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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 2/95.

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DATE OF DECISION: March 11, 1996.

Mrs. S. L. Malave, Petitioner

Shri H. Y. Deo, Advocate for the Petitioners

Versus

Union Of India & Another, Respondent **S**

Shri R. K. Shetty, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri **V. Ramakrishnan, Member (A).**

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1. To be referred to the Reporter or not ? *No*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

V. Ramakrishnan
14/3/96
(V. RAMAKRISHNAN)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO.6, 3RD/4TH FLOOR
PRESCOT ROAD, FORT, BOMBAY-400 001.

ORIGINAL APPLICATION NO.: 2/95.

Dated : this Monday, the 11th day of March, 1996.

CORAM : Hon'ble Shri V. Ramakrishnan, Member (A).

Mrs. S. L. Malave ... Applicant

Versus

Union Of India & Anr. ... Respondents.

APPEARANCE :

1. Shri H.Y. Deo,
Counsel for the applicant.
2. Shri R. K. Shetty,
Counsel for the respondents.

: ORDER :

| PER.: SHRI V. RAMAKRISHNAN, MEMBER (A) |

1. Heard Shri H.Y. Deo, Counsel for the applicant and Shri R. K. Shetty, Counsel for the respondents. The applicant who is a keen sports-woman, is aggrieved by certain adverse remarks communicated to her vide letter dated 13.07.1993 at annexure A-1 for the calendar year 1992 and also by another set of remarks for the calendar year 1993 vide communication dated 18.07.1994 at annexure A-4. She also contends that on account of these adverse remarks, she was not allowed to cross the Efficiency Bar w.e.f. 01.02.1994, which was the date on which she would have normally crossed the Efficiency Bar.

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However, I find that subsequently she has been allowed to cross the efficiency bar w.e.f. 01.02.1995.

2. The Learned Counsel for the applicant draws my attention to the fact that when the applicant represented against the adverse remarks for the year 1992 vide letter dated 26.07.1993 at Annexure A-6, the same was turned down by the authorities as per their communication dated 27.10.1993 at annexure A-2. He further states that for the subsequent period i.e. 1993, the applicant had submitted her representation seeking expunction of the adverse remarks vide her representation dated 08.09.1994. By the time this application was filed in December, 1994, that representation had not been disposed of. Later, however, the authorities have disposed of the same vide their communication dated 10.12.1994 and a copy of the same has been enclosed by the respondents as annexure-2 to their revised reply statement. The Learned Counsel for the applicant makes a number of submissions to substantiate the applicant's contention that the adverse remarks are not justified and that they should be expunged. He also brings out that when the applicant's representation dated 26.7.1993 at Annexure A-6 in respect of adverse remarks for the year 1992 was rejected by the respondents vide their letter dated 27.10.1993 at annexure A-2, the applicant submitted a further appeal to Respondent No. 1 to reconsider the matter vide her letter dated 15.02.1994 at Annexure A-8. This

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representation was not forwarded by the office of the Respondent No. 2 on the ground that none of the provisions under Rule 23 of the C.C.S(C.C.A) Rules is applicable in this case, as is seen vide their letter dated 12.03.1994 at annexure A-3. Shri Deo, contends that this stand of the respondents is clearly untenable, as the C.C.S(C.C.A) Rules has no relevance in the present case. The applicant is aggrieved about the communication of adverse remarks and no disciplinary proceedings were instituted against her. He also draws my attention to the Department of Personnel O.M. dated 30.01.1978 reproduced in para 26 of Chapter-2 in Swamy's Compilation on Seniority and Promotion in Central Government Service, Third edition published in 1992, which reads as follows :-

"No memorial or appeal against the rejection of the representation against adverse entries should be allowed six months after such rejection."

The Learned Counsel for the applicant submits that this O.M. would make it clear that a memorial or appeal against the rejection of the representation against adverse entries could be filed within six months after such rejection. The applicant had filed her appeal in February 1994, which was within six months from the date of rejection of her representation vide letter dated 27.10.1993. He therefore, contends that the respondents are not justified in not forwarding the appeal of the applicant to the competent authority, namely; the respondent no. 1.

3. Shri Shetty, the Learned Counsel for the respondents, resists the O.A. He submits that while an inference could be drawn from the Department of Personnel O.M. dated 30.01.1978 that an appeal can be filed within a period of six months from the date of rejection of the representation against adverse entries, he has not come across any positive or specific provision permitting filing such an appeal. He however concedes that there is no statutory bar in filing any appeal against the rejection of representation.

4. I find substance in the preliminary point taken by Shri H.Y. Deo that the respondent no. 2 should have forwarded the appeal of the applicant to respondent no. 1 instead of returning it as has been done vide their letter dated 12.03.1994 at annexure A-3. In the facts and circumstances of the case, I direct the Respondent no. 2 to forward the appeal at annexure A-8 to the respondent no. 1 within a period of four weeks from the date of receipt of a copy of this order. As the rejection of the representation in respect of the subsequent year, namely; 1993 was communicated only after the present O.A. was filed, I grant liberty to the applicant to file an appeal against this rejection to the respondent no. 1 through respondent no. 2 within a period of one month from the date of receipt of a copy of this order. If the applicant files such an appeal, respondent no. 2 shall forward the same to the respondent no. 1 and respondent no. 1

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will dispose of this appeal pertaining to 1993 within three months from the date of receipt of the appeal on merits without invoking the question of delayed submission of appeal for adverse entries for 1993. Respondent no. 2 will also forward the appeal filed by the applicant dated 05.02.1994 as at annexure A-8 in respect of adverse remarks for 1992 within ^{four} ~~two~~ weeks from the date of receipt of a ^{for} copy of this order and respondent no. 1 will dispose of the appeal within three months thereafter.

5. The applicant had also asked for another relief namely, that she should be allowed to cross the efficiency bar w.e.f. 01.02.1994 instead of 01.02.1995, as has been actually granted. I have perused the D.P.C. proceedings and also the relevant A.C.Rs. Depending on the orders to be passed on the appeal, the applicant may revive the issue regarding crossing the efficiency bar with effect from 01.02.1994, if it becomes necessary. All the contentions raised in the present application are left open, as I have not gone into the merits of the contentions.

6. The O.A. is disposed of with the above directions.
No costs.

V. Ramakrishnan
11/3/1996
(V. RAMAKRISHNAN)
MEMBER (A).