

13

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A., NO. 68/2003

New Delhi, this the 22nd day of January, 2004

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Mrs. Kamlesh Shankdhar,
Steno Grade-III, (32061)
HQ WAC Command, IAF, Accounts Section,
Subroto Park, New Delhi

..... Applicant

(By Advocate : Shri G.D Bhandari)

V e r s u s

Union of India, through

1.. The Secretary,
Ministry of Defence,
Govt. of India,
North Block, New Delhi

2.. The Air Officer I/C Pers.,
Air Headquarters,
Vayu Bhawan, New Delhi

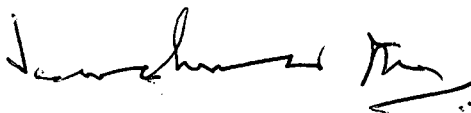
..... Respondents

(By Advocate : Ms. Meenu Maini)

O R D E R

BY SHARWESHWAR JHA, MEMBER (A) :

The applicant has preferred this OA against the orders of the respondents dated 11.7.2002 (Annexure A-1) whereby a number of her juniors have been promoted as Stenographers Grade-II, a non-selection post, ignoring her case, inspite of the fact that she is one of the senior-most Stenographers Grade-III with unblemished service records. Her appeal submitted on the subject has also been rejected. Accordingly, she has prayed that the orders of the appellate authority dated the 22nd August, 2002 (Annexure A-III) may be set aside. She has also submitted that her Annual Confidential Reports for the years 1997-98 to 2000-2001 cannot be considered for rejecting her case for promotion to



Stenographer Grade-II, as the same have not been written by the competent Reporting Officers.

2. On perusal of the facts of the case, as submitted by the applicant, it is observed that she was initially appointed as a Hindi Typist/LDC on 29.1.1993 and she worked as Hindi Typist till she was promoted as Stenographer Grade-III w.e.f. 12.4.1991. She has been working as Stenographer Grade-III (Hindi) at HQ WAC Command Accounts w.e.f. 12.5.1992 under the Group Captains. She has also mentioned the names of the Group Captains under whom she has worked during her service as Stenographer Grade-III so far. Having rendered 10 years of service in the post of Stenographer Grade-III (Hindi) she has become eligible for promotion to the post of Stenographer Grade-II (Hindi) which is a non-selection post. She has referred to the Recruitment Rules issued by the Ministry of Defence as on 31.8.2001 in this regard, a copy of which is placed at Annexure A-4. After having not found her name in the promotion orders dated 11.7.2002 (Annexure A-1) whereby 16 Stenographers Grade-III were promoted as Stenographer Grade-II and in which 12 persons junior to the applicant were included, superseding the applicant, she submitted a representation/appeal dated 24.7.2002. The respondents gave her a reply on 27.8.2002 (Annexure A-3) in which they have confirmed that the applicant was considered for the said promotion, but the DPC did not find her fit due to low grading in her ACRs. Accordingly, the thrust of the grievance of the applicant has been on the fact that her ACRs for the periods in question have not been written by the Officers under whom she directly worked. She has also

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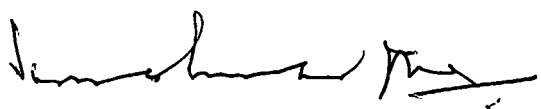
taken upon herself to plead that the Confidential Reports, which were not of the desired level, were essentially detrimental to her service interests and as such adverse to her career and, therefore, should have been conveyed to her. The same having not been done, the action of the respondents in not promoting her as Stenographer Grade-II is arbitrary. She has also argued that the post being a non-selection post, her CRs, which were essentially not adverse in nature, should not have stood in her way to being recommended for promotion as Stenographer Grade-II. She has further pleaded that her work has been appreciated by all concerned in the Organisation and, therefore, apprehends that her CRs might have been manipulated and not written by the concerned Reporting Officers. She has contended that the stand taken by the respondents that the gradings given in the ACRs cannot be disclosed to the person reported upon is not relevant to her grade and, therefore, the same should have been conveyed to her if it was of low nature. By mentioning the names of the Officers to whom she used to report, she has alleged that her reports have not been written by the same officers. According to her, average ACRs cannot be treated as adverse in the case of promotion to non-selection posts to which a person has to be promoted on the basis of seniority-cum-fitness only.

3. The applicant has cited the decisions of the Hon'ble Supreme Court in the case of Parveen Singh vs. State of Punjab, 2001-1-SC SLJ-118 and also in the case of Nilangshu Bhusan Basu vs. Dev K. Sinha & Others, 2001-SCC-8-199 to support her contention that she could not have been ignored in the promotion simply because her CRs were below the Bench

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Mark. Reference has also been made to the decisions of the Hon'ble Supreme Court in Sawatanta Singh vs State of Haryana, 1997-4-SCC-14 to contend that an opportunity should have been given to her to improve upon, which was not done in her case. Relying on the decision of the Hon'ble Supreme Court in the case of U.P. vs. Yamuna Shankar Misra & Anr, 1997-4-SCC-7, she has pleaded that the Officers carry a public responsibility and trust to write the Confidential Reports objectively, fairly and dispassionately and that the Reporting/Reviewing Officer should share the information, which is not a part of the record with the officer concerned. The decision of the Hon'ble Supreme Court in the case of U.P. Jal Nigam & Ors v. Prabhat Chandra Jain, AIR 1996 SC 1661, that the average ACR would be communicated in case it is given as down-grading the ACR of the previous year, the applicant has emphasised her point that the CRs in question were never conveyed to her and, therefore, should not have been taken into account while considering her case for promotion to the post of Stenographer Grade-II. The need for the Reporting Officer to have consulted the reported officer having been emphasised in the decision of the Hon'ble apex Court in Yamuna Shankar's case before forming an opinion to make the adverse remarks in the ACRs has also been referred to by the applicant.

4. However, the respondents, confirming the factual details of the applicant, like the services rendered by her, etc. have affirmed that the applicant was considered for promotion to the post of Stenographer Grade-II after she completed the requisite qualifying service in the post of Stenographer Grade-III and that she was adjudged "not fit"



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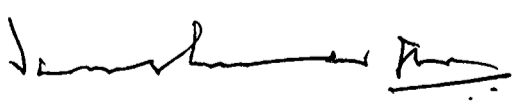
by the DPC, as the ACRs for the preceding five years were found to be below the specified bench mark. They have not clarified as to whether the said post is a non-selection post and whether the bench mark was applicable to the case. On perusal of the CR Dossier of the applicant produced by the respondents before the Tribunal, it is observed that the applicant has been awarded gradings of 'average' for three years and 'good' for two years out of the five years in question, namely, 1996-97 to 2000-2001 for the DPC held during 2001-2002, and gradings of two 'average', two 'good' and one 'outstanding' for the DPC held during 2002-2003. It is further observed that the ACRs of the applicant were written during the period in question by the Group Captains/Wing Commanders under whom she had worked. Though on the question as to how they have adopted the bench mark in the case of a non-selection post, they have submitted that there are certain guild-lines for considering an officer as 'fit' and the officers categorised as 'fit' are placed in the order of their seniority in the Grade from which promotions are to be made. They have clarified that while the grading 'average' would not be taken as an adverse remark, it cannot be regarded as complimentary to the officer. The decisions of the Hon'ble apex Court, which have been relied upon by the applicant are, in the opinion of the respondents, not applicable to the instant case. They have also not found favour with the submission of the applicant in paragraph 4.26 of the OA which relates to cases of down-grading of ACRs to average from the previous ACR, which is not the position in the case of the applicant. Accordingly, they have maintained that an overall low grading is not to be rewarded with promotion. It is thus

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observed that while on the one hand, the respondents have admitted that the post of Stenographer Grade-II is not a selection post and the criterion of seniority-cum-fitness is applied, they have insisted that the Government have laid down a minimum bench mark of 'Good' for promotion even for non-selection posts.

5. As regards the allegation of the applicant that her ACR for the year 2001-2002 was not placed before the DPC, the respondents have submitted that the vacancies pertain to the period as on January, 2001 of the year and accordingly the DPC was constituted as on the said date only, whereas her ACR for the year 2001-02 was to be initiated after March, 2002. As a result, the ACR for the said period could not have been placed before the DPC. Incidentally they have not confirmed that the grading of ACR for the year 2001-02 in respect of the applicant was 'Outstanding'. On the question of the officers under whom she had worked, they have given the names of the officers as in Paragraph 5.5 of the reply and have accordingly refuted the allegation of the applicant that her CRs were not written by the Officers with whom she had worked.

6. The applicant has also submitted a rejoinder in which she has contested the averments of the respondents made in some of the paragraphs, which are part of record. She has, however, reiterated that her case has not been given a fair consideration and there has been arbitrariness on the part of the respondents. She has come out quite significantly against her CRs for the periods 1996 - 2001



being below the specified bench mark, taking a position that 'average' ACR is not a bar to promotion to a non-selection post. She has also questioned the Officers as named by the respondents as having written her CRs being not competent officers. She has again furnished details of the Officers under whom she worked during the period in question. She is insistent on the fact that her ACR for the year 2001-2002 was 'Outstanding' and the same was not placed before the DPC. The learned counsel for the applicant, during oral submission, has submitted that it was wrong on the part of the respondents not to have placed the said CRs before the DPC even in other cases, as the vacancy related to the subsequent period. And finally, she has pleaded that it is wrong and irrelevant on the part of the respondents to have held that promotion to a non-selection post can be denied on the basis of low grading in the CRs.

7. We have perused the records on the subject including the submissions of both the parties carefully and have observed that the case of the applicant was considered by the DPC on the dates it was due and she was not recommended for promotion, as she did not meet the benchmark laid down for selection as Stenographer Grade-II. The DPC and the respondents have followed the procedure laid down for the purpose and as such have not merited any significant cause for interference with their recommendations/decisions.

8. The facts relating to writing of the ACRs of the staff by officers who were not competent to write them or the average reports not being conveyed to the reported officer as this plays an adverse role in the matter of

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promotion, have also been considered by us and we do not find any merit in the same, as there are definite procedures in matters relating to various aspects of writing of ACRs and the same should have been followed by the applicants at the appropriate time. There is no doubt that average report not being conveyed to the officer reported upon, the applicant might not have been aware of the same and accordingly might not have been represented against at the appropriate time, at the same time we do not find explanation of the respondents quite satisfactory when they say that for deciding fitness they follow certain guide-lines, but they have not specified any guide-lines. It can thus be deduced that the DPC might have followed its own parameters, perhaps subjective in nature, as these have not been recorded in the departmental papers which they have produced before the Tribunal, thereby depending more on the gradings given in the ACRs than on the merit of each individual report, the same having not been seriously and objectively considered. The principles which have been referred to above in the matter of the Reporting Officer sharing his or her opinion about the officer reported upon so as to improve the performance of the reported officer does not seem to have been observed by the respondents in actual practice. It would be necessary for the respondents to refer to the instructions on promotion of officers/staff to non-selection posts instead of evading the matter by simply submitting that they have gone by certain guide-lines to decide fitness.

9. Having regard to the facts and circumstances of the case and having observed that the applicant has been duly

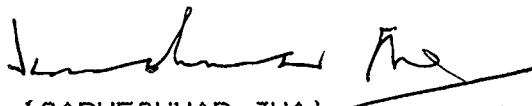
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considered by the DPC as constituted for the purpose, following the guide-lines on the subject, while we do not find any reason to interfere with the panel as prepared by the respondents vide Annexure A-1, we are not satisfied with the explanation given by the respondents in regard to how they have applied the bench mark 'Good' in the case of promotion of Stenographer Grade-III to Stenographer Grade-II and how they have defined "fit" following the bench mark "Good" inspite of the fact that the post of Stenographer Grade-II is a non-selection post. To our mind, this requires re-examination and re-consideration by the respondents in order to ensure that they are not following instructions which are not relevant to the case and that the applicant is not subjected to any injustice whatsoever for that reason.

10. With this, the OA is disposed of in terms of the above observations/directions. No costs.


 (SARWESHWAR JHA)

MEMBER (A)


 (SHANKER RAJU)

MEMBER (J)

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