

(2014) 10 DEL CK 0048

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6907/2014

Union of India

APPELLANT

Vs

Suchitra Goswami

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 DEL CK 0048

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Anurag Ahluwalia, CGSC and Prashant Ghai, Advocate for the Appellant

Judgement

Vipin Sanghi, J.—The petitioner - Union of India has preferred the present writ petition under Article 226 of Constitution of India to assail the order dated 06.05.2014, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short, "the Tribunal") in O.A. No. 3193/2012, whereby the aforesaid original application preferred by the respondent was allowed and the petitioner was directed to consider the respondent's case for notional promotion from the dates from which her juniors Arun Kumar and Sanjiv Datta were promoted to the post of Director. The respondent, however, was denied arrears of pay and salary and other attendant benefits. She was, however, held entitled to full benefits in her pensionary dues on the basis of notional promotion.

2. The respondent was directly recruited to the Central Secretariat Services (CSS) on the basis of the Civil Services Examination (CSE), 1973. She was allotted 1975 batch. She earned promotions in 1981 to senior time scale of Group "A" (Under Secretary level); in 1991 to the selection grade (Deputy Secretary level) and subsequently ante-dated to the year 1989 on the strength of order passed by the Tribunal in O.A. No. 323/1992. The respondent was fluent in Chinese and French languages and had an outstanding/very good record till the year 1986. She also did her MBA in Disaster Management.

3. The respondent, on completion of the requisite service, became eligible for being considered for the rank of Director in the year 1994; Joint Secretary in 1997-98 and Additional Secretary in the year 2000-01 as per the Central Staffing Scheme, 1996. However, the DPC held in September, 1998 to consider the placement of candidates in the Directors list of 1994, found the respondent unfit on account of her ACR for the year 1987 being graded, as "fair". The respondent learnt of the reason for her not being placed on the Directors' list in the year 1994 by invoking the provisions of the Right to Information Act. The respondent disputed the said below bench mark ACRs of 1987 by making her representation. The said disputed ACRs were upgraded to "good" on 28.03.1999. The respondent made a representation on 20.07.2010 for reconsideration of her case and consequently review DPC was held in October, 2010. The CEB recommended the respondent for inclusion in CSS Directors' suitability list for the year 1994. The EO made further recommendation that if the proposal of CEB were to be accepted by the Prime Minister, the respondent would stand to derive all benefits of pay and promotion in terms of the O.M. dated 10.04.1989. These proposals were approved by the Prime Minister on 16.11.2010. In the meantime, the respondent was promoted as Director on 14.07.2010.

4. The grievance of the respondent was that despite approval as aforesaid, she was promoted as Joint Secretary on 15.07.2012-just before 15 days prior to her superannuation. She claimed that she was drawing salary which was Rs. 40,000/- less than what she would have otherwise drawn, had she been promoted in time as per the eligibility criteria. She claimed that she was drawing monthly pension of Rs. 25,000/- approximately less than her normal entitlement.

5. The petitioner opposed the original application. As aforesaid, the Tribunal has partially allowed the same.

6. Before proceeding further, we may take note of the ACR gradings given to the respondent from 1979 till 2009-10, which have been reproduced in the impugned order itself:-

7. The Tribunal held that once the respondent has been included in the Directors' suitability list for the year 1994, her position had been restored to her original place as per her entitlement. The effect of the incorrect recording of the ACR and consideration of the same by the DPC held in September, 1998, stood wiped out. The Tribunal then proceeded to consider whether the respondent was entitled to promotion at par with her immediate junior Arun Kumar, as claimed by her. The Tribunal takes note of the fact that on account of wrong recording of the ACR for the year 1987, the respondent continued to suffer on repeated occasions whenever the CEB met. The Tribunal after taking note of the proposal dated 21.10.2010, which was to the effect that name of the respondent may be included in the Directors' suitability list for the year 1994 and which was eventually approved by the Prime Minister, proceeded to consider as to what course should have been followed once the applicant's name was included in the Directors' suitability list for the year 1994. The submission of the petitioner that

there is a difference between - being placed in the suitability list, and being selected for placement, was also considered by the Tribunal. The Tribunal called for the relevant record and perused the same. The Tribunal reproduced the office note dated 12.05.2011 which reads as follows:

"6. The matter was again referred to Estt(Pay) for their advice vide notes at p.52/ ante. That Division has examined the case vide notes at pp.53-54/ante and has observed that stepping up of pay would arise only after her appointment orders as Director are issued if so warranted consequent to her inclusion in Suitability List of 1994. In this regard it was clarified that after cadre restructuring of CSS in 2003, the post of Director became a cadre post of CSS. The years 2004-2007 were declared as "no panel years" for promotion to the grade of Directors. Ms. Goswami's case was considered for inclusion in Directors Select List (now handled by CS Division) for 2008 and 2009 and she was found "unfit". She was found "fit" for promotion to the post of Director in the Select List Year 2010. Thereafter, orders were issued promoting her as Director on 14th July, 2010 (p.246/C) and the promotion was effective from the date of assumption of charge. On inclusion of her name in the Directors Suitability List 1994, a communication was issued on 23rd November, 2010 (p.227/C) to the effect that the competent authority has approved the inclusion of the name of Ms. Goswami, a CSS officer, in the CSS Directors Suitability List for the year 1994 on second review.

7. The issues for decision in the representation of Smt. Goswami for fixation of pay with reference to her junior, Shri Arun Kumar, clarifications sought by Establishment Division and the position of CS Division are as follows:-

8. The Tribunal further proceeded to observe as follows:-

"Further, there is an extract from OM No. 22011/5/86-Estt.(D) dated 10.04.1989, para 18.4.2 whereof provides that while considering a deferred case, or review of the case of a superseded officer, if the DPC finds the officer fit for promotion/ confirmation, it would place him at the appropriate place in the relevant select list or the list of officers considered fit for confirmation or promotion after taking into account the toned down remarks or expunged remarks. The OM further goes ahead to provide that in the case there is no vacancy the junior-most officer officiating in the higher grade should be reverted to accommodate the officer so reviewed. The relevant provisions have already been quoted elsewhere in this order. It, however, shows that the above provision of the OM dated 10.04.1989 was well within the knowledge of the respondent organization and had been dealt with. From the perusal of the file, it clearly emerges that what stands in the way of the applicant getting reduced in seniority was the objection regarding the possibility of his being not picked up by any department.

18. We certainly do not subscribe to the arguments of the respondents that the Director being a selection post under the CSE Rules, there was a probability that she would not have been picked up by any of the departments where her name

was selected. We find that there is absolutely no reason to adopt this kind of presumption. To the contrary, we find that the applicant is well versed in two foreign languages, namely, Chinese and French. Out of the two, Chinese is certainly a most difficult language to learn as it is still part- hieroglyphic. She has also a string of qualification including M.Phil and MBA from two different places to her credit. With these qualifications and her consistently higher ACRs, we are fully of the view that there is no ground for presumptions on part of the respondents that the applicant would not have been picked up by any of the departments to which her name would have been circulated. To the contrary, we are satisfied that the applicant would have been picked up for some selective post by some of the departments.

19. The admitted error on the part of the respondent organization has resulted in denial of promotion to the applicant. We are also of the opinion that had the applicant been promoted in regular time, the ACRs that she would have earned would have been somewhere around equal to her immediate junior Arun Kumar. However, the applicant has spent a period of almost 11 years in pursuing court cases, filing representations and meeting officers. Instead, this period could have been well spent higher pursuit according to her capability in superior posts had she been promoted in time. Nothing can compensate for this loss o years which was spent by a deserving candidate, like the applicant, for getting promotion.

20. We are equally conscious of the fact that this Tribunal is not empowered to direct promotion but is only empowered to direct consideration of the applicant s case for promotion to next below rule. Under the given circumstances, there are no arguments that despite having placed the applicant in the Directors" Suitability List for the year 1994, why she was not given promotion in time. Therefore, we are firmly of the opinion that the next below rule would apply vis-a-vis her immediate juniors Arun Kumar, respondent no.3, and Sanjiv Datta, respondent no.4."

9. The submission of learned counsel for the petitioner is that the mere placement of the respondent in the Directors" suitability list of 1994 does not ipso facto vest a right in the officer to be appointed as a Director. In this regard, reference is made to paragraph 9 of the Office Memorandum dated 05.01.1996 which contains the Central Staffing Scheme and lays down the procedure for selection and appointment of officers to Secretarial posts of and above the rank of Under Secretary to the Government of India and to certain import non-secretariat posts. Paragraph 9 states that, "the panel approved by the ACC on the recommendation of the Civil Services Board will be utilized for making appointments to posts under the Government of India, but inclusion in the panel would not confer any right to such appointment under the Centre." The submission of learned counsel for the petitioner is that the Tribunal erred in concluding that merely because the respondent was entitled to be placed on the Directors" eligibility list for the year 1994, she would automatically become entitled to be appointed as a Director before her juniors, namely, Arun Kumar

and Sanjiv Datta.

10. Having perused the impugned order and considered the overall facts and circumstances, as also the submission of learned counsel for the petitioner in the light of the Central Staffing Scheme, we are not inclined to interfere with the impugned order as we do not find any illegality or infirmity in the conclusions drawn by the Tribunal. The Tribunal, in our view, was right in concluding that the petitioner had not demonstrated any reason to presume that the respondent would not have been picked up by any of the departments upon being placed in the Directors' suitability list. There was no blemish in the respondent's service record since she had either outstanding or very good gradings in respect of the years for which her ACRs were graded prior to 1994. Moreover, she was well versed with two foreign languages, namely, French and Chinese and had attained qualifications including M.Phil and MBA. Though, theoretically it may have been argued that there was no right in the candidates placed on the Directors select list for being placed as Director, that was not enough to deny relief to the respondent. It was for the petitioner to produce material before the Tribunal to dislodge the presumption in favour of the respondent that she would not have been picked up by any of the departments, despite her credentials upon being placed in the Directors' suitability list. The petitioner did not produce any such material. In our view, the respondent was treated rather shoddily by denying what was due to her which resulted in her being selected as Joint Secretary on 15.07.2012 i.e. just 15 days from the date of her superannuation.

11. Consequently, we are not inclined to interfere with the impugned order, and dismiss the present petition.