

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 614/90  
T.A. No.

199

DATE OF DECISION 17.1.1992.

Shri B.G. Chitale	<del>Petitioner</del> Applicant
Shri M.L. Chawla	Advocate for the <del>Petitioner(s)</del> Applicant
Versus	
Union of India & Others	Respondent
Shri K.S. Dhingra, Sr. A.O.	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */no*
4. Whether it needs to be circulated to other Benches of the Tribunal? */no*

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The applicant, while working as Foreign Language Examiner in the office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) To quash the impugned order of promotion issued vide No.A/25269/CAO/P2 dated 5th March, 1990, promoting the junior to the applicant;
- (ii) to direct the respondents to appoint the applicant as D.F.L.A. from the date of his eligibility with all consequential benefits, including pay and allowances;

(iii) to direct the respondents to revise the overall grading in the A.C.R. of the applicant on the basis of expunction of adverse remarks in his ACRs for the year 1986 as well as 1988; and

(v) to restrain the respondents from getting the 1989-90 ACRs reporting as well as reviewing by the non-civilian officers and directing them further to resort to the practice of getting the ACRs written and reviewed by civilian officer as envisaged in the extant instructions and guidelines.

2. On 10.4.1990, the Tribunal passed an ex parte interim order directing that the Annual Confidential Report of the applicant shall be initiated and reviewed strictly in accordance with the instructions contained in Appendix-8 at page 42 of the application which states that the Reporting Officer should be "Deputy Director or S.C.S.O. or an officer not below the rank of Lt. Col. and equivalent".

3. On 24.4.1990, Shri K.S. Dhingra, Sr. Administrative Officer, appeared on behalf of the respondents and stated that the applicant had not made a representation against the impugned order. The Tribunal directed that the applicant may make a representation against the impugned order within one week and the respondents shall dispose of the same within one month from the date of the receipt of the representation.

Or

4. The applicant made a representation to the respondents on 30.4.1990 which was rejected by the latter on 26.6.1990.

5. The facts of the case in brief are as follows. The applicant joined the service of the respondents as Technical Assistant in the Cipher Wing in S.I. Directorate in March, 1956. He was promoted as Senior Technical Assistant in April, 1964. He was selected as Civilian Translator by the U.P.S.C. in 1965. He ranked <sup>at</sup> number 1 in the merit list and Shri M.S. Joshi, respondent No.5, ranked at serial No.4.

6. On 21.12.1984, the applicant was promoted as Foreign Language Examiner and was placed above Shri M.S. Joshi, who was also promoted in December, 1984.

7. On 31.10.1989, Shri Doji Tshering, who was Deputy Foreign Language Adviser, retired. As neither the applicant nor Shri Joshi was eligible for immediate promotion, the applicant was asked to function as Deputy Foreign Language Adviser in an officiating capacity w.e.f. 1.11.1989. This arrangement was to continue till the vacancy was filled up.

8. The grievance of the applicant is that Shri Joshi was promoted to the post of Foreign Language Examiner, overlooking his claims.

9. The respondents have stated in their counter-affidavit that in accordance with the relevant recruitment rules, the post of Deputy Foreign Language Adviser is to be filled by promotion on the basis of selection from amongst

Foreign Language Examiners who have rendered five years' regular service in the grade. None was eligible for consideration for promotion on 1.11.1989, when the post fell vacant. The applicant as well as respondent No.5 completed five years' regular service on 20.12.1989. Thereafter, a meeting of the D.P.C. under the Chairmanship of Member, U.P.S.C. was held on 6.2.1990. The D.P.C. considered the applicant and respondent No.5 for promotion. The applicant was assessed as "Good", whereas respondent No.5 was assessed as "Very Good" by the D.P.C. Based on the comparative merit of the two, respondent No.5 was recommended for officiating promotion as D.F.L.A. Respondent No.5 was appointed as D.F.L.A. on 5.3.1990. When the applicant was considered for promotion along with respondent No.5, his representation against adverse remarks in the A.C.R. for the year 1988 (relating to his health) <sup>was</sup> ~~under~~ consideration by the competent authority, who, on 20.3.1990 ordered expunction of those remarks. In view of this, a review D.P.C. was held on 5.6.1990. The review D.P.C., after examination of the service records of the applicant, did not recommend any change in the panel recommended by the original D.P.C. on 6.2.1990. The recommendation of the review D.P.C. has also been approved by the competent authority.

10. We have gone through the records of the case carefully and have considered the rival contentions. The learned counsel

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for the applicant argued that after the expunction of the adverse remarks in the Confidential Report for the year 1988 regarding the health of the applicant, the grading given to him in the C.R. was not revised. The same grading which was there earlier, was before the review D.P.C. even after the expunction of the adverse remarks. In this context, he has relied upon the decision of the New Bombay Bench of this Tribunal in Vasant Waman Pradhan Vs. State of Maharashtra & Another, 1991 (1) SLJ (CAT) 257 at 267. In our opinion, the aforesaid decision is clearly distinguishable. After the competent authority has expunged the adverse remarks, there is no legal requirement that the grading given to the applicant should be revised in all cases. In the instant case, the adverse remark relating to the health of the applicant was that he was not in good state of health and that he used to get sick too often. No other adverse remark based on his health was conveyed to the applicant. Had the state of health of the applicant affected his work adversely, the Reporting Officer and/or Reviewing Officer would have commented on the same. In the absence of any such comments, <sup>by ✓</sup> the mere fact that the adverse entry relating to his health was expunged, the competent authority was not required to revise the grading given to the applicant. In any event, the review D.P.C. had before it the confidential reports of the

applicant containing the A.C.R. for the year 1988 in which the adverse entry relating to health had been expunged.

11. The applicant has contended that the CRs should have been written by the civilian officers only as certain civilian officers have taken senior position by 1974 in SI-4 Branch where the applicant had worked. According to the respondents, the applicant holds the post of FLE which is equivalent to a Civilian Staff Officer and that his ACRs are to be initiated by an officer of the rank of Deputy Director or Senior Civilian Staff Officer or an officer not below the rank of Lt. Colonel and equivalent and reviewed by an officer of the rank of Director or equivalent/Head of Office/Deputy Director(Brigadier/Solonel or equivalent). In the instant case, as the applicant was directly working under GSOI, S-14 Branch who was competent to initiate the CRs during the relevant period, we see no merit in the contention raised by him.

12. In the light of the above, we see no merit in the present application and the same is dismissed, leaving the parties to bear their <sup>own</sup> ~~own~~ costs.

*B. N. Dheundiyal*  
(B. N. Dheundiyal) 17/11/92  
Administrative Member

*P. K. Kartha*  
17/11/92  
(P. K. Kartha)  
Vice-Chairman(Judl.)