

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 600 of 2005

This the 22nd day of May, 2007

CORUM

HON'BLE SHRI A.K.SINGH, MEMBER (A)
HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

Smt. D.D. Bhutani, wife of late R.K. Bhutani at present working as Stenographe Grade II, Office of Chief Post Master General, U.P. Circle, Lucknow.

Applicant.

By Advocate: Sri Surendran P

Versus

1. Union of India, through the Secretary, Department of Posts, new Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Assistant Post Master General, Office of Chief Post Master General, U.P. Circle, Lucknow.

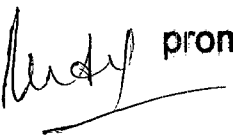
Respondents

By Advocate: Sri Sunil Sharma

ORDER

BY HON'BLE SHRI A.K. SINGH, MEMBER (A)

The O.A. bearing No. 600/2005 has been filed by the applicant Smt. D.D. Bhutani (of the address given in the notice) against the order dated 22.4.2004 and order dated 9.2.2004. By means of order dated 9.2.2004 issued by the respondents, the applicant was informed that DPC, after over all assessment of service record of the applicant had adjudged her 'Unfit' for promotion to Stenographer Grade II in their meeting held on



27.1.2000. Applicant's representation against the order dated 9.2.2004 was also rejected by order dated 22.4.2004..

2. Brief facts of the case are that the applicant joined Postal Department as Stenographer Grade III on 24.10.1975. The applicant proceeded on leave w.e.f. 6.8.86 to 20.6.2000 due to certain pressing domestic problems. The mother-in-law of the applicant was suffering from cancer and father-in-law was suffering from another serious ailment which ultimately resulted into death of both of them died during the course of treatment. The applicant resumed her duties on expiry of her leave and the respondents sanctioned the leave for the aforesaid period vide order dated 9.1.2001. The applicant again proceeded on leave for a brief period and again joined her duty on 21.6.2002. In the mean time a DPC meeting for promotion from Stenographer Grade III to Stenographer Grade II took place on 27.1.2000. During this period, the applicant was on leave due to sickness of his ailing mother-in-law and father -in-law as aforesaid. The DPC recommended promotion of 29 officials from Stenographer Gr. III to Stenographer Gr. II in the scale of Rs. 5000-8000 but they adjudged the applicant 'Unfit' for promotion to Stenographer Gr. II. The applicant filed several representations to the respondents and ultimately she was promoted to the grade of Stenographer Gr. II w.e.f. 24.12.2001 by means of order dated 29.1.2004. The applicant submits before us that all the 29 officials in Stenographer Gr. III were given promotion as Stenographer Gr. II on the basis of restructuring in the cadre of Stenographers. Hence the applicant

submits that she is also entitled to get the benefit of promotion w.e.f. 31.1.2000 instead of 24.12.2001, as all 29 persons promoted w.e.f. 31.1.2000 were juniors to her. She submits that she never involved in any disciplinary proceedings nor was given any warning or adverse remarks during the period of her service. Hence, there does not appear any reason why she should not have been promoted w.e.f. 31.1.2000 when her juniors, 29 in number were promoted.

3. In the mean time, the applicant's case was considered for grant of IInd Financial up-gradation under the ACP scheme. The applicant was promoted to the grade of Rs. 5500-9000 w.e.f. 1.6.2001 vide order dated 1.6.2001. As per order dated 29.6.2001, the applicant's pay was fixed at Rs. 6250/- w.e.f. 1.6.2001. The applicant moved several representations to the authorities that she had joined service on 24.10.99. Accordingly she was entitled to the benefit of ACP scheme w.e.f. 24.10.99 itself. The applicant's representations was decided through a common order dated 9.2.2004 in which it was stated by the respondents that the DPC, after over all assessment of the service record of the applicant, had adjudged her 'Unfit' for promotion to the cadre of Stenographer Gr. II in the meeting held on 27.1.2000. As regards, IInd financial upgradation, she was informed by the respondents that the same was allowed to her with immediate effect as per recommendations of the DPC. The applicant moved another representation in March 2004 which was also rejected by the respondents on similar grounds. Being

aggrieved by the same, the applicant has filed the present O.A. before us on the following grounds:-

- i) That the applicant has been discriminated against her 29 juniors who have been given promotion over her in the cadre of Stenographer Gr. II and subsequently to Grade I.
- ii) That Stenographer Gr. II is a non-selection post and as such she is entitled to get promotion notionally w.e.f. 31.1.2000 upto 20.6.2000 with actual effect from 21.6.2000 as per provisions of O.M. dated 28.9.1981.
- iii) That there is total non application of mind on the part of the respondents in this case, as a result of which, respondents have passed an arbitrary order in malafide exercise of power.
- iv) That the applicant is entitled to get the benefit of ACP scheme on completion of 24 years of service i.e. w.e.f. 24.10.99 as provided under rules.
- v) That no adverse remark has ever been communicated to the applicant and as such the findings of the DPC suggesting her as 'Unfit' for promotion to the post of Stenographer Gr. II is illegal and arbitrary. On the basis of the above, the applicant has sought the following reliefs in the O.A.:-
 - a) To quash the order dated 22.4.2004 and 9.2.2004 and to issue directions to the respondents to consider the case of the applicant for notional promotion w.e.f. 31.1.2000 with actual benefit with effect from 21.6.2000 to the post of Stenographer Gr.

ii instead of 24.12.2001.

b) To issue a direction to give ACP to the applicant w.e.f. 24.10.99 i.e. the date on which she had completed 24 years of service instead of 1.6.2001.

c) To issue any other direction or order which this Tribunal may deem just and proper under the circumstances of the case.

4. The respondents on their part have contested the O.A. on the following grounds:-

i) That the case of the applicant for promotion from Stenographer Gr. III to Gr. II was considered by the DPC held on 27.1.2000. The applicant, during this period, was absent from duty without information w.e.f. 6.8.86 to 20.6.2000, which covers a period of 3 years, 10 months and 16 days. The DPC in their meeting held on 27.1.2000, therefore, assessed the service record of the applicant and found her applicant 'unfit' for promotion. The DPC held on 12-13/3/2001 and 19.6.2001 also found the applicant 'Unfit' for promotion for Stenographer Gr. II.


ii) As regards her claim for financial upgradation w.e.f. 23.10.99, the respondents submit that as per ACP Scheme, the officials, who were not covered under TBOP/ BCR scheme, were to be considered for 1st financial up-gradation on completion of 12 years and 11th financial up-gradation on completion of 24 years of service as on 9.8.99 and onwards. The cadre of stenographer is covered by ACP scheme.

iii) That the applicant Smt. D.D. Bhutani had completed more than 12 years of service but less than 24 years of service on

9.8.99. Hence she was only entitled for first financial up-gradation on 9.8.99.

iv) The applicant completed 24 years of service on 23.10.99. Accordingly her case was considered by the Screening Committee on 30.5.2000 for IInd Financial Upgradation w.e.f. 9.8.99. As the applicant was given selection grade w.e.f. 24.10.1985 in the pay scale of Rs. 425-640/- vide Memo No. STA/3-XP/90/11 dated 12.2.1998. Hence, the promotion in the selection grade has to be counted as promotion for the purpose of ACP.

v) The respondents further submit that the O.A. is highly time barred. Applicant should have filed the same within one year with effect from the date on which the cause of action had arisen in this case i.e. during 2000 and 2001 in both cases. But the O.A. has been filed on 12th December, 2005 and hence the same is clearly time barred U/s 21 of the Administrative Tribunals Act, 1985. On the basis of the above, the respondents submit that the O.A. No. 600 of 2005 is devoid of any merit and hence the same deserves to be dismissed.

5. The applicant and respondents were heard in person on 25.4.2007 through their respective counsels. Sri Surendran P  appeared for the applicant and Sri Sunil Sharma appeared for the respondents. In their oral submissions, both the counsels reiterated their arguments as above.

6. We have given our anxious considerations to the submissions made by the learned counsels on both sides and have also perused the records of the case. We have also perused the minutes of the DPC meeting held on 27.1.2000 for promotion of eligible employees from Stenographer Gr. III to Stenographer Gr. II.

7. The findings of the DPC in so far as it relates the applicant reads as under (Ref. Page 2):-

"The DPC after over all assessment of service record adjudged the following officials 'Unfit' for promotion from Grade III to Grade II:-

1. Smt. D.D.Bhutani, Steno, C.O., Lucknow
(Due to incomplete CR)
2. Shri S.A. Moid, Steno, SSPOs, Azamgarh.
(Due to currency of punishment)
3. Shri Abhai Kumar, Steno, SSRM 'A' Dn, Allahabad
(Due to currency of punishment)

8. The findings of the DPC in so far as it relates to the applicant appears to be non-speaking and hence unreasonable.

The applicant joined as a Stenographer Gr. III during the year 1975 and had completed service of over two decades when the DPC meeting, in question, took place. In case the current C.R. of the applicant was not available, the DPC could have considered

Mudiy her ACRs for the earlier period. The respondents submit that the applicant was unauthorizedly absent from duty on the date of DPC meeting which took place on 27.1.2000. It is on record that respondents, themselves have sanctioned her regular leave on 9.9.2001 covering the full period of absence of the applicant.


from duty. The leave sanction order is enclosed as Annexure No. 3 to the O.A. As such a review DPC should have been held on that basis to consider the case of the applicant afresh for promotion to the post of Stenographer Gr. II in light of instructions contained in G.I. D.P. & A.R. O.M. No. 22013/8/80-Estt. (D.) dated the 28th September, 1981 which clearly provides that a person who is on long leave and who could not be promoted, should be treated to have been notionally promoted for the purpose of being taken off the panel only, subject to the actual effect being given on return from leave. The relevant extract of the aforesaid communication reads as under:-

"The matter has been carefully considered and it has been decided that person who is on long leave and who could not be promoted should be treated to have been notionally promoted for the purpose of being taken off the panel only, subject to the actual effect being given on return from leave."

9. However, there is substantial merit in the say of the respondents that applicant should have been filed the O.A., in question, within one year from the date when the DPC met and had adjudged her as 'Unfit' for promotion to the cadre of Stenographer Gr. II. She was over looked for promotion to the grade of Stenographer Gr. II as per order dated 31.1.2000, which is enclosed as per Annexure no. 4 to the O.A. The applicant should have filed O.A. by 30 or 31.1.2001 but she did not file the same in time. She ultimately filed this O.A. on 12th December, 2005. It is trite law that repeated representation do not enhance the period of limitation. The O.A., thus is clearly barred by limitation under section 21 of the AT Act, 1985. There is also no

application on record filed by the applicant for condonation of delay in filing the O.A. as such this bench is quite helpless in the matter even though we find substantial merit in the case of the applicant. The O.A. is therefore, hit by limitation and hence part of relief claimed by the applicant is not sustainable in law and is accordingly rejected.

10. As regards the applicant's claim for the benefit of ACP on completion of 24 years of service i.e. w.e.f. 24.10.99 when she completed 24 years of service, we find that the DPC meeting which concluded on 30.5.2000 had adjudged the applicant 'Unfit' for IInd financial upgradation in the pay scale of Rs. 5500-175-9000 on 24.10.99. We find that the findings of even this DPC are not only non-speaking but also unreasonable. The DPC has not recorded any reason as to why they found this applicant 'Unfit' for IInd Financial upgradation in the pay scale of Rs. 5500-900 as on that date i.e. on 24.10.99. An arbitrary order or unreasonable order which does not record any reason is no order at all in eye of law. The Apex Court in the case of Menka Gandhi Vs. UOI and others [Reported in AIR 1978 SC 579] have observed that 'No Govt. can act arbitrarily as arbitrariness is violative of Article 14 of the Constitution.'

 11. Moreover, as I have already mentioned above, in case the ACR of the applicant for the period during she was on leave were not available, the DPC should have gone back and could have referred to ACRs for the earlier period when she was not on leave. It is on record that the applicant had completed nearly two decades of service. As already mentioned above, the G.I. D.P. &

A.R. O.M. No. 22013/8/80-Estt. (D.) dated the 28th September, 1981 clearly provides that in case an employee is on long leave and could not be promoted, she should be treated to have been notionally promoted for the purpose of being taken off the panel only, subject to the actual effect being given on return from leave. The relevant extracts of the aforesaid para have already been reproduced above.

12. In view of the above, there is no justification whatsoever in either not recommending or not granting the benefit of IInd financial upgradation w.e.f. 24.10.99 to the applicant i.e. the date on which she completed her 24 years of service. We therefore, allow this part of the relief claimed by the applicant and direct the respondents to conduct a review DPC forthwith to consider granting the benefit of second financial up-gradation to the applicant w.e.f. 24.10.1999. We have considered the question of applicability of limitation as provided under Section 21 of the AT Act, 1985. Since there is a recurring and continues cause of action on the score of getting less pay every month due to denial of benefit of IInd Financial Upgradation w.e.f. 24.10.99, no limitation as provided under Section 21 of the Administrative Tribunals Act, 1985 will apply to this case.

13. In consequence, O.A. 600 of 2005 is partly allowed on the above grounds. Parties to bear their own costs.


Member (J)

HLS/-


Member (A)