recorded by the Reporting Officer on 15.6.1990 is only 'Very Good'. These, presumably, are the remarks for 1992-93. The reviewing officer also has recorded only 'Very Good' remarks on her. The accepting authority has not recorded any remarks. Thus, taking the overall picture, Ms Katyar has got two outstanding gradings but one 'outstanding' does not flow from various

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15
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parameters given and the reports entered therein. This must be the reason why both the officers on overall assessment have been graded as 'Very Good'. The remarks of the Minister, who must be the accepting authority, the D.P.C. seems to have gone through the parameters and the remarks given therein and categorised both as 'Very Good' although in case of Mrs Katyar, the grading given by the reporting/reviewing officer for two years certainly are outstanding. The reporting and reviewing officers are the same in both the cases. The remarks in both the cases have been recorded by the Special Secretary and the Law Secretary is the reviewing officer and we presume that one of them must have been a Member of the Committee presided over by a Member of the U.P.S.C. This Tribunal is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the D.P.C. The recommendations of the expert bodies cannot be questioned and judicially reviewed. It has been held in case of State of Bihar & others vs. Dr. Asis Kumar Mukherjee and others ((1975) 3 Supreme Court Cases 602):

"From Olympic team selection to orthopaedic expertise the judicial robes are invited to exercise umpire's jurisdiction under our system. Even where judges angels should they not fear to tread where perhaps others may rush in?"

In case of B. S. Minhas vs. Indian Statistical Institute (1983) 4 SCC 582, the Hon'ble Supreme Court has observed as follows:

"It is not for the Court to determine who is the superior of the two candidates and who should be selected. It is for the

16

authorities concerned to select from amongst the available candidates.

In AIR 1987 SC 1889 S. B. I. vs. Mohd. Moynuddin, the Hon'ble Supreme Court have clearly laid down that "selection has to be made by a regularly constituted D.P.C. and no officer can claim promotion or selection to the higher grade as a matter of right. He has a right to be considered but has no right to be promoted and the Court is not competent to sit as an appellate authority and appreciate the abilities and attributes of the eligible candidates." The same view has been reiterated in AIR 1988 SC 1069 UPSC vs. Hiranaya Lal, wherein it has been observed that the provisions to make selection has been vested in the D.P.C. and the Tribunal or a Court cannot usurp the role for itself. In one of the latest rulings, the Hon'ble Supreme Court in JT 1995(2) SC 654 Major General I. P. S. Dewan vs. Union of India and others categorically barred the jurisdiction of the Courts to sit as an appellate authority over the acts and proceedings of the D.P.C.

In view of the law laid down by the Hon'ble Supreme Court, we cannot go into the recommendations made by the D.P.C. and accepted by the Government. The learned Additional Solicitor General categorically stated at the Bar that A.C.C. has already accepted the recommendations of the D.P.C. and has appointed Shri B.K. Prashed as Deputy Government Advocate and thus after the approval of the A.C.C., the petition itself has become infructuous. This Tribunal is neither competent to sit in judgment over the recommendations of the D.P.C. nor it is competent to sit in judgment over the acceptance or rejection of the

17

17

recommendations by the A.C.C. as has been held in the case of M. K. Mukherjee vs. Union of India (Supra). In the light of the aforesaid observations, the application fails and is dismissed leaving the parties to bear their own costs.

The order of status-quo granted by the Tribunal on 3.1.1995 and continued till the hearing of this application is vacated. The original A.C.Rs. called from the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs are returned in sealed cover to the learned counsel for the respondents Shri Madhav Panikar.

(B.K. Singh)
Member (A)

(J.P. Sharma)
Member (J)

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