

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 1529/94.

Date of decision: 17-2-95

(21) Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri P.P. Agarwal,
S/o Shri R.N. Agarwal,
Bangalow No. 126,
Railway Colony,
Leader Road,
Allahabad
(Presently holding
the post of Senior
Divisional Controller
of Stores,
Northern Railway,
Allahabad.

.. Applicant

(By Advocate Shri R.K. Kamal)

versus:

1. Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi.

2. Railway Board, through its
Secretary, Rail Bhavan,
New Delhi. .. Respondents

(By Advocates Shri D.S. Mohindru with
Shri P.H. Ramchandani.)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)]

The applicant is aggrieved by the Respondents' Order dated 21.7.1989 by which he was superseded by some of his juniors for appointment to Selection Grade (Rs. 4500-5500) post of Group 'A' Service of Indian Railway Service of Engineers (IRSE) (Annexure A-1) and adverse remarks in his Annual Confidential Report ending 31st March, 1989 conveyed to him on 10.11.89 (Annexure A-2) under He originally filed the application (DA 1105/89 / section 19 of the Administrative Tribunals Act in the Allahabad Bench on 5.12.1989 which has later been transferred to

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this Bench by Order of the Hon'ble Chairman dated
22.4.1994.

2. The brief facts of the case are that the applicant, who was appointed as A.E.N. on 29.8.1963 was confirmed in Class I Service w.e.f. 12.3.1974. In 1977, he was promoted as Executive Engineer in senior scale in North Eastern Railway. He was further promoted as Deputy Chief Engineer in the Junior Administrative Grade w.e.f. 23.4.83. He was then transferred to Northern Railway as Deputy Chief Engineer and was posted at Allahabad from July, 1984. The applicant was holding the post of Senior Divisional Controller of Stores in Junior Administrative Grade w.e.f. 1.6.1989. The next promotion was to the Selection Grade in Group 'A' of IRSE, which was when the officer had completed 13 years of service in Class I (Grade 'A') Service. According to the applicant, he became eligible to be promoted to the Selection Grade w.e.f. 12.3.1987. As per the rules, an officer confirmed in Group 'A' Service also become eligible for Senior Administrative Grade (Rs. 5900-6700) on completion of 17 years of service and the applicant states that he, therefore, became eligible for Senior Administrative Grade on 12.3.1991.

3. In the impugned order dated 21.7.1989, some of junior officers, namely, (1) Daya Ram (S.No. 9), (2) Deepak Krishan (S.No. 38), (3) Shri A.K. Khande (S.No.40) and (4) Shri C. Balakrishnan (S.No. 43) had been promoted to

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Selection Grade while the applicant was omitted against which he made a representation to the Secretary, Railway Board on 11.8.1989 followed up by a reminder to which no reply was received by him.

4. After the aforesaid selections had taken place, the applicant was communicated an adverse entry in his confidential report for the period ending 31.3.1989 on 11.8.1989 (Annexure II). This read as under :-

- "(1) He is not systematic in his work. Nor is he able to attain objectives or sustained qualities.
- (2) He has very limited initiative. Does not like to take on additional responsibilities or work."

The applicant filed representation against the adverse remarks on 26.10.1989 (Annexure IV). By order dated 16.4.1990, the applicant was informed that his representation/appeal against the adverse remarks have been rejected.

5. According to the applicant, the only adverse remarks communicated to him were for the year ending March 1989 and because of these adverse remarks, he had been illegally and arbitrarily superseded for appointment to the selection grade vide order issued on 21.7.1989.

6. The applicant alleges that the procedure for writing confidential reports as laid down in paragraphs 1606-1608 of the Indian Railway Establishment Code (Vol.I), 1959 (IREM), extracts of which are placed on record, have not been followed. According to him, the adverse remarks

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in the confidential reports could have been given to him only after giving him an opportunity to improve his work or any fault he might have had which required to be improved. In the present case, he was never given any opportunity for improving his work and conduct before giving him the adverse remarks which had stood in his way for selection to the Selection Grade (Rs. 4500-5700).

7. The respondents have filed their reply in which they have stated that the Railway Board's letter dated 21.7.1989, which has been challenged by the applicant, is an order placing the officers, who had been selected in the Selection Grade of IRSE (Rs. 4500-5700) in which the applicant was also considered but not selected on the basis of his performance and records. They State that he was again considered in the Selection Grade panel of IRSE and approved for the same on 16.5.1991. The respondents state that in accordance with the selection rules (Rule 203 of the IREM (Vol.I), all posts in administrative grades are selection posts, wherein the suitability of the eligible officers are assessed by the Selection Committee, the members of which are of the rank of Secretary to the Government of India. They have also denied receipt of the applicant's representation dated 11.8.1989 against his supersession in the selection grade. According to them, the contentions made by the applicant that since there was no

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✓ departmental enquiry or vigilance case pending against him, he should have been selected, is not relevant because the Selection Committee had assessed his performance and considered his case but not selected him. In para 8 of the reply, the respondents have stated that the applicant was not allowed for Selection Grade by the Selection Committee after over-all assessment of his service record and not because of the adverse remarks referred to by the applicant. They have further submitted that there is no nexus between his non-selection for Selection Grade and adverse remarks given in his confidential report of 31.3.1989, which was communicated to him vide letter dated 10.8.1989.

8. The respondents have also submitted that the confidential report of the applicant for the year ending 31.3.1989 was reviewed by the Chief Engineer on 19.6.1989 and a warning letter was issued to him for unsatisfactory performance vide confidential letter dated 24.4.1989 (which has been filed with the supplementary reply filed on 17.1.1995). His representation dated 26.10.1989 against the adverse remarks had also been considered by the competent authority and rejected by letter dated 16.4.1990. In the light of the above submissions, the respondents have submitted that the applicant is not entitled to any of the reliefs claimed for.

9. We have heard Shri Kamal, learned counsel for the applicant and Shri Ramchandani, learned counsel for the

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respondents at length and perused the records. As per our directions, the respondents have also filed a supplementary reply in respect of writing of confidential reports on 17.1.1995. As directed, the respondents have also submitted/ confidential reports file of the applicant as well as the selection grade panel of I.R.S.E. approved on 18.7.1989 and Senior Administrative Grade panel approved on 20.10.1992 for our perusal.

10. The respondents have clarified that Section II relating to confidential reports in the I.R.E.C. Vol. I (1959 Edition) relied upon by the applicant was reflected in the 1971 Edition also. This Chapter, however, did not find a place in 1985-1987 Editions wherein it has been mentioned that the Chapter on Confidential Reports will be printed later on. According to the respondents, the aforesaid chapter on Confidential Reports is under review and finalisation by the respondents. They submit that pending such finalisation, certain administrative instructions had been issued with regard to gazetted railway servants vide D.O. letter dated 24.4.1987 (Annexure R-2). According to them, the adverse remarks for the year ending 31.3.1989 were communicated to the applicant in accordance with these instructions. They have also stated that the proforma for recording ACRs which was used earlier has been renewed and the new format came into effect w.e.f. 1.4.1987 and this format had been used for recording the applicant's ACR.

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11. Shri R.K. Kamal, learned counsel for the applicant submits that Chapter 19 of the confidential reports of I.R.E.C. (1985 Edition) has neither been revised nor incorporated in this Code. Therefore, since the earlier Section II dealing with confidential reports has not been deleted by any law made by the President, the rule existing under the 1959 Code has to be followed. He further submits that taking into account the purpose of writing CRs as given in these rules, which should legitimately/a nexus to the purpose for which it is done, conveying the adverse remarks for the year ending 31.3.1989 after that date, as was done in this case, was arbitrary and illegal. He further submits that the letter dated 18.10.1989 conveying the adverse remarks in the confidential report for the year ending 31.3.1989 is vague and does not indicate the specific instances or how this will have the effect of improving the applicant's work or conduct, which is / very purpose of writing confidential reports. The failure to do so defeats the purpose of writing confidential reports. According to the applicant, the procedure laid down in Rules 1606-1608 of the 1959 Edition of I.R.E.C. Code has not been adhered to. He has, therefore, submitted that the confidential report for the year 1989 may be quashed and the applicant's case remitted to a Review Selection Committee for due consideration and selection.

12. Shri R.K. Kamal has also submitted that after this application was filed in the Allahabad Bench in December, 1989 and while it was pending, his earlier representation

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appeal dated 26.10.1989 against his supersession for the selection grade was rejected by the respondents vide their order dated 16.4.1990. His contention is that this is in violation of Section 19(4) of the Administrative Tribunals Act, 1985.

13. He also relies on the decision of the Supreme Court in Gurdial Singh Fiji v. State of Punjab [AIR 1979 SC 1622] and submits that the adverse remarks in his confidential report could not have been acted upon to deny him the promotion unless the same had been communicated to him and he had an opportunity to improve his work and conduct or to explain his conduct. According to him, such an opportunity has been denied to him and hence, the Selection Committee has erred. He has also relied upon the judgment of the Supreme Court in Amar Kant Choudhary v. State of Bihar [AIR 1994 SC 153] and Brij Mohan Singh v. State of Punjab [AIR 1997 SC 948].

14. Shri Ramchandani, learned counsel for the respondents has confirmed that the earlier rules as incorporated in I.R.E.C. (1959 Edition) have not been reviewed or deleted so far. However, the earlier instructions are not being followed but have been superseded by the later instructions. He has referred to rule 1606 of the 1959 Code and states that the Annual Confidential Reports are being recorded in the "prescribed form" as are given from time to time (Annexure to the Supplementary Reply). He submits that the confidential reports reflect the plus and minus points of an individual

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✓ officer and it cannot be stated that the whole exercise is only for improvement of the officer's work and conduct in the future. He submits that there has been substantial compliance of the rules and principles of natural justice as the representation made by the applicant against the adverse remarks has been considered by the competent authority and he has also been given an opportunity to improve thereafter. He has further submitted that all the provisions in Section II of the I.R.S.E. dealing with the confidential reports are not mandatory, some of which could also be directory. The learned counsel's contention is that the assessment of an officer, though it is stated under the rules is for a period ending 31st March, cannot be taken as mandatory, because the assessment will necessarily spill over for a few days thereafter, as the is assessment of the senior officer in his own mind which necessarily cannot have a cut-off date which can be strictly adhered to. The learned counsel also submits that the Selection Committee met on 4.5.1989 for consideration of the eligible officers for Selection Grade has only taken into account the ACRs for the years / March 1984 to March 1988. In other words, the impugned ACR for the period ending March, 1989, having not been considered by the Selection Committee, the applicant has no case.

15. We have carefully considered the applicant's claims, the arguments of the learned counsel and perused the records in this case.

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16. The main claim of the applicant in this case is that the Selection Committee, which had considered the officers for promotion to the Selection Grade, had committed an error in relying upon the adverse remarks in his ACR for the year 31.3.1989 as he had not been confronted with these remarks nor given an opportunity to represent against the same. We have perused the records of the Selection Committee/Board which met on 4.5.1989 to select suitable Junior Administrative Grade officers of I.R.S.E. for placement in Selection Grade (Rs.4500-5700). The applicant's name is in S.No. 30 of the list of officers who were assessed by the Committee for promotion. The assessment was done on the basis of the ACRs of the officer for the years ending March 1984 to March 1988 and in the final remarks column, he was assessed as ' Not Fit '. Therefore, the claim of the applicant that the Selection Committee had erred in considering the adverse remarks in his confidential report for the year ending 31.3.1989 is falsified by the record and this claim is, therefore, baseless and/rejected. In the circumstances, the judgments of the Supreme Court in Gurdial Singh Fiji's case and the other two cases relied upon by the applicant are also not relevant to the facts in this case. The adverse remarks have, in fact, been communicated to the applicant within a reasonable time on which he had also been given /opportunity to represent. In any case, the adverse remarks in his ACR for the year ending 31.3.1989 had not been taken into consideration by the Selection Committee in respect of the selections held for the post of Junior Administrative Grade.

Later, the competent authority considered the representation of the applicant before rejecting the same vide order dated 16.4.1990.

17. The recording of the adverse remarks for the period ending 31.3.1989 had been followed up by the confidential letter addressed by the Chief Engineer to the applicant dated 24.4.1989 in which details of the serious deficiencies in his work had been referred to. In this letter, it was stated, inter alia, that he has not exercised adequate control on the work of contractor for ballast screening, there were a large number of excess PRC sleepers which had been dropped on the slopes, that certain work enumerated in paragraphs 3 and 4 of the letter was not permissible as it was not safe for train operations and showed lack of planning and control. This was followed by the communication of the adverse remarks in the confidential report by the impugned letter dated 10.8.1989 in which it was also mentioned that this had been done with the hope that the applicant will effect improvement in the direction indicated. His appeal against the adverse remarks had been considered by the competent authority and rejected by the letter dated 16.4.1990. Therefore, taking into account the sequence of facts, the applicant had been conveyed the warning for unsatisfactory performance

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of his work by 24.4.1989 and he was aware of the deficiencies at the time when the formal communication of the adverse remarks was made on 10.8.1989. Therefore, taking into account the entire facts, we are unable to agree with the contentions of the learned counsel for the applicant that the applicant has been denied the opportunity to improve his work and conduct. We are also satisfied that there has been substantial compliance of the relevant rules given in Section II of the I.R.E.C. Rules and he has been given adequate opportunity to make representation against the adverse remarks in compliance with the principles of natural justice.

18. The applicant has himself sought amendment of his petition on the rejection of his representation by order dated 16.4.1990 which has been allowed by the Tribunal by order dated 27.5.1994. In the circumstances, the plea taken by the applicant's counsel, based on Section 19(4) of the Administrative Tribunals Act, is without force.

19. In the result, we find no merit in this application. It is accordingly dismissed. There will be no order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

R. Adige

(S.R. Adige)
Member (A)

S.K.