

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3064/2001

New Delhi, this the 5th day of February, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Sh. Nanu Singh
S/o Sh. Ram Chander
Assistant Station Master
Railway Station,
Jataula, Jauri Sampka
Distt. Gurgaon, Haryana.

...Applicant
(By Advocate Sh. B.S.Mainee)

V E R S U S

1. Union of India : through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway
Bikaner.
3. Station Superintendent
Railway Station
Jataula, Jauri Sampka
Distt. Gurgaon, Haryana.

...Respondents
(By Advocate Sh. B.S.Jain)

O R D E R

By Sh. Shanker Raju,

Applicant impugns respondents orders dated 19-10-2000, 20-10-2000 and 28-3-2001 whereby adverse remarks have been communicated in his confidential report for the period ending 31-3-2000, he has been denied promotion and representation against adverse remarks has been rejected respectively. He has sought quashment of these orders with all consequential benefits.

2. Applicant who was initially appointed as Cabinman in 1975 on selection to the post of Assistant Station Master and on being imparted training was

posted as ASM. He had undergone training from 5-1-98 to 23-5-98 and had passed the training. Subsequently he had also cleared the competency test on 22-7-98. Accordingly he was posted at Railway Station, Sampka.

3. In the ACR pertaining to the year period from 1-4-99 to 31-3-2000, applicant has been communicated adverse remarks grading him below average with the remark in column "8" that "he had the knowledge of work but knowledge of departmental rules is less"

4. Subsequently promotion to the higher grade which has been effected from 20-10-2000, applicant's name could not find place due to adverse remarks.

5. A representation was preferred by the applicant against the adverse remark which was rejected on 28-3-2000 giving rise to the present OA.

6. Ld. counsel of the applicant Sh. B.S. Maine contended that the adverse entry made is malafide due to arbitrariness on the part of the Station Master, JSKA. It is stated that there is absolutely no material to indicate that the applicant had less knowledge of the rules and the entry itself is contradictory. It is stated that the respondents have not communicated favourable remarks along with the adverse entry and as regards his knowledge to the safety rules, enquiry has been held on his back without giving him an opportunity and no documents like memo, findings, warning have been produced to indicate that the applicant during this interregnum

was ever communicated as such during the reported period. According to Sh. Mainee, remarks are vague, as no opportunities are given. In so far as competency certificate is concerned, it is stated that the applicant had passed the training course at Chandausi and also obtained the competency certificate which is valid for three years. In this conspectus it is stated that although the applicant appeared in the examination for competency on 22-7-98, results are not declared which can not be attributed to him. According to him unless the competency certificate is not issued, ASM are not allowed working on safety side. Sh. Mainee, relied upon the following decision to substantiate his plea with regards to vagueness and inconsistency in the remarks which lack objectivity, H.N.Srivastava & Ors. Vs. UOI & Ors. (1991 (1) AISLJ CAT 4), Ashok V.David & Anr. Vs. UOI & Ors. (1996 (2) SLJ SC 1), Vinod Kumar Vs. Secretary, Ministry of Defence (1998 (1) SLJ CAT 550), Brij Mohan Singh Chopra Vs. State of Punjab (ATR (1987) (1) SC 513), S. Ramchandra Raju Vs. State of Orissa (1994 (3) SLJ SC 95) and Mohan Lal Atwal Vs. UOI (ATJ (2001) (1) 152).

7. Sh. Mainee further contended that due to adverse remarks, his further promotion to the grade of Rs. 5000-8000/- has been withheld.

8. On the other hand, strongly rebutting the contentions Sh. B.S.Jain, Id. counsel of the respondents contended that knowledge of the applicant about depttl. rules was poor and though he was sent for the training at ZTC, Chandausi, but had failed to

qualify in the examination and got a supplementary. Though it is stated that the applicant has been verbally warned on several occasions to improve his working, an enquiry gone into by Administrative Officer revealed that the applicant's knowledge about safety rules is not satisfactory and in the light of this, below average grading was most apt. On the recommendations of AO/RE, the applicant was to be booked for the refresher course.

9. It is stated that as the basis of further promotion was seniority-cum-suitability, the applicant could not be promoted because of adverse remarks.

10. During the course of hearing, respondents have been directed to produce the relevant records as R-1 annexed with the reply was not attached. Aforesaid records have been furnished by Sh. Jain and have been perused by me. Sh. Jain by referring to the record contended that earlier ACR of the applicant was graded average and for 2002 below average remarks have been recorded. On revision, case of the applicant was considered in detail. Sh. Jain further referred to the punishment imposed upon the applicant on 29-8-2001 whereby his increment has been withheld for three years on the ground that as a Cabinman, he could not see the ballast graits on the track. By referring to the inspection as regards PLC working on 28-2-2001, it is stated that the applicant has failed to follow safety rules. By referring to parawise comments as to the confidential remarks, it is contended that the applicant failed to prepare PLC

properly and it had been concluded that the applicant's knowledge particularly in preparation of papers is not satisfactory.

11. Referring to Note dated 24-2-2002 written to the DRM by Station Supdt., it is contended that the applicant's knowledge about the rules is improving but due to lack of knowledge, serious mistake in operational work had resulted.

12. Regarding lapses for the period April 2000 to March 2001, it is contended that the applicant has still poor knowledge on safety rules which resulted in total failure of communication, applicant is unable to prepare documents and is stubborn person. Sh. Jain further referring to the enquiry report of SS Mange Ram dated 20-2-2001 which includes the reported period where the applicant had failed to write the full name of the train and had committed mistake in all the messages and had failed to operate the block as per the rules. In nutshell, he has been graded below average because he lacked the qualities for the post of ASM.

13. Sh. Maine in rejoinder reiterated his pleas taken in OA and stated that nothing beyond the pleadings can be taken in to consideration. He has not been communicated any shortcomings and has not been afforded any opportunity to improve upon. The contention that applicant has failed in test is on the face of it is wrong and the punishment imposed has already been reduced to 6 months WTI in 1999.

Moreover, it is contended that the material considered is beyond the reported period which cannot be the basis of adverse remarks against the applicant.

14. I have carefully considered the rival contentions of the parties and perused the material on record.

15. The following observations have been made by the Apex Court in S.Ramchandra Raju's case (supra)

"The facts are eloquent. From 1973-74 the appellant started with a commendation of his performance to be "satisfactory" to "fair" in the year 1990-91. Would it be comprehensible that in the year 1987-88 whether he would suddenly drop down and become an average or below average teacher? When he was a responsible teacher and he had cordial relations with the students' community, and was taking pains to impart lessons to the students, would it be believable that he avoids to take classes and drops down "if not watched"? When anterior to or subsequent to 1987-88 he was a man of ability and of integrity, the same would become below average only for the academic year 1987-88 without discernible reasons. It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This conduct is much to be desired. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasize that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive comments in estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant period for the above objectives if not strictly adhered to in making an honest

assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to loose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible to superior or controlling officer to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work atleast to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate-employee/officer should dedicate to do hard work and duty, assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service".

The Division Bench of Delhi High Court in Dinesh Kumar Shandilya Vs. UOI (2002 (2) ATJ 126) after gone in to the guidelines in writing of ACR, it is held that recording of ACR must be done in fair and equitable matter to ensure that career of the employee is not jeopardised. Remarks should be borne on the facts and the reviewing and reporting officer are required to be acquainted with the work of the officer reported upon atleast three months during the period covered by the ACR. Objectivity should be maintained in writing confidential reports. Chandigarh Bench of this Tribunal in Fateh Singh Vs. Chandigarh Administration (2002 (3) ATJ 425) held as follows :-

"The gamut of the decisions referred to above is that the purpose of writing the Annual Confidential Reports and making entries in the character roll is to give an opportunity to a public servant in improve excellence. If the

adverse remarks are not communicated with all expedition, the very purpose for which they were made is frustrated. It is the duty of the reporting officer to adopt a constructive approach by informing the concerned employee of his shortcomings and pass to him all the material which may go against him so that the employee may beforehand place his point of view and in any case may have enough time and opportunity to improve.

16. Having regard to the ratio laid down by Apex Court and evaluating the factual matrix of this case in their light, I find that the statements made by the respondents that the applicant has failed to pass training and got through in supplementary, on the face of it is incorrect as the applicant had passed the test which is apparent from the letter of the respondents dated 23-5-98 where the applicant has been shown to have passed.

17. In so far as competency test for the purpose of ASM held on 22-7-98 is concerned, applicant had appeared in the test and had cleared the same as such he was continued to work. Merely because the result has not been declared, would not obliterate the factum of having appeared in the competency test. In so far as ACR is concerned, the same certainly lacks objectivity what has been recorded and agreed upon is that although the applicant knows his work but he has less knowledge about the depttl. rules, which are basically safety category rules. Once the applicant has passed the training course and competency test, the remarks certainly are contradictory as having passed these tests, lesser knowledge of rules cannot be . . . imputed against the applicant. Moreover the respondents attempt to establish that the applicant was verbally warned on several occasions cannot be

countenanced. As per the mandatory requirements to improve upon if a person is lacking in performance, it is incumbent upon the authorities to issue warning, advisory memo etc. which have not been issued undisputedly to the applicant during the reported period. In one of the communications sent by Area Officer, it is admitted that no pre-notice has been issued to the applicant to improve upon his working. In so far as the enquiry is concerned which is conducted by A.O., the report has been withheld from the applicant and this enquiry report has been issued after the reported period. None of the incidents figured during the reported period have ever been communicated to the applicant.

18. These remarks are vague and cryptic and cannot be sustained in absence of any opportunity accorded to the applicant earlier to improve upon. In Ramchandra Raju's case (supra), the Hon'ble Apex Court laid stress upon the fair, objective and constructive assessment in all fields and also the statutory safeguards to be followed by the Reporting Officers. A remark should be intelligible and adverse entry must precede an opportunity. These deficiencies are to be pointed out in order to facilitate objective assessment through necessary advise, guidance and assistance to correct the faults. This is not a case that inspite of granted opportunity, the applicant has not improved or the opportunity has not been availed of by the applicant. If the material is not put to the concerned employee and shortcomings are not highlighted before hand, he is denied an opportunity to improve especially when an ACR has an adverse

effect over the promotional avenues. Respondents should have followed the safeguards and to arrive at an objective assessment borne out from the records which is merely on the verbal warnings, which are not recorded in writing and no such record of this verbal warnings are kept, are not sufficient in compliance of the guidelines. Although these guidelines are directory but yet having regard to the decisions of the Hon'ble Apex Court, the objectivity should not lack in the ACR. From the perusal of ACR, I am of the view that on one hand applicant is observed to have knowledge of work but otherwise has been found to have less knowledge of rules particularly when the applicant had passed the training and also cleared the competency test which is valid for the period of three years as per the rules. The aforesaid remarks on the face of it runs counter to these undisputed facts and having failed to mention the good points in the ACR i.e. the favourable remarks, is certainly violative of the guidelines on the subject.

19. I have also seen the order passed by the respondents by which applicant's representation has been rejected. The A.O. has furnished the comments and the allegations to my considered view are vague and pertaining to the period which is beyond the reported period i.e. March 2000. As such extraneous matter has been taken in to consideration to maintain the aforesaid remarks which shows lack of application of mind by the appellate authority and in this view of the matter order is not sustainable.

20. I am of the view that the remarks are unfounded, vague, indefinite, without following the guidelines. The same cannot be sustained in law.

21. In the result, for the forgoing reasons, OA is allowed. Impugned orders dated 19-10-2000 and 28-3-2001 are quashed and set aside. Respondents are directed to expunge the adverse remarks from the ACR of the applicant ending with March 2000 within three months from the date of receipt of a copy of this order. Applicant shall also be entitled for all consequential benefits.

S. Raju

(SHANKER RAJU)
MEMBER (J)

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