

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.888/89

Kum. P.M. Patil

...

Applicant

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vs

Union of India
Through Director of Inspection
D G S & D Bombay and Ors. ...

Respondents.

Coram: Hon'ble Mr. M.R.Kolhatkar, Member (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Appearance:

Shri S.Natarajan, counsel for
the applicant.

Shri P.M.Pradhan, counsel for
the respondents.

Dated: 23-12-93

Oral Judgement

(Per : Hon'ble Mr. M.R.Kolhatkar, Member (A).)

| This is an application filed under Section 19 of the Administrative Tribunals Act. The applicant joined Government service in the office of the Director of Inspection (DGS&D) as Lower Division Clerk on 2-1-64. She was promoted as Upper Division Clerk on ad-hoc basis with effect from 21st Feb.1983. She was regularised as an Upper Division Clerk with effect from 17-3-1989. Office Order dated 15.6.89 Exhibit A-3 shows that she was at Sr. No.1. The prayer of the applicant is that a regular vacancy arose as on 1-9-85 and the DPC ought to have considered her case for promotion as UDC on regular basis at the time the vacancy arose and not from 17-3-89. It appears that some UDC's had filed Writ Petition in the High Court on the point of reservation and the office received the same on 2-9-85. The High Court had passed the orders to the effect that all promotions would be subject to the outcome of the Writ Petition which were received on 11-9-85.

The Department admittedly ~~re~~frained from holding DPC to avoid complication/risk. It was only when the respondents received clarifications that when there was no stay order DPC should be held that DPC was held on 17-3-89. It is thus evident that the date of DPC was purely fortuitous.

2. The applicant has quoted examples of other UDC's viz. Smt. V.L.Jayaraman and Shri Khandare who are respondents No. 4 & 5, who are junior but/ have been promoted from earlier date, viz 25-7-86 and 14-9-86.

3. The respondents have contended that Smt.Jayaraman and Khandare were promoted against the 12½ % limited departmental examination quota against the vacancies to which they were respectively entitled. They have further pointed out that the regular promotion can be ordered from the date of the validity of the panel or from the date of occurrence of the regular vacancy, whichever was later as per the instructions of the Department of Personnel and therefore the procedure followed by them in regularisation of applicant with effect from 17-3-89 was valid and cannot be questioned.

4. Coming to the Department of Personnel guidelines dated 30-3-88, we note that in para 2 (iii) of the same, it is clearly stated that unless there is an injunction/stay order against making regular promotions, the appointing authority may convene the DPC. We do not see any reason as to why the applicant should suffer because DPC was held later due to misinterpretation of the court orders especially when existence of vacancy as on 1-9-85 is not denied. We, therefore, feel that the ends of justice would be met by disposing of this case by the following order:

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ORDER :-

5. The respondent No.1 is directed to take action for preparation of a panel for promotion to the post of UDC on regular basis as on 1-9-85 and arrange to convene a Review DPC for that purpose. The Review DPC should consider the case of the applicant under the rules to assess the suitability of the Applicant for regular promotion as UDC as on 1-9-85. The department should complete the action in this regard within 3 months from the date of receipt of this order. If the applicant is found suitable on the basis of the recommendation of the Review DPC, Respondent No.1 is directed to give to the Applicant 1-9-85 as the deemed date of regular appointment and should also give all consequential benefits to which she is legitimately entitled. She should also be considered for the post of Supdt., as per rules on the basis of this deemed date of regular appointment.

No order as to costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member(J)

M.R. Kolhatkar
(M.R. Kolhatkar)
Member(A)