

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(B)

O.A. No. 395/87- 198
T.A. No.

DATE OF DECISION 29-1-1988

Kumari N. Ajwani **Petitioner** Applicant

In person **Advocate for the Petitioner(s)**

Versus

Union of India **Respondent**

Shri P.P. Khurana **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

The Hon'ble Mr. Birbal Nath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

29/1/88
(BIRBAL NATH)
Member (A)

(J.D. JAIN)
Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

Date of decision: 29-1-1988

REGN. NO. O.A. 395/87.

Kumari N. Ajwani ... Applicant

Vs.

Union of India. Respondent.

CDRAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: In person.

For the respondent: Shri P.P. Khurana, Counsel.

J U D G M E N T.
(delivered by Hon'ble Mr. Birbal Nath, A.M.)

By this application under Section 19 of the Administrative Tribunals Act, 1985, filed on 19th March, 1987, the applicant, Kumari N. Ajwani, Senior Research Officer, Planning Commission, New Delhi, ^{has} prayed that her case for promotion to Grade II of the Indian Economic Service be reconsidered ignoring the A.C.Rs which were not communicated to her and which should be expunged being adverse/critical and she should be given promotion to grade II with retrospective effect, the date her junior, Shri P.B. Dhawan, obtained the same.

2. The salient facts leading to the present application are that the applicant was promoted as Senior Research Officer (scale Rs. 1100-1600) grade III of the I.E.S. on 9.12.1974. At the relevant time, the applicant had been working

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Senior Resident Officer
as ~~Economic Investigator~~ in the Planning Commission. She is due for superannuation on 31.1.1988 and she was due to be considered for promotion to grade II. However, on 27.2.1987 and 9.3.1987, officers junior to the applicant had been promoted and the applicant was superseded. In the first list issued on 27.2.1987. (Annexure 'A1), 12 officers junior to the applicant were promoted and in the second list published on 9.3.1987 (Annexure 'A2), 50 officers junior to the applicant were promoted. The applicant has, therefore, challenged her supersession by 62 officers junior to her. She has impugned the selections on the ground that two meetings of the Departmental Promotion Committee/Selection Committee were held in quick succession. She apprehended that she had been superseded due to some critical/adverse report which was never communicated to her but was considered by the Selection Committee.

3. In the counter affidavit, the respondent averred that the applicant had been assessed adversely for the years 1984-85 and 1985-86. It was admitted by the respondent that the administrative Department, i.e. Planning Commission had not communicated the adverse remarks to the applicant. These were communicated to her on 22.4.1987 by the Planning Commission. The Departmental Promotion Committee meetings were held prior to April, 1987, i.e. on 27.2.1987 and 9.3. 1987. The applicant was not selected because of her relative grading. It was further averred that even if the adverse remarks were expunged following a representation by the applicant, the assessment for the years 1984-85 could, at best, be classified as

'good' and not 'very good' or 'outstanding' and this would not have made any difference.

4. To get into the merits of the averments made by the respondents, it was necessary to look into the D.P.C. proceedings. We found that six vacancies in grade II were available and 18 officers in grade III were considered for the same, i.e. three times the number of vacancies for the year 1985. There were eight vacancies in 1986 and 24 officers in grade III were considered for 8 vacancies in Grade II. Only such officers were eligible to be considered who had completed six years of service. For 1987 panel of candidates for 80 vacancies were to be considered. For the panel of 1985, the name of the applicant was considered at serial No. 7 and she was given a total of 19 marks, whereas, those who had been selected were given 25 marks (3 candidates), 21 marks (2 candidates) and 19 marks (1 candidate). The applicant's junior, Shri P.B. Dhawan, had got 25 marks and was placed at serial No.3 . The other person who got 19 marks was Shri R.P.Jain, who was senior to the applicant and was at serial No. 4 of the list considered. It may also be mentioned that another officer who got same number of marks as 19 was senior to the applicant, i.e. Shri K.B. Lall. He was also not promoted. Thus, it will be seen that the applicant was superseded by her junior on a relative grading which is based on assignment of marks to the various types of A.C.Rs. The records revealed that five marks were given to an 'excellant/outstanding' report, four to 'very good' and three to 'good'. On this basis, the applicant had secured 19 marks and her reports were graded as follows:-

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1979-80	Excellent	Marks (5)
1980-81	Good	" (3)
1981-82	Very good	" (4)
1982-83	Good	" (3)
1983-84	Very Good	" (4)
	Total	<u>19</u>

So far as the panel for the year 1986 is concerned, the applicant was assessed at serial No. 2. Her report for 1984-85 was taken as adverse and her excellent report which was for the year 1979-80 was not considered because only five reports were to be considered and she had got in all 14 marks and she, therefore, was not promoted. For the year 1987 her name appears at Serial No. 2 and since she had two adverse reports for the last two years i.e. 1984-85 and 1985-86 she got a total of 11 marks for grading purposes.

5. Therefore, we find that so far as Departmental Promotion Committee meetings are concerned, the case of the applicant was ^{duly} considered. The system of grading was fair and uniform and she was not discriminated against and the D.P.C. proceedings cannot be challenged on this account. However, the applicant has challenged her supersession on the ground that she has been ignored on the basis of uncommunicated remarks and thus, her supersession is bad in law. This challenge was met by the learned counsel for the respondents by the argument that non-communication of adverse remarks has to be given due weightage by the Departmental Promotion Committee but this does not vitiate the proceedings.

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However, we are not persuaded by this argument urged on behalf of the respondent. It is well settled proposition of law that no civil consequence ^{should} accrue to a civil servant unless the so-called adverse entry is duly communicated. The Hon'ble Supreme Court in the case of Gurdial Singh Fijji V. State of Punjab & Ors.¹, has observed as follows vide para. 17:-

"The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified...."

6. In view of the foregoing proposition of law enunciated by the Hon'ble Supreme Court, we are of the view that the D.P.C. was not properly advised to take into consideration the adverse report given to the applicant though it had never been communicated nor her representation against the same had been considered by the competent authority. The right course which the Departmental Promotion Committees normally adopt in such cases is to defer consideration and decide the case only after the representation is decided. In this view of the matter, we consider that the D.P.C. proceedings qua the applicant for the year 1986 and 1987 are vitiated and cannot be legally sustained.

1. AIR 1979 SC 1622.

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7. The applicant has also prayed that the adverse reports awarded to her for the year 1984-85 and 1985-86 be expunged. We are unable to afford her this relief because she had not filed the adverse remarks conveyed to her nor the grounds on which the adverse remarks are being impugned.

All that she has stated in clause (i) of the reliefs sought under paragraph 9 of her application is that the un-communicated remarks be treated as expunged. We are afraid this argument alone would not justify granting the relief sought. During the course of arguments, it had transpired that the adverse remarks were communicated to her belatedly and she had filed representations which were considered but not accepted by the competent authority.

8. To sum up, we partly allow this application and quash the D.P.C. proceedings for the year 1986 and 1987 qua the applicant. She will be entitled to re-consideration of her case as per law and rules. So far as expunction of her adverse A.C.Rs. is concerned, she will be free to seek permissible remedy as per law, if so advised.

9. The application stands disposed of with the above directions, with no order as to costs.

29/11/88
(BIRBAL NATH)
Member (A)

(J.D. JAIN)
Vice-Chairman