

6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Regn. No. OA-799/87

Dated: 14.1.1988

Dr. V. P. Malik

..... Applicant

Versus

Union of India & Ors

..... Respondents

For the Applicant

..... Shri A. K. Goel,
Advocate

For the Respondents

..... Smt. Raj Kumari Chopra
Advocate.

CORAM: Hon'ble Shri S. P. Mukerji,
Administrative Member

&
Hon'ble Shri G. Sreedharan Nair,
Judicial Member

(Judgement of the Bench delivered by Hon'ble
Shri S. P. Mukerji)

In his application under Section 19 of the Administrative Tribunals Act, the applicant who is an Assistant Professor in Forensic Medicines in the Lady Hardinge Medical College, has prayed that he should be promoted to the post of Associate Professor w.e.f. 4.4.1986 with consequential benefits of seniority, pay, etc. The promotion to the post of Associate Professor is governed by the Central Health Services Rules, 1982, according to which five years of qualifying service as Assistant Professor was required. On 4th June, 1986, the rules were amended and the length of qualifying service was reduced from five years to three years. The applicant, who was working as Associate Professor from 23.1.1981, in OA-1058/86 moved the Tribunal praying that he should be promoted as Associate Professor w.e.f. 1984 but the same was not accepted by the Tribunal on the ground that the amendment could not have retrospective effect and that the applicant became eligible for promotion as

Associate Professor w.e.f. 4.6.1986 only. It is on that basis that the instant application has been moved. It appears that in 1986 when he became eligible, the D.P.C. did not consider him for promotion and the D.P.C. which met on 19.3.1987, considered the cases of his juniors but his case was not considered because the character roll entry only for one year i.e. 1985-86 was there. There was no C.R. entries between 1982 and 1984 when he was out of service. He was reinstated in 1984. The D.P.C. of 1987 decided that his case should be considered for promotion by the D.P.C. when his C.R. for at least one more year is received. The respondents have stated that the question of his promotion w.e.f. 19th March, 1987 will be considered only when at least one more confidential report is available. According to the applicant, apart from the C.R. entry for 1985-86, the C.R. entry for 1984-85 was also there. In para 3 of his rejoinder dated 8.10.1987, he has stated that the C. R. entry for the period 18.11.1985 to 18.2.1986 was sent to the respondents on 26.2.1986 and that the confidential report for the period from 18.2.1986 to 31.12.1986 had been received by respondent No. 1 by despatch No. FMT/87/24 dated 28.1.1987. According to the applicant, non consideration of his case on the wrong impression that only one year's C.R. was available was unjustified.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents has produced before us the C.R. dossier of the applicant. From a close perusal of this dossier, it is clear that ~~whereas~~ ~~whereas~~ the C. R. entry for the period from 1.1.1986 to 31.12.1986 was recorded by the Reporting Officer on 17.1.87 and that by the Reviewing Officer on 10.3.87, the entries for the period between 18.11. 1985 and 31.12. 1985 were made by the Reporting Officer on

28.9.1987 and by the Reviewing Officer on ^{the same day} 10.9.1987. Accordingly, the averments made by the applicant that the second report of 1985 was also before the D.P.C. when it met on 19.3.1987 is not correct. The reports written in September, 1987 would not be available to the D.P.C. which met in March, 1987. We therefore, have no hesitation in upholding the plea of the respondents that the D.P.C. did not assess the applicant in 1987 when only one C.R. entry was available.

3. When the C.R. dossier was handed over to us on 11.12.1987, the learned counsel brought to our notice that six C.R. entries for 1981-82 (23.10.81 to 24.4.82), 1982-83 (25.4.82 to 31.3.1983), 1983-84, 1984-85, from 1.4.1985 to 17.11.1985 and from 18.11.1985 to 31.12.1985 have been added. We have gone through these six added C.R. entries, the first and the fifth of which are adverse and we were told on the last date of hearing that the adverse entries were being communicated to the applicant in the course of the day. A close examination of these added C.R.s indicate that none of the entries except the last (for 18.11.1985 to 31.12.1985) bear any date either of the Reporting or the Reviewing Officer, and it can be reasonably believed that the entries for the old periods are being reconstructed now with some adverse remarks for the periods (a) 23.10.81 to 24.4.82 and (b) 1.4.85 to 17.11.85 by the same officers, which are likely to prejudice and jeopardise the applicant's chances of promotion as Associate Professor. These remarks till the date of hearing are uncommunicated and ^{by the applicant} ^{by the respondents} no representation could be filed much less disposed of. The Supreme Court in Brij Mohan Singh Chopra Vs. the State of Punjab, A.T.R. 1987 (1) S.C. 513 relying on

on their earlier decisions in Gurdial Singh Fiji Vs. the State of Punjab and Others, 1973(3) SLR 518 and Amarkant Chaudhary Vs. the State of Bihar, 1984(2) SLR 297, has laid down the principle that unless an adverse report is communicated and representation, if any, is made by the employee is considered, it cannot be acted upon to deny promotion.

4. Amongst the six added entries, three entries made for the period between 25.4.1982 and 31.3.1985 ~~is an~~ of no consequences as no assessment remarks have been recorded because the petitioner did not work under the Reporting/Reviewing Officers. The two C.R. entries viz. one made for the periods between 23.10.1981 and 24.4.1982 and another between 1.4.1985 and 17.11.1985 by the same pair of reporting and reviewing officers contain scathing and vicious remarks couched in a style which fails to connote a detached assessment. Neither the Reporting Officer nor the Reviewing Officer ~~have~~ contrary to the prescribed instructions, affixed any date to their remarks. All the added remarks by the Reporting and Reviewing Officers seem to have been made near about the same date and together during the pendency of the application. In any case, these remarks were not in existence when the D.P.C. met on 19.3.1987. Remarks on an officer written five to six years later has little scope of credibility. Such remarks written during the pendency of a case challenging non-promotion have ~~now even~~ less credibility and can well be dismissed as motivated. The question of disposal of representation which the applicant may make against the adverse remarks now communicated for the year 1981 and part of the year 1985 cannot arise within the next two months. Further, ~~it~~

it will be too much to expect that the applicant would be able to marshal the facts in his defence against the adverse remarks now levelled against him for the year 1981. The "very good" reports which the applicant earned for the periods (a) from 18.11.85 to 31.12.85 and (b) from 1.1.86 to 31.12.86 by a different pair of reporting and reviewing officers give ~~lie~~ to the adverse remarks still further.

5. The plethora judicial pronouncements on adverse remarks leave no doubt whatsoever to establish the principle that adverse remarks do irreparable damage and injury to a government servant by endangering his prospects of promotion not to speak of ~~the~~ attaching stigma to his standing. Accordingly, when these remarks tend to assail the civil rights of the government servant, they have to be treated in a semi-judicial manner by giving the fullest opportunity to the government servant for his defence before they are allowed to inflict their lethal effect on the career of the government servant. Taking a government servant by surprise by springing adverse remarks on bygone periods without giving him an opportunity of representation to get them expunged in a judicious manner, would be nothing less than stabbing him in the back. In the instant case, we would be allowing nothing less than that in case the adverse remarks communicated to the applicant during the pendency of the case and after the arguments had concluded are allowed to prejudice the reliefs which he may earn on facts ~~of~~ ^{and} law in the present application. The timing and the substance of the adverse remarks being of dubious nature, we would keep them suspended for the reliefs claimed by him in the present application. This rules out the first and fifth of the six added entries. The second, third and fourth entries are without any assessment hence they can be ignored. The

sixth entry being for the period from 18.11.85 to 31.12.1985, is for less than three months hence it cannot be considered. Thus, none of the six added entries is worth considering. Since the D.P.C. of 19.3.87 wanted one more entry for assessing the applicant, we direct the respondent to get the annual confidential report for the period from 1.1.1987 to 31.12.1987 recorded and reviewed by 31.1.1988 and take action on the following lines.

6. In the facts and circumstances, we allow the application with the following orders:-

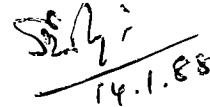
- (a) A D.P.C. should meet to consider the case of promotion of the applicant to the post of Associate Professor w.e.f. 4.4.1986 when he became eligible for such promotion in accordance with this Tribunal's judgement dated 25.5.1987 in OA-1058 of 1986 (Annexure-"A" to the application);
- (b) The D.P.C. should meet on or before 31.3.1988 after the annual C.R. entry for the period from 1.1.1987 to 31.12.1987 has been completed by 31.1.1988 as directed above and representation if any disposed of before 31.3.1988;
- (c) The C.R. entries now added in the A.C.R. for the period between 23.10.1981 and 31.12.1985 should be completely taken out of the A.C.R. dossier before the same is placed before the D.P.C. This is not only because the adverse entries have not been communicated but also because we have a reasonable feeling that they have not been written with complete detachment and at the time when the remarks

should have been recorded in accordance with the established rules and procedures.

(d) The D.P.C. should consider ~~the~~ only two C.R. entries ^{one} for the period from 1.1.1986 to 31.12.1986 and the other for the period between 1.1.1987 and 31.12.1987. This will be in accordance with the D.P.C.'s own decision of 19.3.1987 that the case of the applicant should be considered when at least two entries are available.

7. There will be no order as to costs.


(G. Sreedharan Nair)
Judicial Member


(S. P. Mukerji)
Administrative Member

Index: Yes/No