

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 444/90

198

~~T.A. No.~~DATE OF DECISION 23-9-1991Mrs. V.A. Upadhye

Petitioner

Mr. S.P. Saxena

Advocate for the Petitioner(s)

Versus

Engineer-in-Chief and others

Respondent

Mr. R.K. Shetty

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? *no*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

MGIPRRND-12 CAT/86-3-12-86-15,000


 (U.C. SRIVASTAVA)

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.444/90

Mrs.V.A.Upadhye,
House No.3,
Sarvatra Society,
Paud Road,
Pune - 411 029.

.. Applicant

vs.

1. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi - 110 011.

2. The Chief Engineer,
Southern Command,
Pune - 411 001.

3. The Chief Engineer,
Poona Zone,
Pune - 411 001.

4. Commander,
C.W.E.,
Pune - 411 001.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman

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

Appearances:

1. Mr.S.P.Saxena
Advocate for the
Applicant.

2. Mr.R.K.Shetty
Counsel for the
Respondents.

ORAL JUDGMENT:

Date: 23-9-1991

(Per U.C.Srivastava, Vice-Chairman)

The applicant was recruited as
L.D.C. in the year 1966 in the office of
Garrison Engineer at Ahmednagar and was later on
transferred to Pune. The applicant was subsequently
confirmed ~~in~~ as LDC. On the basis of seniority
on ad hoc basis she was promoted from the post of
LDC to UDC and this selection ^{was} made by a DPC on
1-7-1987. Vide order dtd. 13-4-1988 the ad hoc
promotions to the UDC post approved by the DPC were
to be continued upto 20-4-1989. The applicant who
earned good entries was given an adverse remark
in the year ending September, 1988 ~~xxxxxxx~~

to the effect that "she does not exert to learn and slow and tends to delay." It appears that because of this adverse remark the DPC did not recommend her name for the post of UDC and she was reverted to the post of LDC and juniors have been promoted. That is why she has approached this Tribunal.

2. The respondents in their written statement stated that the applicant has not been reverted from a regular post of UDC to LDC, she has only been switched back from UDC(adhoc) to her original post of LDC on her being not selected for the post of Clerk U/D (officiating).

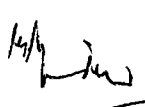
3. The contention on behalf of the applicant is that as a matter of fact the DPC should have considered the case for regularisation of all the UDC who were promoted on ad hoc basis and yearly/instead of promoting yearwise the DPC has clubbed the vacancies of all such years and this is how they adjudged the suitability of the respective candidates and in case the DPC would have considered the vacancies yearwise then the adverse remarks for the year 1988 against which she has preferred a representation would not have been taken into account. In this connection a reference has been made to the case of Principal Bench Krishan Chander v. Union of India and Ors., (1987)4 ATC 668, in which it was held that holding of joint panel is not permissible and as a matter of fact eligibility has to be considered yearwise and in case the same is not considered yearwise

the proceedings of the DPC are invalid. The learned counsel also made a reference to the decision of the Bangalore Bench in the case of G. Lakshminarayana v. The Chief Engineer and another, Application No. 854 of 1989(F), decided on 29th June, 1990, in which the applicant of that case who belongs to the same department was similarly placed and also gave certain adverse remarks and the DPC did not ~~xxx~~ recommend him for promotion and reverted him. The proceedings of the DPC were produced before the Bangalore Bench which observed various flaws in the same. At paragraph 17 the Tribunal observed:

"17. We have seen the proceedings of the DPC, which met on 7.8.1989 and subsequent dates to consider the promotion of LDCs and UDCs (ad hoc) to the cadre of UDCs, on an officiating basis. We observe with regret, that these proceedings of the DPC, do not indicate precisely the dates, subsequent to 7.8.1989, when it deliberated on the selection of candidates, for promotion as UDCs on an officiating basis. We notice, that each page of the various annexures to the proceedings of this DPC, relating to the assessment of each person for promotion as UDC, on an officiating basis, has not been duly attested, by all the members of the DPC to authenticate them. It needs no emphasis, that the entire proceedings of the DPC, which have a vital bearing on the career of the employees, must be drawn up, with meticulous care, in regard to their completeness and clarity and that each evaluation sheet, is duly attested by the DPC members, in token of its authenticity, so as to leave no scope for doubt, about the same."

The Tribunal observed in that case that the service records of the applicant from the year 1986 to 1988 have been seen and it was found without any stain and there was no basis for giving adverse remarks in the subsequent year. In the instant case practically parallel to the case of Lakshminarayana also the applicant earned good entries in the previous years and the DPC maintained the ad hoc appointment of the applicant every year. In one year all of a sudden adverse remarks were given to the applicant regarding her work which was ..4/-

appreciated in the previous year and that is why she was recommended by the DPC. The adverse remarks so made has ~~no~~ ~~is~~ got no locus standi and has to be expunged as the foundation for the same was non-existent. The adverse remarks even otherwise should not have been taken into account for considering the case of the applicant as her case for promotion was to be considered in accordance with the vacancy ~~of~~ yearwise and accordingly we allow this application and set aside the order dtd.23-10-1989 reverting the applicant to the post of LDC and the respondents are directed to convene a meeting of the review DPC to consider the case of the applicant for regular promotion as UDC and in case she is found suitable for promotion as UDC regularly. Her pay should also be fixed notionally in the post granting her annual increment due in the intervening period. However she will not be entitled for arrears on this count for the period she has not actually shouldered the responsibilities. Let it be done within three months from the date of receipt of a copy of this order. There will be no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman

MD

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Contempt Petition No.25/92
in
Original Application No.444/90.

Mrs.V.A.Upadhyay. Applicant.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Vice-Chairman, Shri V.S.Deshpande.
Hon'ble Member(A), Ms.Usha Savara.

Appearances:-

Applicant by Mr.S.P.Saxena,
Respondents by Mr.R.K.Shetty.

Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dated: 5.3.1993.

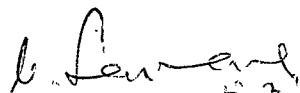
Heard Mr.S.P.Saxena for the applicant and
Mr.R.K.Shetty for the respondents.

The only contention of the applicant's counsel is that yearwise entitlements of the employees had not been considered by the Review DPC as observed by this Tribunal in its Judgment dt. 23.9.1991 while referring to Krishan Chander v.Union of India & Ors (1987) 4 ATC 668). It is however, apparent from the operative portion of the order that ^{this} it was not the exercise which was contemplated when the entitlement of the applicant for promotion was to be considered. It is apparent that a fresh DPC meeting was to be convened for considering the case of the applicant for regular promotion as UDC and this has apparently been done and she has been granted a promotion operative from the year 1989.

...2.

3. In these circumstances, we find that there is no wilful disobedience of the directions issued by this Tribunal. If the applicant has any grievance he would have the liberty of approaching the Tribunal afresh, but about the maintainability of merits thereof we say nothing in this order.

4. The notice discharged. No order as to costs.


(USHA SAVARA)
MEMBER(A)


(M. S. DESHPANDE)
VICE-CHAIRMAN.

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