

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1691/2000

New Delhi, this the 24th day of July, 2001

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Gopi Chand
S/O Late Sh. Hira Lal
Asstt. Controller of Stores,
Northern Railway,
Baroda House,
New Delhi

Residential Address:-
5126/4, Harful Singh Building,
Behind Punjab National Bank
Sabzi Mandi, Delhi.

...Applicant

(By Advocate: Shri G.D.Bhandari)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Controller of Stores,
Northern Railway,
Baroda House,
New Delhi.
3. Sh. S.P. Markandey,
Divl. Controller of Stores
Northern Railway/DRM's Office,
Ambala Cantt.

..Respondents

(By Advocate: Shri R.P.Agarwal)

O R D E R

By Hon'ble Shri Govindan S. Tampi, M (A):-

Challenge in this OA is directed against the supersession of the applicant by a junior individual by order dated 6.7.2000, in the Senior scale as Assistant Controller of Stores and posting as a Deputy Controller of Stores.

2. Heard Shri G.D.Bhandari, learned counsel for the applicant and Shri R.P.Agarwal, learned counsel for the respondents.

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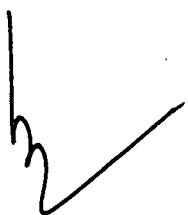
(2)

3. The applicant, who belongs to a Scheduled Caste category, joined North-Eastern Railway, Gorakhpur on 5.3.1960 as a Clerk and after passing through various stages, he came to hold the post of Assistant Controller of Stores, a Group 'B' post in the Northern Railway Headquarters Office, New Delhi (He has retired on superannuation w.e.f. 31.5.2001). The applicant states that he had an extremely industrious and totally unblemished record of service over a long time and he had, by his dint of perseverance and fine performance, reached a Group 'B' post and he was discharging his functions to the satisfaction of all persons concerned. However, on 12.8.1996, certain adverse remarks recorded in his ACR for the period of 1995-96 were communicated to him. These were generic, ambiguous and unspecified remarks. He had represented against the same and had met the Secretary, to the General Manager, Northern Railway on 10.9.1996 and handed over the representation. However, no response thereto has been received. Thereafter, on 2.6.1999, he was communicated adverse remarks in the ACR for the period ending 31.3.1999 which again were unreasonable, unspecific and, therefore, improper. His representation dated 7.10.1999 against the same was rejected on 24.11.1999. Thereafter, for the year 1999-2000, when he was filling up the ACR proforma, he had highlighted his exceptional performance for the year. Yet an adverse entry was recorded in his ACR for that year as well. The applicant's representation dated 7.8.2000 against the same had not been decided upon. All these have accrued in spite of his exceptional and fine performance and totally on account of bias against him. The applicant says that

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in spite of the fact that he was one of the senior-most in the organisation, these entries have been deliberately made in his report with the specific motive to down-grade his performance as he comes from a Scheduled Caste category and help others. With the result, in spite of his being placed at Sl. No.13 of the line for promotion, he was denied the promotion and a candidate from the general category placed at Sl.No.16 - Shri S.P. Markandey has been promoted. According to the applicant, these actions smack of arbitrariness as repeatedly for the periods ending 31.3.1996, 31.3.1999 and 31.3.2000, he has been adversely remarked upon only to deny him the benefit of promotion with a result his legitimate advancement in his career which was due. The applicant has relied upon a number of decisions in the cases of (1) Vaikunta Nath Dass Vs. Chief District Medical Officer, AIR 1992 SC 1020, (2) Bridge Mohan Singh Chopra Vs. State of Punjab, AIR 1987 SC 948, (3) Vaidya Nath Mahapatra Vs. State of Orissa AIR 1989 SC 2218, (4) P.K. Shastri Vs. State of M.P., 1999 (7) SCC 329 and (5) State of U.P. Vs. Yamuna Shankar Mishra, 1997 (4) SCC 7. All these points were vehemently stressed by Shri G.D.Bhandari, learned counsel during the oral submissions, who submitted that he has been dealt with in a harsh and improper manner.

4. Strongly rebutting the above pleas, Shri Aggarwal, learned counsel states that three adverse entries have been recorded in the ACR of the applicant for the periods 31.3.1996, 31.3.1999 and 31.3.2001. While no representation against these remarks made for the period 31.3.1996 has been received, while the representations



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made against the remarks made on 31.3.1999 and 31.3.2000 have been disposed, after due consideration. With adverse entries in three out of five years, the applicant could not have expected to be promoted even on ad hoc basis. Respondents have acted in a proper manner and have never been inimical towards the applicant. His case for promotion was indeed considered by the DPC, which did not find him fit for the same in view of his none-too-satisfactory performance. Shri Aggarwal points out that the DPC which perused the ACRs of 1995-96 and 1998-99, which had adverse entries, duly confirmed. The ACR for the period ending 20.3.2000 was not considered then. It was, however, perused by the subsequent DPC of 17.10.2000. Shri Aggarwal also placed before us the records of the DPC as well as the ACRs of the individual concerned and prayed that as it would be evident that the respondents' action has been proper and correct throughout. The applicant has no merits and deserved to be dismissed.

~5. We have carefully considered the matter and perused the papers brought on record. To sum up the allegations of the applicant are that the respondents have *themselves to scuttle* taken it upon ^{him} his chances of advancement in career, as they cannot tolerate an individual belonging to scheduled caste category making it good in life. The basic intention behind recording adverse entries in his ACRs for the years ending 1995-96, 1998-99 and 1999-2000 was only to ensure that despite his hard work and creditable performance he does not come up in his career. He states that remarks entered in his ACRs are of generic

and unspecified nature and vague and against all canons for writing the reports. We have seen the letters No.E-106/5116 dated 12.8.1996, No.E-106/5116 dated 2.6.1999 and No.E-106/5116 dated 30.6.2000 under which the adverse entries in the ACRs for the years 1995-96, 1998-99 and 1999-2000 have been communicated to him. We do not find from the perusal thereof that the remarks therein are too generic or vague or unspecific or ill-advise as alleged. In the report for the year 1995-96, it has been recorded that his "level of knowledge of functions, related instructions and their application is average only; quality of performance with regard to standard of work and programme objectives is average only; working is average, without willingness to understand and improve despite several verbal instructions". The report for 1998-99 has this remark "He needs further grooming in purchases and contract management". Again "this officer has no motivation and his conduct does not in spite any confidence in his subordinates. Lacks interest in his job" are the remarks in the ACR for 1999-2000. Not by any stretch of imagination can these be/considered as vague or unspecific. They are specific and relatable to his work and, therefore, the applicant cannot get any help from the various decisions cited by his, which are not applicable in this case.

6. With regard to the representations or appeals made against the adverse entry for the period ending 31.3.1996, there is no record that any such representation has been received by the respondents, in spite of the applicant's protestations and averments that he had

addressed the Secretary to the General Manager and the Controller of Stores in that regard. Therefore, for all intents and purpose, we have to hold that the adverse remarks remain unexpunged. His representation against the adverse entry for 1998-99 has been rejected on 24.11.1999. Applicant has indicated that his representation against the remarks for 1999-2000, has not been answered. The same is fact has been rejected on 29.9.2000, and the applicant is also aware of the fact as he has filed an appeal against it on 12.1.2001. Thus, evidently the adverse entries in the ACRs for 1995-96, 1998-99 and 1999-2000 are sustained.

7. From the perusal of the records produced before us, we observe that the DPC held on 6.1.2000 had considered the case of the applicant among others, but did not find him fit on the basis of his ACRs which were not up to the mark. This DPC did not consider the applicant's ACR for the year 1999-2000, as the said report was written only on a date subsequent to DPC's meeting. Still it had 5 ACRs in which 2 had adverse entries. The subsequent DPC held on 17.10.2000, had considered the report for the period ending 31.3.2000. On the ground that representation against it was disposed of only just before DPC, the same was discarded by us from reckoning. Even then we find that the DPC could not have come to a decision other than what they have done in January in view of two adverse entries, still in the reports from 31.3.1996 to 31.3.1999. Primarily, in view of the instructions of the Railway Board of 1.3.1990 which states that DPC should categorise officers as 'fit' or 'unfit' for ad

hoc promotion on the basis of overall assessment of the reports and that 'bench-mark', for such fitness should not be less than 'Good'. DPC, had correctly assigned him the remark 'Not yet fit'. This was the only decision possible. And DPC's findings deserve to be endorsed. That being the case the allegations made by the applicant about the anti-scheduled caste bias of the respondents is something which deserves outright rejection.

8. The applicant, as observed above, has not at all made out any case for our interference. The application, therefore, fails and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)

Member (J)

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G. S. Tampi
(Govindan S. Tampi)

Member (J)