

*Lecomes*

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH

O.A.405/91

Lucknow the      th day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).  
Hon'ble Shri A.K. Misra, Member(A).

Smt. Sultana Jawaaid,  
wife of Mr. Iqbal Jawaaid,  
R/o Saiyada Manzil,  
Mansoor Nagar, City Lucknow      ...      Applicant.

(By Advocate Shri P. Surendran)

Versus

1. Union of India through the  
Ministry of Science and Technology,  
New Delhi.
2. The Chief Administrative Officer,  
Council of Scientific & Industrial  
Research, Rafi Marg, New Delhi.
3. Director, Central Drug Research Institute,  
Chhatar Manzil, Lucknow.
4. Professor B.N. Dhawan, Director,  
CSD, RI, Lucknow.
5. Dr. R.C. Shrimai, Head of the  
Department of Pharmacology, CDRI,  
Lucknow.
6. The Administrative Officer, Central  
Drug Research Institute,  
Lucknow.      ...      Respondents.

(By Advocate Shri A.K. Chaturvedi)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant is aggrieved by the action of the respondents  
in not granting her promotion to the post of Group-III(II) in  
the scale of Rs.1640-2900 (pre-revised) by not calling her for  
Departmental Promotion Committee (DPC) held in February/April,  
1991; (2) rejecting her representations dated 30.4.1991 and 12.9.1989;  
and (3) the adverse remarks communicated to her vide order dated  
29.6.1987 and 27.7.1989/which  
have not been expunged.

2. The brief relevant facts of the case are that the applicant while working with the respondents has submitted that there were no complaints regarding her work from 1975 to 1985. According to her, she was victimised from 1984 by Respondents 4 and 5 and was absent from duty under medical treatment w.e.f. 15.9.1984. By respondents' memo dated 29.6.1987, certain adverse remarks were communicated to her and again vide Office Memo dated 27.7.1989. She has submitted that these were not based on correct facts. She has submitted representations against these remarks on 12.9.1989 and again on 30.4.1991. The / representation, has been rejected by the respondents' OM dated 8.10.1989 in which they have not agreed to her request to expunge the adverse remarks in her ACRs. This order has, however, not been challenged by the applicant in this application. Her contention is that upto 1986 there were no adverse remarks against her and she, therefore, claims promotion to Class-III post in the higher scale w.e.f. 1.2.1986 when she was eligible for consideration. The applicant has submitted that she has not been duly considered for promotion since July, 1991 when other similarly situated persons were allowed the promotion after their assessment. She has claimed that her second chance for assessment promotion under the relevant Rules has been denied to her. She has also submitted that when the O.A. was still pending, Respondents 3-6 had called her for assessment stating that it was a last and final chance under the relevant Rules (NRAS) which was available to her w.e.f. 1.2.1988 for the assessment year 1987-88. However, she had not appeared for interview for this assessment as explained in her letter dated 6.2.1992 because of the pendency of this application in the Tribunal. Learned counsel for the applicant has relied on the judgement of the Tribunal in Dr. Sushma Vs. Union of India (1993 (24) ATC 348 (CAT, PB)). He has submitted that the DPC

the years 1986-87, 1988-89 and 1989-90 when there were adverse remarks against her which had not been expunged. Therefore, the question of reassessment for the period between 1986 and 1989 will not arise. The rejection of her representation to expunge the adverse remarks has been done as early as on 6.10.1989 which has not been challenged in the present O.A. They have also denied the allegations of harassment and victimisation. They have submitted that the O.M. dated 1.4.1992 has also not been challenged, when the applicant chose not to appear in the interview even though she was given a chance to appear in the same on 12.2.1992, perhaps because she was wrongly advised.

4. Shri P. Surendran, learned counsel has also been heard/ in reply. According to him, the applicant ought to have been assessed for promotion at the end of 5 years, 7 years, etc. which has not been done, although he has submitted that there is no challenge to the adverse remarks for 1987-89 in her ACRs which the respondents had not agreed to expunge by their order dated 6.10.1989.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. It is noticed from the respondents' O.Ms dated 29.6.1987 and 27.7.1989 that they have conveyed certain adverse remarks in the ACRs of the applicant for the periods ending 31.3.1987 and 31.3.1989, respectively. As mentioned above, the applicant has not impugned the validity of the O.M. dated 6.10.1989 issued by the respondents rejecting her

could not take into account the adverse remarks pertaining to a later date and according to him the respondents may be directed to consider the applicant's case for promotion to Class-III post w.e.f. 1986 or from 1991 and onwards when other/ similarly situated persons have been so considered and promoted.

3. The respondents in their reply have taken a preliminary objection that the application is barred by limitation as the representation against the adverse remarks in the ACR was rejected as far back as <sup>on</sup> 6.10.1989. The applicant's counsel had also submitted during the course of hearing that this rejection letter has not been impugned in the O.A. Shri A.K. Chaturvedi, learned counsel has, therefore, submitted that in the circumstances, the adverse entries communicated to the applicant through memo dated 27.7.1989 and 29.6.1987 have become final for the relevant periods. The respondents have submitted that the applicant has been given three chances under the NRAS Scheme in the years 1986, 1987 and 1988 but she had not appeared when called for an additional chance under the subsequent Scheme called 'MANAS'. In the O.M. dated 1.4.1992, they have explained that under the 'MANAS' Scheme, a special provision has been made which provides that those who have already availed of three chances and were not successful will be allowed an additional chance for assessment from that date. Accordingly, the applicant was called for interview on 12.2.1989 but she did not attend the interview which the learned counsel for the applicant had stated was on the ground that this O.A. is pending. Learned counsel has submitted that there are no allegations of mala fides against the Members of the Committee who had assessed the applicant's case for

the years 1986-87, 1988-89 and 1989-90 when there were adverse remarks against her which had not been expunged. Therefore, the question of reassessment for the period between 1986 and 1989 will not arise. The rejection of her representation to expunge the adverse remarks has been done as early as on 6.10.1989 which has not been challenged in the present O.A. They have also denied the allegations of harassment and victimisation. They have submitted that the O.M. dated 1.4.1992 has also not been challenged, when the applicant chose not to appear in the interview even though she was given a chance to appear in the same on 12.2.1992, perhaps because she was wrongly advised.

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5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. It is noticed from the respondents' O.Ms dated 29.6.1987 and 27.7.1989 that they have conveyed certain adverse remarks in the ACRs of the applicant for the periods ending 31.3.1987 and 31.3.1989, respectively. As mentioned above, the applicant has not impugned the validity of the O.M. dated 6.10.1989 issued by the respondents rejecting her

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applications for expunging the adverse remarks for this period. In the circumstances of the case, the adverse remarks for the relevant years from 1986-1989 have become final. It is further noticed that the applicant had been given three chances for assessment promotion under the previous Scheme in existence at the relevant time (NRAS) for the years 1986, 1987 and 1988. For the assessment year of 1987-1988 when she had not appeared, in view of the provisions under the later Scheme which was introduced by the respondents, she had been informed to appear in the interview which was to be held on 12.2.1992. She had chosen not to appear in the interview on the ground that the present O.A. is pending before the Tribunal. Admittedly, she did not appear on the wrong advice given to her. Unfortunately, this case has been pending adjudication for a number of years and after refusal of the applicant to appear in the interview in 1992, it appears that she has not been considered for promotion to Class-III post.

7. In the facts and circumstances of the case, the applicant's prayers for assessment promotion with effect from 1986 or 1987 are rejected, as there were adverse remarks in her ACRs for the relevant period. She had also been duly assessed for those periods and not found eligible for promotion under the then existing NRAS Scheme. However, the third and final chance she was given/under the 'MANAS' Scheme which is a special provision <sup>which</sup> had not been availed of by her even though she was duly informed and called for interview on 12.2.1992. This OA has been filed on 14.10.1991 and, therefore, taking into account the particular facts and circumstances of the case, the

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D.A. is disposed of with the following directions:

- (1) Respondents to take action to assess the suitability of the applicant for promotion to Class-III post with effect from 1.4.1988 *"or fourth P"* in the third chance available to her under the provisions of the relevant 'MANAS' Scheme applicable at the relevant time, by giving her a reasonable opportunity for appearing in the interview;
- (2) In case she is found suitable, she will be entitled to consequential benefits in accordance with the relevant rules and instructions; otherwise she will be considered for promotion in the subsequent years in accordance with the relevant rules and instructions;
- (3) The above action shall be taken within three months from the date of receipt of a copy of this order. No order as to costs.

*A. K. Misra*  
(A.K. Misra)  
Member(A)

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Vice Chairman(J)

'SRD'