

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 276/90

Transfer Application No:

DATE OF DECISION: 26-5-95

Ms. Shobhana Joshi. Petitioner

Shri M.A. Mahalle. Advocate for the Petitioners

Versus

Station Director of A.I.R., Respondent

Shri Sureshkumar. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R. Kolhatkar, Member(A).

The Hon'ble Shri

1. To be referred to the Reporter or not ? X
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER(A).

(18)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.276/1990.

Ms.Shobhana Joshi.

... Applicant.

V/s.

Station Director of
All India Radio & Ors.

... Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri M.A.Mahalle.
Respondents by Shri Sureshkumar.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 26.8.95

In this Original Application under section 19 of the Administrative Tribunals Act the applicant has challenged the adverse entries in the C.R. for the year 1987 which were communicated to her separately in respect of the period for 1.1.1987 to 31.7.1987 and 1.8.1987 to 31.12.1987. She also purports to challenge adverse remarks in the A.C.R. for the year 1988, but no documents in this regard have been enclosed. She did make a representation dt. 2.6.1988 against the adverse remarks, ^{for 1987 but} the same remains undisposed till this date. Several contentions have been raised including the bias entertained against the applicant by Respondent No.3 Extension Officer who has since been made also a private respondent as R-4 consequent on his retirement. It has also been alleged that there are contradictions ^{in remarks} between two parts of the C.R. for the year 1987. The applicant further challenges ^{her} being held up at the E.B. which was due on 29.4.1988 in respect of which the meeting was held on 17.6.1989 and the order refusing E.B. was

...2.

issued on 28.6.1989. We are not required to go into all the contentions because so far as the representation of the applicant is concerned, it is conceded by the Respondents that the same has not been disposed of till this date, ~~the~~ reason being that her representation is held to be time barred because she received the memo on 2.5.1988 and gave the representation on 2.6.1988 i.e. after the expiry of the time limit and secondly that the wording of her representation shows that she had accepted her deficiencies. We are unable to accept these contentions of the Respondents. First of all any ~~the~~ time limits in relation to ACRs either for communicating the adverse remarks or for making representations or for disposing of them, are ~~contradictory~~ directory and not mandatory and in any case the contentions of the Respondents that her representation was time barred has absolutely no factual basis. Secondly, a reading of the representation does show that the applicant wanted her representation to be considered and the adverse entries be reviewed. It cannot, therefore, be said that the representation was not required to be disposed of. So far as the E.B. is concerned, the Respondents have stated that she was assessed unfit by the DPC and she was also informed and the subsequent DPC proceedings have been kept in sealed cover because of disciplinary proceedings initiated against her apparently on 29.12.1989.

2. It is now well settled that if the ^{adverse} representations against/remarks are not disposed of by the Government, the same cannot be made use of for denying a promotion or similar benefits to the Government employee. The applicant has asked for ^{the} relief of treating ~~the~~ ^{remarks} as nonest or of

expunging them, but we are unable to grant such a relief. But we are required to grant relief in terms of the well settled position. We, therefore, dispose of the O.A. by passing the following order.

O R D E R

So far as the denial of E.B. to the applicant in terms of the decision of the DPC held on 17.6.1989 is concerned when the departmental inquiry was not pending against her, the same is ^{invalid} held ~~and~~ liable to be interfered with. The Respondents are directed to hold a review DPC in relation to the DPC held earlier ^{viz.} on 17.6.1989 and this Review DPC should consider the case of the applicant for crossing the E.B. by ignoring adverse remarks in the C.R. of the Officer for the year 1987. If the DPC clears the applicant for crossing the E.B., necessary action should be taken and all consequential benefits should be allowed to the applicant including payment of arrears of increment which was withheld. There would be no orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

B.