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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2931/2004

New Delhi, this the 17th day of May, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Smt. Anuradha Raj Joshi
(Before marriage Anuradha Sharma Joshi)
R/o A-20, Hyderabad Estate, He-pean-Sea Road,
Mumbai - 36.

Working as Deputy Director (Prog.)
All India Radio, Mumbai
Under the Secretary, Government of India
Shastri Bhawan, New Delhi.

....Applicant.

(By Advocate Shri M.K. Bhardwaj)

Versus

Union of India through:

1. Secretary,
Ministry of Information & Broadcasting
Government of India, Shastri Bhawan,
New Delhi - 110 001.
2. Chief Exclusive Officer
Prasar Bharati
PTI Building, Parliament Street,
New Delhi - 110 001.
3. Director General
Doordarshan,
Mandi House, New Delhi - 110 001.
4. Director General
All India Radio
Akashwani Bhawan, Parliament Street
New Delhi-1.
5. R. Shanmugasrindaram
6. Khurshed Ahmed Wani
7. Mrs. S.J. Rizvi
8. Mr. P.K. Ray

officers at sr. no. 5 to 8 are working under
D.G., Doordarshan, The copies to them are
to be served through D.G. Doordarshan,
Mandi House, New Delhi-110 001.

(By Advocate Shri S.M. Arif)

.....Respondents.

ORDER (ORAL)

By Hon'ble Shri S.K. Malhotra, Member (A):

This OA has been filed by the applicant with the prayer that the impugned
order dated 29-10-2004 (Annexure A-1) by which she has been denied

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promotion and has been reverted to the Junior Time Scale in the programme production cadre of Doordarshan may be quashed and set aside and she may be considered for promotion by holding review DPC.

2. The brief facts of the case are that the applicant has earlier been working as Assistant Station Director in AIR. Later she was promoted as Deputy Director in the Senior Time Scale of Indian Broadcasting (Programme) Service on adhoc basis on 9-4-2002. The period of adhoc promotion was extended from time to time. According to her, she was considered for regular promotion to the above grade in October, 2004 but her name has not been approved, although some of her juniors have been promoted on regular basis. It has been contended by her that the adhoc promotion is given after proper screening by the Appointing Authority and only those officers are given promotion who fulfill the eligibility conditions prescribed in the recruitment rules. Once adhoc promotion has been given to her and there was no adverse entry against her in ACRs, she should have been considered for regular promotion for Senior Time Scale on regular basis. The mode of promotion in terms of recruitment rules is seniority-cum-fitness both for adhoc and regular promotion; and once she has been found fit for adhoc promotion, she could not be denied regular promotion.

3. The respondents have filed their reply in which they have stated that the adhoc promotions were granted to the officers subject to their being found fit as per their seniority, available ACRs and vigilance clearance. The adhoc promotion does not confer any right for regular appointment or promotion in the grade. The applicant was considered for regular promotion as per recruitment rules by a duly constituted DPC but she was found "unfit" for said promotion. It has further been stated that there were certain adverse remarks in her ACR for the period 1999-2000. These adverse remarks have not been expunged as claimed by the applicant in her rejoinder vide letter dated 25-6-2001 (Annexure R-1).

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4. We have heard both the learned counsel for the parties, have also gone through the pleadings available on record and the original file of the Department on the subject.

5. During the course of arguments, the main point raised by the learned counsel for the applicant was that before granting adhoc promotion, she was screened and was found fit by the DPC. According to him, the criterion for both adhoc promotion as well as regular promotion is seniority-cum-fitness. In case the applicant who was found fit for adhoc promotion, ^{she} could not have been found unfit for regular promotion as the assessment was made based on the same ACRs. In support of his arguments, he cited a judgement of Madras Bench of this Tribunal in OA 1160/2003 in the case of M. Shankaran vs. Union of India and ors. [2004 (3) ATJ 434] in which it was held that even adhoc promotions have to be made only after proper screening of all the eligible and qualified candidates. It was, however, conceded by him that the adverse remarks in the ACRs for the year 1999-2000 were communicated to her. However, the same were expunged in the year 2001 vide letter dated 25.6.2001 (Annexure R-I) and as such this could not stand in the way of her promotion for which DPC was held in 2004.

6. The learned counsel for the respondents, however, brought to our notice that the adverse remarks have not been expunged, as claimed by the applicant. He showed us the original file of the department in which her representation against adverse remarks was dealt with. It was observed that her representation was considered by the Competent Authority but was rejected vide letter dated 4-5-2001 addressed to her. On the other hand while this letter has not been appended by the applicant with the OA or with the rejoinder, another letter dated 25-6-2001 addressed by the Station Director to the Director General, AIR has been appended in which recommendations to expunge the adverse remarks are stated to have been made (Annexure R-1). He also brought to our notice another communication dated 16.03.2005 in which it has been observed that the signature on the letter dated 25.6.2001 by the Station Director recommending

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expunction of adverse remarks of the Station Director do not tally with his original signature and prime facie the letter dated 25-6-2001 appears to be a fake one. In this communication, it is also observed that the Station Director had only issued the order dated 4-5-2001 rejecting the representation of the applicant and no subsequent letter was issued by him in regard to the adverse remarks. Since the letter dated 25-6-2001 has been found to be fake, the Vigilance Section of the Directorate has been asked to investigate the matter for appropriate action.

7. We have also perused the proceedings of the DPC held on 22-6-2004 in which the selection of the officers including the applicant for promotion to the Senior Time Scale was considered. It is observed that the applicant was found "unfit", for both the years 2002-03 and 2003-04 by the DPC. Accordingly she was reverted to the Junior Time Scale vide order dated 29-10-2004 (Annexure A-1)

8. After hearing both sides, we are convinced that no illegality has been committed by the respondents department in considering the case of the applicant for regular promotion to the Senior Time Scale. She has been considered for promotion but has not been found "fit" by the duly constituted DPC mainly due to an adverse remark in her ACR for the year 1999-2000. As regards her adhoc promotion in 2002, her ACR folder has also been perused by us. She has been rated as "good" in her ACRs during the period 1996-1997 till 2000-2001, except during 1999-2000 when she was rated as "below average" and there were certain adverse remarks also which were communicated to her. However, she was still allowed adhoc promotion, which is normally given based on seniority and if one fulfils the eligibility criteria. However, that does not give her any legal right for regular promotion.

9. From the averments made by the applicant in the OA as well as in rejoinder, it is observed that an attempt has been made by her to mislead the court by appending a letter dated 25-6-2001 addressed by the Station Director to the Director General, recommending expunction of her adverse remarks in the

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ACRs for the year 1999-2000 (Annexure R-1) which letter is stated to be a fake one. We could not get any satisfactory explanation as to how the applicant had access to this letter, which was an inter-departmental communication, a copy of which was not endorsed to her. The Department has taken a view that no such letter was issued by the Station Director and this letter appears to be a fake one for which vigilance enquiry has been initiated. Her representation against the adverse remarks was rejected by the Station Director vide letter dated 4-5-2001 addressed to her which she has not appended at all. This is a very serious matter and which requires to be investigated. In case the letter dated 25-6-2001 (Annexure R-1) is found to be a forged one, appropriate disciplinary action must be initiated against the applicant.


10. It is a well settled principle of law that the Tribunal cannot be expected to play the role of an Appellate Authority or umpire in the acts and proceedings of the DPC, and it cannot sit in judgement over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of being arbitrary. On this aspect of the matter, we are relying on the judgement of the Hon'ble Supreme Court in the case of **Anil Katiyal (Mrs.) v. Union of India**, 1997 (2) SCT 157 (SC). In another case of **D.A. Solunki v. Dr. B.S. Mahajan**, AIR 1990 SC 434, it was held that whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection etc. No such illegality or arbitrariness has been pointed out in the instant case. We do not, therefore, find any justifiable ground to interfere.

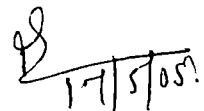
11. Registry is directed to send a copy of this order to respondent no.1 (by name) for taking appropriate action in regard to the observations made in para 9 of this order.

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12. Taking into consideration the above facts, we do not find any merit in the OA and the same is dismissed. No order as to costs.


(S.K. Malhotra)
Member (A)


(Mrs. Meera Chhibber)
Member (J)

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