

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

D.A. No.1316/1987.

Date of decision: November 8, 1990.

Smt. L. Binodini Devi ... Applicant.

Vs.

Union of India & Ors ... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. I.K. Rasgotra, Member (A).

For the applicant ... Shri S.K. Bhattacharya,
counsel.

For the respondents 1 to 3 Shri P.P. Khurana,
counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

The applicant is a trained qualified Pilot in the Directorate of Agricultural Aviation, New Delhi. She is aggrieved by the order of the D.P.C. dated 25.6.1987 which did not recommend her name for promotion to the next higher post of Senior Pilot (Fixed Wing) in the scale of Rs.4500-5700. She has challenged the proceedings of the D.P.C. on the ground that it had taken into consideration the adverse remarks in her Confidential Reports which were not communicated to her before the D.P.C. met nor given her an opportunity to file a representation against the same. Consequently it is stated on her behalf that the said adverse entries should not have been taken into consideration to deprive her the promotion to the next higher grade.

It is not necessary to go into the various factual

points raised in this Application, it can be disposed of on a short ground. In paragraph 6(22) of the reply filed by the respondents, it is submitted:

"that the position stated by the applicant is generally accepted about the late communication of the adverse remarks in her Confidential Reports. However, it is submitted that the DPC did not exclude her from due consideration. It is also submitted that the adverse remarks, in the Confidential Reports were communicated to her after the date of the DPC, purely as a matter of routine procedure. However, as already stated in the preceding paragraphs the DPC had included her name in the list of candidates for consideration for promotion to the post of Senior Pilots by selection method and had considered her case on merits alongwith the other fellow pilots in the seniority list in accordance with the prescribed Recruitment Rules."

necessary
It is also to mention here the order No.33-15/84 PPII dated 13th July, 1987 (Annexure-H to the OA) addressed by the Ministry of Agriculture, Department of Agriculture and Coop, New Delhi to the applicant by which the adverse entries were conveyed to her. The said order reads as under:

"Subject:- Adverse entries in the CRs of Miss Binodini Devi, Junior Pilot for the years 1985 and 1986 -Communication of adverse remarks.

..

Madam,

I am directed to say that the Reviewing Officer has recorded the adverse entries in the CRs of Miss Binodini Devi, Junior Pilot (FW) for the years 1985 and 1986 as under:

1985

Signature of Reviewing
Officer

I do not agree with
R.O. She lost nerves
while flying a Beaver
on 27.8.85 and kept
on flying without any
bearings. She
forced landed the plane
and it was severely
damaged.

Name (Block Capitals)

R.K.srivastava.

Designation

JS(PP & MY)

Date

21.5.1987.

1986

Signature of Reviewing
Officer

She could not do any
flying as she was not
cleared for it.

Name (Block letters)

R.K. Srivastava.

Designation

(JS (PP & MY)).

Date

21.5.1987.

It is requested that you may please make
representation against the adverse remarks within
six weeks from the date of receipt of this
communication failing which it will be construed
that you have nothing to represent against the
adverse entries so recorded.

Yours faithfully,

Sd/-

(K.C. DEHURY)

Deputy Secretary to the Govt. of India

The D.P.C. met on 25.6.1987. The adverse entries
were communicated thereafter on 13.7.1987. It is,
therefore, clear that this could not have been taken
into consideration by the D.P.C. It has not been
brought to our notice that the aforesaid adverse entries
were not taken into consideration nor is there anything
to show what the DPC considered were other matters apart
from the aforesaid ACR entries. The conclusion, therefore,
is that the adverse entries had been taken into consideration
by the D.P.C. This could not be done and the order

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passed by the DPC excluding her name from those candidates who were recommended for promotion was vitiated by a gross error.

It is well settled that whenever an adverse entry is recorded in the A.C.R., it has to be communicated as soon as possible so that the employee against whom the entry has been made is afforded an opportunity to file a representation objecting to the said entry or any part thereof. It is only when the representation is disposed of or where the employee has not made a representation even after a reasonable period of time, the adverse entry can be looked into and relied upon by the authorities concerned including the D.P.C. But where an adverse entry has not been communicated to the employee and he is not afforded an opportunity to file a representation, the same should not be acted upon. In the present case, it was communicated to the applicant only after the D.P.C. had met. It is regrettable that such a thing happened even while the U.P.S.C. was associated with this D.P.C. The result has been that the applicant has to suffer.

We are satisfied that the applicant has been able

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to make out a case for interference. The proceedings of the D.P.C. dated 25.6.1987 as far as the applicant is concerned have to be quashed and set aside. It will also be necessary to direct the respondents to hold a review DPC to consider her case for promotion. In case she is cleared, then in that event, her seniority will be fixed in accordance with the rules.

No one has appeared on behalf of respondents 4 and 5 S/Shri R.S. Rana and G.S. Sidhu who were treated as regular from 25.6.1987, i.e. the date of the meeting of the D.P.C. It is stated that both these respondents were junior to the applicant in service and they cannot have seniority ahead of the applicant. In case the applicant clears the DPC, she will be given the seniority that she is entitled to and in that process, the position of both the respondents, 4 and 5, shown at Serial Nos. 1 and 5 of the Notification dated 27.7.1987 (Annexure G) will undergo a change in case the applicant is adjudged senior to them.

We, however, decline to set aside the adverse


remarks made against her, for this would be made by the concerned authority after she has made a representation against the adverse entries of 1985 and 1986 contained in Annexure-H. She may do so within a period of six weeks from today which will be considered by the authority concerned within a month thereafter. The Review D.P.C. may be held within a further time of one month. The Review DPC will take into account the A.C.R entries after amendment, if any.


In the result, therefore, we allow the Application in part. We set aside the proceedings of the DPC dated 25.6.1987 so far as it relates to the applicant. We permit the applicant to make a representation if she has not made so far against the adverse entries communicated to her within a period of six weeks from today and we further direct the Reviewing Officer to consider the same and make appropriate entries. In case, there is any further entry, it has to be conveyed to her and she must be given an opportunity to file a representation against the same. A Review D.P.C. will be constituted thereafter to consider her case for promotion. We further direct that if she is cleared by the D.P.C. for promotion, she would be given appropriate seniority vis-a-vis respondents 4 and 5. To that extent, the order dated 27.7.1987 (Annexure-G) is to be modified by the respondents. She will also be entitled to consequential benefits in case she is cleared for promotion to the post of Senior Pilot (FW) in the Directorate of Agricultural

all

Aviation, in the scale of Rs.4500-150-5700 (revised).

We leave the parties to bear their own costs.


(I.K. RASGOTRA)
MEMBER (A)
8.11.1990.


(AMITAV BANERJI)
CHAIRMAN
8.11.1990.

SKS

Date	Office Report	Orders
	<p>NOTED - 12.8.91 S/Assistant</p> <p>SKK</p> <p>17.5.91</p> <p>do</p> <p>SRD</p>	<p><u>30.4.1991.</u></p> <p>Present: Shri P.P. Khurana, counsel for the petitioners in MP-1290/91.</p> <p>Issue notice of this Misc. Petition to the respondent (applicant in OA), returnable on 17.5.1991.</p> <p><i>(Signature)</i> (I.K. RASGOIRA) MEMBER (A) 30.4.91.</p> <p><i>(Signature)</i> (AMITAV BANERJI) CHAIRMAN 30.4.91.</p> <p>None present.</p> <p>List the case on <u>8.7.91.</u></p> <p><i>(Signature)</i> B.O. C.O., C.I</p> <p><u>8.7.91</u></p> <p>None present.</p> <p>Adjourned to 10.7.91.</p> <p><i>(Signature)</i> B.O. C.O. (C-2)</p> <p><u>10.7.91</u> M.P. 1290/91 in O.A. 1316/87</p> <p>Petitioner through Shri P.P. Khurana, Counsel.</p> <p>This M.P. has been filed by Shri P.P. Khurana, Counsel, on behalf of the Respondents-Union of India on 15.3.91, praying for extension of three months' further time for holding the meeting of the review D.P.C. That period is over. Shri P.P. Khurana state that he has no ^{further} instructions in this matter.</p> <p>In view of the above, this M.P. is filed.</p> <p><i>(Signature)</i> (I.K. RASGOIRA) MEMBER (A) 10.7.91</p> <p><i>(Signature)</i> (AMITAV BANERJI) CHAIRMAN 10.7.91</p>

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SECTION-XIV

D.No. 1222 /91 /SC/SEC-XIV
SUPREME COURT OF INDIA
NEW DELHI

DATED: 10th May, 1991

From

The Registrar (Judicial),
Supreme Court of India,
New Delhi.

To

✓ The Registrar,
Central Administrative Tribunal
Principal Bench,
Faridkot House,
Copernicus Marg, New Delhi.

CIVIL APPEAL NO. 2328 OF 1991
(Appeal by Special Leave granted
by this Court Order dated 7th May, 1991

in Petition for Special Leave to Appeal (Civil)
No. 5356 of 1991 against the
Judgment and Order dated 8th November, 1990
of the Central Administrative Tribunal, Principal Bench,
at New Delhi in O.A. No. 1316/87).

Smt. L. Binodini, Devi

.. Appellant

Versus

Union of India & Ors.

.. Respondents

Sir,

I am directed to forward herewith under Rule 6,
Order XIII, S.C.R. 1966 (as amended) a certified copy of the
Order/Judgment of this Court dated 7th May, 1991
in the appeal above-mentioned. A certified copy of the
Decree and the Original Records, if any, in the matter
will be sent in due course.

Please acknowledge receipt.

*akg*12.1.91.

Yours faithfully,

for REGISTRAR (JUDICIAL)

190/Pc
10/5/91