

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1622/90

New Delhi this the 7th Day of November, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Smt. Lakshmi Swaminathan, Member (J)

Smt. Manju Bali, wife of
Shri Bhupinder Singh Bali,
resident of EA-103, Inderpuri,
New Delhi-110012.

...Applicant

(By Advocate Sh. Inderjit Sharma)

Versus

1. Union of India through
Secretary, Ministry of
Information and Broadcasting,
Government of India,
Shastri Bhawan, New Delhi.

2. Director General,
All India Radio,
Akash Vani Bhawan,
Parliament Street,
New Delhi.

...Respondents

(By Advocate Sh. P.H. Ramchandani, Senior Counsel,
though none appeared)

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan:-

The applicant is aggrieved by the orders by which her probation as an Assistant Architect to which post she was appointed by the Annexure A-3 order dated 21.12.87 was terminated by the issue of the Annexure A-7 order dated 29.8.87 by which in her place another person Smt. Shyama Behl was promoted.

2. The facts of the case have been succinctly given in the reply of the respondents. It is only necessary to reproduce them verbatim to understand the dispute before us as follows:-

"it is submitted that a DPC was convened on 24.11.1987 to grant promotion to eligible departmental D'Man Gr.I to the cadre of Asst. Architect to fill up four available vacancies. According to the Recruitment Rules of 1975 in force, those who have rendered eight years of service in the grade of D'Man Gr.I are eligible for promotion to the grade of Asst. Architect.

The said DPC, after pursuing the CR dossiers and service records of eight eligible candidates, recommended the names of the following four officers for promotion in the order indicated below:-

1. Smt. Kusum Thakur
2. Smt. K.K. Narang
3. Smt. Manju Bali
4. Smt. Naresh Bala

The recommendation of the DPC was submitted to the DG:AIIRZ (the appointing authority) for his approval. Since the fourth vacancy was meant for a reserve candidate for a direct recruit, DG:AIIR approved for issuance of the promotion order of the first three candidate including the applicant and decided that the fourth vacancy may be filled up by giving promotion to the fourth candidate of the panel after the point has been got dereserved and the revised draft recruitment rules which were pending with UPSC are approved and notified. Accordingly, an order dated 21.12.87 was issued giving promotion to three candidates including the applicant to the grade of Asst. Arch. in the pay scale of Rs.2000-3500. Smt. Manju Bali, the applicant was in S.No.7 in seniority order in the grade of Gr.I, her name came up on position number 3 in the panel recommended by the DPC on the basis of the overall grading acquired by the candidate.

The candidate at S.No.3 and 4 in the seniority list namely Smt. Shama Bahl and Smt. Parvin Bedi were not recommended for promotion by the DPC. These two candidates, subsequently, represented (annexure 'A' & 'B') that they have not been given promotion as they apprehended that certain adverse remarks contained in their ACRs have been taken cognisance of, by the DPC although these adverse remarks had since been expunged by the competent authority. These representations were examined and it was found that the representation against the adverse entries were pending with the competent authority for decision. The representations were considered and adverse remarks were expunged only after holding of the DPC. Hence it was necessary to review the recommendations of the DPC due to this changed circumstances. The appointing authority accordingly decided to hold a review DPC.

A review DPC was held on 27.8.89. Names of the same 8 Arch. Asst. Gr.I were considered, who were there in the earlier DPC. The panel recommended for promotion to fill up the three vacancies of the general candidates did not contain the same of Applicant. The three names recommended by DPC were of these officers who appeared above the applicant in the seniority list."

3. The applicant's contention is that for the purpose of a review DPC it was not necessary to consider the case of all persons whose cases were considered by the earlier DPC on 24.11.87. In this connection, attention is drawn to the consolidated instructions issued by the Ministry of Personnel on 10.4.89 regarding the departmental promotion committees and related matters. In particular, attention is drawn to para- 18.4.1 18.4.2 and 18.4.3 as extracted below:-

"18.4.1. In cases where the adverse remarks were toned down or expunged subsequent to consideration by the DPC, the procedure set out herein may be followed. The appointing authority should scrutinise the case with a view to decide whether or not a review by the DPC is justified, taking into account the nature of the adverse remarks toned down or expunged. In case where the UPSC have been associated with the DPC, approval of the Commission would be necessary for a review of the case by the DPC.

18.4.2 While considering a deferred case, or review of the case of a superseded officer, if the DPC finds the officer fit for promotion/ confirmation, it would place him at the appropriate place in the relevant select list/list of officers considered fit for confirmation or promotion after taking into account the toned down remarks or expunged remarks and his promotion and confirmation will be regulated in the manner indicated below.

18.4.3. If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the junior most person officiating in the higher grade should be reverted to accommodate him."

The learned counsel for the applicant submits that not having followed these instructions, the proceedings of the DPC are vitiated.

4. He further points out that the person who was promoted in her place viz. Smt. Shama Bahl has been favoured unduly, as would be evident from the fact that the representation dated 12.12.83 against some adverse remarks, alleging that because of these adverse remarks

Bahl regarding adverse remarks were pending and after adverse remarks were toned down, it was felt necessary to hold a review DPC. As only four posts were notified for filling up by the earlier DPC only those four posts were considered and the applicant fell out of the race on account of the decision of the DPC. As the applicant was only a diploma holder and that the recruitment rules have already been changed, the applicant was, therefore, eligible only for the post of Technical Officer. She was found fit by the DPC which was held immediately after the review DPC and given that appointment.

6. We have carefully considered the contention of the learned counsel for the applicant. The applicant has not impleaded Smt. Shama Bahl as a respondent. She has also not impugned the order promoting Smt. Shama Bahl on the ground of bias or favouritism. In the circumstances, we cannot look into complaints made about the favoured treatment allegedly given to Smt. Shama Bahl.

7. We have seen the instructions by the D.O.P. This is a case where a review DPC was held after about two years after the applicant was first promoted by which time, in the meanwhile, the recruitment rules, got amended. Admittedly, there were four posts to begin with of which only three were filled up by general candidates. The fourth post was a reserved post but no reserve candidate was available. The respondents state that the 4th candidate in the panel, i.e., Smt. Naresh Bala was to be considered after the point was got dereserved. Nothing has been indicated in the reply as to whether that vacancy continued or not. We are of the view that in case that vacancy was available and that had been dereserved, the applicant ought to have been considered for being appointed to that vacancy as

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Assistant Architect as it was then called.

8. If, however, that vacancy was not available there still remains the possibility of similar vacancies having arisen before the recruitment rules were amended. The respondents have not clarified this picture in their reply. If there was such a vacancy the applicant would still be eligible for appointment to that post without holding a fresh DPC, i.e., on the conclusion of the review DPC. In the circumstances, the applicant is entitled to directions on these accounts.

9. The learned counsel for the applicant also points out that the applicant was already appointed on probation on the post of Asstt. Architect for a period of two years by the order dated 21.12.87 (Annexure A-3). She was reverted by the order dated 29.8.89, i.e., when she had rendered nearly one year and 8 months of probation. However, in the Annexure A-8 order dated 29.8.89, i.e., the date of her reversion, the applicant has again been appointed as Technical Officer on probation for a further period of two years. The learned counsel submits that two posts are equivalent excepting for the fact that the posts of Technical Officer are given only to diploma holders. In the circumstances, it was improper to keep the applicant on probation again for two years.

10. This point is validly taken. We are of the view that in so far as the Annexure A-8 is concerned, the probation of two years fixed for the applicant should take into account the probation already done by her on the post of Assistant Architect in terms of the Annexure A-3 order.

11. In the circumstances, we dispose of this O.A. with the following directions to the second respondent,

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Director General, All India Radio:-

- i) The second respondent is directed to examine whether the 4th vacancy which was to be got dereserved as mentioned in the respondents' reply was got dereserved and was vacant when the applicant was reverted on 29.8.89. If so, the applicant should not have been reverted as Assistant Architect Grade-I; instead, the applicant should have been continued as Asstt. Architect on this vacant post.
- ii) In case such a vacancy does not exist, the second respondent is directed to consider whether any of the four additional vacancies belonging to the general candidates for which a fresh DPC was held on 27.7.89 occurred before the rules were amended. In case any such vacancy existed before such amendment, the respondents are again directed to take action as in (i) above.
- iii) If the second respondent finds that no benefit can be given to the applicant either in terms of (i) or (ii) above, we declare that the total probationary period of the applicant taking into account her appointments by the Annexure A-3 order dated 21.12.87 and her appointment as Technical Officer by the Annexure A-8 order dated 29.8.89 shall not exceed two years. In other words, the period of probation specified in the Annexure A-8 order shall be reckoned after taking into account the period of probation already rendered as Assistant Architect prior to her reversion. The Second respondent

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is directed to issue suitable orders under intimation to the applicant within a period of two months from the date of receipt of this order.

12. The O.A. is disposed of, as above, with no order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

N.V. Krishnan
7.11.94

(N.V. Krishnan)
Vice-Chairman (A)

'Sanju'