

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 4420/2014

New Delhi, this the 26th day of September, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Mrs. Neelima Bhatnagar,
Aged 66 years, Retired Auditor,
W/o Late Capt. M.K. Bhatnagar,
R/o C-90, Sector 33, Noida,
Uttar Pradesh.

.. Applicant

(By Advocate: Shri R. Krishnamoorthi)

Versus

1. Union of India,
Through Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001.
2. Director General,
Border Security Force,
CGO Complex, Block-10,
Lodhi Road, New Delhi-110003.
3. Inspector General (Personnel),
Central Government Office
Complex, Block-10, Lodhi Road,
New Delhi-110003.
4. Director,
Pay and Accounts Division,
BSF Pushpa Bhawan,
Madangir, New Delhi-110062.

.. Respondents

(By Advocate : Shri A.K. Singh)

O R D E R (ORAL)**Justice L. Narasimha Reddy, Chairman**

The husband of the applicant was working as Assistant Commander in Border Security Force (BSF). He died, while in service, on 01.06.1972. The applicant was appointed as Lower Division Clerk (LDC) on 01.09.1972 on compassionate grounds in Pay & Accounts Division (for short, PAD), BSF. She participated in the Competitive Examination held for selection/appointment to the post of Auditor and, accordingly, was appointed in that post, through order dated 19.10.1977. However, the applicant was reverted from that post, through an order dated 08.11.1979.

2. Initially, the order of reversion was kept in abeyance, but later on it was reaffirmed on 17.05.1980. The applicant filed WP(C) No.1735/1985 before the Hon'ble High Court of Delhi, challenging the order of reversion. On constitution of this Tribunal, the O.A. was transferred and numbered as T.A. No.464/1985. Through order dated 04.03.1987, this Tribunal has set

aside the order of reversion, and directed that the applicant shall be deemed to have continued as an Auditor, from the date of her appointment to that post. It was also held that she is entitled to all consequential benefits.

3. The applicant has narrated certain unfortunate developments, which are said to have taken place in her office. She made various representations for promotion to the post of Junior Accounts Officer (JAO) and, thereafter, to the post of Accounts Officer (AO). She took voluntary retirement on 01.12.2000. Thereafter, she kept on making representations, claiming the relief. Through an order dated 09.12.2013, the respondents replied to the applicant, stating that her every claim was considered, while she was in service, and she is not entitled to any further relief. It is also mentioned that her case for ACP was considered; and on finding that her ACRs for the years 1995-96, 1996-97 and 1998-99 were below benchmark, she was denied the same. Certain other reasons were also mentioned therein.

4. This O.A. is filed challenging the order dated 09.12.2013 and claiming the benefits of upgradation and promotion to various posts, mentioned in the relief portion.

5. The respondents filed counter affidavit opposing the O.A. It is stated that this O.A. is not maintainable, since it has been filed nearly one and a half decades, after the applicant took VRS. It is also stated that in the impugned order, extensive reasons were assigned as to how the applicant is not entitled for the benefits; and the applicant is not able to point out any defect in such reasons. Other grounds urged by the applicant were also dealt with, in detail.

6. We heard Shri R. Krishnamoorthi, learned counsel for the applicant and Shri A.K. Singh, learned counsel for the respondents.

7. The basic particulars of the service of the applicant are furnished in the preceding paragraphs. The initial appointment of the applicant was as an LDC on

compassionate grounds, and on the basis of her selection in the Competitive Examination, she was appointed as Auditor. Pointing out some reasons that her selection/appointment to the post of Auditor was not correct, she was reverted in the year 1979; and such order was reiterated in the year 1980. In T.A. No.464/1985, this Tribunal granted the relief as under:

“In the result, the order dated 17.5.1980 (Annexure P-9) reverting the petitioner from the post of Auditor to L.D.C. is quashed. The petitioner will be deemed to be continuing as an Auditor from that date and will be entitled to all consequential benefits. She will also be considered for promotion in accordance with the Rules and will be given all consequential benefits accordingly. This order shall be implemented within three months from the date of its receipt. The petition is accordingly allowed with no order as to costs.”

The respondents implemented the order and the applicant was continued as Auditor.

8. The applicant did not earn any further promotion. She contends that the relief granted by the Tribunal as regards the consequential benefits, would take in its fold, the promotions to the post of JAO and AO. It is not in dispute that promotion to those posts is by way of

selection. In case, any junior to the applicant in the category of Auditor was promoted, she was supposed to pursue the remedies or to make protest, at the relevant point of time. The record does not disclose any such effort.

9. In this O.A., prayer is made in the context of promotion to the posts of JAO/AO. However, during the course of the arguments, learned counsel for the applicant submits that the applicant is not pressing the claim for promotion, at this stage.

10. What remains in the O.A. is about the claim for ACP/upgradation of pay scale. The applicant made several representations, but it was not particularly on the question of ACP. A representation dated 28.10.2013 was dealt with, and was responded through a detailed reply dated 09.12.2013. We do not intend to refer to the other contents of the said order. As regards the claim of the applicant for promotion, she was denied the same. However, in respect of the claim of ACP, the following is mentioned in para (ix) of the order:

“(ix) With regard to denial of financial up gradation under ACP scheme, it is informed that record & performance of the employee is assessed by the report reflected in the annual confidential report of the concerned employee. You could not be granted financial up gradation under ACP scheme due to your inconsistent record for the year 1995-96, 1996-97 & 1998-99.”

11. ACP is granted to an employee, who stagnated without any promotion in any post for a period of 12 years. That shall be subject to evaluation by the Screening Committee. Almost an exercise akin to the promotion, is undertaken. The reason is that the upgradation would be to the pay scale of the next higher post. The three relevant ACRs of the applicant were found to be below benchmark or inconsistent and, hence, the ACP was denied. This naturally took place at a time, when the applicant was in service.

12. During the hearing of the O.A., the learned counsel for the applicant strenuously argued that the ACRs of the three years, mentioned above, were not communicated to the applicant. It needs to be mentioned that the requirement to communicate the below benchmark ACRs arose, only in the light of the judgment of the Hon'ble

Supreme Court in **Dev Dutt vs. Union of India & Others**, (2008) 8 SCC 725. The ACRs were not communicated to her, as there was no necessity at all. Further, had the applicant felt aggrieved at that time, necessary steps in that direction were required to be taken. The entire record is silent about that.

13. The applicant took VRS in the year 2000. Normally, anyone, particularly an employee in Audit Department, would ensure that every benefit of service is availed before the VRS, so that the size of the pension would be reasonable. For reasons best known to her, the applicant accepted the benefits consequent upon her VRS, without making any effort about the said benefits. The issue cannot be permitted to be raised at this length of time.

14. Learned counsel for the applicant has also relied upon an order dated 10.09.2001. That was a letter issued in relation to certain proceedings before this Tribunal, for fixation of seniority in the grade of JAO in PAD. That has no relevance to the claim of the applicant herein. After the conclusion of the letter, at the bottom, while marking

copy to the Director (Accounts), he was requested to fix the inter se seniority of the personnel in the PAD, vis-a-vis, in their respective grades and to extend the consequential benefits. The benefit of inter se seniority was also directed to be extended to the applicant and one Shri K.K. Sharma, retired Auditor. Nowhere it is mentioned that the ACP, or other similar benefit, need to be extended to her. Other claims are also equally uncertain, and not supported by any record.

15. We do not find any merit in the O.A. and, accordingly, the same is dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/jyoti/