

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 554/93

199

T.A.No.

DATE OF DECISION

25/11/98

K.S. Kumaresan

....Petitioner

Shri. D.S. Garg

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors.

....Respondent

Shri R.V. Sinha

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri N. Sahu, Member (J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A. 554/93

New Delhi this the 25th day of February, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri N. Sahu, Member(A).

K.S. Kumaresan,
Department of Chemicals & Petrochemicals,
Shastri Bhawan,
New Delhi.

... Applicant.

By Advocate Shri D.S. Garg.

Versus

Union of India through

The Secretary,
Department of Agriculture & Cooperation,
Krishi Bhawan,
New Delhi.

... Respondents.

By Advocate Shri R.V. Sinha.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by certain adverse remarks in his Annual Confidential Report for the year 1985 and he has submitted that the representation made by him against this has been disposed of by a non-speaking order which has been impugned in this application dated 17.12.1992. This order has been passed in pursuance of the order passed by the Tribunal in the earlier O.A. filed by the applicant i.e. O.A. 485/87 which was disposed of by order dated 8.9.1992.

2. The brief facts of the case are that the applicant is working as Stenographer Grade 'D' with the respondents. According to him, he was communicated adverse remarks in his ACR for 1985 against which he made a representation which was not disposed of. Meanwhile, the respondents promoted his juniors in the cadre of Stenographers

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Grade 'C' on ad hoc basis without considering his case against which he appealed to the Secretary, A&C. He had also filed the aforesaid OA 485/87 which had directed the respondents, inter alia, to dispose of his representation dated 31.3.1986 by a considered order within four months and communicate the same to the applicant. In that order, it was also directed that the respondents shall consider the case of the petitioner for promotion on ad hoc basis as Stenographer Grade 'C' as on the date on which his junior was promoted. Further, it was directed that if on consideration of his case he is found fit for promotion, he shall be accorded the same benefits as were accorded to his juniors, including consequential benefits. Following the aforesaid order, he states that he received two communications from the respondents, one dated 17.12.1992 stating that his representation dated 31.3.1986 had been carefully considered by the ^{Secretary, B.} Department of Agriculture and Cooperation, and he has not found any merit in it and; secondly, the O.M. dated 12.1.1993 communicating to him the result of the DPC which had reviewed and considered his case. In this O.M. it has been mentioned that the Committee did not find him fit and suitable for ad hoc promotion as Stenographer Grade 'C' with effect from the date of his juniors who were promoted on ad hoc basis in April, 1986.

3. Shri D.S. Garg, learned counsel for the applicant, has very vehemently submitted that the applicant's representation against the adverse remarks had not been disposed of by a 'considered order' as per the order of the Tribunal dated 8.9.1992 but is a bald order. According to him, the rejection of his representation without giving the reasons in the order itself is bad in law and is also contrary to the Tribunal's earlier order. As regards the second impugned

order/O.M. dated 12.1.1993, the learned counsel has submitted that it is also vague and non-speaking as the date, composition of the DPC as well as the exact ACR which had been taken into account by the Committee and other details have not been furnished in the O.M. According to him, this is also a serious lapse which entitles the applicant to succeed in having the adverse remarks in the 1985 ACR quashed as well as the two impugned orders. The applicant has submitted that he has a clear service record and is fit for promotion except for the 1985 adverse ACR and, therefore, the DPC should have taken over the assessment of his entire work and not relied upon the 1985 ACR. A ground has been taken that the DPC has not made the assessment correctly for the vacancy in question by taking into account the relevant ACRs. It has been alleged that the 1985 ACR has been written in 1986 and six vacancies have been filled in April, 1986 and unless all these vacancies arose in 1986 the 1985 ACR is not relevant and should not have been taken into account. Another allegation is that the ACR for 1985 had included the remark "Unfit for promotion" which, according to the learned counsel for the applicant, was to be decided on the basis of five years ACRs and should not be on the basis of the 1985 ACR itself. For these reasons, it was argued that the decision of the DPC is harsh and arbitrary. In the circumstances, the learned counsel has submitted that the impugned orders dated 17.12.1992 and 12.1.1993 should be quashed and set aside, the adverse entries in ACR for 1985 should be expunged and direction to be given that the applicant be promoted as Stenographer Grade C on ad hoc basis w.e.f. 3.4.1986, together with consequential reliefs, including arrears of salary. The learned counsel has relied on the judgement of this Tribunal in **E.G. Nambudiri Vs. Union of India & Anr.** (ATR 1987(2) CAT 360), but that case will not be

of any assistance to the applicant as the judgement has been reversed on appeal by the Supreme Court in **Union of India Vs. E.G. Nambudri**, (AIR 1991 SC 1216).

4. Shri Garg, learned counsel, had also made a submission that the adverse ACRs are mala fide but it was admitted that in the pleadings itself no facts have been mentioned to show or prove any mala fides. In the circumstances, we do not think it is necessary to deal with this ground any further and the ground of mala fide is accordingly rejected.

5. The respondents have filed their reply controverting the above and we have also heard Shri R.V. Sinha, learned counsel. Learned counsel has also submitted the original records of the Ministry for our perusal. They have submitted that the ACR of the applicant for 1995 contained adverse remarks while he was functioning in the Directorate of Economics and Statistics. The applicant was transferred from that Directorate to the Department of Agriculture and Co-operation on administrative grounds w.e.f. 20.3.1986. On transfer of a portion of the work of the Fertiliser Division from this Department, the applicant was transferred w.e.f. 31.3.1986. They have submitted that pending availability of regular officers for appointment as Stenographers Grade 'C', few Stenographers Grade 'D' were promoted on ad hoc basis but the applicant was not promoted as he was not on the rolls of the Department of Agriculture and Co-operation at that time and had been transferred along with this post to the Department of Fertiliser. According to them, his representation made against the adverse entries in the ACR for 1985 had been duly considered by the competent authority and was rejected against

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which he submitted an appeal on 31.3.1986. According to them, this had also been considered by the competent authority in the Department and rejected on 9.12.1986. The petitioner then filed an application (OA 485/87) in which the Tribunal had given certain directions referred to above. They have submitted that they have implemented the directions of the Tribunal and the Secretary, (A&C) had again carefully considered the appeal dated 31.3.1986 but found no merit in it and the reply was accordingly given to him on 17.12.1992. They have also submitted that in accordance with the directions of the Tribunal given on 8.9.1992, they had also constituted a DPC to re-consider the applicant's case. They have submitted that on the assessment of the relevant ACRs, the DPC had not found him fit for promotion with effect from the date his juniors were promoted. In the reply to the O.A. the respondents have also submitted that the representation made by the applicant dated 26.2.1986 against the adverse remarks in the ACR of 1985 was duly considered in all aspects by the competent authority against which he filed an appeal. This had also been considered by the then Secretary and rejected on 9.12.1986. In the circumstances, the respondents have submitted that the representations made by the applicant have been duly considered and disposed of by the competent authority in accordance with the Rules and established principles. They have also submitted that as contended by the applicant there is no necessity to communicate the date of the DPC, composition of DPC and other details which had been considered by the duly Constituted DPC in accordance with the Rules. They have submitted that as the ACR for 1985 contained adverse remarks, the DPC on an overall assessment of the conduct and performance of the applicant as seen from the Confidential Reports, including for the relevant year 1985, have not found the applicant fit for ad hoc

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promotion. Learned counsel has, therefore, submitted that everything has been done in accordance with the rules and instructions and orders of the Tribunal dated 8.9.1992 and the allegations of the applicant to the contrary are baseless. He has, therefore, prayed that the O.A. may be dismissed.

6. In the rejoinder, the applicant has submitted that his first representation dated 26.2.1986 was disposed of by the competent authority, but by a non-speaking order. Following the Tribunal's order dated 8.9.1992 the competent authority has again disposed of the applicant's representation stating that he did not find any merit in it. This according to him means that now it is for the Tribunal to decide his representation on merit as the competent authority has failed to dispose of the representation by a reasoned order. He has, therefore, submitted that the adverse entries in ACR for 1985 should be quashed, treating them as expunged and he should be promoted from the earlier date when his junior was promoted.

7. We have carefully considered the pleadings, the original records and the submissions made by the learned counsel for the parties.

8. The details of the adverse remarks in the 1985 ACR of applicant read as follows:

Regularity & Punctuality	:	Unsatisfactory. Even goes to
in attendance		the extent of recording wrong
		time of arrival and departure.

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Proficiency & accuracy of
stenographic work

: Slow in taking dictation.
Transcription and get up of
dictated material is extremely poor.

Intelligence & Keeness
and Industry

: He has neither the keenness
nor the ability to do good
work.

Fitness for promotion
to higher grade (s) on
his turn.

: Unfit

Has he been reprimanded
for indifferent work or for
other causes during the
period under report. If
so, give brief particulars.

: He has been warned orally as
well as in writing on a
number of occasions during
the period under report for
indifferent work, refusal to
do work, sleeping in office
hours, being unpunctual as
well as for recording wrong
time of arrival and departure.

9. We note from pages 22 to 24 of the Ministry of
Agriculture file No. 32018/1/87-E-IV that it has been stated
that the applicant's representation against the adverse remarks
had been examined by the competent authority but they did not,
however, find any justification for expunction of the adverse
remarks and his representation was accordingly rejected and he
was informed by memo dated 4.3.1986. Against this, he had
submitted another representation to the Secretary, (A&C) which

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had also been examined, who had taken a decision rejecting the appeal on 9.12.1986, but unfortunately this decision was not communicated to the applicant. It appears that these facts were not brought to the notice of the Tribunal by either party correctly, before the order dated 8.9.1992 was passed. However, in compliance of the Tribunal's order the applicant's representation was placed again before Shri M.S. Gill, Secretary, (A&C) who vide his note dated 11.12.1992 has stated that he has carefully considered the representation and does not find any merit in it. Thereafter, the impugned order dated 17.12.1992 has been passed. It is further noted that in pursuance of the Tribunal's order dated 8.9.1992 the DPC held another meeting to consider the applicant's case for promotion on ad hoc basis as Stenographer Grade 'C'. In the minutes of the meeting, it has been stated that the Committee had considered his CRs and on the basis of his performance as reflected in them, did not find him fit and suitable for promotion to the post of Stenographer Grade 'C' w.e.f. the date his juniors have been promoted on ad hoc basis.

10. In the first instance, we note that the respondents have, for whatever reasons, not brought to the notice of the Tribunal in OA 485/87, the relevant facts that the representation made by the applicant dated 26.2.1986 against the adverse remarks in the ACR had been duly considered by the competent authority and rejected. The appeal against this had also been considered by the then Secretary and rejected on 9.12.1996 which was, however, not communicated to the applicant. However, from the rejoinder it is clear that the applicant himself admits that the competent authority had disposed of his representation dated 26.2.1986 and what was referred to as a representation dated 31.3.1986 in the

Tribunal's order was, in fact, the appeal. However, we further note that the respondents have fully complied with the directions of the Tribunal inasmuch as the competent authority i.e. the Secretary (A&C) has again considered the applicant's representation and in his note dated 11.12.1992 has noted that he did not find any merit in it. This has been communicated to the applicant. In **Union of India Vs. E.G. Nambudiri** (Supra), the Supreme Court has held that reasons for rejecting the representation against the adverse remarks need not be recorded or communicated, but if such a decision is challenged for judicial review, the reasons for the decision may be placed before the court. In this case the Supreme Court held:

"..... In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law."

11. No doubt, in this case, the Tribunal had directed the competent authority to dispose of the applicant's representation dated 31.3.1996 within four months by a 'considered order' and communicate the same to the petitioner. The reasons recorded by the Secretary, (A&C) in his order dated 11.12.1992 have been communicated to the applicant. In the facts and circumstances of the case, and having seen the original records, we have no reason to doubt that the

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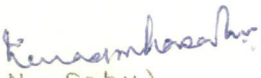
applicant's representation has ~~not~~¹⁸ been carefully considered by the competent authority before rejecting it. Therefore, in the present case, having regard to the judgement of the Supreme Court in **Nambudiri's case (supra)** read with the Tribunal's order dated 08.09.1992, we find no good grounds to set aside the impugned order dated 17.12.1992.

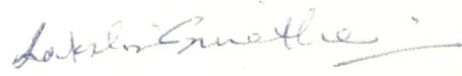
12. We do not also find any force in the contention of the applicant that in the impugned order dated 12.1.1993, since the details of the date of the meeting held by the DPC, its composition and other details have not been given, it vitiates the order, as these are not required to be given under any provisions of law/rules. The adverse remarks in the 1985 ACR have been communicated to the applicant by memo dated 6.2.1986 and according to the applicant's own version and the facts as seen from the records, his representation dated 26.2.1986 had also been disposed of by the competent authority which he states was a non-speaking order. If that was so, he could have challenged that order in the earlier O.A. he had filed, but that has not been done. Besides, even if it is a non-speaking order, that by itself does not vitiate the order passed by the competent authority as held by the Supreme Court in Nambudiri's case (Supra). Therefore, the DPC having considered the ACRs for the relevant period of five years in no way has violated the relevant rules/instructions which vitiates the impugned order dated 12.1.1993. It is settled law that the DPC/competent authority is to assess the merit of the candidate for promotion and it is not for the Courts or the Tribunal to do this in exercise of the power of judicial review. In the facts and circumstances of the case, we are unable to agree with the contention of the applicant that the proceedings of the DPC are

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invalid or that this Tribunal should make a reassessment of the merit of the applicant or expunge the adverse remarks in the 1985 ACR.

13. In the result, we find no justification for interference in the matter. O.A. is accordingly dismissed. No order as to costs.


(N. Sahu)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

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