

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1224/96

Date of Decision: 6.3.98

Mrs. Gharat Deepa Dilip

Applicant.

Shri D.V. Gangal.

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri V.S. Masurkar.

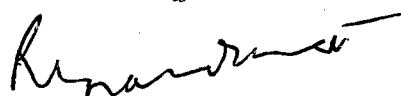
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri. P.P: Srivastava, Member (A)

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*


(R.G. Vaidyanatha)
Vice Chairman,

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 1224/96

Friday the 6th day of March 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri P.P. Srivastava, Member (A)

Mrs. Gharat Deepa Dilip
Residing at
C/o D.W. Gharat
Kamgat Vasahat,
Opp. Palvi Hospital
Tal-Uran, Dist. Raigad.

... Applicant.

By Advocate Shri D.V. Gangal.

V/s.

Union of India through the
Chief of the Naval Staff
(for DGAS), Naval Headquarters
Ramkrishna Puram,
New Delhi.

The Flag Officer Command-in-Chief
Headquarters, Western Naval Command
Mumbai, Shahid Bhagatsingh Marg,
Mumbai.

The General Manager,
Naval Armament Depot
Mumbai, Gungate Naval
Dockyard, Mumbai.

The General Manager,
NAD Karanja, P.O. Naval
Armament Depot,
Tal Uran, Dist. Raigad.

Smt. K.D. Thakur
Working as U.D.C. under the
General Manager, Naval Armament
Depot, Karanja, P.O. Naval
Armament Depot, Tal-Uran,
Dist. Raigad.

Shri T.P. Babu Rajenderprasad,
U.D.C., Naval Armament Depot
NAD P.O. Alwaye. 683 563

The Competent Authority
Through the Chief of Naval Staff
Naval Headquarters,
Ram-Krishna Puram,
New Delhi.

The Departmental Promotion Committee,
through the Chief of Naval Staff,
Naval Headquarters,
Ram-Krishna Puram,
New Delhi.

... Respondents.

By Advocate Shri V.S. Masurkar.

Ry

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. Since the points involved is short, we have heard the learned counsel for both sides regarding admission and final hearing.

2. Affidavit of service of notice on respondent No.6 have been filed. Notice to respondent No.5 has been served in person. Notice to respondent No.6 has been sent by registered post, more than two months back and since no acknowledgement has been received, it is presumed that the notice has served on respondent No.6.

3. The applicant who is working as L.D.C. had filed this O.A. challenging non-promotion to the post of U.D.C. particularly her juniors, respondents Nos 5 and 6 have been promoted. The applicant had made representation against the supersession, but the official respondents have failed to consider her case for promotion. Therefore, she filed this O.A. seeking for a direction to quash the promotion order of respondent Nos 5 and 6 and get the DFC proceedings and then for a declaration that the applicant is entitled to promotion and necessary direction be given to the DFC to review the case and promote the applicant as UDC and other consequential benefits.

4. The official respondents have filed reply opposing the application. Their main defence is that the applicant's case has been considered along with all the other candidates including the juniors. The applicant was found not yet fit for promotion.



It is stated that the applicant's overall performance is average. Therefore the DPC considered her case and found that she is not yet fit for promotion.

5. The short point for consideration is whether the applicant is entitled to be considered for promotion and ^{Promotion} ~~supersession~~ of her juniors is sustainable under the law or not?

6. Both the counsels contended that the promotion is by way of non selection ~~method~~ under which each candidate's case is considered individually.

It is not a case of comparative merits. It is also ~~known~~ ^{not disputed} that the promotion has to be done on the basis of ACRs. In this connection the DPC meeting took place on 14.8.96. The learned counsel for the official respondents have furnished before us the relevant ACRs of 1990 - 1996 and also the DPC proceedings to show that the applicant has been considered as per Rule and she was found not yet fit for promotion.

7. The learned counsel for the applicant contended that since adverse remarks have not been ~~communicated~~ ^{communicated} to the applicant, the ACRs presumed to have been good. We have perused the ACR and DPC proceedings made available to us. No doubt the DPC on 14.8.96 considered the case of the applicant and she was not found yet fit for promotion. The DPC findings are in terms of ACRs.

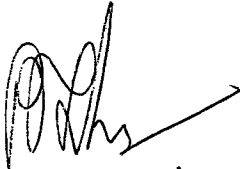
The learned counsel for the respondents pointed out that even though the adverse remarks are not communicated but if the ACR shows that the candidate is 'average' then it is not compulsory that such a candidate is entitled for promotion.

8. We find that the ACRs for the year 1993-94 and 1995-96 the grading is 'good' and in the year 1994-95, 1992-93, 1991-92 and 1990-91 the grading is 'average'. There ~~are~~ three gradings of 'average' and two gradings of 'good'. Therefore this is not a case that the grading as 'average' in every year. If the DPC have considered the applicant then on what basis the applicant was declared as not yet fit for promotion, since at least for two years she was graded as 'good' and for three years she was graded as partly good and partly average. It is not that the applicant being graded as average in all the years. The ~~D.C.~~ should be asked to review and re-consider and then take a decision whether the applicant is entitled to be promoted or not. We are not sitting on an appeal on the findings of the DPC. But the DPC has to consider all the points. This matter is remitted to the DPC to consider the question and take a decision as per Rule. In view of this it is not necessary to consider other contentions urged by the applicant.

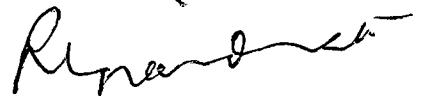
9. In the result, the O.A. is allowed partly. We direct that the department to hold a review DPC and place all the relevant ACRs of the applicant before the DPC. The DPC to decide whether the applicant is fit for promotion or not yet fit for promotion as per Rules. In the circumstances we direct that these exercises should be done and a decision be taken within a period of three months from the date of receipt of this order. In case



the applicant found fit for promotion by the DPC then she should be entitled to be promoted from the date her immediate juniors are promoted with consequential benefits according to the Rules. In case the DPC found the applicant not yet fit for promotion needless to say that the applicant can challenge this according to law. In the circumstances of the case there would be no order as to costs.



(P.P. Srivastava)
Member (A)



(R.G. Vaidyanatha)
Vice Chairman.

NS

(5)