

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:660/99

Date : 3/3/2000

~~Smt. Dasika Surekha~~ _____ Applicant

_____ Shri S.P.Saxena _____ Counsel for Applicant

V/s.

_____ The Secretary, Ministry of _____ Respondents
Defence & 3 Ors.

_____ Shri R.K.Shetty _____ Counsel for Respondents

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri B.N.Bahadur, Member(A).

- 1) Whether it needs to be referred to the reporter or not?
- 2) Whether it needs to be circulated to other Benches or not?
- 3) Library.


(R.G.VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:660/99
DATED THE 3RD DAY OF MARCH, 2000

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN
HON'BLE SHRI B.N.BAHADUR, MEMBER(a)

Smt.Dasika Surekha,
Resident of 37/13, (S.W.),
Pratik Nagar,
Yerawada, Pune-411 006.
Employed in P.A.O(ORs)B.E.G.,
Kirkee, Pune-411 003. ... Applicant

By Advocate Shri S.P.Saxena

V/s.

1. The Secretary,
Ministry of Defence(Finance),
Union of India,
New Delhi.
2. The C.G.D.A.,
West Block V,
R.K.Puram,
New Delhi
3. The C.D.A (S.C.),
No.1, Finance Road,
Pune - 411 001.
4. The A.C.D.A. - in-charge,
P.A.O.(ORs) B.E.G.,
Kirkee, Pune - 411 003. ... Respondents

By Advocate Shri R.K.Shetty

(ORDER) (ORAL)

Per Shri Justice R.G.Vaidyanatha,Vice Chairman

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard Shri S.P.Saxena, learned counsel for Applicant and Shri R.K.Shetty, learned counsel for Respondents.

2. The Applicant is working as an Auditor in the Office of the Respondent No.4 at Pune. During 1997, she gave birth to her third child on 14/3/97, due to that she applied for leave from next day, viz. 15/3/97 to 12/6/97. She was due for duty on 13/6/97, in the

...2.



meanwhile the child was not keeping well and was suffering from malnutrition. Applicant consulted her doctor who advised her to Breast feed the child for two months more. In view of this Medical **advise**, the applicant applied for extension of Earned leave for 51 days from 13/6/97 to 31/7/97. The applicant later joined duty on 1/8/97. Now we are told that even this extended period of 51 days has been sanctioned by administration. However, in the Annual Confidential Report for 1997-98 adverse entry is made against the applicant **which** shows ^{an} irregularity in attendance^y and adverse remark was communicated to the applicant. As a result of Adverse Remark, applicant was not promoted as Senior Auditor. That is how the applicant has approached this Tribunal for quashing of the Adverse Remark and for a direction to respondents to promote her.

3. Respondents in their reply **have** admitted the relevant facts and Irregular attendance in the Annual Confidential Report is made consequently she was found not fit for promotion.

4. We have perused the xerox copy of the Annual Confidential Report for 1997-98 and we have also perused the original now produced before us by the respondents. We find that almost all the remarks in the Confidential Reports are favourable to the applicant by giving grad^{as} "Good" in many columns, there are also remarks which are very favourable to the applicant. It is stated that the applicant is reasonably prompt, she is amenable to discipline, she

...3.



is punctual, etc., but however there is a solitary remark in column No.16 as irregular in attendance. Further, the Officer himself clarified as follows:-

"Irregularity arises due to her birth of third child"

Again at column No.22, the Reviewing Officer remarks as follows:-

"Yes, I agree.
Due to birth of third child, irregularity in attendance."

5. What is more, the Reviewing Officer has clearly mentioned Applicant is good.

It is therefore clear that the applicant is good in all respects including punctuality. However, both the Reporting Officer and the Reviewing Officer have stated she is irregular in attendance and also show reason as "birth of third child."

6. Therefore, it is nobody's case that applicant was irregular in attendance deliberately or she had no interest in the work or due to any extraneous reasons but admittedly it was due to birth of her third child. We have seen the Medical Certificate, Exhibit-A, which is at page-22 of the paperbook where the doctor has advised that applicant should give exclusive Breast Feeding to the Baby for two months. If for the advise of the Doctor, the applicant prays for extension of two months leave, it cannot be said that she is irregular in attendance.

7. Further, the leave has been sanctioned by Administration. The learned counsel for applicant brings to our notice a decision of Principal Bench of

...4.



Tribunal reported in 1993(2)SLJ-235 (Shri Mahinder Singh v/s. Union of India) that if the absence has been condoned, then it cannot amount to misconduct and no penalty can be given.

8. In the present case the leave has been sanctioned. The reason for the leave is mentioned. The birth of third child is admitted. In these circumstances, adverse remarks in the Confidential Reports.

"as irregular in attendance in column No.16 and 22"

cannot be sustained and are liable to be quashed.

It is not a case of some vague observation with no effect but admittedly the applicant's promotion has been held up and she is treated as unfit for promotion as can be seen from the letter at Exhibit-A-3 which is at page-17 of the paperbook.

9. The Applicant has asked for a direction to respondents to promote her retrospectively with all consequential benefits. We are afraid that we cannot grant such a relief. We can only direct respondents to hold a Review DPC and consider the applicant's case for promotion by ignoring the adverse remarks and find out if she is fit for promotion and in case she is found fit for promotion she must be given all permissible benefits including notional seniority from the date her junior is promoted with benefits permissible under the rules.

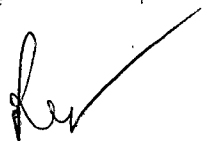
10. In the result, the application is allowed and the Adverse Remarks in the Annual Confidential Report of 97-98, in column No.16 and 22 as

"irregular in attendance"

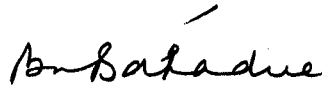
and the order of the accepting authority that the

"remarks are accepted as adverse" are hereby quashed.

...5.



The applicant's case for promotion as Senior Auditor should be considered by arranging Review DPC and the Review DPC should consider the case of the applicant for promotion by ignoring the Adverse Remarks expunged by us and if she is found fit for promotion, she must be given all permissible benefits including notional seniority, within three months from the date of receipt of copy of this order.


(B.N. BAHADUR)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.