

SMT. NUTAN ARVIND
v.
UNION OF INDIA AND ANR.

JANUARY 15, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

Central Civil Services—Promotion—Departmental Promotion Committee—Field of choice—Prior to May 12, 1988 on the basis of seniority—Administrative instructions issued thereafter—Grading on the basis of Confidential Reports Assessed 'Very Good' and 'Good'—Those with 'very Good' promoted—None with 'Good' included in the panel—Held Valid—Court not to sit over the assessment made by DPC as an appellate authority—Officers competent to write Confidential Reports—It was for DPC to consider at the time when assessment of the respective candidate is made.

Union of India of India Etc. v. Majji Jangamayya Etc., [1977] 2 SCR 28, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2546 of 1996.

From the Judgment and Order dated 22.12.94 of the Central Administrative Tribunal, New Delhi in O.A. No. 1796 of 1989.

Dr. Ashok Agarwal and P.D. Sharma for the Appellant.

K. Lahiri, P.P. Singh and S.N. Terdol for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order dated December 22, 1994 of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1796 of 1989.

We had issued notice to the respondents to show to this Court whether the consideration for promotion was on merit and ability or seniority-cum-merit and what was the principle that was followed in grading the Officers by

A the D.P.C. Pursuant to the said notice, learned counsel for the Union of India has brought to our notice the instructions issued by the Government of India and was in vogue prior to May 12, 1988. The Administrative Instructions contained in Memorandum of the Government dated 17th May, 1957 which was approved by this Court in *Union of India Etc. v. Majji Jangamayya Etc.*, [1977] 2 SCR 28. This Court had accepted the criteria laid down in those instructions which were as under:

"1. Greater emphasis should be laid on merit as a criterion.

2. The Departmental Promotion Committee should first decide the field of choice, namely, the number of eligible officers awaiting promotion who should be considered for inclusion in the selection list. An officer of outstanding merit may be included in the list even if he is outside the normal field of choice.

3. The field of choice wherever possible should extend to 5 to 6 times the number of vacancies expected.

4. From among such officers those who are considered unfit for promotion should be excluded and the remaining should be classified as 'outstanding' 'very good' and 'good' on the basis of merit as determined by their respective records of service. The selection list should then be prepared by placing the names of the order of these three categories without disturbing the seniority *inter se* within each category.

5. Promotions should strictly be made from such selection list in the order in which the names are finally arranged. The selection list should be periodically reviewed removing from the list names of persons who have been promoted, and including fresh names."

On consideration of the above instructions, this Court had held thus:

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar, Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not

the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

It is thus the settled law that prior to May 1988 grading used to be done as per Board's instructions and, therefore, the field of choice was done strictly on the basis of the seniority. Grading is now being done according to the confidential reports on the basis of principle of 'outstanding', 'very good', 'good' etc. etc. it is stated by the Tribunal in paragraph 14 at page 13 that it had perused the DPC proceedings placed before it and observed thus :

"We shall next consider the allegations in respect of the DPC. We have seen the records produced by the learned counsel for the respondents which includes the note to the DPC and the proceedings of the DPC. The DPC met under the Chairmanship of Shri Jagdish Rajan, Member UPSC and included the Secretary, Department of Revenue, the Chairman, CBDT and Member CBDT. The meetings were held on 23rd to 25th and 30th March, 1988. We notice that the members signed the proceedings on 30.3.1988 itself. The records of 141 persons were considered and a panel of 65 persons was prepared which includes 4 SC candidates. The name of the applicant does not find a place in the panel. No officer has been assessed as 'outstanding'. The committee had assessed the officers as either 'Very good' or 'good'. In some cases, the assessment was placed in a sealed cover. The applicant was assessed as 'Good'. None included in the penal had the rating 'Good'."

The DPC which is a high-level committee, considered the merits of the respective candidates and the appellant, though considered, was not promoted. It is contended by learned counsel for the appellant that one K.S. Rao was the officer at the relevant time to review the performance of the appellant whereas in fact one Menon had reviewed it. The latter was not competent to review the performance of the appellant and to write the confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessments of the respective candidates is made. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered there cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and

A call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference.

B It is brought to our notice by the learned counsel that since the appellant was superseded for the subsequent period also, she could not file any proceedings in the Tribunal due to the pendency of this matter. If she is aggrieved against such a supersession, this order does not preclude her to agitate her rights according to law.

The appeal is accordingly dismissed. No costs.

C G.N.

Appeal dismissed.