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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 242 OF 2004
Cuttack this the 15th day of February 2005

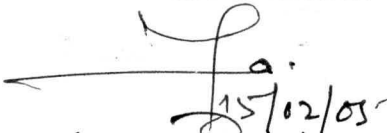
C.T.M. Suguna ... Applicant(s)


- VERSUS -

Union of India & Ors. Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No


15/02/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 242 of 2004
Cuttack, this the 15th day of Feb., 2005

CORAM :

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

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C.T.M. Suguna, D/o. late C.T.Marudhachalam,
aged about 46 years, at present working as
Collector, Mayurbhanj

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Applicant

By the Advocates

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M/s. G.Rath
S.Mishra
T.K.Praharaj
S.Rath
S.Mohanty

-VERSUS-

1. Union of India represented by Secretary, Personnel & Training, New Delhi
2. State of Orissa represented by Chief Secretary, Secretariat Building, Bhubaneswar, Dist-Khurda
3. Principal Secretary, Family & Welfare, Secretariat Building, Bhubaneswar, Dist-Khurda

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Respondents

By the Advocates

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Mr. U.B.Mohapatra,
Sr. Standing Counsel
(Central)

Mr. T.Dash, Govt.
Advocate(Orissa)

O R D E R

MR. B.N.SOM, VICE-CHAIRMAN: The Applicant, C.T.M.Suguna, an officer belonging to Indian Administrative Service (in short I.A.S.) of Orissa cadre has filed this Original Application being aggrieved by the order dated 20.2.04 passed by the General Administration Department, Government of Orissa vide Annexure-A/3 promoting some officers of I.A.S. cadre to the Selection Grade (in short S.G.).

2. The facts of the case, shorn of details, are as follows :

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2. The applicant was posted as Project Director, Orissa Health Service Development Project (in short O.H.S.D.P.) from May, 2001 to May, 2002. According to her, her performance as Project Director was above the bench mark accepted by the World Bank and ^{that} the World Bank Mission, in July, 2001 had expressed its satisfaction over the implementation of the project during her tenure. The applicant has also produced the minutes of the meeting held with the World Bank Team in the chamber of the Chief Secretary on 2.2.2002, wherein it was held that the progress of the project was remarkable. Again on 8.5.2002, the World Bank submitted a mid-term review mission to the Principal Secretary, Health, Ms. Meena Gupta stating therein that the project implementation since the last mission was satisfactory. From May, 2002 to July, 2003, the applicant was posted as Inspector General, Registration and thereafter posted as Collector, Mayurbhanj, when she received a DO letter from the Special Secretary to the Government of Orissa, General Administration Department dated 1.1.2004 communicating some adverse remarks as contained in her Annual Confidential Report (in short A.C.R.) for the period from May, 2001 to May, 2002. The applicant's grievance is that the said adverse remarks are contrary to the minutes of the meeting held in the chamber of the Chief Secretary to the Govt. of Orissa, where the Chief Secretary and the Principal Secretary, Health, who were the writers of those adverse remarks were parties. She has, therefore, submitted that the said adverse remarks for the period from May, 2001

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to May, 2002, were communicated to her with ^{that} malicious intention and/those remarks were not based on any evidence, which is one of the requirements of law. It has been submitted by the applicant that against those adverse remarks, she had submitted a representation to the Special Secretary to the Government of Orissa, General Administration Department and the same was pending on the date of filing of this application. In the meantime, the Government of Orissa had promoted her juniors to the Selection Grade in I.A.S. Hence, she has assailed denial of promotion to her as illegal, arbitrary and devoid of reasons. It has been pointed out by the applicant that those adverse remarks were communicated about one year six months after the A.C.R. was written, with the sole objective to stall her promotion to the next higher grade.

3. Respondent No.2, Chief Secretary to Govt. of Orissa, by filing a detailed counter has opposed the prayer of the applicant. It has been submitted that the adverse remarks were communicated to the applicant on 1.1.2004, as per the rules and the applicant had made a representation against the said remarks on 6.2.2004 for expunction of those remarks from her A.C.R., which was under active consideration of the Government. The Respondent has, therefore, urged that the applicant has rushed to the Tribunal without exhausting the departmental remedies and without waiting for the outcome of her representation made to the higher authorities. As her representation against the adverse remarks were under consideration, the Screening Committee, which held

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its meeting on 29.1.2004 to consider promotion of I.A.S. officers of 1989-90 batch to the Selection Grade, the name of the applicant was also considered. The Committee observing some adverse remarks in the A.C.R. of the applicant for the year 2001-2002 and that the representation against those remarks was under consideration, it decided to defer the case of the applicant for promotion to the next meeting and as the next Screening Committee had not yet decided or arrived at any conclusion with regard to suitability of the applicant for promotion to the Selection Grade or otherwise, the case of the applicant is premature. Respondent No.2 has also denied that it had any mala fide intention to stall her promotion. It has been submitted by Res.2 that the averment made by the applicant regarding the quality of her performance during the period she had worked as Project Director was only self-assessment and no definite conclusion could be arrived on that basis. The Respondent has, therefore, submitted that the O.A. being devoid of merit is liable to be dismissed with costs.

4. We have heard the learned counsel for both the parties and perused the records placed before us. We have also gone through the adverse remarks, which were communicated to the applicant. However, during the pendency of this O.A., the Respondents had disposed of the representation of the applicant and had decided to expunge the adverse remarks except the following :

" You had over emphasized your contribution. Your quality of ~~out~~ put was average. Your knowledge of rules and regulations was of average standard. You raised a number of

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objections about different item of work without being aware that the work had been done as per the existing instructions. You were given to raising unnecessary alarm about your work", and also leaking negative. Consequently, your tenure as Project Director was disastrous and set back for the project".

The learned counsel for the applicant repeatedly submitted that these adverse remarks also cannot remain on record when the other remarks on the quality of her work and performance had been expunged. If the remarks made to the effect that her tenure as Project Director was 'disastrous' and a 'set back' for the project, that would become incongruent when other negative remarks recorded by the Reporting Officer had already been expunged. Further, he pointed out that the Respondents, by filing additional reply dated 16.12.2004 have disclosed that in the meantime a DPC was held on 6.11.2004 for consideration of promotion of the I.A.S. officers to Selection Grade, in which the case of the applicant was also considered along with others and the applicant was found suitable for promotion to the next grade. In the circumstances, it would be contradictory if her record shows that her tenure during the year 2001-02 was to quote, disastrous and ^aset back for the project whereas she is found worthy of career progression. If these remarks are allowed to stand, those will continue to obstruct her career progression of the applicant in various ways in future also and therefore, his submission was, those adverse remarks should also be quashed.

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6. We have given our anxious consideration to the submissions made by the learned counsel for the applicant and we find lot of force in his argument. From the submissions made by the Respondent, it is found that the applicant has been granted promotion to the Selection Grade in I.A.S. from 1.4.2003 as due to her, she being an officer belonging to 1989 batch. It also reveals from the record placed before us that the Chief Secretary as the Reviewing Officer had toned down the adverse remarks and had rated the applicant above average by overruling the grading given to her by the Reporting Officer as below average. It is also disclosed in the records placed before us that the ex-Chief Secretary of Orissa, as the Reviewing Officer had remarked that the officer reported upon "deserves part credit for the improvement in the implementation of the World Bank Project, but not the whole credit". The reviewing authority has already applied his mind and has been of the view that the overall performance of the applicant was above average, which, in our considered opinion would mean that the applicant's tenure as Project Director was neither disastrous nor a set back to the project. In fact, the reviewing authority had been of the opinion that the applicant deserved some credit for improvement in the implementation of the World Bank Project. It also appears that because of the toning down of the adverse remarks by the reviewing authority, the Screening Committee had found the applicant suitable for promotion to the

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Selection Grade. Viewed from this angle, we agree with the submissions made by the learned counsel for the applicant that the remarks "your tenure as Project Director was quite disastrous and a set back for the Project" should also be expunged from the A.C.R. of the applicant for the year 2001-2002 in order to bring harmony with the views of the reviewing authority. We order accordingly.

7. Before parting with this case, we would like to observe that the remarks given by the Reporting Officer that the self assessment given by the applicant in her A.C.R. for the year 2001-02 'over emphasized' her contribution and her quality of out put was average and that her knowledge of rules and regulations was of average standard, need no toning down, because, that was the assessment of work and conduct of the applicant by the Reporting Officer. However, as the Reviewing Officer has upgraded those remarks by stating that her performance was above average, we are not inclined to interfere in the matter.

8. With these observations and direction as made above, the O.A. is disposed of. No costs.

(M.R. MOHANTY) 15/02/05
MEMBER (JUDICIAL)

BJY

(B.N. SOM)
VICE-CHAIRMAN