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Date of order: 23rd May, 2011

MS. SUDHA RANI GUPTA
Through
versus

..... Petitioner
Mr. K. Venkatraman, Advocate.

THE SECRETARY, GOVT. OF INDIA & ORS. Respondents
Through Ms. Saroj Bidawat, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJIV KHANNA, J.:

By the impugned order dated 26th April, 2011, Central Administrative Tribunal, Principal Bench, New Delhi (for short, ‘tribunal’) has dismissed O.A.No.3955/2010 and M.A.No.2985/2010 filed by the petitioner-Sudha Rani Gupta on the ground of limitation. The tribunal in paragraph 4 of the impugned order has held as under:-

“4. A perusal of the record reveals that after her non selection by the DPC in 2006, the applicant had made a number of representations and the same had been rejected by the respondents and the decision communicated to her as early as by a letter dated 10.04.2006. This had been followed by subsequent communications dated 20.09.2006 and 21.12.2006. In

addition replies had also been given under the RTI. Likewise, the subsequent DPC impugned in the present OA pertains to the year 2008. In response to a query from the Bench as to why the applicant had not approached the Tribunal at the appropriate time, the submission on behalf of the applicant would be that she had been making representations to the department. The present case is thus found to be beyond the period of limitation prescribed as per the AT Act. The MA for condonation of delay is not found to be entertainable either.”

2. Learned counsel for the petitioner has submitted that in the Departmental Promotion Committee (DPC) meeting held on 14th February, 2008, the petitioner was not selected but her junior, who is respondent No.3 to the petition, was selected. Thereafter, the petitioner had written letter dated 26th September, 2008 requesting for furnishing of the proceedings of the DPC. The petitioner had also filed an RTI application dated 29th July, 2008. However, information was not disclosed and the application for inspection was also rejected. Aggrieved by the order passed by the Public Information Officer and the first appellate authority, the petitioner approached the Central Information Commission for furnishing of information and documents. The petitioner has stated that her house was damaged in a fire on 8th March, 2009 and she lost her belongings. This was reported to the police station Lahori Gate and in this regard DD entry dated 8th March, 2009 was recorded. The petitioner has further stated that in her personal life also she faced immense problems as a divorce petition

was decided by grant of decree of divorce dated 30th January, 2010.

3. Keeping in view the aforesaid facts, we feel that the tribunal should not have dismissed the original application on the ground of limitation in so far as challenge made to the DPC held on 14th February, 2008 is concerned.

4. In spite of the aforesaid, we are not inclined to remit the matter to the tribunal in view of the facts noted below.

5. The petitioner was appointed on 14th June, 1978 as a Librarian Grade-III, now known as Library Information Assistant, Group 'C' in National Medical Library. She was posted at different libraries, but on the same post. She retired on attaining the age of superannuation on 28th July, 2011. Throughout from 1978, when she was appointed till the date of retirement in 2011, she was not given a single promotion. However, two financial up-gradations were accorded to her in accordance with the ACP scheme.

6. In the meeting held on 14th February, 2008, the petitioner along with others were considered for the post of Assistant Library Information Officer, but her claim was rejected on the ground of grading recorded in the ACRs for the years 2000 to 2005. It is a contention of the petitioner that gradings were not disclosed/communicated to her and, therefore, the gradings given in the ACRs

cannot be a ground to deny her promotion. It may be noted that the petitioner was graded as “average” in the said ACRs, which does not meet the prescribed bench-mark for promotion to the post of Assistant Library Information Officer.

7. The aforesaid action of the respondents is unacceptable and does not meet parameters of law in view of the decision of the Supreme Court in the case of *Dev Dutt Vs. Union of India* (2008) 8 SCC 725. In the said case it has been held:-

“36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring communication of the entry, or even if there is a rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from

Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

8. Examining and referring the aforesaid decision, a Division Bench of this Court in *UOI versus Krishna Mohan Dixit* decided on 8th October, 2010 has directed the following procedure to be adopted:-

“8. To summarize, the Hon’ble Supreme Court gave following directions to deal with the adverse ACRs (below bench mark ACR), relevant for consideration by a DPC to consider the incumbent for further promotion :-

(i) The un-communicated adverse ACRs (those which are below bench mark) should be communicated to him for enabling him an opportunity of making representation to assail those entries such as if the entry was ‘Good’ then to get it upgraded to ‘Very Good’, the bench mark;

(ii) The representation made, if any, should then be considered by the Higher Authority who would certainly entitled to reject the representation and confirm the ‘Good’ entry (though of course in a fair manner);

(iii) The authority to decide representation must be an authority higher than the one who recorded subject entry, so as to avoid the principle of appeal from ceaser to ceaser.

(iv) If the ACR is upgraded, the review DPC to be held for considering the case of the incumbent afresh for promotion for the relevant year and in case, the incumbent is found fit then to promote him forthwith with retrospective effect. Even if the person has retired when considered by the review DPC for promotion, he would be entitled to all consequential benefits.”

9. In view of the aforesaid, we partly allow the writ petition and permit the petitioner to make a representation within a period of four weeks from today on gradings given to her in the ACRs for the period 2000 to 2005. The said representation will be considered by the respondent and an order will be passed within four weeks from the date of representation. In case the petitioner meets the required bench-mark, a review DPC will be held within two months from the date of review and the outcome will be communicated to the petitioner. We may note here that the learned counsel for the petitioner has accepted that the petitioner will not be entitled to any back wages as she has already retired and she was granted two financial up-gradations under the ACP scheme. Learned counsel for the petitioner was candid and has stated that the petitioner would be satisfied if she is given notional promotion as Assistant Library Information Officer, which is a promotional post.

With the aforesaid directions and observations, the writ petition is disposed of.

SANJIV KHANNA, J.

CHIEF JUSTICE

MAY 23, 2011
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