

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

14

O.A.No. 2415/92.

DATE OF DECISION 22-7-1993

<u>SHRI Z.R. GHANSI,</u>	Petitioner
<u>SHRI V.S.R. KRISHNAN,</u>	Advocate for the Petitioner(s)
Versus	
<u>UNION OF INDIA &amp; ORS.</u>	Respondent
<u>None</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.S. Hegde, Member (Judicial)

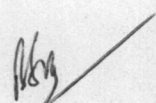
The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

## J\_U\_D\_G\_E\_M\_E\_N\_T

Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial) 7

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the Tribunal may be pleased to quash the impugned order dated 18.2.1992 (Annexure A-4) rejecting the representation of the applicant and also to expunge the adverse remarks communicated to the applicant vide Memo. dated 24.9.1991 (Annexure A-2) as legally not sustainable.



15

2. The applicant is working as an Information Officer in the Directorate of Information and Publicity, Delhi Administration and has put in more than 16 years of service in the Directorate of Information and Publicity, and has worked with various dignitaries of the Delhi Administration. The Learned Counsel for the applicant, Shri Krishna contends that the next stage of promotion from the post of Information Officer is to the post of Deputy Director (Publicity). As per the recruitment rules, officer who works as Information Officer with 8 years experience is eligible to be promoted to the next grade or post of Deputy Director. He contends that there are vacancies of Deputy Director in the office of the respondents but the respondents malafidely has not convened any DPC making promotion. Had the respondents convened the DPC at the appropriate time, the applicant being duly qualified as Information Officer would have been selected and promoted to the higher post as his service records have all along been good. The main challenge in this O.A. is against the adverse remarks for the year 1989-90 by the Reviewing Officer, Shri S.N. Chatterjee, and he further contends that orders dated 24.9.1991 (Annexure A-2) was malafide and the same is supported by documentary proof. It is due to the

*As per*



malafide attitude of the Director, Shri Chatterjee, 16  
that the convening of the DPC was delayed. The Director  
wants to foist his own favourite person for the higher  
post and is waiting for him to complete 8 years of  
service as Information Officer. The Learned Counsel  
for the applicant contends that though the Reporting  
Officer gave a favourable report, Reviewing Officer  
purposely gave an adverse report which is not supported  
by documents and was given with malafide intention  
because his earlier and subsequent CRs were good.

3. As against this, the respondents, in their  
reply, has not disputed that the applicant has put  
in 16 years of service and is eligible for being  
considered for the post of Deputy Director as per  
the regulations. There is no averment on the part  
of the respondents why the post has not been filled  
up. It is only stated that the post is now being  
filled up as per the necessity and exigency of the  
work and as per the administrative convenience.

4. In this connection it is relevant to point  
out that the observations made by this Tribunal vide  
its order dated 14.10.1992 is relevant and after

16/10/92

hearing and perusal of the records, the Tribunal has admitted the petition and granted interim relief. Accordingly, it was observed that in view of the discrepancy in the ACR of 1989-90, the petitioner may be considered for promotion to the next higher grade without taking into consideration the adverse remarks recorded in the report for the year 1989-90 but the result of the DPC was not made known or acted upon till the disposal of the O.A. as an interim measure.

5. It is pertinent to point out that only after the direction of this Tribunal, the respondents thought fit to initiate DPC in order to fill up the post of Deputy Director. Nevertheless, still the DPC has not been convened. When the matter came up for hearing on 7.7.1993, none appeared for the respondents and the Learned Counsel for the applicant has demolished the contention of the respondents by going through the various documents. In so far as Annexure A-2 is concerned, the remarks made by the Reviewing Authority is not based on documents because column No. 2, he states that the applicant was found unfit for Press Liaison work by EC(H) and Ex-CEC. In this connection the Learned Counsel has brought to my notice Annexures A-1 and A-2 vide



dated 23.8.1991 and 20.12.1989 respectively. It

is apparent that both the parties have given good  
good chit to the applicant during the period under  
consideration. Therefore, the said observation  
by the Reviewing Authority is not warranted.

Again in column No. 4 (a)- Fitness for Promotion -

Reviewing Authority has remarked as not fit. In  
this connection Government of India's O.M. dated  
16.5.1985 is brought to my notice wherein the said  
item is deleted in the year 1985. The Ministry of  
Finance has requested the other department to take  
action to delete the column relating to fitness  
promotion in the form of C.R. for various services  
and posts under their control. Column No. 4(b)

the subject matter is that whether a special charac-  
teristics or any outstanding merits for justify  
selection to a higher post. The Learned Counsel  
for the applicant submits, the observation of the  
Reviewing Authority has no nexus to the query  
raised in column 4(b) if the officer has put in  
special characteristic, the Reviewing Authority  
has to state the same in a positive manner.

Therefore, he submits that all these remarks made by the Reviewing Officers are attributed to the mala fide of the Director since the Reporting Officer has not made any such observations. These observations were made with the ulterior motives in order to promote his own candidate. As a matter of fact, these remarks ought to have been emanated from the Reporting Officer and not by the Reviewing Officer. Further any adverse remarks as per the O.M. dated 30.1.1978 of the Department of Personnel should be communicated within one month of their being recorded. This communication should be in writing and a record to that effect should be kept in CR dossier of the Government servant concerned. In so far as the applicant is concerned, the alleged adverse remarks having communicated after a lapse of 15 months i.e. on 24.9.1991 for the ACR of 1989-90. The idea of communicating the adverse remarks to the officer concerned is to overcome and improve the shortcomings. If it is communicated after a lapse of more than a year, very object and purpose of adverse entries becomes defeated and the said <sup>adverse</sup> remarks are liable to expunge.



6. Though the applicant has made a detailed representation aggrieved by the adverse entries communicated to him, the reply given by the respondents is very brief and cryptic vide dated 18.2.1992 (Annexure A-4).

7. Shri V.S.R. Krishna, Learned Counsel for the applicant cited various decisions of the court stating that the rejection of representation against adverse remarks should be by a speaking order; especially when a Reviewing Authority disagreeing with the findings of the Reporting Officer, he should give a speaking order. He relied upon a case of this Tribunal -

L. Jayaseelan vs. UOI & Ors. [1991 (2) ATJ 309].

8. I have gone through the records and heard the arguments of the Ld. counsel for the applicant. The contentions raised in the petition are substantial and are supported by documents. The remarks made by the Reviewing Authority are not based on documentary evidence and the said adverse remarks made by the Reviewing Authority cannot be sustained in the light of the above. Accordingly, the impugned order dated 18.2.1992 as well as order dated 24.9.1991 are required to be quashed. Accordingly, I quash both the orders and allow the petition with a direction that as and when

the DPC is convened, the applicant's name should be considered for promotion without taking into consideration the alleged remarks made during the year 1989-90. This O.A. is allowed with no order as to costs.

(B.S. Hegde)  
Member (J)

*B.S. Hegde*  
22/12/93