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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1923/91
~~XXXXXX~~

DATE OF DECISION 29.01.1993

Smt. Varsha Malhotra

Petitioner

Shri K.L. Bhatia

Advocate for the Petitioner(s)

Versus

U.P.S.C.

Respondent

Mrs. Raj Kumari Chopra


Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

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


(J.P. SHARMA)
MEMBER (J)


(P.C. JAIN)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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C.A. NO.1923/91

DATE OF DECISION : 29.01.98

Smt. Varsha Malhotra

...Applicant

Vs.

Union Public Service Commission...Respondent

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri K.L. Bhatia

For the Respondent

...Mrs.Raj Kumari Chopra

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant is working as Technical Assistant (HOLL) since 29.12.1973 and earlier to it she was working as MD in Union Public Service Commission since 16.3.1965. The next promotion is to the post of Investigator for which Technical Assistants with 5 years' experience are eligible. The case of the applicant is that she was eligible for promotion in the year 1978-79, but she has not got any promotion to the post of Investigator which is a non selection post inspite of the fact that she is high-up in the seniority list of Technical Assistants being placed at Serial No.7 (Old 20) of the list. Her grievance is that the persons junior to the applicant have been promoted as Investigators by the order dt.3.4.1990. The applicant made a representation which was rejected by the order dt.3.2.1991 (Annexure A1) where in she was informed that her name was duly considered by the competent authority in accordance with the prescribed procedure, but she was not considered as fit for promotion to the post of Investigator.

2. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the impugned Memo dt.8.2.1991 rejecting her representation and a direction to the respondents to promote the applicant to the post of Investigator from the date on which her juniors were promoted with all consequential benefits.

3. It is alleged by the applicant that her non promotion to the post of Investigator is due to certain extenuous considerations not related to her performance.

4. The respondents contested the claim of the applicant and stated that she was considered by the DPC and was assessed unfit for promotion, though she was third in the order of seniority. The application, therefore, has no merit and is liable to be rejected.

5. We have heard the learned counsel for both the parties at length and also perused the proceedings of the DPC held on 20.3.1990 which were provided during the course of hearing by the concerned department. The contention of the learned counsel for the applicant is that the DPC has not properly assessed the applicant in the minutes dt.20.3.1990 and the Annual Confidential Report of the applicant does not show any adverse remarks and none was

communicated to her. The applicant has remained on sanctioned leave for a number of years for some domestic reasons and this fact has prejudiced her case and so the DPC did not recommend the case of the applicant for promotion. The learned counsel for the respondents, however, argued that the applicant's case was duly considered by the DPC in accordance with the instructions issued by the Department of Personnel and Training vide para-6.2.1 of the OM No.22011/5/36-Estt.(D) dt.10.4.1989 (Annexure R2) and assessed the applicant as unfit for promotion. The applicant having been on leave for long periods, there was no ACR written for this duration-1977, 1978, 1979, 1982, 1983, 1984, 1985, 1986, 1987 and from 1.1.1988 to 17.11.1988. It is further argued that the applicant has actually worked on the post of TA (HOLL) for 6 years approximately out of the total service of about $16\frac{1}{2}$ years. In view of this fact, the records of performance which should form the basis of assessment by the DPC itself were non-existent on account of her remaining on leave for about 10 years. However, reliance has been placed on para-6.2.1 of the above OM which pertains to confidential reports. Sub-para (c) of the above OM is reproduced below :-

"Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account."

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6. It is evident from the above that in case the CR of a particular year is not available, then attempt should be made to see the CR of earlier years and even the available CRs of the feeder grade can be looked into. The respondents have also provided the file containing the ACR of the applicant and there is some substance in the contention of the learned counsel for the applicant that the ACR of a number of years have not been recorded because the applicant during that particular period did not work and was on leave. But the ACRs of certain periods are available on record. The minutes of the DPC dt.20.3.1990 goes to show that the applicant was considered and there is an observation, "Having examined the character rolls of the following senior most eligible officers, the committee assessed them as indicated against each :

Smt. Varsha Melhotra - assessment - unfit."

The report of the DPC does not indicate that the ACR of the available years in the applicant's case have been seen and on the basis of that the applicant was found unfit.

Thus it is not evident from the record of the DPC dt.20.3.1990 that the compliance has been made of para-6.2.1 of sub para (c) of the above OM, which is reproduced above.

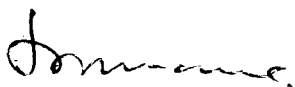
In view of the above facts, the rejection of the representation dt.8.2.1991 cannot be said to be justified and the matter has to be sent back to the respondents to call a review DPC and consider the case of the applicant on the basis of the

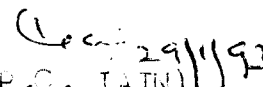
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available ACRs of 5 years and if the ACRs of the performance of Technical Assistant are not available, then the ACR of the period when the applicant worked as MO be also perused and on that basis the DPC should draw its conclusion whether the applicant is fit for promotion or not. It has already been observed above that this is a non selection post.

7. In view of the above facts and circumstances, the application is partly allowed and the impugned order dt.3.2.1991 is set aside and the respondents are directed to call a review DPC to again consider the case of the applicant on the basis of the available ACRs in accordance with the provisions of the OM dt.10.4.1989 as laid down in para 6.2.1. The respondents are directed to comply with the above directions within a period of three months from the date of receipt of a copy of the judgment. In the circumstances, the parties shall bear their own costs.


(J.P. SHARMA)
MEMBER(J) 29.1.93


(P.C. JAIN) 29/1/93
MEMBER(A)