

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.4319/2017

This the 21st day of February, 2018

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Uday Kumar Varma, Member(A)

Smt. Vimla Sharma, Aged about 52 years
Group 'A'-Sub: Penalty of Disciplinary Authority
W/o Sh. Vinay Sharma
Deputy Director
Department of Electronics and IT
R/o 710, Type-IV
Lakshmibai Nagar, New Delhi-23.

...Applicant

(By Advocate: Ms. Madhurima Tatia)

Vs.

1. Union of India represented by Secretary
Ministry of Electronics & Information & Technology
(Personnel Division), New Delhi.
2. Director(Vigilance)
Department of Electronics and IT
Electronics Niketan, 6, CGO Complex
Vigilance Unit, New Delhi.
3. Deputy Director(Vigilance)
Department of Electronics and IT
Electronics Niketan, 6, CGO Complex
Vigilance Unit, New Delhi.
4. Deputy Director(Personnel)
Department of Electronics and IT
Electronics Niketan, 6, CGO Complex
Vigilance Unit, New Delhi.

..... Respondents

(By Advocate: Shri R.K. Jain)

Order (Oral)

Justice Permod Kohli:

This OA is directed against the order dated 10/12.03.2015 passed by the Disciplinary Authority under Rule 16 of CCS(CCA) Rules, 1965 imposing minor penalty of withholding of three increments without cumulative effect upon the applicant, as also the order dated 09.03.2016 passed on behalf of the President dismissing the appeal of the applicant against the above penalty order.

2. The applicant was working as Section Officer. She dealt with the case of *in situ* promotion of one Shri Jaspal Singh in her capacity as a Section Officer. On the basis of some complaint the matter was examined and it was found that Shri Jasbir Singh was not having the requisite bench mark for getting *in situ* promotion. Accordingly, disciplinary proceedings were initiated against the applicant and other officials for ignoring the important aspect of not having the Bench mark at the time of recommending promotion of Shri Jaspal Singh.

3. The representation of the applicant was duly considered by the disciplinary authority and vide impugned order dated 10/12.03.2015, the impugned penalty has been imposed. The applicant thereafter sought personal hearing and vide second

impugned order dated 09.03.2016, her request for personal hearing and for cancellation of the penalty order both were rejected. Learned counsel appearing for the applicant has vehemently argued that for *in situ* promotion no bench mark was required and simply on the basis of the ACRs Shri Jasbir Singh was to be considered for promotion and thus, the applicant did not commit any dereliction of duty in recommending his *in situ* promotion without considering the question of Bench mark. It is not in dispute that the method prescribed for promotion is seniority-cum-fitness. Thus, fitness has to be examined on the basis of some criteria. The applicant in her representation to the disciplinary authority relied upon DOP&T's OM dated 04.10.2012 which did not require consideration of benchmark. The disciplinary authority has dealt with the representation of the applicant in extenso and came to the conclusion that *in situ* promotion was granted to Shri Jasbir Singh in the year 2009 and OM dated 04.10.2012 cannot be applied retrospectively for promotion granted in the year 2009. The disciplinary authority was, therefore, of the opinion that the applicant dealt with point numbers 6 and 8 but ignored point No.7, which dealt with the question of bench mark. The relevant observations are contained in the impugned order which reads as under:-

“In the aforesaid DPC note dated 18.5.2009 submitted by Smt. Vimla Sharma, then Section Officer to JD (Pers.), it is noted that after point no.6, next point jumps to no.8 which clearly indicates that one point (no.7) was deleted/missing from the note regarding the benchmark instructions of DOPT mentioned in other DPC notes.”

4. It was accordingly held that the applicant violated the rules and Govt. instructions in this regard.

5. Learned counsel for the applicant has referred to the notings from the DOP&T which are placed on record from pages 77-86.

6. We have perused the aforesaid notings. These notings were on some complaint under Public Interest Disclosure and Protect of Informer Scheme. These notings were made in the year 2012. In the notings there is no clarity as to which of the OM governs the in situ promotion. It is, however, observed in the said noting that the criteria for in situ promotion is also seniority-cum-fitness. Thus, some methodology has to be adopted for assessing the fitness of the candidate. In any case, these notings were in respect to the complaint made by some whistle-blower which has been dealt with, and in that reference is also made to the case of the applicant. Suffice it to say that any such notings of the DOP&T cannot be substitute for the opinion of the disciplinary authority. The disciplinary authority has to make its own opinion and

assessment based upon the material before it. Any office memorandum issued by the DOP&T on a particular subject may be a guiding factor but not the sole parameter for awarding penalty or otherwise. The statutory rules govern the award of penalty in disciplinary proceedings and not the notings of any officer that may be contained in the DOP&T files. The disciplinary authority as well as the appellate authority have dealt with the plea of the applicant that the bench mark system was not relevant for purposes of *in situ* promotion. The charged officer relied upon memorandum dated 04.10.2012, whereas *in situ* promotion was granted in the year 2009. The later memorandum cannot be a guideline for the decision already taken nor can it operate retrospectively. Except taking refuge under the DOP&T notings, learned counsel for the applicant has not been able to point out any legal infirmity in the impugned penalty orders. It is also not a case of violation of principles of natural justice warranting interference by the Tribunal in the disciplinary proceedings.

7. No merit. Dismissed.

(Uday Kumar Varma)
Member(A)

(Justice Permod Kohli)
Chairman

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