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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A.No.180/93

New Delhi, this the 9th day of September, 1998

HON'BLE SHRI N.SAHU, MEMBER(A)
HON'BLE DR.A.VEDAVALLI, MEMBER(J)

Smt.Prem Wati Sharma,
W/o Shri S.C.Tiwari,
r/o 1/5747, Balbir Nagar,
Gali No.15, Shahdara,
Delhi-110032.

....Applicant

(By Advocate: Shri M.M.Sudan assisted by Sh.R.R.Ojha)

Versus

1. Lt.Governor,
Delhi, through Chief Secretary,
Delhi Administration,
5, Sham Nath Marg,
Delhi.
2. Secretary(Services),
Delhi Administration,
5, Sham Nath Marg,
Delhi.
3. Development Commissioner,
Delhi Administration,
5/9, Under Hill Road,
Delhi-54.

....Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R(ORAL)

BY HON'BLE SHRI N.SAHU, MEMBER(A)

This O.A. has been filed on 18.1.93 against the promotions to Grade-I of Delhi Administration Subordinate Service(DASS) made by the respondents ignoring the claim of the applicant. The applicant filed a representation which was rejected by the communication of the respondents dated 5.2.92. As the impugned order is dated 5.2.92, the petition filed on 18.1.93 cannot be challenged on the ground of limitation.

2. The respondents state that the applicant was duly considered for promotion to Grade-I but she was found unfit

for promotion. The learned counsel for respondents has filed extracts of the recommendations of the DPC held on 28.5.92, 4.6.92, 1.7.92, 2.7.92 and 14.7.92 against the vacancies for the year 1989. They considered the representation of Smt. Premwati Sharma whose grievance was that her juniors were promoted to Grade-I. She supplied to the DPC the seniority list notified vide letter No.F.47(6)/87/Dev Hqr./10249-51, dated 21.12.87. In the said seniority list her name appeared at serial no.15 with the date of appointment as 14.10.71. The DPC considered her suitability by calling for the service record for the years 1984-85 to 1988-89 (both years inclusive). They noted the adverse remarks in the report for the year 1983-84 and 1984-85. The reports were adverse. In the year ending 31.3.86, the reports were colourless and positively adverse. Even for the year 1988-89, she was graded 'average'. Accordingly the DPC had not found her fit for promotion.

3. At para 4.14 of the rejoinder, the applicant stated that she was served with memorandum dated 30.6.86 communicating the adverse remarks in the ACRs for the years 1983-84, 1985 and 1986. Against the adverse remarks, she filed a representation (annexure A-9 to A-10) which were respectively served on the respondents on the same date i.e. 11.8.86. In token of receipt, we have the signature of receiving official. In a communication by the Deputy Secretary(Services) to the Joint Director(Agriculture), it was directed that the representation of the applicant Smt. Premwati Sharma dated 3.8.86 be traced. The Joint Director(Agriculture) by letter dated 3.8.86 states that no representation of Smt. Premwati Sharma was traceable in the

records. The original representations were shown to us by the learned counsel for applicant and they were also shown to Shri Vijay Pandita, ld. counsel for respondents. Shri Pandita states that there was no seal of the official and it was only the signature and that would not be sufficient of having received the representation. Shri Pandita also states that this matter relates to the ACRs for the years 1984-85 to 1988-89 and the representation was filed in 1986 and, therefore, the cause of action does not survive.

4. We have considered the submissions. We note that the factum of having filed the representations were available in the pleadings even when the petition was filed. The applicant had preserved a copy of the representation and the ld. counsel for applicant has shown that to us. It is for the respondents to prove that some other person has signed on the representation and not any official of the department. Until the respondents prove that the signature is not genuine, we are compelled to accept that the representation filed was genuine. We also note that on the dates mentioned above, the DPC was held and considered the adverse reports against the applicant for the year 1984-85 onwards. We are now satisfied that these adverse reports were considered by the DPC when the representations of the applicant were pending and they were not disposed of.


5. In the case of Gurdial Singh Fijji vs. State of Punjab & ors. - 1979 (2) SCC 368, the Hon'ble Supreme Court at para 17 laid down the law that the adverse entry cannot be acted upon till opportunity for representation has been afforded and the representation considered. As

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this is the crucial decision governing the disposal of the O.A., we extract here para 17 of the decision of the Supreme Court in the above referred case:-

"17. The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, through the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him."

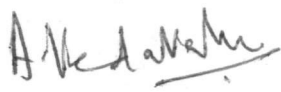
6. The Hon'ble Supreme Court has followed the decision in the case of Gurdial Singh Fijji vs. State of Punjab in the case of Union of India & ors. vs. E.G.Nambudiri - (1991) 17 ATC 104. At page 109, the Supreme Court again reiterated the rule in Fijji's case in the following words:-

 "Any adverse report which is not communicated to the government servant, or if he is denied the opportunity of making representation to the superior authority, cannot be considered against him. In the circumstances, it is necessary that the

authority must consider the explanation offered by the government servant and to decide the same in a fair and just manner."

7. In the light of the above law laid down by the Supreme Court, the decision of the DPC in denying promotion to the applicant must be held to be bad in law. We accordingly direct the respondents to take on record a fresh representation (since the old one is not available) dated 3.8.86 to be filed by the applicant within one week from the date of receipt of a copy of this order and the respondents shall dispose of this representation after due consideration, within six weeks of the receipt of the same. A review DPC shall be constituted within ten weeks thereafter to reconsider the claim of the applicant and the decision of the review DPC shall be communicated to the applicant within six weeks.

8. O.A. is disposed of as above. No costs.



(DR.A. VEDAVALLI)
MEMBER(J)



(N. SAHU)
MEMBER(A)