

SUPREME COURT OF INDIA

Anil Katiyar

Vs.

Union of India

C.A.No.4432 of 1996

(S. C. Agrawal and G. T. Nanavati, JJ.)

08.11.1996

JUDGEMENT

S. C. AGRAWAL, J.:-

1. This appeal relates to appointment on the post of Deputy Government Advocate in the Central Agency Section in the Ministry of Law of the Government of India. The appellant as well as respondent No. 4 are both employed in the Central Agency Section. The appellant joined as Asst. Government Advocate on April 9, 1990, while respondent No. 4 joined the said post on October 5, 1989. Respondent No. 4 was thus senior to the appellant. The post of Deputy Government Advocate is a selection post on which appointment is made from amongst Asst. Government Advocates. A Departmental Promotion Committee (DPC) headed by a member of the Union Public Service Commission was constituted for making the selection. The appellant as well as respondent No. 4 were graded as "very good" by the DPC and since respondent No. 4 was senior to the appellant he was selected and on the basis of the said selection he has been appointed as Deputy Government Advocate. The appellant moved the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') by filing O.A. No. 2538 of 1994 which has been dismissed by the impugned judgment dated June 8, 1995.

2. Before the Tribunal the main contention urged by the appellant was that the selection was made by the DPC on the basis of the Annual Confidential Reports (ACRs) of the appellant and respondent No. 4 for the years 1990-91, 1991-92 and 1992-93 and that in the ACRs for the years 1990-91 and 1991-92 the appellant was graded as "outstanding" by the Reporting Officer as well as the Reviewing Officer and in the ACR for the year 1992-93 she was graded as "very good" by the Reporting Officer as well as the Reviewing Officer and that respondent No. 4, on the other hand, was graded as "very good" by the Reporting Officer as well as the Reviewing Officer in all the three ACRs. The submission was that since the appellant had been graded as "outstanding" in two out of three ACRs by the Reporting Officer as well as the Reviewing Officer, grading the appellant as "very good" by the DPC was not justified. The Tribunal has held that it was not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not go into the recommendations made by the DPC which had been accepted by the Government. The Tribunal has, at the same time, looked into the ACRs of the appellant and has observed that out of two "outstanding" gradings given to the appellant one "outstanding" grading does not flow from various parameters given and the reports entered therein and that must be the reason why the appellant had been graded as "very good".

3. Shri Gopal Subramaniam, the learned senior counsel appearing for the appellant, has submitted that the Tribunal was in error in observing that one "outstanding" grading does not flow from various parameters given and the reports entered and in doing so the Tribunal has assumed the role of an appellate authority over the Reporting Officer and the Reviewing Officer, a course which, according to the Tribunal itself, could not be adopted by it. The submission is that the grading has to be made by the Reporting Officer and the Reviewing Officer and since both have agreed in grading the appellant as "outstanding" in the ACRs for the years 1990-91 and 1991-92, it was not open to the Tribunal to say that one of the "outstanding" gradings does not flow from various parameters given and the reports entered therein. As regards the grading made by the DPC, the submission of Shri Subramaniam is that there is no reason why the appellant should have been graded "very good" when she had received "outstanding" remarks from the Reporting Officer as well as the Reviewing Officer in the ACRs of two out of three years.

4. Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by mala fides.

5. The question is whether the action of the DPC in grading the appellant as "very good" can be held to be arbitrary. Shri G. L. Sanghi, the learned senior counsel appearing for the Union Public Service Commission, has placed before us the confidential procedure followed by the DPCs in the Union Public Service Commission for giving overall gradings, including that of "outstanding", to an

officer. Having regard to the said confidential procedure which is followed by the Union Public Service Commission, we are unable to hold that the decision of the DPC in grading the appellant as "very good" instead of "outstanding" can be said to be arbitrary. No ground is, therefore, made out for interference with the selection of respondent No. 4 by the DPC on the basis of which he has been appointed as Deputy Government Advocate. But, at the same time, it must be held that the Tribunal was in error in going into the question whether the appellant had been rightly graded as "outstanding" in the ACRs for the years 1990-91 and 1991-92. The observations of the Tribunal that out of the two "outstanding" gradings given to the appellant one "outstanding" grading does not flow from various parameters given and the reports entered therein, cannot, therefore, be upheld and are accordingly set aside.

6. The appeal is disposed of accordingly with no order as to costs.

Order accordingly.