

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1950/1994

New Delhi this the 19th Day of July 1995

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

Hon'ble Mr. R.K. Ahooja, Member (A)

Smt. Varsha Malhotra,
WZ 8, B Krishnapuri,
Gali No. 20,
Delhi-110 018.

Applicant

(By Advocate : Shri S.K. Sinha
proxy for Shri Jog Singh)

Vs. ,

The Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi-110 011.

Respondent

(By Advocate: Shri N.S. Mehta)

O R D E R (Oral)

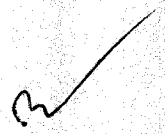
Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

The challenge in this application filed under Section 19 of the Administrative Tribunal Act is against ~~for~~ corrigendum dated 13th July 1993 issued by the Union Public Service Commission whereby the applicant who was promoted with effect from 23.3.1990 was treated to have been promoted only with effect from 4.12.1992. The facts in a nutshell can be stated as follows. The applicant who commenced her service as Mechanical Operator with effect from 16.3.1965 was promoted as Technical Assistant. While the applicant and her juniors were considered by the Departmental Promotion Committee for promotion to the post of Investigator (Data Processing) in the year 1990, she was passed over

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and juniors were promoted. Aggrieved by this the applicant approached this Tribunal filing O.A. No. 1923/1991. Rejecting the contention raised by the Department that the applicant was not found fit as her ACRs for several years were not written, the Tribunal disposed of the application with a direction to convene a review DPC to consider the case of the applicant on the basis of the available ACRs in accordance with the instructions contained in OM No. 22011/5/86-Estt.(D) dated 10.4.1989 in paras 6.2.1.

2. Pursuance to the above direction of the Tribunal, the respondents after convening a review DPC issued an order dated 12.4.1993 appointing the applicant to the post of Investigator (Data Processing) with effect from 20.3.1990, i.e. date on which her juniors were promoted. Thereafter, on 13.7.1993 the impugned order has been issued altering the date of her promotion to 4.12.1992 without issuing any notice to the applicant to show cause. The applicant contends that the action of the respondent is without any authority, arbitrary, discriminatory and malafide and that on account of the impugned order her chances for promotion to the next higher post is being eclipsed. Under these circumstances the applicant has filed this application for a direction to consider the applicant for promotion to the post of Superintendent as per the Rules of 1989 as she fulfilled the criterion laid down for promotion to the post of Superintendent.



3. The respondents have filed a reply to this application. Their contention is that though the DPC assessed her fit to be promoted with effect from 20.3.1990, her promotion could not have taken effect on that date as the applicant was on long leave from 4.12.1989 to 3.12.1992, and therefore the impugned order was rightly issued giving effect to her promotion with effect from the date she rejoined duties.

4. We have heard the arguments of Shri S.K. Sinha, proxy counsel on behalf of Shri Jog Singh, for the applicant and Shri Vijay Kumar Mehta, counsel for the respondent.

5. The learned counsel for the respondent argued that since it would not have been practically possible for the Department to promote the applicant while she was on long leave, the department has rightly promoted her with effect from the date she returned from long leave, However, maintaining her seniority over her juniors. This according to the learned counsel was done in compliance with the Govt. of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms OM dated 20.8.1981, a copy of the above OM is made available for our perusal, para 2 of the OM reads as follows:

"The matter has been carefully considered that leave is essentially a situation that makes one eligible to benefits but which are put off till after leave (as for example the benefits of increments), it has been decided a person who is on long leave and could not be promoted should be treated to have been notionally

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promoted if a junior in the same panel is regularly promoted for the purpose of being taken off the panel only, subject to the actual effect being given on return from leave. This benefit would not be admissible in cases where persons have refused promotion on the basis of panel or those who have taken leave with the purpose of avoiding transfer to other stations or those who remain on long leave without proper sanction. In effect the benefit will be given only to those who are on long leave due to proved physical disability."

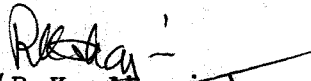
6. A careful reading of this OM would clearly show that in a case where an employee could not be promoted as he is on long leave should be treated to have been notionally promoted if a junior in the same panel is regularly promoted. According to the above OM the applicant should be deemed to have been promoted notionally from the date on which her juniors was promoted and effective promotion could be given only from the date on which she resumed duty.

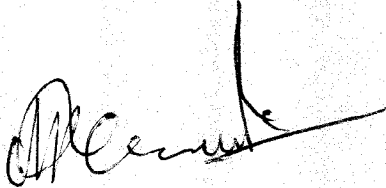
7. On the basis of the recommendations of the D.P.C. an order was passed promoting the applicant with effect from 20.3.1990 as Investigator (Data Processing) (General Central Services, Gr. 'B' Non-Gazetted; Non-Ministerially in the scale of Rs. 1640-2900. It is not the case of the respondents that any arrears of pay and allowance has been paid to the applicant on the basis of this ante dated promotion. ~~Therefore, even in the light of the OM~~ ~~dated 28.9.1981~~ Therefore, even in the light of the OM dated 28.9.1981 relied on by the respondents the putting off of the applicant's notional promotion

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till she returned from leave did not arise. The respondents must maintain the seniority of the applicant as Investigator (Data Processing) above her immediate juniors Smt. Vinod Kumari Anand who was promoted with effect from 20.3.1990. Therefore, if the respondents alter the date of promotion from 20.3.1990 to 4.12.1992, the fixation inter-se seniority over Smt. Vinod Kumari Anand would be against the general principle of seniority that the date of entry in the cadre and the length of service should be the criterion for seniority.

8. In the light of what is stated above we set aside the impugned order at Annexure A-1. We direct the respondent to restore the order dated 12.4.1993 promoting the applicant with effect from 20.3.1990. The respondent is also directed to consider the applicant for promotion to the next higher post of Superintendent (Data Processing) with effect from the date she comes within the zone of consideration, and promote her in her turn if she is not otherwise found unsuitable for such promotion. No order as to costs.


 (R.K. Anooja)
 Member (A)


 (A.V. Haridasan)
 (Vice Chairman [J])

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