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**(2011) 09 DEL CK 0061**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 3087 of 1999 and CM 1448 of 2009

Vipin Kumar Mittal — APPELLANT

Vs

Lok Sabha Secretariat — RESPONDENT

**Date of Decision :** 06-09-2011

**Acts Referred:**
Constitution of India, 1950 — Article 14
Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955 — Rule 4(2), 5

**Citation :** (2011) 7 AD 466

**Hon'ble Judges :** Dr. S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** D.P. Khandelwal, for the Appellant; Maninder Acharya, for the Respondent

**Final Decision :** Dismissed

## Judgement

S. Muralidhar, J.—Aggrieved by the adverse entries made in the annual confidential reports ("AC Rs), the Petitioner, who was working as a Research Assistant ("RA") in the Lok Sabha Secretariat ("LSS"), filed the present writ petition. Apart from seeking the quashing of these adverse entries in the AC Rs, the Petitioner also seeks a direction in the nature of mandamus to the Respondent to restore his seniority as RA and promote him first as Executive Officer ("EO") and thereafter as Assistant Director ("AD") or Deputy Director ("DD") on or before the date when his juniors were promoted to such posts.

2. The Petitioner states that in 1974, in exercise of the powers conferred by Rule 4(2) and Rule 5 of the Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955 ("Rules"), the Speaker made an order dated 1st December 1974, known as the Lok Sabha Secretariat (Methods of Recruitment and Qualification for Appointment) Order, 1974 ("R&CS Order, 1974"). In terms of a circular dated 30th January 1978, all representations against adverse remarks in the AC Rs "should be decided expeditiously by the competent authority and in

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any case, within three months from the date of submission of the representation". Further, it was stated therein that adverse remarks should not be deemed to be operative if any representation filed during the prescribed time limit was pending. On 15th June 1989, another Recruitment and Conditions of Service Order was issued by the Speaker (hereafter `R&CS Order, 1989"). The Petitioner has also referred to the guidelines issued by the Department of Personnel and Training ("DoPT"), Government of India on 10th April 1989, on the subject of Departmental Promotion Committee ("DPC") proceedings and related matters. The guidelines stated, inter alia, that "it should be ensured that suitability of the candidates for promotion is considered in an objective and impartial manner". It also laid down a detailed procedure for evaluation of the AC Rs.

3. The Petitioner, who holds a post graduate degree and is a law graduate, was appointed as RA in the LSS on 21st May 1982. His appointment in the Library and Research, Reference, Information and Documentation Service (hereinafter "LARRDIS") was on the basis of a written test followed by an interview. The Petitioner states that the year he was selected as RA, there were five other appointments after his.

4. In 1985, the Petitioner, along with the others, was given a substantive appointment in the post of RA as per the establishment list. The Petitioner refers to the cases of Shri Raj Shekhar Sharma and Shri C.S. Joon who were both superseded initially but in whose cases seniority was restored when they approached the Legislative Committee/EO. As far as the Petitioner is concerned, in October 1988 he was posted to the Public Accounts Committee ("PAC"), which was another wing of the Parliamentary Committee. According to the Petitioner, his transfer from LARRDIS to the PAC "must have been on the consideration of his academic qualifications, quality of work, experience and other meritorious considerations." The Petitioner states that he was new to the job of writing PAC reports and even though the workload was heavy, he worked with the utmost sincerity. On 29th May 1989, after working for eight months in the PAC Branch, the Petitioner applied for earned leave of twenty-six days from 5th to 30th June 1989 due to an urgent domestic problem in his hometown at Muzaffarnagar. The Parliament was not in session during that period and most of the staff/officers had availed leave. However, instead of granting leave, his Reporting Officer, Shri A. Subramaniam, Senior Financial Committee Officer ("SFCO"), who was himself on deputation in the LSS, raised unnecessary objections to the leave being granted. According to the Petitioner, the SFCO had a bias against the Petitioner and therefore, he did not consider favourably his request for sanction of leave. When the Petitioner went to a senior officer, Shri K.K. Sharma, the Deputy Secretary, the SFCO''s objection was overruled and leave was granted to him. According to the Petitioner, in a note dated 31st May 1989, Shri K.K. Sharma observed that "the Petitioner was not happy in the PAC Branch and wanted to be posted back in LARRDIS", to which the Joint Secretary concerned agreed. However, the SFCO, on seeing his file, again imposed condition on the grant of

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leave. In November 1989, the Petitioner was posted back in LARRDIS.

5. On 7th March 1990, the Petitioner was issued a memorandum regarding the adverse entries in his AC Rs for the period ending 30th June 1989. The Petitioner states that he was never given any advice about his work. Neither the Chairman nor any other member of the Parliamentary Committee had found him wanting in competence. In his representation against the adverse entries in his AC Rs, the Petitioner maintained that he had never faltered in the performance of his duties. He stated that he had never been provided with any guidelines and no periodical inspections of the quantity and quality of his work had taken place. The negative remarks written by the SFCO were only in the file relating to the grant of leave. Reliance was placed on the decision in S. Ramachandra Raju Vs. State of Orissa, and State Bank of India etc., Vs. Kashinath Kher and others, etc.,, , where it was pointed out that the objective behind the writing of the confidential report is "to give an opportunity to the officer to remove deficiencies and to inculcate discipline", and secondly, to improve the quality, excellence, and efficiency of public service. According to the Petitioner, since the time limit for disposal of his representation against the AC Rs was not indefinite, the adverse remarks should not be deemed to be operative as long as the representation was pending.

6. On 15th May 1991, four R As junior to the Petitioner were promoted as E Os, and following this, the Petitioner again made a representation on 30th May 1991. Subsequently, two more R As were promoted as E Os. On 30th December 1992, the Petitioner represented to the Speaker of the Lok Sabha asking to be promoted as AD since he had already completed the requisite number of years of service as RA. On 31st December 1992, the Petitioner was promoted as EO. However, fourteen junior R As were promoted as E Os above him. The Petitioner contended that while the other officers had been granted their original seniority, he had been denied his. After several representations by the Petitioner, a reply dated 4th February 1998 was given by the Additional Secretary (E) to the following effect:

Dated the 4th February, 1998

MEMORANDUM

With reference to his representation dated 16th January, 1998 addressed to the Hon''ble Speaker for restoration of his seniority, Shri V.K. Mittal, Assistant Director (LARRDIS) is informed that his representation has been examined and the same being devoid of merit, has been rejected.

2. Shri V.K. Mittal is further informed that his earlier representations on the same issue were also examined and he was informed of the decision taken in the matter vide memoranda dated 14th February, 1995, 19th January, 1996 and 6th May, 1997. He was also informed that no further representation on this issue would be entertained in future.

3. Shri Mittal is hereby advised to desist from making representation on the

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same ground again and again. He is also informed that no further representation on this issue shall be entertained in future.

Sd/-

(J.P. RATNESH)

ADDITIONAL SECRETARY (E)

7. A review petition was filed by the Petitioner subsequently which did not elicit a response. Thereafter, the present writ petition was filed. Rule was issued on 1st July 1999.

8. It is submitted by Mr. D.P. Khandelwal, learned Counsel for the Petitioner, that the SFCO acted mala fide in recording a negative ACR. The promotion given to the Petitioners juniors was clearly discriminatory and, therefore, in violation of Article 14 of the Constitution. While the Petitioner was promoted only once, his juniors were promoted twice. Also, representations made by the Petitioner were not disposed of within the prescribed time period and were rejected in a mechanical manner. Reliance is placed on the decisions in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and State of U.P. Vs. Yamuna Shanker Misra and another, It is stated that the SFCO who made the adverse remarks was upset about the fact that the Petitioners leave had been sanctioned by the Deputy Secretary. He was also unhappy that the senior officer agreed to transfer the Petitioner back from the PAC Branch to LARRDIS. At no time did the Chairman or other members of the Parliamentary Committee make any complaint against the Petitioner.

9. A preliminary objection has been raised by the Respondent to the delay in preferring the present writ petition. It is pointed out that the Petitioners representation was rejected by the memorandum dated 19th January 1996 whereas the present writ petition was filed only on 15th May 1999. Considering that the Petitioners representations were ultimately rejected by a memorandum dated 4th February 1998, and this petition was filed in 1999, the preliminary objection on the ground of laches is overruled.

10. It is next submitted that the AC Rs of the Petitioner had been reviewed at more than one level. It was not as a result of the opinion of one superior officer supervising the work of the Petitioner. It is pointed out that the Petitioners representation dated 2nd April 1990 was first considered by the competent authority (Joint Secretary) who remarked on 14th November 1990 that the Petitioners performance may be treated as "fair" and that taking into account the totality of his performance, the remarks of the reviewing officer may stand. These remarks of the Joint Secretary were approved by the then Secretary General of the Lok Sabha on 21st November 1990.

11. It was submitted that the Petitioner had also earned a "fair" grading in his AC Rs for the period ending 30th June 1990. The adverse entries were communicated to him by a Memorandum dated 23rd November 1990. It is

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further pointed out that in terms of the guidelines led down by the DoPT by the OM dated 10th April 1989, the bench mark for promotion for induction to group "A" post would be a "good" grade. The DPC for Group A posts of the LSS ("DPC-I"), which met on 1st May 1991, considered the case of the Petitioner for the post of EO (Research) and considered the AC Rs of the previous five years. The DPC-I observed that in two of the five AC Rs of the Petitioner he had been graded "fair". In view of this, the DPC-I felt that the performance and conduct of the Petitioner should be further watched, and therefore did not consider him for the post of EO at that stage but instead, three others R As, one senior to the Petitioner and two junior to him, were recommended for promotion as EO with effect from 14th May 1991.

12. The DPC-I in its meeting held on 28th December 1992 for filling up of 17 vacancies in the grade of EO again found the Petitioner ineligible for promotion. In two of the Petitioner''s five AC Rs he was graded as "fair". On the basis of the overall grading of officers in the zone of consideration, the DPC-I placed the Petitioner at serial No. 16 in the select panel as he had been awarded an overall grading of "good". Since the terms of the guidelines approved by the Speaker on 5th June 1992 stipulated that those with the grade "very good" would en bloc be senior to those graded "good", the Petitioner was superseded by his juniors.

13. This Court has been shown the original records concerning the Petitioner''s AC Rs for the year ending 30th June 1989 in which the SFCO made a noting dated 7th March 1990 that the Petitioner "lacked both in commitment to the task assigned and devotion to duty", which was further commented upon by the General Secretary (A). A perusal of the ACR itself shows that apart from the SFCO, it was also seen by the reviewing officer who concurred with the grading of "fair". As regards the ACR for the period ending 30th June 1990, the remark was that "he has yet to show creativity and innovative qualities". This observation was made on 5th November 1990 by another reporting officer, who was then the AD. The reviewing officer concurred and commented that the Petitioner needed to take greater interest in techniques of research and reference work, and increase his output qualitatively and quantitatively. The comment of the reviewing officer was countersigned by the JS (B).

14. There is no substance in the allegation of bias or arbitrariness on the part of the Respondent in either recording the AC Rs or in dealing with the representations made by the Petitioner against such negative remarks. It is difficult to find any legal infirmity in the matter either in the process of decision making or the decision itself.

15. No grounds have been made out for the grant of any of the reliefs prayed for by the Petitioner.

16. The writ petition is dismissed, but in the circumstances, with no order as to costs. The application also stands disposed of.

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