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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 1749/89

New Delhi this the 22nd day of April, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. T. THIRUVENGADAM, MEMBER (A)

S. D. Arya,
Permanent Way Inspector (Spl.),
Northern Railway,
Tilak Bridge,
New Delhi.

... Applicant

By Advocate Ms. Raman Oberoi

Versus

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

2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

... Respondents

By Advocate Shri B. K. Aggarwal

O R D E R (ORAL)

Shri Justice V. S. Malimath -

This case is by Shri S. D. Arya, Permanent Way Inspector (Special), Northern Railway for directing the respondents to consider his case for empanelment in Class II Service (AEN) without taking into consideration the Annual Confidential Reports (ACRs) for the years 1983-84, 1984-85 and 1986-87 and to interpolate his name at the appropriate place in the panel prepared as on 11.1.1989. There is also a prayer for expunging the adverse entries in the ACRs for the said period.

2. The principal grievance of the petitioner is that he suffered adverse entries for the years 1983-84, and 1984-85 as his superior, Shri J. S. Bedi, Asstt. Engineer, was biased against him. The petitioner has made certain allegations to show that there is reason for Shri Bedi to be biased against him for making adverse entries. The adverse entries for all the three years, namely, 1983-84, 1984-85 and 1986-87, it is not disputed, were duly communicated to the petitioner. The petitioner's case is that in respect of adverse entry for the year 1983-84 he made a representation on 2.2.1985, in respect of the entry for the year 1984-85 on 1.4.1986, and in respect of the entry for the year 1985-86 on 19.11.1988. As regards the first two years, the DPC was held some time in December, 1988. Obviously, the DPC would have taken into consideration the ACRs immediately preceding the date of the DPC for a period of five years. Whereas the petitioner asserts that he complained about the adverse entries for the first two years, as aforesaid by making representations, the respondents have stated in their reply that they have not received any such representation. It is necessary to note that the representation made against the entries of 1986-87 has been dealt with and rejected, copy of which order has been produced as Annexure A-9 dated 26.7.1989. If the representation of the later year was examined and rejected, it is difficult to believe that representations in respect of the earlier ACRs were kept pending without being disposed of. The petitioner

has not produced any satisfactory material to establish that the representations said to have been made by him in respect of the first two years were served on the appropriate authorities. If they were served, there seems to be no reason why the same would not have been dealt with in the same manner as the representation in respect of the entries for the year 1985-86. Having regard to the probabilities and the circumstances, we are inclined to believe the statement in the reply that the respondents did not receive the representations of the petitioner in respect of the adverse entries for the years 1983-84 and 1984-85. If there were no representations against the entries of these years, the DPC was justified in taking them into account. Obviously, the entries for those two years do not bring about his any credit to the petitioner's performance. If on the basis of those adverse entries the petitioner was not found fit and suitable for empanelment, it is difficult to hold that the decision of the DPC is arbitrary or illegal. If there is truth in the assertion of the petitioner that he made the representations as he says he did on 2.2.1985 and 1.4.1986 and he did not receive any reply thereto, one would have expected him to challenge this inaction on the part of the authorities in appropriate proceedings. That not having been done for a considerable length of time, further strengthens the inference that no such representations were made as alleged. Hence, taking into consideration of the adverse entries for the years 1983-84 and 1984-85 cannot be faulted.

3. So far as the entries for the year 1986-87 are concerned, a representation was made and the same was duly considered and rejected by the order Annexure A-9 dated 26.7.1989. In view of the law laid down by the Supreme Court in AIR 1991 SC 1216 between Union of India & Ors. vs. G. Nambudiri, rejection of the representation against adverse entries without a reasoned order cannot be faulted. Besides, the adverse entry for the year 1986-87 is only to the effect that the petitioner was not fit and suitable for promotion. This entry, in our opinion, is based on general assessment of the performance of the petitioner and is not connected with any particular conduct of the petitioner. In the decision reported in AIR 1989 SC 72 between Jayanti Kumar Sinha vs. Union of India & Ors., in paragraph 11 it is held that ordinarily when the entries relate to specific instances leading to adverse entries, the communication thereof is sent to the officer concerned with a view to providing an opportunity for improvement of performance. The entries which are mostly based on general assessment of performance are not required to be communicated. In the said decision the Supreme Court has extracted the entries in ACRs for the period 1975 to 1984. Entries like, "I agree. I have no high opinion of his work or as a man. The DRDO derives no benefit from him but our rules are such that we have to live with such people"; "He is an average officer"; "Performance is average and fair"; "I am totally disappointed with the officer. My predecessors have also had the same

feeling. I tried to see whether he could be fit into MTRC Bangalore. Even for this he has to appear for an interview. His performance as far as I can see is mediocre and I accept....'s observation*; "he is in my opinion at the lowest limit of technical performance and managerial performance in DCRL Scientist 'E'", have been characterised as entries not relating to specific instances leading to adverse entries. It is only specific circumstances leading to adverse entries that have to be brought to the notice of the official concerned by communicating the same to him to provide an opportunity for improvement of his performance. The aforesaid entries which are mostly based on general assessment of performance are not required to be communicated. That, in our opinion, is the status of the entry that the petitioner is not fit for promotion. Relying upon the decision of the Supreme Court, it has to be held that the entry for the year 1985-86 being based on general assessment of the performance of the petitioner, there is no good reason for us to interfere in the same. We have already said that that entry was communicated and the representation against the same was considered and rejected.

4. Another argument of the learned counsel for the petitioner is that there is a considerable delay in making or communicating the entries. We have already said that so far as the entries for the years 1983-84 and 1984-85 are concerned, no complaint having been made by the petitioner, we would not be justified in examining the same. So far as the entry for the

year 1986-87 is concerned, we fail to see how we can interfere merely on the ground that that entry was made belatedly. It is necessary to bear in mind that when the DPC undertakes the task of assessing the suitability of the candidates for promotion, it has to take into consideration the candidature of all the eligible persons as on the relevant date. We would not be justified in finding fault with this procedure. We do not appreciate the delay in making the entries, but it is better to ensure that the entries are written though belatedly rather than creating a situation where the candidate's performance has to be assessed without the benefit of the entries for the relevant periods. It is not possible to take the view that the delay was attributable to any bias against the petitioner. During the period 1986-87 it is not the case of the petitioner that the person who wrote the ACR was biased against him. That entry is only to the effect that the petitioner was not fit and suitable for promotion. In our opinion, delay in recording it does not justify us to interfere. The question of giving reasons for coming to such ^{is} conclusion does not arise because the opinion formed on the general assessment of the petitioner's performance.

5. If the entries in the ACRs for the years 1983-84 and 1984-85 do not call for interference or they remain unchallenged, they are, in our opinion, sufficient to justify exclusion of the petitioner's [✓] name from the panel for promotion.

6. For the reasons stated above, this application fails and is dismissed. No costs.

P. J. D. S.

(P. T. Thiruvenkadam)
Member (A)



(V. S. Malimath)
Chairman

/as/