

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

....
OA.1988 of 1989

New Delhi, this the 18th day of July, 1994

Hon'ble Shri J. P. Sharma, Member (J)

Hon'ble Shri B. K. Singh, Member (A)

Mrs Tara Rani Tolaney
R/o N-552, Sector-8
R. K. Puram
NEW DELHI

... Applicant

By Advocate: **Shri B.B. Varma**

VERSUS

Union of India through

Secretary
Central Board of Direct Taxes
North Block
NEW DELHI

... Respondent

By Advocate: **Shri V.S.R. Krishna**

ORDER
(Oral)

Shri J. P. Sharma, M(J)

The applicant had earlier filed OA.293/86 while working as an ad-hoc UDC in the Directorate of Inspection, Central Board of Direct Taxes on 28.4.86 in which she prayed that the recommendation of the DPC finding her unfit for promotion to the post of UDC in February, 1979, as unfair as juniors to her were promoted. She should be promoted from that date on which juniors to her were so promoted. That OA was decided on 2.2.87 by the Principal Bench with the direction to the respondents that the adverse entries for the year 1977-78 be expunged and the adverse remarks sheet be taken out from the CR file and that her case be reconsidered for promotion to the post of UDC as in February, 1979 by the Review DPC.

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The Review DPC should meet and a decision about her suitability should be taken by the respondents. In case the applicant is found fit for promotion as UDC by the Review DPC on February, 1979, she should be promoted as such. The applicant has since voluntarily retired from service w.e.f. 28.2.89. Thereafter she has filed this OA in September, 1989 in which she has prayed for the following reliefs:

- "(i) The declaration that the applicant is a UDC with seniority immediate above Shri Gurbux Singh and as a consequence thereof,
- (ii) A further declaration that she is entitled to pay and allowances of UDC with effect from the date from which she performed the duty of UDC that is to say w.e.f. 13th July, 1979,
- (iii) and as a further consequence, a further declaration that she be deemed promoted to the grade of Assistant with seniority immediately above her junior Shri Goverdhan Lal, and entitled to refixation of pay in the grade of Assistant as per rules with effect from the same date from which Shri Goverdhan Lal drew the pay and allowances of Assistant, and further refixation of pay in the revised scale, implemented on the recommendation of the Fourth Pay Commission,
- (iv) and further declaration that she is entitled to retirement benefits on the basis of the basic pay accruing to her after such re-fixation.
- (v) and the last declaration that the cost of the litigation may be borne by the Respondent."

2. A notice was issued to the respondents who filed reply and contested the application and stated that as per direction of the Principal Bench in OA.293/86 decided on 2.2.87, the Review DPC was held on 12.5.87 and the applicant was found unfit for promotion. The ACR of the applicant for the year 1978-79 was also considered and that 1977-78's ACR was ignored by the Review DPC. A Review DPC was again held on

20.7.89 and this DPC also did not recommend the applicant ~~for~~ promotion. Since the applicant had already sought retirement under Rule 48(A) of the CCS(Pension)Rules,1972 w.e.f. 20.2.89. She is not entitled to any relief.

3. The applicant has also filed a rejoinder and have substantiated the averments made in the OA by citing certain case on the point.

4. We have heard the learned counsel for the parties at length. The contention of the counsel for the applicant was that there is violation of Article 14 of the Constitution of India as the action of the DPC was arbitrary and that the juniors to the applicant were given promotion ignoring the claim of the applicant. We have gone through the grounds taken in the OA from ground one to nine. But we do not find any averment that the Review DPC of 1987 and 1989 acted in a malafide manner. The counsel for the applicant has also referred to **Para-11** of the rejoinder where it is stated: "The respondents seem to have made it a prestige issue and seem to have decided that once thus condemned a person, condemned she is forever and no power can redeem her."


5. The power of the Tribunal to interfere in the matter of selection conducted under the relevant statutory Recruitment Rules by a duly constituted DPC is only ~~restricted~~ ^{restricted} to interfere when there is malafide

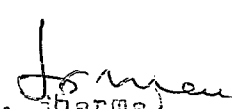
on the part of the members of DPC in as much as the rightful claim of the applicant's case on certain bias, prejudice and pre-notions was ignored. Counsel for the applicant argued that the grounds one to eleven have been taken mildly. However, we find that there is no direct averment, imputation or allegation against the members of DPC and further the respondents in their reply have categorically stated that the case of the applicant has been considered in the light of the judgement in OA.293/86 decided on 2.2.87. If the applicant harboured any grudge that the DPC was not conducted in pursuance of the direction of the earlier OA, she was free to move for contempt against the respondents. In the present application, she has raised the plea of her not being considered by the Review DPC only on the ground that juniors to her have already been promoted and that DPC has made it a prestigious point that once condemned remains condemned forever. We cannot understand the logic behind this averment. Counsel for the applicant has also referred to arbitrariness and also that the applicant has been discriminated. Merely because no adverse entry was communicated to the applicant would not, by itself, make her suitable for the post. There are considerations, for example, where one is an efficient worker and remains continuously away from job without leave sanctioned or otherwise for a number of months at one time or at intervals.

12

We find that the applicant absented herself for months together between 1976-79, may be due to her personal difficulties, but the DPC was free to comment and assess that aspect also while considering the applicant suitable for the promotional post. As said above, the Tribunal cannot sit as an appellate authority, but can only interfere when the statutory Recruitment Rules have not been followed or there has been an omission or commission on the part of the DPC that requires interference.

6. In view of this, we do not find any merit in this application. (At this stage, the applicant's **counsel** ^{not} seeks adjournment of the case, but we are ^{not} inclined to adjourn the case further). The case is dismissed **as devoid of merits.**
No costs.


(B. K. Singh)
Member (A)


(J. P. Sharma)
Member (J)

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