

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 323 of 1992

New Delhi, this the 19th day of November, 1997

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Hon'ble Mr. Justice K.M. Agarwal - Chairman
Hon'ble Mr. N. Sahu - Member (Admnv)

Suchitra Goswami presently working as
Deputy Secretary to the Govt. of India,
Department of Ocean Development, C.G.O.
Complex, Lodhi Road, New Delhi.

-APPLICANT

(By Advocate - Shri M.R. Bhardwaj)

Versus

1. Union of India through Secretary,
Ministry of Industry (Department of
Industrial Development), Udyog
Bhawan, New Delhi.

2. Establishment Officer, (Dept. of
Personnel & Training), North Block
New Delhi.

-RESPONDENTS

(By Advocate - Shri P.H. Ramchandani)

JUDGMENT

By Mr. N. Sahu, Member (Admnv) :-

The amended O.A. filed on 13.9.1996 has been taken on record and the pleadings on the same are complete. It is, therefore, unnecessary to refer to the averments made in the original application.

2. The issue in this O.A. is whether on the facts and circumstances a review DPC to consider the case of the applicant for empanelment for promotion to the post of Deputy Secretary during the year 1989 is called for or not. If under the rules it is necessary to hold a review DPC, can the respondents deny the same on the hypothetical ground that even if a review DPC is convened the applicant might not make her grade on the facts before them?

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3.. The above issues arise on the following facts. The applicant represented against some adverse remarks in the confidential report for the year 1987 when she worked as an Under Secretary. The ACR for the year 1987 was initiated by two reporting officers. One reporting officer in his report on 9.1.1989 made some adverse remarks which were communicated to the applicant on 25.1.1989. She represented against the said adverse remarks on 3.10.1989. By a communication dated 25.6.1990 these adverse remarks were directed to be expunged. The same were expunged on 12.7.1990.

4.. The dates of the meeting of the selection committee are as follows - CSS Selection Grade Select List,1988 - selection committee meeting held on 28.1.1989; CSS Selection Grade Select List,1989 -selection committee meeting held on 25.5.1990; and CSS Selection Grade Select List,1990 - selection committee meeting held on 27.3.1991. For the selection committee proceedings for the year 1988 as well as 1989, the applicant was considered on the basis of the unexpunged adverse remarks of the ACR for the year 1987. She was not found fit. Even in the year 1990 she was still superseded by as many as 33 officers junior to her, although considered with the CR of 1987 as amended. In the year 1991, however, the applicant was empanelled for promotion and promoted to the rank of Deputy Secretary. The fact remains that the respondents did not deny the presence of adverse remarks in her part CR for the year 1987 at the time of circulation of CRs for

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(32)

preparation of select lists for the year 1989 and in respect of 1990 the applicant vehemently states that the adverse remarks were still in tact when the CRs were circulated which affected her grading.

5. The respondents state that for the year 1989 even if the corrected CR of 1987 had been placed before the selection committee which met on 25.5.1990 it would not have made any difference to the non-selection of the applicant. The reasons given by the respondents are that the bench mark for the selection to this post carrying scale of Rs.3700 - 5000) is "very good". The selection committee for the year 1990 which met on 27.3.1991 had considered the corrected ACR for the year 1987; even so the applicant was not included in the 1990 list because she was graded only as "Good" and did not reach the minimum bench mark "very good". On the basis of this analogy, the respondents state that even if the corrected ACR had been considered in the 1989 - selection list there was no possibility of her getting the "outstanding" grading so as to find her name in the select list. Secondly, they state that this grading of "Good" for 1989 would only have been seen before the selection committee for 1989. Since all the general candidates included in the select list are senior to her she could not have been included at all. They therefore state that any review would be a futile exercise. It is next argued that Para 11 of Appointment of Officers to the Secretariat Posts under the Central Staffing Scheme by OM dated 5.1.1996 quoted in para 8 of the

amended O.A. applies to Central Staffing Scheme and does not apply to promotion of Under Secretary to the post of Deputy Secretary within the Central Secretariat service. According to them the provisions of review only apply to Group 'A' All India Service and Central Service Officers.

6. On behalf of the applicant it is submitted that her supersession in 1990 could be only on account of the presence of adverse remarks in her part CR for 1987 at the time of circulation of CRs while preparing the Select List for the year 1990 (emphasis supplied by us). If she is found fit for promotion on a consideration of CRs for 81-91, her service record from 81-90 (after expunging the adverse remarks) could not have been much different. Secondly, convening of the review DPC would not be a futile exercise because in the select list of 1989 in violation of the instructions of the Appointments Committee of the Cabinet the respondents have included two retiring officers with less than three months of service. If this were not done, the applicant would have gained by two places.

7. We have carefully considered the submissions. Para 11 ibid is extracted hereunder -

"A special review may be made in the case of any officer whose C.R. undergoes a material change as a result of his representation being accepted against recording of adverse comments on his annual confidential report"

(bX)

8. We have not been shown any basis or authority to uphold a distinction sought to be made by the respondents between Class-I officers under the Central Staffing Scheme and other officers in the Central Secretariat Service for the purposes of application of review DPC rule. This is a distinction which has no relationship either to the needs of the persons as a class or has no rational nexus with the special characteristics of that class. We hold that the provisions of review DPC are applicable to all the officers and officials working in the Government of India. The provisions of review DPC are very clear. The five categories by way of illustration mentioned for convening a review DPC in para 18.1 of Chapter 53 of Swamy's Complete Manual on Establishment & Administration, Sixth Edition, 1997 edition, are extracted hereunder -

"The proceedings of any DPC may be reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of the DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPCs to rectify certain unintentional mistakes, e.g.,-

- (a) where eligible persons were omitted to be considered; or
- (b) where ineligible persons were considered by mistake; or
- (c) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or

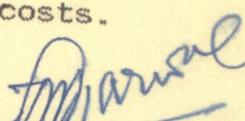
(d) where some procedural irregularity was committed by a DPC; or

(e) where adverse remarks in the CRs were toned down or expunged after the DPC had considered the case of the officer."

The applicant's case comes under the fifth category. A procedure has also been laid down. In the first place the appointing authority should scrutinise the case with a view to decide whether a review DPC is called for or not. The respondents while not denying that a review DPC is called for merely argued hypothetically as to what would happen even if a review DPC was convened. It is clearly laid down that the review DPC should consider the expunged remarks in substitution of the original adverse remarks. It is for the review DPC as properly constituted as per rules to consider the suitability of the applicant for promotion and record a finding to that effect. It is not open to the respondents to state as to what would have happened even if the review DPC had considered her case. This stand denies to the DPC to be duly constituted for this purpose its functional role to decide the suitability of the applicant for promotion. It is for the review DPC to consider as to whether the inclusion of two ineligible officers was violative of O.M. dated 11/12 April, 1989 issued by Secretary to ACC. Even grading of the applicant on the basis of last 5 CRs or 3 CRs is an important task of the DPC. As this is a selection post, the merit position of the applicant has to be considered afresh. We cannot, therefore, agree that when

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conditions for review DPC are clearly satisfied the respondents without convening a review DPC can come to a hypothetical inference on the probable outcome of the same even if such an inference is plausible. We, therefore, direct the respondents to initiate steps to convene a review DPC to reconsider the applicant's case for empanelment to the post of Dy. Secretary for the year 1989 within a period of 12 weeks from the date of receipt of a copy of this order and implement the recommendations of the said review DPC soon thereafter. The O.A. is accordingly allowed. No order as to costs.



(K. M. Agarwal)
Chairman



(N. Sahu)
Member (Admnv)

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