

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 174/2000

(6)

New Delhi this the 5th day of March, 2001.

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

Smt. Sushma Mutreja,  
Assistant, L.S.III Section,  
Ministry of Labour,  
New Delhi.

..Applicant

(By Advocate Mrs Rani Chhabra )

VERSUS

1. Union of India  
through the Secretary,  
Ministry of Labour, Shram  
Shakti Bhawan, New Delhi.

2. Shri Gopal Singh, Under  
Secretary, Ministry of Labour,  
Shram Shakti Bhawan, New Delhi.

3. Smt Lajjawati,  
Assistant Cash Section, D.G.E&T,  
Shram Shakti Bhawan, New Delhi.

4. Shri Om Prakash,  
Assistant.

5. Sheesh Ram,  
Assistant.

6. V.H. Sorte,  
Assistant.

7. Kanti Bhai,  
Assistant

Respondents No.4 -7 of the  
address Ministry of Labour,  
Shram Shakti Bhawan, New Delhi

.. Respondents

(By Advocate Shri R.V.Sinha, learned counsel  
through proxy counsel Shri R.N.Singh )

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

The applicant is aggrieved by Office Memo.  
dated 2.2.1999 (Annexure A-8), in which they have  
informed that her name was also considered for

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inclusion in the select list of Assistants Grade for the year 1994-1995 along with her juniors but the DPC held for promotion for that year had not found her fit for inclusion in the Select List. Admittedly, she has been subsequently considered by the DPC which was held on 17.12.1998 and her name has been included in the select list of Assistants Grade for the year 1996.

(A)

2. The brief relevant facts of the case are that in the year 1992-93, the applicant had been given certain adverse remarks in her ACR. These were communicated to her by the respondents OM dated 8.7.1994. With regard to certain adverse remarks given in Paragraph 2 of this OM, dealing with as many as 40 occasions during April, 92 to December, 1992, when the applicant was stated to have come late to office, the applicant had made representations to the respondents in July and September, 1993. These representations have been considered by the respondents. Mrs. Rani Chhabra, learned counsel for the applicant has relied on their OM dated 27.12.1993 (Annexure A 4) wherein she has been informed that the late attendance during April, 1992 to December, 1992 has been condoned. She was, however, advised to be more careful in future as she had not improved despite warning given by the Administration on 27.8.1991. To the O.M. dated 8.7.1994 the applicant made her representation praying for expunging of the adverse remarks which were rejected by the respondents by their OM dated 3.2.1995 (Annexure R-20). She had submitted an appeal against this order which was also rejected by the appellate authority by order dated 29.8.1995 (Annexure A-21).

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3. The respondents have produced the relevant records of the DPC proceedings held on 7.11.1996 for selecting the list of Assistants for the year 1994; DPC proceedings held on 20.4.1998 for selecting the list of Assistants for the year, 1995 and the DPC proceedings dated 17.12.1998 for selecting the list of Assistants for the year 1996. In the DPC Minutes held on 7.11.1996 it has been recorded that adverse remarks were communicated to the applicant on which she had made representations which were rejected. Therefore the applicant was not found fit for promotion. Similarly in the DPC proceedings held on 20.4.1998 she was again not found fit due to the adverse remarks in her ACR for the year 1992-1993. Mrs Rani Chhabra, learned counsel has submitted that in view of the fact that the respondents have themselves issued OM dated 27.12.1993 condoning her late attendance during the period from April, 1992 to December, 1992, which admittedly formed part of the remarks for the year 1992-1993, these facts should have also been placed before the DPC which has not been done. She has, therefore, submitted that as the relevant papers have not been placed before the DPC in question, the consideration of the applicant's case has not been done in accordance with the rules, guidelines and relevant instructions on the subject. Therefore, she has prayed that a direction may be given to the respondents to have the matter placed before a Review DPC to reconsider the applicant's case.

4. On the other hand, Shri R.N. Singh, learned proxy counsel for the respondents has submitted that before the aforesaid DPCs met, the applicant was fully

aware that they have rejected her representation for expunging the adverse remarks by orders dated 3.2.1995 and 29.8.1995. His contention is that these were not challenged by the applicant earlier or even in this OA, and so no such direction as prayed for by the applicant can be given. He has also explained that the respondents have made it clear that the earlier OM passed by them dated 27.12.1993 pertaining to her late arrival in the office during the period from April, 1992 to December, 1992 has been condoned for administrative exigencies, after she was asked to apply for leave for the relevant period and not for any thing else. He has submitted that the correct facts have been placed before the DPC, that the applicant's representations for expunging the adverse remarks for the year 1992-1993 have been rejected and therefore, there is no question of ordering a review DPC in the present case. He has also submitted that in the subsequent DPC held on 17.12.1998 the applicant, whose name appears at Serial No.1, has been considered, found fit and her name placed in the Select list of Assistants for the year 1996. Learned proxy counsel has, therefore, submitted that there is no merit in this application and the same may be accordingly dismissed with costs.

5. We have carefully perused the pleadings, records and considered the submissions made by the learned counsel for the parties.

6. The relevant portion of the respondents' OM dated 2.2.1999 reads as follows:-

"With reference to her representation dated 10.8.1998 and 27.1.1999 on the subject noted above, Smt. Sushma Mutreja, Assistant(Ad hoc) is informed that she was also considered for

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inclusion in the Select list of Assistants'Grade for the year 1994-1995 alongwith her juniors. However, she was not found fit by DPC for promotion and inclusion in the Select List of Assistants'Grade for the year 1994and 1995. She was again considered by DPC for inclusion in the Select List of Assistants'Grade for the year 1996." (26)

As mentioned above, on perusal of the DPC Minutes of 7.11.1996 and 20.4.1998,there is no doubt that the applicant's name figures in the list of permanent UDCs of the CSS cadre who were eligible for consideration for promotion to Assistants Grade. However, it is relevant to note from the records, that the DPC had been informed that the representations to expunge the adverse remarks communicated to the applicant on 8.7.1994 pertaining to the year 1992-1993 have been rejected by the respondents and there is no expunction of the adverse remarks. The adverse remarks conveyed to the applicant in the OM dated 8.7.1994 reads as follows:-

- 1."She was not having full day work. During the period of her posting only 245 receipts were marked to her which also she did not handle properly.
- 2.On certain occasion she attended office late. As per O.M.No.A19012/37/93.Adm.1 dated 26.8.93 she absented without submitting any leave application for 6 days and was late on 40 occasions during April,1992 to December,1992."

7. It is with reference to the last portion of Paragraph 2 of the aforesaid OM that ,admittedly, the respondents have taken a decision to condone her late attendance during the period from April,1992 to December, 1992.Perhaps the same might have been done due to administration exigencies as submitted on their behalf. However,having condoned the applicant's conduct of coming late to the office, the respondents cannot at the same time state that the adverse remarks for the relevant year 1992-1993 have been left

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un-touched. Their submission of papers to the DPC, which had in turn recorded that the representations made by the applicant for expunging the adverse remarks have been rejected and these remarks have, therefore, not been expunged is not the correct position. In other words, it is clear from the facts and circumstances of the case that some part of the adverse remarks given to the applicant for the year 1992-1993 have been, in fact, expunged i.e. those remarks dealing with late coming for the relevant period.

(21)

8. It is settled law that in the matter of assessment of the eligible candidates by the duly constituted DPC, it is necessary to place before them all the relevant papers so as to enable them to arrive at a correct conclusion, in accordance with the relevant rules and instructions. It is also settled law that the Court/Tribunal is not to sit as a Court of appeal or make a re- assessment of the ACRs of the eligible candidates whether they are fit or not, which is the function of the Departmental Promotion Committee. This is mentioned as the learned proxy counsel for the respondents has submitted that even if some portion of the adverse remarks stood condoned, that would not make any difference whatsoever to the final assessment by the DPC of the applicant's ACR for the relevant year. It is also relevant to note that in the present case, instead of the DPC proceedings having been held annually as required under the rules, the respondents have admittedly held them long after due date. In the case of the select list of Assistants for the year 1994-1995, they have held the

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DPCs on 7.11.1996 and 20.4.1998, respectively, by which time the respondents had all the records available with them. It was the duty of the respondents to have placed the relevant records, including OM dated 27.12.1993, that part of the adverse remarks have been condoned before the DPCs for their due consideration of the matter. However, this has not been done.

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9. In view of the discussion above, the OA partly succeeds and is allowed with the following directions:-

(i) The respondents to convene a review DPC of the eligible candidates for the select list of Assistants' Grade for the years 1994 and 1995, in accordance with the relevant rules, guidelines and instructions, keeping in view the observations made above. This shall be done within three months from the date of receipt of a copy of this order.

(ii) If the applicant is found eligible by the review DPC so convened, she will be entitled to consequential benefits in accordance with law.

No order as to costs.

(Govindan S.Tampi)  
Member (J)

Lakshmi Swaminathan  
(Smt.Lakshmi Swaminathan)  
Vice Chairman (J)