

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 33/95

Date of Decision 13/2/96

Smt. Indira Nair Petitioner

Shri S.P. Saxena Advocate for the Petitioner.

Versus

Union of India & 2 Ors. Respondent

Shri R.K. Shetty Advocate for the Respondents.

Coram:

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

The Hon'ble Mr.

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

abp.

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

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,PRESCOT RD, 4th FLOOR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.33/95.

DATED THIS 13TH DAY OF FEBRUARY,1996.

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

Smt. Indira Nair
(Advocate by Shri S.P.Saxena)

... Applicant

v/s.

1. The Union of India,
Through The Secretary
Ministry of Defence,
South Block, DHQ, PO,
NEW DELHI - 110 011.

2. The Officer-in-Charge,
A.O.C. Records,
Secunderabad - 15.

3. The Commandant,
C.A.F.V.D., Kirkee,
Pune - 411 003.
(Advocate by Shri R.K.Shetty)

... Respondents.

! O R D E R !

! Per Shri M.R.Kolhatkar Member (A) !

In this OA under section 19 of Administrative Tribunals Act, the applicant impugns the order dated 20/9/94 page-10 (Exhibit-A) communicated by respondent No.3 to the applicant in connection with her case for grant of special pay as UDC for performing complex nature of duties. This letter states that the matter was taken up with respondent No.2 who had intimated that the case of applicant was processed in the Annual DPC Nov,93 but the said DPC did not recommend for grant of special pay based on relevant ACEs. This communication itself appears to be based on letter dated 20/8/94 from respondent No.2 at page-39. It is not in dispute that the applicant at the time of consideration of her name

(X)

by DPC was at Sr.No.63 at seniority list appearing at page-33, 34 and 35. However, she was not selected for drawing special pay but her juniors at Sr.Nos.64, 65, 69, 70 and 71 were included. According to CPRO 41/83 at page-28.

"The selection is to be made by the controlling authorities on the suitability of a particular officer to handle the work in a post identified as carrying discernible duties and responsibilities of complex nature. Seniority cum fitness would not be the criteria for filling up such posts."

2. On the basis of the service record, the DPC held in November,93 adjudged the applicant to be not yet fit on assessment of CRs for preceeding 3 years namely 1990-1991, 1991-1992 and 1992-1993. The CRs for these years were "average", "good" and "average" respectively and apparently since the applicant had two average CRs she was not considered fit. The Counsel for Applicant based his case mainly on two points.

3. First of all, there was no communication or follow-up informing fall in efficiency of the applicant in the year 1992-93 as compared with previous year 1991-92. It has been judicially held that fall in efficiency amounts to deterioration of performance and amounts to adverse remarks; therefore it is required to be communicated. No such communication has been received by applicant.

4. Secondly, respondents have relied on the DOP circular No.22011/5/86-ST/T dt. 10/4/89, according to para 6.2.1 of which:

"The DPC should assess the suitability of the Officers for promotion on the basis ...3/-

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of their service record and with particular reference to the CRs for preceeding 5 years."

It is evident that the respondents had treated the grant of special pay of Rs.70/- to the UDC in the nature of promotion and have followed the guidelines for promotion.

5. The Counsel for Applicant, therefore, argues that to the extent, ~~of~~ CRs for only 3 years have been considered, she is entitled to the relief for re-consideration of her case alongwith the case of other applicants by means of a review DPC. I am inclined to agree. In order that this exercise may not be an empty formality, I have gone through the CRs of the applicant for the relevant previous years. I notice that the CRs were earlier maintained on the calender year basis. The switch, however, took place in 1991 and the CR for January 90 to March 91 has been treated as CR for the year 1990-91. The CR of the applicant for the year ending 31/12/89 assessed her to be "good". The CR of the year ending 31/12/88 assessed her to be "excellent". In the event, the CRs of the applicant for 5 years are considered, the grading would, be, begining from the earliest year: Excellent, Good, Average, Good and Average. The term excellent would certainly outweigh atleast one "average", Therefore, it is probable for the DPC, considering the CRs of the applicant for 5 preceeding years, to take a different view on the fitness of applicant than was taken by the DPC which was held in Nov, 93.

6. Since the applicant is entitled to succeed on this short ground, I do not go into the question whether the proceedings were vitiated on account of non-communication of fall in performance.

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In the light of the above discussion, the OA is disposed of by passing the following order:-

ORDER

OA is allowed. Communication dated 20/9/94 passed by respondent No.3 as well as communication dated 20/8/94 at page-32 from respondent No.2 are quashed and set aside. Respondents are directed to hold a fresh review DPC in respect of the annual DPC held in November, 93 for assessing UDCs for their suitability for drawing special pay of Rs.70/- for performing complex nature of duties.

The said DPC should consider the applicant alongwith others on the basis of CRs of preceding 5 years. If the applicant is judged fit for grant of special pay, the same should be granted to her with all consequential benefits with arrears being limited to the period of one year prior to the date of filing of OA. No order as to costs.

abp:

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