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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1029/86

DECIDED ON : 7.1.1993

V. P. Gupta

... Applicant

Vs.

Union of India & Others

... Respondents

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri G. D. Gupta, Counsel for the Applicant

Mrs. Rajkumari Chopra, Counsel for the Respondents

JUDGMENT (ORAL)

Hon'ble Shri P. C. Jain, Member (A) —

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant was initially appointed as Grade 'C' Stenographer in the Ministry of Industry in August, 1971 on the basis of passing the Stenographers' Examination conducted by the UPSC in 1970. A Stenographer is entitled to compete for the post of Section Officer in the Limited Departmental Examination Quota, the same examination being conducted by the UPSC. The requirement is that the person concerned should have rendered five years' service as Stenographer. The examination comprises of two parts — (1) written part and (2) evaluation of service records. The written part comprises of five papers of 100 maximum marks each and the candidates getting a fixed number of marks which is fixed every year by the UPSC, out of the above maximum 500 marks, are declared successful in the written part of the examination and eligibility for evaluation of service records. For evaluation of service records a maximum 150 marks is earmarked. The marks obtained in the written part as well as on evaluation of service records are added to select persons as per their merit equivalent to the number

of vacancies available for appointment as Section Officers through this method of limited departmental examination. It is common ground between the parties that the service record is seen for a period of five years preceding the year in which the examination is held.

2. The applicant completed five years in 1976 as Grade 'C' Stenographer and accordingly competed for the limited departmental examination conducted by the UPSC in 1977. Though he passed in the written examination but he was not selected on the basis of the totality of marks in the two parts of the examination. He similarly appeared in 1978, 1979, 1981 and 1982 but in none of these years as well he was declared successful for appointment to the post of Section Officer. He also appeared in 1984^{and} on the basis of that examination he was selected and appointed as Section Officer on 5.11.1985.

3. Before we advert to the issue involved in this case, it is necessary to refer to certain developments in the career of the applicant. On the basis of a case in respect of a criminal offence being under investigation against the applicant in which he was also arrested and remained in the custody from 29.7.1973 for more than 40 hours, he was deemed to have been suspended w.e.f. 29.7.1973 vide order dated 9.9.1973. The aforesaid suspension order was revoked by order dated 18.2.1975. In the criminal case the applicant was ultimately discharged vide judgment and order dated 25.1.1983 on account of there being no evidence against him. Finally the period of suspension was ordered to be treated as period spent on duty and the applicant was allowed full pay and allowances for that period. Vide memorandum dated 9.1.1984 he was served with a memorandum of chargesheet in the disciplinary proceedings initiated against him but he was exonerated of the charges therein vide order dated 15.5.1985. However, by confidential memorandum dated

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16.5.1985, the applicant was warned to be more careful in future so that such lapses do not re-occur on his part. It may be made clear here that this was not an order passed in the disciplinary proceedings and the order by which the applicant was administered a warning does not show that it was required to be placed on his D.R. dossier.

4. It is in the above background that the applicant made a representation on 5.2.1986 for review of his case for selection/appointment to the post of Section Officer on the basis of the examination conducted by the UPSC in 1977 and in subsequent years on the ground that probably the fact of his suspension, involvement in a criminal case etc. had affected adversely the evaluation of his service records which ultimately resulted in denial of his selection for appointment to the post of Section Officer in all these years. This representation was rejected by memorandum dated 7.8.1986 (Annexure P-13). Hence, this O.A. in which the applicant has prayed for the following reliefs :-

- "a) to allow this application of the applicant under Section 19 of the Administrative Tribunals Act, 1985 with costs.
- b) to issue appropriate order or orders, direction or directions:
 - i) quashing the memorandum dated 7th August, 1986 rejecting the representation of the applicant for reconsideration of the candidature of the applicant for the post of Section Officer on the basis of Section Officers' Examination 1977 and subsequent examinations held in 1978, 1979, 1981 and 1982 conducted by the U.P.S.C.
 - ii) directing the respondents to award full marks to the applicant for the period for which his C.R. was not written and to review the remaining record ignoring the remarks/documents which were of extraneous nature.
 - iii) declaring the applicant successful in 1977 Examination itself, with all consequent benefits like arrears of pay, allowances, promotions, seniority, service, etc.
- c) to issue such other appropriate order or orders, direction or directions as deemed fit and proper to meet the ends of justice."

5. The respondents have contested the OA by filing their reply to which the applicant has also filed a rejoinder. We have perused the material on record and also heard the learned counsel for the parties quite at some length.

6. Learned counsel for the applicant strongly stressed two contentions before us. Firstly, it is stated that for the period 1.1.1973 to 28.7.1973 no assessment of the applicant's work and conduct was recorded in his C.R. and as such the applicant has a reasonable apprehension of having been prejudiced in evaluation of his service records in connection with the examination in question. The second contention is that admittedly there was a note in his service record about his having been placed under suspension which was modified only after he made a representation dated 11.11.1985 as is evident from the O.M. dated 26.12.1985 (Annexure P-12). It was, therefore, argued that the note in his service record is likely to have prejudiced the UPSC in the matter of evaluation of his service records. The learned counsel for the applicant, therefore, pressed that in view of the discharge of the applicant in the criminal case and his exoneration in the disciplinary inquiry held against him and also in view of the fact that the period of suspension has been treated as having been spent on duty with full pay and allowances, evaluation of his service records for the purposes of the examination of 1977, 1978, 1979¹⁹⁸¹ and 1982 be reviewed.

7. Learned counsel for the respondents gave to us the marks given to the applicant in the matter of evaluation of his service record for the examinations 1977, 1979, 1981, 1982 and 1984. It was submitted by her that the record for the year 1978 is not available. According to the above information the applicant is shown to have secured 125 out of 150, 120 out of 150, 117 out of 150, 120 out of 150 and 117 out of 150 in part 2 of the examination, i.e.,

evaluation of the service records for the relevant preceding five years, for the examination 1977, 1979, 1981, 1982 and 1984 respectively. We have shown this statement to the learned counsel for the applicant also. This statement makes it clear that the absence of the C.R. in the C.R. dossier of the applicant for the period 1.1.1973 to 28.7.1973 and for the period of suspension from 9.7.1973 to 18.2.1975 could not have adversely affected the applicant in the matter of evaluation of his service record, for the simple reason that in the absence of two years' service record, i.e., for 1973 and 1974, as already stated above, the applicant could not have got for 1977 examination 125 out of 150 maximum marks for the service record, presumably because 150 marks for five years would be assigned on the basis of 30 marks for each of the five years. If the absence of service record for two years had been a bottleneck, the applicant could have secured at best 90 marks out of 150. Thus, it appears to us that his service performance has been assessed for the years for which there was no service record on the basis of this report for the years for which it was available. Thus, the contention of the applicant that the absence of the service record might have affected him adversely cannot be said to have been substantiated.

8. As regards the other contention, the respondents in para 6.13 of their reply have stated that at the time of forwarding of the C.R. dossier for evaluation to the UPSC in connection with the examinations held for the years 1977, 1978, 1979, 1981 and 1982, the C.R. dossier, inter alia, contained the following documents:-

"A note signed by Director (Administration), Directorate General of Technical Development stating that Shri V. P. Gupta, Personal Assistant was under suspension from 29th July, 1973 to 17th February, 1975 and that no report was written on him for the aforesaid period."

This shows that the fact of suspension of the applicant for the period mentioned in the above note was before the authority which

evaluated the service record of the applicant for the relevant periods, and theoretically it is possible that this factum of suspension of the applicant for a certain period might have subjectively influenced that authority to the detriment ^{of the} ~~to the~~ interest of the applicant. This note was substituted on 16.12.1985 by the following note as stated by the respondents in para 6.15 of their reply :-

"Shri V. P. Gupta, Personal Assistant had not worked under any officer during the period from 29th July, 1973 to 17th February, 1975 and as such no report was written on him in the aforesaid period."

This substitution was done admittedly in pursuance of the applicant's letter dated 11.11.1985 (Annexure P-11). Whether the note earlier placed in the C.R. dossier of the applicant has in fact played any part at the time of evaluation of service record of the applicant, we are not in a position to state categorically either way because it is a matter which can be verified only by the authority which evaluated the C.R. The respondents in their reply have denied that it has influenced the evaluation of service record. Apart from that, we are inclined to take a view, on the basis of the marks assigned to the applicant on the subject of evaluation of service records, for the relevant years, as already adverted to above, that the possibility of any such adverse conclusion would not be reasonable in the facts and circumstances of this case because if it had really influenced the assessing authority in an adverse manner, the possibility of the applicant securing the marks which he was assigned would be remote. Further, we cannot sit in appeal on the assessment made by the competent authority. Suffice to say, that *prima facie*, there appears no reason whatsoever for any interference by the Tribunal or for any direction for a review in the matter of evaluation of the service records for any of the

years in which the applicant competed in the limited departmental examination for selection and appointment to the post of Section Officer.

9. In the light of the foregoing discussion, we see no merit in this OA which is accordingly dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J. P. Sharma)
Member (J)

P. C. Jain
(P. C. Jain)
Member (A)