

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 293
TAX NO.

1986

DATE OF DECISION 2.2.1987

Mrs. Tara Rani Petitioner

Shri R.L. Sethi Advocate for the Petitioner(s)

Versus

Central Board of Direct Taxes Respondent

Shri M. L. Verma Advocate for the Respondent(s)

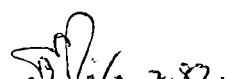
CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H. P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO


(H. P. BAGCHI)
JUDICIAL MEMBER


32/2.2.87
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(5)

OA. No. 293/86

DATE OF DECISION : 2.2.1987

Mrs. Tara Rani . . . Applicant

vs.

Central Board of Direct
Taxes . . . Respondent

Shri R.L. Sethi . . . Counsel for Applicant

Shri M.L. Verma . . . Counsel for Respondent

CORAM :

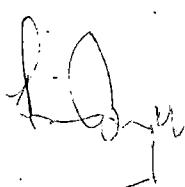
The Hon'ble Mr. S. P. Mukerji, Administrative Member

The Hon'ble Mr. H. P. Bagchi, Judicial Member

JUDGMENT

The applicant who is working as an ad-hoc UDC in the Directorate of Inspection, Central Board of Direct Taxes, moved this application on 28.4.86 under Section 19 of the Administrative Tribunals Act, 1985 praying that the adverse entry in the annual confidential report (ACR) for the year 1977-78 being inoperative, the OPC's recommendation finding her unfit for promotion as an UDC and in February 1979 is unfair/ void when her juniors were promoted and that she should be promoted as an UDC from the date on which her juniors were appointed, with all consequential benefits.

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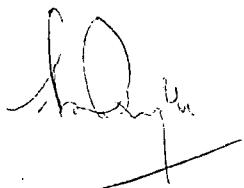
2. The admitted facts of the case fall within the narrow compass and can be summarised as follows. The applicant was appointed as LDC on 19.6.1966 and was confirmed as such on 12.5.1977. Because of her domestic compulsions she had to be on long leave for 2090 days for the period between 28.6.1976 and 16.7.1983. While she was on leave, an adverse entry was recorded in her C.R. Dossier for the reporting year 1977-78 to the following effect.

"Col 13 - Other remarks : Applications for leave even are not made properly and regularly. Had been on leave on the ground of sickness for long period and thereafter on ground of child sickness. Does not seem to care for the service"

The aforesaid remarks were recorded on 1.8.1978 and was communicated to her on 4.6.80. It was admitted that during the reporting year 1977-78 the applicant did not work for a single day, being on extraordinary leave.

The promotion ^{to} for the post of UDC is made from the rank of LDC on the basis of seniority subject to the rejection of the unfit. The DPC which met in February 1979 declared her to be unfit for promotion but found three of her juniors to be fit for promotion, as a result of which while her juniors were promoted, she could not be promoted till 12.8.83 as an UDC on an ad-hoc basis.

3. The argument of the learned counsel for applicant is that she having been found fit for confirmation as late as on 12.5.77 as LDC she could not be held to be unfit for promotion as UDC in February 1979 when three



persons who are junior to her were found fit. The learned counsel's understandable presumption is that rejection of her case most probably flowed out of the adverse entry which was not communicated to her till June 1980 but was very much before the DPC in February 1979. His main contention is that this adverse entry which might have played a crucial role in her rejection in February 1979 was ex-facie unauthorised and inadmissible not only because it was not communicated to her till the DPC met but also because she had not worked for even a single day during the reporting period 1977-78. The learned counsel for respondents has argued that since the petitioner had been on long leave she could not be found to be fit enough to be promoted as an UDC.

4. Having heard the arguments of the learned counsel for both the parties and gone through the documents carefully, we have no hesitation in setting aside the adverse entry of 1977-78 communicated on 4.6.80 on the single ground that there ~~was~~ ^{was} no material before the Reporting Officer to comment on her performance and to pass judgment to the effect that she did not seem to care for the service. It is a well settled principle that no entry can be made in respect of the performance of an official, unless the reporting officer has seen the performance of the official reported upon for at least three months. In the instant case, Shri R.N. Dave the officer who has recorded the adverse entry had not seen the performance of the applicant not to speak of three months but even for a single day. It was therefore, not

proper on his part to enter the remarks for whatever they are worth. Accordingly we direct that this entry should be completely expunged and the sheet should be taken out from the C.R. and another sheet should be introduced to the effect that no entry could be made for the reporting year 1977-78 as the official was on leave throughout the reporting period.

5. So far as her fitness for promotion as an UDC is concerned, we are impressed by the arguments of the learned counsel for applicant that the applicant having been found fit to be confirmed as LDC on 12.5.77 and not having put in a single day's of work between 12.5.77 and 12.7.79 as she was on leave throughout there was no post-confirmation material before the DPC on the basis of which it could be presumed that having been found fit for confirmation ^{as LDC} on 12.5.77 she was unsuitable for promotion as UDC. The arguments of the learned counsel for respondents that her rejection could be a sequel of her being on long period of leave has to be repelled in view of the fact her absence on leave continued with short spells of duty right up to 16.7.83 inspite of which she was promoted as an UDC on ad-hoc basis on 12.8.83. If she was found to be fit for promotion as an UDC on ad-hoc basis on 12.8.83, it is not understood why she was found unfit for promotion in February 1979 when the circumstances were no worse than in 1983.

6. In view of the facts and circumstances discussed above we allow the petition with the direction that the adverse entry for the reporting year 1977-78 should be expunged and the adverse remarks sheet should be taken

out completely from the CR file and that her case should be re considered for suitability for promotion as UDC as in February 1979 by the Review DPC by taking into account the available entries up to that date. In case the Applicant is found fit for promotion as UDC by the Review DPC of February 1979 she should be promoted as such when her juniors were promoted with all consequential benefits including arrears of such pay and allowances to which she would be entitled under the rules. The Review DPC should meet and a decision about her suitability should be taken by the respondents within a period of three months. There will be no order as to costs.


(H. P. BAGCHI) 2/2/77
JUDICIAL MEMBER


(S.P. MUKERJI) 2/2/77
ADMINISTRATIVE MEMBER

R.A.