

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No. 307/90  
XXXXXX

198

DATE OF DECISION 6.6.1991

Smt. S.G.Beri Petitioner

Mr. S.P.Saxena Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

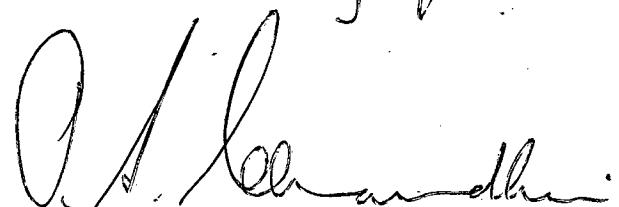
Mr. A.I.Bhatkar Advocate for the Respondent(s)

### CORAM

● The Hon'ble Mr. P.S.Chaudhuri, Member (A)

The Hon'ble Mr. T.C.Reddy, Member (J)

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 ? } No
4. Whether it needs to be circulated to other Benches of the Tribunal ? } No

  
( P.S.Chaudhuri )  
Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY  
\* \* \* \* \*

original Application No. 307/90

Smt. S.G.Beri, ULC,  
Controllerate of Quality Assurance(A),  
Nehru Road, Kirkee,  
Pune 411 003.

... Applicant

v/s

1. The Union of India, through  
The Secretary, Leptt. of Defence  
Production, Ministry of Defence,  
New Delhi 110 011.
2. The Director General of Inspection  
(Quality Assurance), Ministry of  
Defence, New Delhi 110 011.
3. The Controller,  
Controllerate of Quality Assurance(A),  
Nehru Road, Kirkee, Pune 411 003. ... Respondents

CORAM : Hon'ble Member (A), Shri P.S.Chaudhuri  
Hon'ble Member (J), Shri T.C.Reddy

Appearances:

Mr. S.P.Saxena, Advocate,  
for the applicant and Mr.A.I.  
Bhatkar instructing Mr. M.I.  
Sethna, Counsel for the  
respondents.

ORAL JUDGEMENT:

Dated : 6.6.1991

(Per. P.S.Chaudhuri, Member (A))

This application under Section 19 of the  
Administrative Tribunals Act, 1985 was filed on 16.5.1990.  
In it the applicant who is working as UDC in the office  
of 3rd respondent prays for the following reliefs:

- (a) The penalty imposed on applicant by order  
dated 15.12.89 withholding her promotion  
for one year from the date of order be set  
aside/quashed.
- (b) The penalty imposed on applicant in 1987 of  
withholding the promotion for 18 months be  
set aside/quashed and the applicant be  
declared entitled for promotion w.e.f.

April, 1987.

(c) The respondents be directed to consider and promote the applicant to the grade of O.S.II from the date she would have become entitled had the penalties been not imposed on her in view of the peculiar case.

(d) The respondents be also directed to consider and offer promotion to O.S.II grade to the applicant in a vacancy now existing at the Office of respondent No.3.

2. The facts may be briefly stated. On 26.8.1958 the applicant joined service in the office of the 3rd respondent as LEC. On 6.9.1971 she was promoted as ULC in the same office. By order dated 17.3.1987 she was promoted as O.S.II and, for the first time, transferred from the Pune area to Kanpur. On 4.4.1987 she submitted a representation pointing out that due to the multifarious and serious ailments that she was suffering from and also due to the ailments of her husband she was unable to move to Kanpur and so she requested for a promotion at Pune itself failing which she was prepared to wait till such time as the next vacancy occurred. By letter dated 7.4.1987 her representation was forwarded with a recommendation that it be considered sympathetically and her refusal to move on promotion may be accepted on medical grounds. However, by letter dated 15.7.1987 her representation was rejected. By movement order dated 2.9.1987 she was directed to carry out her movement to Kanpur. As she did not do so on 19.9.1987 she was served with a memorandum of charges. She replied

... 3/-



to the memorandum but by order dated 29.9.1987 the penalty of withholding promotion for 18 months from the date of issue of the order was imposed on her. It is fairly not denied by the applicant that she did not submit any appeal or seek any legal redressal against the order dated 29.9.1987. By order dated 31.5.89 she was once again promoted as O.S.II and transferred to Kanpur. On 20.6.89 she submitted a representation bringing out that for over four years she had been suffering from diabetes and high blood pressure as a result of which she was having prolonged medical treatment and she <sup>was</sup> required to undergo medical tests every month at KEM Hospital, Pune. Further, in November 1987 she had undergone a major operation as a result of which her health was going down. She was frequently getting attacks of Hypoglyceemia. She also mentioned that her husband was a patient of hypertension and required constant medical care. On 30.6.1989 this representation was forwarded with the remarks that the reasons adduced by the individual in not accepting the promotion on transfer were genuine and that it was, therefore, requested that the request of the individual may please be accepted. However, by order dated 12.9.89 she was informed that her request has been carefully considered but had not been found to be acceptable. By movement order dated 5.12.1989 she was ordered to move to Kanpur but on 6.12.89 she intimated that she was not in a position to move out any where. She was served with a memorandum of charges dated 14.12.1989 which she answered the same day. By order dated 15.12.1989 the penalty of withholding <sup>of</sup> promotion for

one year ~~from the date of issue of this order was imposed~~ on her. On 12.1.1990 she submitted an appeal against the penalty. On 11.4.1990 her appeal was rejected.

3. Being aggrieved, she filed this application seeking the reliefs mentioned earlier. The respondents have opposed the application by filing the written statement. We have heard Mr. S.P. Saxena, learned counsel for the applicant and Mr. A.I. Bhatkar instructing Mr. M.I. Sethna, learned counsel for the respondents.

4. Coming first to relief (a) claimed by the applicant, Mr. Saxena raised a number of contentions in support of the applicant's case.

His first submission was that as there were regular orders on the subject of dealing with refusal of promotion, it was not open to the respondents to issue supplementary instructions in pursuance of which they took disciplinary action against the applicant. Mr. Bhatkar opposed this submission by pointing out that there were clear instructions from the Government of India that in cases where the reasons adduced by an officer for his refusal of promotion are not acceptable to the appointing authority, then he should enforce the promotion of the officer and in case the officer still refuses to be promoted then even disciplinary action can be taken against him for refusing to obey orders. It was his submission that this was exactly what the respondents have done. In view of

this submission of Mr. Bhatkar, we are unable to go along with Mr. Saxena on this point.

Mr. Saxena's second contention was that respondent No.3 was not competent to impose the impugned order of penalty. We are unable to go along with Mr. Saxena on this submission. To begin with, this was not a point raised in <sup>the</sup> statutory appeal that was filed by the applicant. In any case Rule 9(1) of the CCS(CCA) Rules empowers the authorities competent to make appointments as specified in this behalf in the schedule to empower other officers in this behalf. Such a delegation has been made by the specified authority by his order dated 20.1.1981 in terms of which heads of establishments had been delegated the powers to make appointment to non-selection Class-III posts. It is not denied that the applicant is currently holding such a post. In this view of the matter, we have no hesitation in rejecting this submission of Mr. Saxena.

Mr. Saxena's third submission was that under the instructions, if a representation is made, it was incumbent upon the appointing authority to decide it. It was his submission that if it was held that respondent No.3 was the appointing authority, he had already recommended the case of the applicant. So it was not open to him to take disciplinary action against her. We are unable to go along with this submission of Mr. Saxena. The appointing authority had, no doubt, recommended the case of the applicant to the authority who had issued the transfer order which the applicant sought to challenge. That

authority had thought it fit to reject the request of the applicant. We can find nothing wrong in the action of respondent 3 in, thereafter, seeking to who was superior to him, ensure that the orders of that authority, were carried out. It was also open to the appointing authority to take action against the applicant for failing to carry out legitimate orders of movement that had been issued thereafter. In this view of the matter we have no hesitation in rejecting this submission of Mr. Saxena.

Mr. Saxena's final submission on behalf of the applicant was that the action of the respondents in singling her out for penal action, as distinct from mere debarring, was both discriminatory and arbitrary. We cannot find the action to be discriminatory as in Exhibit-K to the application there are a large number of persons shown as having had penalties imposed upon them. Coming, however, to the allegation of arbitrariness, we find that in her appeal dated 12.1.90 the applicant had clearly cited the cases of one Nand Lal and one A.S.Bajwa who were not been penalised even though, they too had not carried out promotion orders. In the appellate order dated 11.4.1990 this allegation had not been dealt with. The applicant once again raised this issue in the application itself. Once again the respondents have not explained the circumstances due to which these two individuals were dealt with differently. The applicant then filed an M.P. seeking certain documents. In pursuance thereof the respondents have made available the representation of the said Nand Lal dated 19.7.89/dealing with his refusal of promotion.

(14)

This application states that "due to sickness of my wife, I am not in a position to move to CPE Itarsi on promotion to Office Supdt II." Once again no explanation is forthcoming as to why Nand Lal whose wife was sick was treated differently from the applicant who was herself sick. During the course of the hearing Mr. Saxena showed us an application of Mr. Bajwa which sought an amendment to his transfer order on the ground that his wife was a chronic heart patient receiving treatment from Ordnance Factory Hospital and that his four children were in the School. Once again no explanation was forthcoming as to why this warranted a different treatment to that meted out to the applicant. Mr. Bhatkar sought to justify this position by the submission that the applicant's explanation for refusing transfer had not been accepted and, therefore, disciplinary action was taken against her whereas the other two Employees' explanations had been accepted and, therefore, no disciplinary action was initiated against them. We are not convinced by this line of argument. Faced with the deafening silence in regard to the specific allegation made by the applicant as also no speaking order regarding why the applicant's application was not acceptable whereas the other two applications on far lesser grounds were accepted we find ourselves in agreement <sup>with</sup> ~~that~~ Mr. Saxena's submission that the respondents action was arbitrary and shows non-application of mind. In this view of the matter we quash and set aside the impugned order of penalty dated 15.12.1989 and the appellate order dated 11.4.1990 thereon as being arbitrary and thus violative of constitutional provisions.

5. Coming then to relief (b) claimed by the applicant, the impugned order was admittedly issued on 29.9.87 and

received by the applicant ~~soon~~ thereafter. Mr. Saxena sought to convince us that the applicant could not prefer any appeal in time or seek any other remedy as she had been operated upon and her health was absolutely bad. Be that as it may it is not disputed that she resumed her duties ~~soon~~ thereafter and has been attending her duties, though in ill-health, more or less continuously thereafter. Against this background we are unable to be persuaded that the applicant was not in a position to pursue the redressal of her grievance before either the departmental authority or ~~in~~ any other appropriate forum during this long period of well over two years. Against this background we have no difficulty in holding that this particular relief is hopelessly stale and belated and barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

Nonetheless, we heard Mr. Saxena on <sup>the</sup> merits of this prayer. He sought to convince us in this regard on the basis of the first three submissions mentioned earlier when discussing prayer (a). As we found no merit in these submissions, we also do not find any merit in prayer (b).

In this view of the matter we have no difficulty in rejecting prayer (b) on the grounds of both limitation and merit.

6. Coming now to prayer (c) quoted above, we find that we cannot give the direction prayed for. Once we have quashed the impugned order of penalty



dated 15.12.1989 the only order that we can give is that the respondents shall consider her case for promotion in accordance with the rules, particularly the instruction dated 10.4.1989 (at Exhibit-J to the application), bearing in mind that she refused promotion by her letter dated 20.6.89 which was rejected by order dated 12.9.1989, and as if the penalty that we have quashed had not been imposed on her.

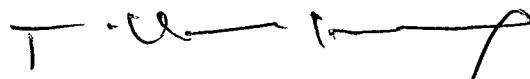
7. Coming to applicant's 4th prayer it is well established that it is prerogative of the management to decide where their employees shall be posted after taking into account all aspects of the matter. In this view of the matter we have no hesitation in rejecting this prayer. // <sup>8.</sup> In this view of the matter the application is allowed in part as indicated above.

9. We accordingly pass the following order:-

ORDER

- (a) The order of penalty dated 15.12.1989 and the appellate order thereon dated 11.4.90 are hereby quashed and set aside.
- (b) The respondents are directed to consider the case of the applicant for promotion to the grade of O.S.II in accordance with the rules, and particularly instruction dated 10.4.81 bearing in mind that she refused promotion by her letter dated 20.6.89 which was rejected by letter dated 12.9.89, as if the quashed order of penalty dated 15.12.1989 had not been passed.

(c) In the circumstances of the case there  
will be no order as to costs.



( T.C. Reddy )  
Member (J)



( P.S. Chaudhuri )  
Member (A)

\*