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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

O.A.No.169/93

Date of Order: 1.10.1993

BETWEEN:

Ms. Radhika Doraiswamy

.. Applicant.

A N D

1. Union of India,
Through Secretary,
Department of Posts,
Ministry of Communications,
New Delhi.

2. Union Public Service Commission,
Through its Secretary,
Shahjehan Marg, Dholpur House,
New Delhi.

.. Respondents.

Counsel for the Applicant

.. Mr.D.Subrahmanyam

Counsel for the Respondents

.. Mr. N.R.Devraj

CORAM:

HON'BLE Mr. JUSTICE. V.NEELADRI RAO : VICE-CHAIRMAN

HON'BLE Mr.P.T.THIRUVENGADAM : MEMBER (ADMN.)

20/10/93

O.A.NO.169 of 1993

DATE OF JUDGMENT: 1.10.1993

JUDGMENT

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE-CHAIRMAN)

The applicant was selected as an officer in the Civil Services in the cadre of Indian Postal Service in July 1974. She was promoted to the senior scale in 1978 and to the Junior Administrative Grade (JAG) in July 1982. In the Junior Administrative Grade, a selection grade is provided and the eligibility for appointment to the selection grade is that the officer should have entered 14th year of service on the 1st July of the year calculated from the year following the year of examination on the basis of which the member was recruited. For filling up vacancies in the selection grade with effect from 1.7.1990, a Selection Committee met some time later and a notification dated 24.1.1992 was issued appointing 23 officers of Junior Administrative Grade against the posts in the non-functional selection grade. The applicant's name was not included in the list even though she had completed the minimum eligibility conditions. A representation was submitted to the department on 2.2.1992 to which the reply was furnished by the department on 26.2.1992 stating that the applicant had not secured the prescribed gradings for grant of non-functional selection grade in the JAG. This OA has been filed with a prayer for a direction to the respondents to include the name of the applicant for the purpose of promotion to the selection grade with retrospective effect from 1.7.1990.

2. A number of grounds were advanced by the learned counsel for the applicant. It was stated that the applicant was eligible for consideration for selection grade from

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July 1988 onwards, but the department considered her case for the first time only with regard to the vacancies effective from 1.7.1990. Because of the delay, the earlier norms laid down by the Department of Personnel in the letters dated 9.7.1987 and 6.7.1988 which were more liberal, could not be applied to her. Secondly, the applicant contends that UPSC was not associated with the selection process. References ^{also} made to certain relaxations in qualifying for promotion with regard to the SC/ST candidates and it was pleaded that this was discriminatory. The applicant also brought-out that the gradings obtained by ~~xxxxxx~~ her during the period of deputation viz., between 1984 and 1988 ^{were} ~~was~~ taken into account mechanically by the selection committee. It is her case that the reporting officers in the department ~~x~~ to which she had gone on deputation are not aware of the importance of the CRs, ~~and~~ nature of work in the deputation assignment is different from the ~~xx~~ professional work in the parent department, ^{and} persons who wrote the report during her deputation ^{weighed} perhaps ^{which} her house keeping job ^{planned} was only of peripheral importance in the local environment where stress is on scientific and research activities. In view of this, the reports obtained during the deputation had acted adversely with regard to consideration for promotion to the non-functional selection grade.

3. The learned Counsel for the respondents, Shri N.R.Devaraj pointed out that the selection grade posts were sanctioned vide the Department of Personnel's letter dated 14.8.1987 and the number of posts in the selection grade were linked with the cadre strength in that 15% of the senior duty posts ie., ^{the} off duty posts at the level of

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senior time^{scale}/or above in the cadre were placed in the selection grade. Thus, there is a limit on the number of selection ^{grade} posts at any point of time and an officer merely satisfying the minimum eligibility condition by way of ^{his} her required number of service cannot be promoted unless, vacancy arises. It is the case of the respondents that at the time ~~the~~ selection grade post ^{have} ~~has~~ to be filled up with reference to the vacancies as on 1.7.1988, there were officers senior to the applicant and hence she was not included in the field of eligibility. The next DPC met for appointment of the persons ^{for} ~~of~~ the vacancies with effect from 1.7.1990 and the case of the applicant was considered there for the first time. By that time, the guidelines for filling up such selection posts have ^{been} ~~have~~ issued by the Department of Personnel in O.M. dated 9.10.1989 as per which the requirement for inclusion in the panel is as under:-

"The Committee should satisfy itself that the overall performance of the officer was good and that he has atleast two "very good" gradings in the last five ACRs. Such an officer would be considered suitable for NFSG. There should be no adverse entries in any ACR."

As regards the association or otherwise of UPSC in the relevant selection, the OM of Department of Personnel dated 9.10.1989 states that the selection may be done by the internal committee. There is no stipulation that UPSC should be associated.

4. The applicant had gone to National Aeronautical Laboratory (NAL) on 17.1.1984 on deputation and she had

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come back to the parent department on 1.4.1988. As the CRs for five years have to be considered for consideration for promotion to the selection grade, the CRs of the applicant from 1985-86 to 1989-90 were placed before the DPC which met for consideration in regard to the vacancies to be filled from 1.7.1990. Clause-iv of OM dated 9.10.89 stipulates that one should have atleast two 'very good' gradings in the last five ACRs. As the applicant had got grading 'very good' only for one year out of five ACRs, ~~xxxx~~ she was not promoted for selection grade in regard to the vacancy which had arisen from 1.7.1990.

5. It is contended for the applicant that the norms for assessment in the NAL are different from the norms for assessment in the regular department of the applicant, and the nature of work which the applicant attended to in the NAL is different from the nature of functions and duties discharged by her in her regular department. It will be discriminatory if the ACRs of the applicant during the period of deputation are taken into account, *where the learned counsel for applicant*

6. The learned counsel for the respondents submitted that the applicant on her volition had gone on deputation and the nature of work in NAL is similar to the work in parent to NAL and she should have realised at the time of going on deputation about the nature of the assessment of the work in the corporation to which she had gone on deputation and hence it is not open to her to contend that the 2 ACRs during the period of deputation shall not be taken into consideration. It is also urged for the respondents that as the ACRs for the immediate five years have to be taken into consideration and as the ACRs in the cadre in regard to

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which the selection grade exists have to be taken into consideration for promotion to that selection grade, and as the CRs of the period earlier to the date of promotion to Junior Administrative Grade in which cadre the selection grade is created and for which post the promotions are considered, cannot be looked into, the contention for the applicant that the ACRs for the period of deputation should not be looked into, has to be negatived.

7. General guidelines as per the D.P.T., OM No.22011/5/86-Estt.(D), dated 10.3.1989 are to the effect that the evaluation of CRs should be fair, just and non-discriminatory (2.2.1). So, it is stated that CRs of five preceding years have to be looked into. If for any reason, CR of any particular year is not written, CR/CRs of the earlier year/years have to be looked into so that the DPC should atleast consider the CRs of five preceding years. There is no mention in the said guidelines as to whether the CRs written by the concerned officer in the department/corporation to which an employee had gone on deputation has to be looked into.

8. But, it is clear from the guidelines that there should be non-discriminatory attitude for evaluation of CRs. Possibility of the norm of assessment in a Corporation being different from the norm of assessment in a Government department, cannot be ruled out. If the norm of assessment in the place of deputation is strict, and if it is liberal in the department, then if the CRs of the years of deputation are looked into, it may be prejudicial to the employee. Further, the nature of work in the regular department may be different from the nature

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of work in the place of deputation. That may also have bearing in writing the CRs. It will be discriminatory if CRs of an employee written in a corporation where very high standards are followed, are compared with employees' CRs in department where such high standards may not be followed. So, we feel that whenever an employee goes on deputation and if CRs of some of the years out of five years that have to be considered are in regard to the CRs written by an officer of the department/corporation to which the employee had gone on deputation, it will be equitable and just if the following procedure is adopted.

At the first instance, the CRs for the five preceding years including CRs written by an officer of the department/corporation to which the employee had gone on deputation, have to be looked into. If on the basis of such CRs, the employee gets selected for promotion as per the norms/rules prescribed, then there is no need to look into any other CR. But, if the employee is not selected on the basis of evaluation of the CRs referred to above, CRs of the five preceding years in the department alone have to be looked into for consideration for promotion either by selection or non-selection. Thus it means that for consideration as per the latter method, CRs written by the officer in the department/corporation in which the employee worked on deputation should not be looked into even though they are for the years within the period of consideration.

9. It is to be noted that even guidelines 2.2.1 suggested that if for any year, CR of the relevant year or years were not written, CRs of the earlier year can be looked into. The employee may go on leave either on the

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ground of sickness or for studies. In such a case, there is no possibility of writing CRs for the period of leave, and the CRs of the earlier years so as to make for shortfall of five years, have to be looked into. Hence when in such cases, CRs of the years earlier to the five preceding years can be looked into, we do not feel as to how it will affect the method of selection if the CRs of the earlier years even in the case of deputation in the case of contingency which we referred to, have to be looked into.

10. The learned counsel for the respondents had not drawn our attention to any OM, Circular or letter to the effect that the CRs of the five years which have to ^{be} considered for promotion for selection post of that grade, should be CRs in the same post. In this case, the applicant is working as Director in Junior Administrative Grade, and the promotion is for the selection grade in the Junior Administrative Grade. The argument for the respondents is that as it is for consideration for promotion for selection grade in Junior Administrative Grade, CRs of the Junior Administrative Grade alone have to be considered, and if the Principle which we laid down has to be accepted, CRs of the applicant for Senior Superintendent Grade also have to be looked into. But, when there is neither rule nor instruction to the effect, that in such cases, CRs of the same grade alone have to be looked into, such contention cannot be countenanced.

11. Hence, the DPC has to review the case of the applicant for consideration for promotion to the selection grade in the Junior Administrative Grade in regard to the

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vacancies which existed from 1.7.1990, on the basis of the CRs of the applicant in the Postal Department for the five preceding years, and the CRs of the applicant written by the officer in the NAL should not be looked into. It is needless to say that in case the applicant is promoted for the selection grade on the basis of the CRs referred to above, her pay has to be ~~xx~~ refixed in the scale of selection grade with effect from 1.7.1990 and the arrears thereon have to be paid within three months from the date on which ~~xxx~~ order of promotion, (~~if she is promoted~~) to the selection grade is ~~going to be issued~~. A DPC has to be convened by 31.12.1993 for consideration as per the observations in this order.

12). The OA is ordered accordingly. No costs.

P. J. *[Signature]*

(P.T. THIRUVENGADAM)
MEMBER (ADMN.)

[Signature]
(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 1st October, 1993.

[Signature]
Deputy Registrar (J)

Vsn

To

1. The Secretary, Union of India,
Dept. of Posts, Ministry of Communications,
New Delhi.
2. The Secretary, U.P.S.C. Shahjahan Marg, Dholpur House,
New Delhi.
3. One copy to Mr. D. Subrahmanyam, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHI :MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(JUDL)

AND

THE HON'BLE MR.P.T.TIRUVENGADAM:M(A)

Dated: 1 - 10 - 1993

~~ORDER~~/JUDGMENT:

M.A./R.A./C.A.No.

in

O.A.No.

169/93.

T.A.No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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