

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No.839 of 1996

Date of order: 27.06.2001

Present : Hon'ble Mr. Justice G. L. Gupta, Vice-Chairman

Hon'ble Mr. B.P. Singh, Administrative Member

Smt. Tagar Roy, w/o Shri Arun Kumar Roy
working as LDC (Q/Pt.) in MES 228044 in
the office of CE EZ Ballygunge Maidan
Camp, Gurusaday Road, Calcutta-19
presently residing at 106/1 Narkeldanga
Main Road, RBI Cooperative Society, Flat
No.A-2, Calcutta-54

... Applicant

VS

1. Union of India, through Secretary,
Ministry of Defence, South Block,
New Delhi-1

2. Engineer-in-Chief, Army Headquarters
Kashmir House DHQ P.O. New Delhi-11

3. The Chief Engineer (HQ) Eastern
Command Engineers Branch, Fort William
Calcutta-21

... Respondents

For the Applicant : Ms. B. Banerjee, counsel

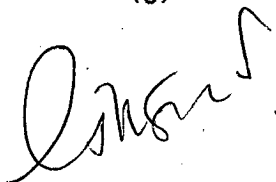
For the Respondents: Mr. M.S. Banerjee, counsel

O R D E R

Hon'ble Mr. Justice G.L. Gupta,

This is an application under Section 19 of the A.T. Act, 1985 whereby the applicant, Smt. Tagar Roy has sought the direction to the respondents to give promotion to her to the post of UDC from the date her immediate civilian junior in MES got the promotion with consequential benefits.

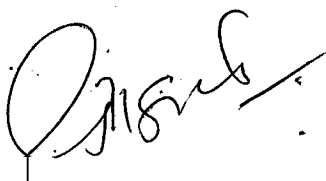
2. The facts of the case are somewhat interesting. The applicant was appointed as LDC by CWE(P), Shillong on 4.9.64 and she was declared quasi permanent on 1.11.67 by the order of CE EZ, Calcutta. She is working in the post of LDC till today. It is alleged that for the selection of the candidates for promotion to the post of UDC list of the LDCs, Annexure 'A/1' was prepared on 9.9.95 and the name of the applicant is at Sl.No.(g). The respondents have, however, ignoring the



seniority of the applicant has given promotion to Meena Dutta Chowdhury, Mithu Mukherjee and T. K. Roychowdhury who were junior to her in the seniority list of LDCs. Not only these three persons, other persons have also been given promotion by the respondents. The applicant made representations but her grievance was not redressed. Aggrieved by the supersession, she has approached this Tribunal.

3. In the reply, the case set up by the respondents is that there is some dispute with regard to the date of birth of the applicant and the three documents produced by the applicant indicate three different dates. According to one document, her date of birth was 4.8.41 whereas according to the second document her date of birth was 6.2.45 and according to the third document it is 6.2.47. It is stated that because of the dispute with regard to the date of birth of the applicant, she has not yet been made permanent on the post of LDC. Therefore, the promotion committee could not consider her name for promotion to the post of UDC. It is further stated that the applicant was asked to submit affidavit showing her correct date of birth, but she has failed to cooperate with the respondents which has resulted in non-consideration of her name.

4. In the rejoinder filed by the applicant, it is denied that she did not cooperate with the authorities in giving her correct date of birth. It is further stated that the original certificate in proof of date of her birth was produced by the applicant before the authorities in December, 1964 and it was the original Matriculation certificate issued by the Dhaka Board of Secondary Education and that original document is with the Department for the last 31 years. It is further stated that the authorities have already settled the matter fixing her date of birth as 4.9.46 and that calculation has been approved by the Headquarters Eastern Command. It is stated that the action of the respondents in depriving her of promotion is arbitrary,



malafide, vindictive and in violation of the principle of natural justice. It is further stated that as the authorities have already settled the date of birth of the applicant, the respondents are estopped from saying anything contrary to that.

5. During the pendency of the case the respondents have filed MA No.304/2000 for filing certain documents. In this MA it has been admitted at para 3 that the DPC has found the applicant fit for promotion subject to the age relaxation.

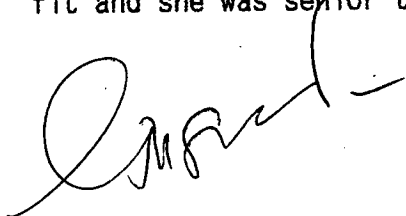
6. The applicant also filed supplementary affidavit to file the document, Annexure 'A/4' on 18.2.2000.

7. We have heard the arguments of the learned counsel of both the parties and perused record which has been made available by the learned counsel for the respondents and have gone through the documents placed on record.

8. It is no more in dispute that the applicant was appointed in 1964 on the post of LDC after following the procedure prescribed under the rules. It is also now no more in dispute that the applicant was found fit for promotion by the DPC in 1995 when the persons junior to her were accorded promotion.


9. The only ground taken by the respondents is that the dispute with regard to the date of birth of the applicant could not be settled and therefore, she could not be treated as confirmed LDC and could not be considered for promotion. As a matter of fact, from the facts stated in MA it becomes clear that the stand taken by the respondents in the reply that her name was not considered by the Selection committee is not correct and she was considered by the Selection committee. Not only that, she was also found fit for promotion but because of the age dispute she has not been given promotion.

10. We are unable to understand how the respondent authority could deprive the applicant from promotion when she was found fit and she was senior to various persons who have been accorded



promotion. If at all there was any dispute with regard to the date of birth, it was entirely different matter. If the respondent authorities were not vigilant enough for all these 31 years in verifying the date of birth of the applicant and making correct entries in her Service Book it was their fault. The applicant cannot be said to be at fault. She has come out with a clear case in her rejoinder that in 1964 when she was appointed she had filed the High School certificate issued by the Dhaka Board of Secondary Education and that certificate is still lying with the authorities. No counter has been filed by the respondent authorities disputing those facts. It is thus obvious that the respondents had the material before them to take decision about the correct date of birth of the applicant who is an ex-repatriat of East-Pakistan.

11. In the instant proceedings, we are not required to record our findings with regard to the date of birth of the applicant. However, from the documents filed by the parties particularly Annexure 'A/4' which is the audit report about the entry of date of birth in the Service Book of the applicant and which was prepared some times in 1983, and the documents filed by the applicant along with the rejoinder and the orders passed by the Ministry of Defence on 28.3.95 and 19.4.95, it is obvious that some decision has already been taken with regard to the date of birth of the applicant and the Ministry has not agreed to any change of date of birth. Be that as it may, as already stated we are not here to decide about the date of birth. The only question to be considered by us is whether the applicant was entitled to be promoted to the post of UDC in 1995 pursuant to her selection by the Selection Committee. Our answer certainly is in the affirmative. The action of the respondent in depriving the applicant to the promotion to the post of UDC is arbitrary and discriminatory. The applicant is entitled to succeed in this OA. The applicant could not be denied



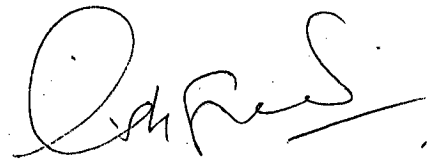
promotionn on the ground of not passing the order of confirmation on the post of LDC because of age dispute.

12. Consequently, the application is allowed. The respondents are directed to grant promotion to the applicant from the date the person immediately junior to her was given promotion, with all consequential benefits within a period of one month from the date when the copy of this order is served upon them. The applicant shall get costs Rs.2000/- from the respondents.



(B. P. Singh)

MEMBER (A)



(G. L. Gupta) J.

VICE-CHAIRMAN