

Pushpa Aggarwal

Vs

U.P.S.C.

Civil Appeal No. 6254 of 1995

(S. Rajendra Babu, N. Phukan JJ)

20.04.1999

JUDGMENT

S.N. Phukan, J.

1. This appeal is directed against the judgment and order dated 16th December, 1994 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1036 of 1990.
2. For the purpose of appreciating the points urged in this appeal we may briefly state the facts.
3. The appellant herein was appointed as Mechanical Operator on 19.3.1965 by the respondents and from the impugned judgment we find that her appointment was on probation for a period of two years and further this period was neither extended nor her appointment was confirmed. However, she was declared quasi permanent w.e.f. 19.3.1968. On 30.5.78 she submitted a letter of resignation on the ground of alleged harassment but on the next day i.e. 31.5.78 she submitted another letter for withdrawal of the resignation. However, the respondents accepted her resignation and informed her accordingly.
4. On being dissatisfied the appellant filed a writ petition before the High Court of Delhi which was transferred to Central Administrative Tribunal. The Tribunal allowed her petition and directed the respondents to allow her to rejoin her service with all consequential benefits and accordingly on 16.5.86 she rejoined her post. On the basis of Review Departmental Promotion Committee held in June, 1979 her appointment was made substantive as Mechanical Operator w.e.f. 1.7.75 and in the seniority list she was placed senior to Kum. Indra Devi. Thereafter, she was appointed to officiate as Technical Assistant (Hollarith) which is higher post w.e.f. 29.4.83 from the date her junior was made senior in the post. From 3.3.86 to 31.7.86 she was given the benefit of ad hoc appointment and her seniority was also determined above the said Kum. Indra Devi w.e.f. 29.4.83. The appellant allegation before the Tribunal was that she was appointed along with Smt. Versha Malhotra, Shri P.S. Jain and Smt. Malti Duggal, therefore, she should be confirmed as Mechanical Operator w.e.f. the date her above named batchmates were confirmed instead of confirming her from 1.7.75. She prayed before the Tribunal that the order dated 12.12.88 confirming her in the post from 1.7.75 be quashed and declaring her entitled to be confirmed as Mechanical Operator w.e.f. the date from which her immediate junior had been confirmed with all consequential benefits.
5. The respondents opposed the application before the Tribunal and stated that 31 Mechanical Operators were confirmed in the grade on the recommendation of the Departmental Promotion Committee held in 1974 and 1977. After the resignation and relieving of the appellant, 2 Departmental Promotion Committees were held for substantive appointment to the grade of

Mechanical Operator and on the basis of the assessment of the record of appellant she was not found fit for substantive appointment. Another Departmental Promotion Committee which was held in December, 1977 the case of the appellant could not be considered as she was not in service and, therefore, a Review Departmental Promotion Committee was held in November, 1988 but she was found unfit. In June, 1979 the appellant was given substantive appointment as Mechanical Operator and she was placed above Kum. Indra Devi who was appointed substantively to the post of Mechanical Operator w.e.f. 1.7.75 on the basis of the recommendation of the next Departmental Promotion Committee.

6. The tribunal took note of the fact that as the appellant was only a temporary employee as Mechanical Operator and her performance was not satisfactory, therefore, rightly stated that she should not be confirmed. The tribunal also noted adverse remarks made in the annual confidential reports and the disciplinary action and punishment imposed on the appellant. Taking into consideration all the facts the application filed by the appellant was dismissed.

7. We have heard learned counsel Shri K.V. Rohtagi for the appellant and Shri Rajiv Nanda for the respondent.

8. The appellant as stated above joined on the post of Mechanical Operator on 19.3.65 and she was declared quasi permanent w.e.f. 19.4.68. For promotion to the post of Technical Assistant (Holl) as per the recruitment rules, 75% of the posts to be filled up by promotion on the basis of seniority cum fitness and 25% on the basis of departmental test. As the appellant was appointed and Mechanical Operator she would come under the category of 75% for the purpose of promotion to the next higher post.

9. In the year 1974, a disciplinary proceeding was started under Rule 16 of the CCS (CCA) Rules, 1965 against the appellant for disobedience of orders of her superior officers and having acted in a manner unbecoming of a government servant. She was found guilty and penalty of withholding of one increment was imposed. In the year 1975 another disciplinary proceeding was initiated against the appellant and in 1976 again she was warned as a result of the disciplinary proceedings. In December, 1976 as a result of disciplinary punishment of withholding of one increment was imposed on the appellant. In 1978 again a disciplinary proceedings was initiated against the appellant.

10. Adverse remarks for the period ending 31.12.1965 were conveyed to her that her work and behaviour was not found satisfactory. In 1969 she was warned that she had to improve her attendance and work. In 1976 adverse remarks, for the year 1975 that she was extremely indisciplined and insubordinate to all her superiors, were communicated to her. Her work was also very poor due to her carelessness. Thus it appears apart from the adverse remarks recorded in the years 1965, 1968 and 1975 in her annual confidential reports, punishments were also awarded after drawing the proceedings in the year 1974, 1976 and 1977.

11. In view of the above remarks in her annual confidential reports and punishments imposed as a result of the proceedings the tribunal refused to interfere in the matter. We hold that action of the tribunal cannot be faulted.

12. But tribunal had recorded after looking into the relevant file of the appellant that her appointment was on probation for a period of 2 years and it was purely temporary. The tribunal also noted that she was made quasi permanent after 3 years and held that merely she was declared quasi

permanent will not *ipso facto* make her appointment to substantive post. We quote below this finding of the tribunal :

"Though there is nothing on record that the probation period at any time extended yet there is no document available which goes to show that she has successfully completed the period of probation."

As stated above though the appellant was appointed in the year 1965 and made quasi permanent in the year 1968 but the respondents neither extended the period of probation nor terminated her services. Adverse remarks were communicated to the appellant regarding her unsatisfactory work and behaviour and also in the year 1969 adverse remarks for the year ending 31.12.1968 were communicated and she was asked to improve her attendance. Nothing was recorded in her annual confidential reports from 1968 to 1976. The first departmental proceeding was started in the year 1974.

13. Under normal circumstances, the case of the appellant for making permanent should have been considered at the end of 2 years of probation or if work was not satisfactory probation should have been extended. Unfortunately, there are no rules of Mechanical Operators. For no fault of appellant her case was not considered for the above period and for the first time it was considered by the Departmental Promotion Committee in the year 1974 and again after she was reappointed as per the direction of the tribunal.

14. We are, therefore, of the opinion that the case of the appellant should have been considered immediately after completion of period of probation and as it was not done the appellant is entitled to some relief. We are of the view that in the grade of Mechanical Operator her seniority shall be restored to below the persons who were immediate senior to the appellant and direct accordingly.

15. Regarding promotion of the appellant to the next higher post the impugned order cannot be faulted in view of the various adverse remarks recorded against the appellant and the punishments imposed as a result of the departmental proceedings. Therefore, her seniority to the post of Technical Assistant shall be as fixed by the respondent which is held to be valid by the tribunal. We make it very clear that in view of the directions regarding fixation of seniority of the appellant to the grade of Mechanical Operator she shall be entitled to all the consequential benefits in that grade but shall not be entitled to claim any benefit to the next higher post namely Technical Assistant.

16. In the result the appeal is partly allowed and the order of the tribunal modified in terms of the above order. The parties to bear their own costs. Appeal partly allowed.