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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

D.A.No.2069/1989

New Delhi, This the 24th Day of May 1994

Hon'ble Mr. Justice V.S. Malimath, Chairman

Hon'ble Mr. P.T. Thiruvengadam, Member(A)

Shri B D Makkar  
S/O Late B.R. Makkar  
working as Executive Engineer (Mechanical)  
Ministry of Surface Transport  
(Roads Wing) New Delhi.

...Applicant

By None

Versus

1. Union of India, through  
Secretary to the Govt of India  
Ministry of Surface Transport  
Transport Bhavan, New Delhi.
2. Director General (Roads Development)  
& Additional Secretary to the Govt of India  
(Roads Wing) Transport Bhavan,  
New Delhi.

...Respondents

By Shri M M Sudan, Advocate

ORDE R(Oral)

Hon'ble Mr. Justice V.S. Malimath, Chairman

1. None appeared for the petitioner. On behalf  
of respondents Shri M M Sudan, Advocate appeared.  
As this is a very old matter, we consider it  
proper to go through the file and dispose of  
the case on merits. The petitioner was an  
Executive Engineer at the relevant point of time  
and he was inflicted with a minor penalty of  
warning by an order RW/AP(EE)34 Vol II dated  
22-7-1986 (Annexure A-4). Further adverse

entries have been made in the ACR for the year  
were

84-85 and 85-86 which ~~be~~ communicated to the  
petitioner and he has also challenged them.

His representation was rejected by a letter  
dated 23 Feb 1987(Annexure A-5). In due course,  
vide office order No.45/88 issued under No.  
32013/4/87/4/87-Admn I dated 16.6.1988(Annexure  
A-24) promotion to the post of Superintending

Engineer was given to one Mr. N Subba Rao who  
is junior to the petitioner. It is then the  
petitioner made a representation on 11-7-1988  
not only questioning the promotion of his  
junior and his own supersession but also  
questioned the penalty awarded to him on  
22-7-86 and the relevant adverse entries  
made in the ACRs for the year 84-85 and 85-86.

The representation of the petitioner dated  
11-7-88 was ultimately rejected by an order  
RW/AP(EE)/34.Vol II dated 3.1.1989 whereupon  
the petitioner filed this DA for proper relief.

2. So far as the challenge to the promotion  
out

is concerned it was pointed by Mr M M Sudan,

the learned counsel for the respondents that

~~empanelment~~ of candidates ~~who~~ within the

zone of consideration was done by a duly

constituted DPC which consisted ~~of~~ a member of the

✓ UPSC. It is therefore submitted that an

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objective consideration was bestowed to the case of the petitioner and he was superseded. But then it is obvious that the petitioner was superseded taking into account the penalty of warning that he has suffered as per order dated 22-7-1986 and the adverse entries made in the ACRs for the years 84-85 and 85-86. If the petitioner can not successfully assail these two orders he would be not in a position to assail the supersession as the DPC would have taken into consideration the adverse entries in the ACRs for the years 84-85 and 85-86 and also possibly the warning suffered by the petitioner. Hence we consider it necessary to examine in the validity of penalty of warning and adverse entries made in the ACRs.

3. So far as the warning issued by Annexure A-4 is concerned, dated 22-7-86/it is necessary to point out that the petitioner was called upon to offer an apology for having made baseless allegations against a senior officer. The petitioner was cautioned that if he does not offer his apology he is likely to be punished. The petitioner did not offer his apology and under the circumstances an order Annexure A-4 dated 22-7-86 was passed imposing the penalty of warning and the present petition has been filed after three years thereafter. If he was aggrieved he should have

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made the complaint within a reasonable time and it is now undoubtedly barred by time. The conduct of the petitioner in not questioning the order of warning for nearly three years would justify the inference that he accepted the same. Similar is the position with regard to the rejection of the representation of the petitioner made against the adverse entries in the ACRs which was rejected on 22-7-87. Thus the application is barred by limitation.

4. The real grievance of the petitioner is that his immediate superior Shri J. C. Shandari Supdt Engineer(Mech) was biased against him and this has resulted in imposition of penalty of warning as also the adverse entries in the ACR 85-86. The complaint made by the petitioner against the superior officer was duly enquired by an independent officer as is clear from the statement in the reply. It is stated that an enquiry was made by the Deputy Secretary(Roads) who after visiting the place and making necessary enquiry found that the charges were unfounded and baseless and were made to malign the superior officer. We see no ground for accepting the petitioner's contention. It is, therefore, not possible to accept the assertion of the petitioner that he has suffered the warning

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of penalty and adverse entries in the ACRs because of the biased attitude of the Supdt Engineer Shri J.C. Bhandari. Looked at from any angle it is not possible to grant any relief to the petitioner and to interfere with the penalty of warning and rejection of representation against adverse entries or his supersession in the matter of promotion to the cadre of Supdt Engineer. Hence we hold that the petitioner has not made out any case. Accordingly the DA is dismissed as devoid of merit. No costs.

P. J. D  
(P.T. THIRUVENGADAM)  
Member (A)

*Thelwell*  
(V.S. MALIMATH)  
Chairman

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