

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 2938/2014

New Delhi, this the 2nd day of August, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)

Smt. Balbir Kaur,
Aged 59 years,
W/o Late Shri S. Bhagat Singh,
Working as LDC (DASS-IV),
Presently posted in Directorate of Education,
O/o DDE (SW-B), Najafgarh,
R/o RZ-191, X-Block, New Roshanpura,
Najafgarh, New Delhi-110043. .. Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Government of NCT of Delhi,
Through the Chief Secretary,
Players Building,
Near Indira Gandhi Stadium,
Delhi.
2. The Principal Secretary,
Services Department,
Govt. of NCT of Delhi,
7th Level, Delhi Secretariat,
Delhi.
3. The District Social Welfare Officer (West),
Department of Women & Child Development,
Directorate of Social Welfare,
Government of NCT of Delhi,
Nirmla Chhaya Complex,
Jail Road, Delhi.
4. The AVATO (CC),
Department of Trade & Taxes,

Govt. of NCT of Delhi,
3rd Floor, Vyapar Bhawan,
New Delhi-2.

.. Respondents

(By Advocate : Mrs. Sumedha Sharma)

ORDER (Oral)

By Hon'ble Mr. P.K. Basu

Heard the learned counsel for both sides.

2. The main grievance of the applicant is that she was not considered for promotion to the post of Upper Division Clerk (UDC)(Grade-III DASS) along with her juniors who were promoted on 04.06.2004. She made a representation dated 11.10.2004, whereafter in letter dated 20.07.2005 (Annexure A/6), the name of the applicant has been incorporated in left out cases. Again, in letter dated 19.09.2008 (Annexure A/1), which pertains to left out cases, the name of the applicant is shown at Sl.No.1 and from this, it appears that her case was not considered due to integrity certificate/vigilance clearance and adverse entry in ACR in 2000-2001.

3. The offending ACR of 2000-01 produced by the applicant as Annexure A/3 shows that she has been graded as 'Good'. However, as regards punctuality, it is indicated that she is an occasional late comer.

4. Since then, her case has been hanging fire in the department and no final decision has been taken. It is also admitted that the above CR was never communicated to the applicant. In fact, in the CR, the Review Officer has held that she is fit for promotion.

5. Learned counsel for the respondents first of all raised the question of limitation as cause of action arose in 2004, whereas the applicant has moved this O.A. in 2014.

6. Learned counsel for the applicant states that in 2014 itself, the applicant had made a representation which did not get answered and right upto 2013, the department had been considering her case, as would be clear from Annexure A/4, which is correspondence between AVATO (CC), Govt. of NCT of Delhi with VATO (Admn.), Department of Trade and Taxes. In fact, the applicant has made a representation even on 06.02.2014, which has not been answered. The learned counsel for the applicant states that only thereafter, the O.A. was filed.

7. The learned counsel for the respondents relies on **S.S. Rathore vs. State of M.P.**, AIR 1990 SC 10, in which the Hon'ble Supreme Court has held that "Repeated representations cannot be used as a reason to cover up delay".

8. Per contra, learned counsel for the applicant states that this is a case of continuous cause of action and as per decision of the Hon'ble Supreme Court in **M.R. Gupta vs Union Of India & Ors.**, 1995 SCC (5) 628, "delay cannot be a ground to deny the benefit".

9. On the question of delay, we are not persuaded by the learned counsel for the respondents as from the facts of the case, it appears that the respondents are responsible in not considering the case of the applicant. Even the ACR, which is adversely affecting the applicant, admittedly, was never communicated. The matter was also not placed before a DPC which could have taken a view whether the ACR was actually below the benchmark or not. It is also admitted that 'Good' is the benchmark for promotion to the post of UDC. Therefore, limitation will not apply in this case.

10. From the facts of the case, it appears that justice will be served if the case of the applicant is considered by the respondents in a review DPC for promotion as UDC from the date her juniors have been promoted.

11. We, therefore, dispose of this O.A. with a direction to the respondents to hold a review DPC and consider the case of the applicant for promotion as UDC from the date her juniors were promoted, with all consequential benefits including arrears of pay. In fact, the request of the applicant for consideration of 2nd financial

upgradation under MACP should also be placed before the Screening Committee. Needless to say that both the review DPC and Screening Committee shall ignore the ACR for 2000-01, since the ACR was never communicated, for the purpose of this promotion and financial upgradation. The time frame of 90 days is fixed for the respondents to comply with our order. No order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/Jyoti/