

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No.

453/89

198

DATE OF DECISION 15/11/1991

Smt. Bhanu K. Narayanan. Petitioner

Shri M.M. Sudame. Advocate for the Petitioner(s)

Versus

Indian Council of Agricultural Research Society & Amr.
Respondent

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y. Priolkar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

(Signature)
(U.C. SRIVASTAVA)
VICE-CHAIRMAN.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY,
CAMP AT NAGPUR.

Original Application No.453/89.

Smt.Bhanu K.Narayanan.

... Applicant.

V/s.

Indian Council of Agricultural
Research Society, New Delhi
and another.

... Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman
Hon'ble Shri M.Y.Priolkar, Member(A).

Appearances:

Applicant by Shri M.M.Sudame.

Oral Judgment:-

Dated: 15/11/1991

[Per, Shri Justice U.C.Srivastava,Vice-Chairman]

By means of this application the applicant is challenging the order dated 15.3.1988 by which she was reverted from the post of Superintendent to the post of Assistant by her employer i.e. Indian Council Agricultural Research Society which is a 'state' withing the meaning of Article 12 of the Constitution of India and the service matters in respect of which cognizance can be taken by the Administrative Tribunal.

2. The applicant joined the services of the Council as Junior Stenographer on 21.11.1977 in the pay scale of Rs.350-560 and she was appointed as a Stenographer on 21.11.1982 in the pay scale of Rs.425-700. As there was no promotional chances for Stenographers who had to stagnate the applicant offered herself for vacancies which were available in the cadre of Assistant which were advertised. The applicant being eligible in terms of the advertisement she also applied for the same and competed with the other candidates and was appointed as Assistant w.e.f. 29.2.1984 in the pay scale of Rs.425-700. The Recruitment and Promotion rules

regarding various employees in the department were amended w.e.f. 4.10.1983. Prior to the amendment for promotion to the cadre of Superintendent from the feeder cadre of Assistant Seniority-cum-fitness was the criteria and all vacancies in the post of Superintendent were filled in only on the principle of seniority-cum-fitness. The amendment introduced the concept of selection of the junior meritorious candidates from the feeder cadre of Assistant to the promotion cadre of superintendent and 66.66 posts in the cadre of superintendent were required to be filled in by promotion on the basis of seniority-cum-fitness and 33.33 vacancies for the promotional cadre were reserved for being filled in by limited departmental competitive examination confined to Assistants and Stenographers. In the amended rules the interpretation which is also a subject matter in the dispute of this application in this behalf reads as follows:-

"33.33% by way of limited Departmental competitive examination confined to Assistant and Stenographers/in the scale of Rs.425-700 of the concerned Institutes, having not less than 3 years service in the grade of Assistant/Stenographer, as on 1st January, of the year in which the examination is held. In case, however, no eligible departmental candidate qualifies that examination the post may be filled in by deputation from other institutes."

The applicant appeared in the said examination and as she was successful and had got the first position she was promoted to the post of Superintendent w.e.f. 9.3.1987.

...3.


It has to be noted that when the applicant appeared for examination she had completed three years of service in Stenographer's cadre and Assistant without any break. She continued to work, abruptly without any notice or any opportunity she faced with the reversion order dated 15.3.1988 treating her promotion cancelled without assigning any reason. The applicant made several representations against the same and although the representations were later on replied the cancellation has been done by the proper authority, but no reasons were assigned. She filed the Writ Petition but that was withdrawn as the jurisdiction by that time were already vested with this Tribunal.

3. The respondents have opposed the application stating that she has not completed 3 years of experience as Assistant or as Stenographer and consequently she was not eligible to be promoted and that this mistake was detected, her promotion was cancelled. Yet another plea was taken that from the roster point it was later on intimated from the higher level that the post was meant for SC, the applicant not being member of SC community her promotion had to be cancelled. The applicant filed an interrogatory to the case and required the respondents to produce the documents. Both the applications were disposed of in the manner that the respondents were directed to produce the various data which was prayed for by the applicant on the date of hearing. No such documents have been produced. The numbers of which were given by the applicant was the letter dated 25.11.1986 by which one post of Superintendent was created, the letter dated 20.1.1987 by which one post was created which was to be filled by SC candidate, letter dt. 7.2.1987 of Director CICR, Nagpur to ICAR that post should be filled in on the basis of results of 1986 examination and the letter dt. 7.3.1988 that the examination should be treated

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as null and void and also the promotion order of one Shri Satyavan Sahare and Shri Mandape Assistants and the representations of the SC candidates. Some of these letters were desired by the applicant as the applicant has stated that there are four posts of Superintendent and two posts have not yet been filled in, if any post is to be given to members of SC community the same may be given from out of those two posts. It has to be seen that once the applicant was promoted, for no fault of her and if at the local level a mistake was committed and which mistake was detected after months the applicant who had in the mean time got certain rights to the post after having duly appointed after competitive examination, her promotion could not have been cancelled without being given any opportunity of hearing to her. This makes the cancellation order illegal. Even otherwise the rules which have been extracted above provides that three years experience from Stenographer/Assistant as needed, the rules do not say that Stenographers or assistant, the use of the oblique is that experience either of the post of Stenographer and Assistant who were on the same pay scale conjointly. The respondents have by ~~mis-interpret~~ mis-interpreting the rule have cancelled the promotion order of the applicant. Even if it was later on detected that the post is meant for SC community in the roster ~~by~~ point the second post whereas as a matter fact is the first post which goes to the members of SC community, the applicant being duly appointed, for no fault of her obviously to the post, could not have been carried over and the next post could have been given to the member of SC community and in order to accommodate unnamed member of SC community, third being none who had qualified in the examination the appointment of the applicant

could not have been cancelled and this cancellation is manifestly unjust, and illegal and in view of these circumstances the cancellation order deserves to be quashed and accordingly the cancellation order dt. 15.3.1988 by which applicant's promotion has been cancelled is quashed and the applicant will be deemed to be continuing on promotional post. However, we make it clear that it is for the department to appoint the member of SC against the next post of superintendent. There will be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN.

B.S.M.