

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA.277/88

Date of decision: 9.7.93

Smt. P.K. Khurana

Applicant

Versus

Union of India

Respondents

Shri K.L. Bhandula

Counsel for the applicant

Shri P.P. Khurana

Counsel for the respondents

CORAM; The Hon. Mr. I.K. RASGOTRA, Member(A)

The Hon. Mr. C.J. ROY, Member(J)

J U D G E M E N T (Oral)

The petitioner Smt. P.K. Khurana was appointed as LDC in the office of the respondents in February 1970. She was promoted as UDC in September 12, 1977. A DPC was held for further promotion to the grade of Assistant on 24.9.82. However, when the DPC list was put up for approval, the Director made some observations which necessitated convening of a review DPC. The review DPC met on 3.11.82 and based on its recommendations the petitioner was promoted as Assistant w.e.f. 9.11.82. Her seniority was to count from 1.10.82, the date on which her junior was promoted as Assistant. She was promoted on officiating basis in a temporary capacity. She was reverted to her substantive post of UDC w.e.f. 12.9.85. She made a representation against the order of reversion on 1.6.87 which was rejected by the respondents vide order dated 20.7.87. Aggrieved by the respondents order of rejection, the petitioner filed this OA under Section 19 of the Administrative Tribunal's Act, 1985, praying for the following reliefs:-

- (a) Order dated 23.1.85 reverting her from the post of Assistant be quashed and the petitioner be deemed to have continued as Assistant with all consequential benefits.
- (b) Alternatively, the applicant be re-promoted as Assistant from the date her juniors have been promoted i.e. from 25.9.86, with all consequential benefits.



...2...

(14)

2. When the case came up for consideration before this Tribunal on 11.5.1988, the question of jurisdiction was raised. However, the application was admitted leaving this question of jurisdiction open on 13.7.88. This matter was heard today. The learned counsel for the petitioner Shri K.L. Bhandula brought to our notice the judgement of the Principal Bench of this Tribunal in T-464/85 (CW 1735/1985) decided in March 4, 1987 in the case of Mrs. Neelima Bhatnagar Versus Union of India and others, where the case of the petitioner who was an LDC in the Border Security Force was dealt with. The learned counsel submitted that following this, several cases have also been decided accepting that the civilians working in the Border Security Force are amenable to the jurisdiction of the Tribunal. The case of the petitioner has been founded on the fact that in her tenure of little over 2 years, she had been shifted from desk to desk about 16 times. The learned counsel referred to the statement in para-14 of the application, which gives the petitioner that she did not find it possible to render satisfactory service. It has been admitted in the GA that the petitioner was communicated adverse entries, in the CR on her for the year 1982, 1983 and 1986. She had represented against these, entries. However, the adverse remarks have not been expunged. The fact of promotion of the petitioner as Assistant on temporary basis is not disputed by the respondents. They, however, submitted that her performance was not found satisfactory and, therefore, she was reverted to her substantive post of UDC w.e.f. 12.9.85. She was considered for promotion by the DPC's held subsequently but she has not been selected. This has been primarily due to the reason that her overall performance as reflected in the ACR's was found unsatisfactory on her. The respondents further submitted that the application is barred by limitation under Section 21 of the Administrative Tribunal's Act, 1985, as the cause of action in her case had arisen on 23.1.1985, when she was reverted to the post of UDC. The

...3...

2

12

representation of the petitioner dated 1.6.87 and the rejection thereof by the respondents by the order dated 20.7.1987 cannot extend the limitation. The petitioner should have acted in good time to make a representation against her reversion and if she did not get any response she should have agitated the matter in proper forum. This view is further fortified by the fact that although the order impugned is of 20.7.87, the reliefs claimed are related to the order of reversion dated 23.1.85. The respondents, therefore, submit that the petition deserves to be dismissed on this ground alone. On merits, it was further submitted that the promotion of the applicant was on temporary basis. Since her performance was unsatisfactory, there was no alternative but to revert her to the substantive post of UDC. Regarding the petitioner's allegation of frequent transfers, the respondents have averred that the petitioner worked in the Air Wing in the Administrative Dte. for more than 5 months continuously. There was no malefide intention in transferring from various sections. It is submitted that on the contrary, it was her performance which necessitated such transfers. It is, however, contended that the CR of the petitioner have been written in accordance with the instructions of the Ministry of Home Affairs incorporated in the OM No.51/14/60/Estt.(A), dated 1.10.61 and the extract of which has been placed at Annexure R-3 (at page 42 of the paper book). From Annexure R-4 of the counter affidavit, it is further observed that before reversion, the petitioner was given an opportunity to continue as Assistant for a period of 3 months when her work was kept under observation. On expiry of the said period of 3 months a special CR was obtained on her work before passing the order of reversion.

3. We have heard the learned counsel for both parties. We are of the opinion that the grievance of the petitioner relates to the reversion vide order dated 23.1.85. She, however, chose to file a representation against the order of reversion only on 1.6.87 nearly after 2½ years. It has been brought to our notice that the petitioner has agitated the matter of reversion in her representation on 10.2.1985, there is all the more reason for her to have approached in proper forum after waiting for the reply

2

13

for a reasonable time. She filed this OA only on 15.2.88. There is, therefore, merit in the argument of the respondents that the petition is barred by the provision of limitation under Section-21 of the Administrative Tribunal's Act, 1985.

4. Even on merits, we are not inclined to consider any relief for the petitioner as she was promoted on officiating capacity on temporary basis. Admittedly, she was transferred on a number of occasions but she did work in some of the sections for a period of over 3 months. Reports of her work performance are not satisfactory. Even thereafter a special chance was provided to her for a period of 3 months, when special reports were obtained on her performance Annexure R-4 (page 43 of the paper book. It is only when she failed to show improvement she was reverted. In view of the above facts and circumstances of the case, we are of the opinion that the OA is first time barred under Section-21 of the Administrative Tribunal's Act, 1985 and secondly lacks merit. Accordingly, it does not call for any interference from us and the same is hereby dismissed with no order as to costs.

*[Signature]*  
(C.J. ROY)  
MEMBER(J)  
9.7.93

*[Signature]*  
(I.K. RASGO TRA)  
MEMBER(A)  
9.7.93

kem090793