

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 751/88
T.A. No.

198

DATE OF DECISION 31.10.80

Shri B.L.Bharti Petitioner

Shri B.S.Mainee Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri Inderjit Sharma, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

Done
(J.P. Sharma)
Member (Judl.)

Done
(P.C. Jain)
Member (Admn.)

Central Administrative Tribunal
Principal Bench: New Delhi.

Regn. No. OA-751/83

Date of Decision: 31.10.80

Shri B.L.Bharti

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

For the applicant

... Shri B.S.Mainee,
Advocate.

For the respondents

... Shri Inderjit Sharma,
Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member (Administrative)
Hon'ble Shri J.P. Sharma, Member (Judicial).

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Shri J.P. Sharma)

The applicant, Senior Traction Power Controller, Northern Railway, Tundla filed this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order dated 11.2.1983 promoting Shri K.C.Dass, Junior to him, passed by the General Manager (P) Northern Railway, New Delhi (Annexure A-1).

2. The applicant claimed the reliefs for quashing the impugned order dated 11.2.1983, directing the respondents to release the promotion of the applicant from the date ~~when~~ his junior had been promoted; further, directing the respondents to give promotion to the applicant ignoring the adverse remarks in the C.R. of the applicant for the year 1985-86 and that the report given by Shri Narottam Das ~~xxxxxxxxxxxxxx~~ for the year 1986-87 be ordered to be honoured by the respondents.

3. The case of the applicant as given out in the application is that he was promoted to the post of Senior Traction Foreman w.e.f. 1.1.1984. He was posted as Senior Traction power Controller with ^{effect from} 29.4.85 under Divisional Electrical Engineer (D.E.E.), Shri Narottam Das, who was posted at Tundla from September, 1983 to August, 1986. The said Shri Narottam Das was the reporting officer for

the annual C.R. for the year 1985-86. The Senior Divisional Electrical Engineer(Sr.D.E.E.) was prejudiced against the applicant as well as ~~xxxxxxxx~~ the D.E.E.

In spite of the good entry given by Shri Narottam Das, Senior D.E.E. for the relevant year gave ~~some~~ adverse remarks which were communicated to the applicant in February, 1987 (Annexure A-3). The said remarks are as follows:

"31(a) Fitness for promotion - NOT FIT

31(b) Has the officer any special characteristics and/or any outstanding merits or abilities which could justify his advancement and special selection for higher appointment out of turn? If so, mention these characteristics briefly and indicate why you consider him fit for out of turn promotion.

I HAVE SEEN HIS WORKING AND INSPECTED INSTALLATIONS UNDER HIS JURISDICTIONS WHICH WERE SHABBY, EVEN AFTER FAILURE THE FAILED SAMPLES WERE NOT STORED. VERBAL WARNINGS WERE GIVEN TO HIM."

The applicant made a representation against the said remarks on 31.12.1987 (Annexure A-4). Before the said representation could be decided by the D.R.M., Northern Railway, the applicant came to this Tribunal on 28.4.88, and filed the instant application. The competent authority dismissed the representation which was communicated to the applicant vide letter dated 25.4.88 (Annexure -X), and received by him on 5.5.1988.

4. For the year 1986-87, the applicant filled up form

Part I of the C.R. and the same was sent to Shri Narottam Das D.E.E., though he was transferred by the time as D.E. from Senior Tundla to Kanpur. When the C.R. form reached the D.M.E., it was found out that Shri Narottam Das was not competent to write the report of the applicant as he had not watched at least and supervised the work of the applicant for three months due to his transfer to Kanpur. In view of this, the applicant was asked to send another filled up form Part I

of C.R. which he did not send by taking the plea that

Part I form which he had sent earlier be returned to him and so there was no entry for the year 1986-87. As a consequence of the above facts ~~xxxxxxxxxxxxxxxxxxxxxx~~ the case of the applicant for promotion had

gone by default and Shri K.C.Dass was promoted to the grade of Rs.2375-3500/- by the impugned order (Annexure A-1).

Aggrieved by this, the applicant has come before this Tribunal for the reliefs aforesaid.

5. The respondents filed the reply and stated that Senior D.E.E. did not harbour any personal grudge against the applicant or Shri Narottam Das, D.E.E. Since the A.C.R. entries ^{in respect} of the applicant were not on record and the A.C.Rs. for the last three years were to be seen for promotion, the case of the applicant could not be considered because he had an adverse entry for the year 1985-86 and 1986-87, the applicant did not fill up Part I of the C.R. Form. The work of the applicant has all along been unsatisfactory and he was also punished by withholding of one increment in 1983. After this period of punishment ended, the applicant was promoted as Senior Traction Foreman with effect from 9.3.84 and not from 1.1.1984 as stated by the applicant. The adverse remarks for the year 1985-86 were communicated to the applicant in February, 1987. The applicant did not represent within 45 days and waited for about 10 months when he represented against the adverse remarks to D.R.M. on 31.12.1987. The competent authority rejected the representation on 20.4.88. Since the applicant has come before this Tribunal before the decision of the representation, so the present application is barred by Section 20 of the Administrative Tribunals Act, 1985. The applicant himself defaulted in not filling up of Part I of the C.R. form when he was asked by the Senior D.E.E. as the earlier C.R. form filled up was wrongly sent to Shri Narottam Das, D.E.E. who did not watch the work of the applicant for three months and could not give any report about his work, having been transferred to Kanpur from Tundla. Thus, the applicant did not come within the zone of promotion and Shri K.C.Dass was promoted to the grade of Rs.2375-3500 as the promotion was subject to clear CRs for the preceding three years.

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5. We have heard the learned counsel for the parties at length and have gone through the records of the case. The regarding non-compliance of Section 20 of the A.T. Act first objection of the respondents has no force as the applicant has come in time after making. The applicant has sent a reminder on 20.3.88, which is also mentioned in the reply dated 20.4.88, and office of the D.R.M. did not communicate the same to applicant within time. The applicant has therefore, filed this application within time. In any case, Section 20 does not come in the way, because by the time the application was filed and came before the Tribunal, the representation of the applicant stood disposed of by rejection.

6. The learned counsel for the applicant argued that the adverse remarks were communicated after much delay and in this connection reliance has been placed on the instructions dated 15.3.85 (N.R.) Sl. No. 869. Though, according to the said instruction, the C.R. should be written within one month of the close of the year under review and the reviewing authority ordinarily reviews it within one month, after which the accepting-authority shall counter-sign it with modification if required within the next one month. However, these are directory in nature and some times the delay may be beyond control. In any case no malafide has been alleged, nor there was any reason to delay the communication of the remarks to the applicant, because these instructions themselves

~~xxxxxx~~ provide that if there is any delay on the part of the Reporting Officer in sending the remarks, it should contain reasons for the delay. In the present case the Reviewing authority has commented adversely on the performance of the applicant which is .. quoted above. The applicant was within his right to make a representation within 45 days but the same had not been done. In spite of this fact, the time barred representation of the applicant was considered on merits and was disposed of. This cannot be said that of the adverse remarks mere delay in communication will wash out the remarks.

7. The learned counsel for the applicant further argued that the applicant had taken a number of grounds in the (Appeal representation (Annexure-4) but these have not been properly considered and no speaking order ~~xxx~~ passed. In fact, the applicant only took the ground that the Reviewing Authority has commented adversely on the work which and did concerned another person / not pertain to him. In such circumstances, the competent authority should have considered the representation and ~~xxxxxx~~ given reasons for accepting or rejecting the same. Thus, the decision by the competent authority on the representation of the applicant/ do suffer from the disposed of by error as it is not/a speaking reasoned order.

8. The learned counsel for the applicant further argued that the reviewing authority ^{was not} to give any remark regarding the fitness for promotion. In this connection, the learned counsel has placed reliance on the Instructions R.B.S. No.E(N.G.)1-76 N.R. Sl.No.8940 wherein it was decided by the Railway Board that the column relating to fitness for promotion may be deleted in the form of C.R. for Group 'C' staff. The competent authority also did not take this fact ^{representation} into account while deciding the ^{representation} of the applicant.

9. The learned counsel for ~~xxx~~ applicant further argued that ~~all~~ ^{both} the remarks favourable and unfavourable ~~applicant~~ were not ~~communicated to the~~. However, in the present case ~~only~~ the adverse remarks of the reviewing authority were ~~conveyed~~ to the applicant. In fact, a correction has been made in the communication dated 14.2.1987 by another letter dated 20.2.1987 in which the words 'special observation of the reviewing authority' were added in Column 31-B.

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only adverse remarks is not according to the instructions ~~Railway~~ ^{as above} by the Board. The non-communication of the remarks ~~also~~ ^{also} may ~~got~~ prejudice the filing of a proper representation by the applicant and the arguments of the learned counsel for the applicant has ~~some~~ ^{got} force.

10. Regarding the remarks for the year 1986-87, the applicant had requested that he should be given the extract of Part I of the C.R. Form ^{submitted earlier} so that he may submit ~~the~~ ^{the} second time C.R. Form after filling part I and the respondents should not have ~~any~~ ^{earlier submitted} objection to it. If the Reporting Officer had given any remark on ~~xxx xxxx~~ Part II of the C.R. Form, that part ~~could~~ not have been supplied to the applicant. As such, it cannot be said that the applicant did not cooperate in filling up the C.R. Forms when required by the respondents.

11. The applicant as well as respondents could not adduce any such document to show as ~~to~~ when the D.P.C was held to consider the case of promotion of Shri K.C.Dass. The impugned order does not show when Shri K.C.Dass was promoted. Further, Shri K.C.Dass has not been made a party to the case. Therefore, the applicant cannot get Shri K.C.Dass condemned in his absence. One has to be heard before any order is passed against that person.

12. The case of the respondents is that there was no prejudice or any malafide intention of the reviewing or competent authority against the applicant. However, as discussed above, the competent authority did not pass a speaking order on the representation ^{of the applicant} dated 31.12.1987 against the ACR of 1985-86. By the speaking order, it is meant that the grounds taken in the representation ~~should either~~ be ^{only after due consideration} accepted or rejected ~~and a cryptic order by which the representation was rejected does not show a proper application of mind.~~ ~~xxx xxxx~~

13. The right to promotion of the applicant can accrue when he is considered by the D.P.C. on the ~~/~~ material before the D.P.C. The CR of the applicant for the year 1985-86 and

1986-87 were not available.

14. In view of this unless those entries of the ACRs of the previous years, 1985-86 and 1986-87 are available, the case of the applicant for promotion could not be considered.

15. In view of the above discussion, the application is disposed of in the manner, that the applicant shall be furnished with whole of the entries and the remarks for the year 1985-86 including favourable part of the same, and the applicant may prefer a supplementary representation, if so advised. The order of the competent authority dated 20.4.88 communicated to the applicant by letter dated 25.4.88 (Annexure-10) is quashed and the competent authority shall decide afresh representation dated 31.12.1987 and any other supplementary representation, if any, made by the applicant, on the furnishing of the whole of the entries of CR as stated above. The competent authority shall dispose of the representation within three months from the date of receipt of this order. It is further directed that the applicant shall submit Part I of the C.R. Form for the year 1986-87 and the respondents shall give the extract of the copy of the earlier CR Part I Form given by the applicant for getting report from the Reporting Officer, Shri Narottam Das. Since, Shri Narottam Das, D.E.E., stood transferred from Tundla so the prayer of the applicant that the respondents should honour the report of Shri Narottam Das, D.E.E. is disallowed. But, instead, the report of the applicant shall be taken from the other Reporting Officer who has seen the work of the applicant in the year 1986-87 for more than three months and the annual remarks for the year 1986-87 shall be got completed within a period of three months from the date of receipt of a copy of this order. After the disposal of the representation of the applicant as said above and remarks for the year 1986-87 are completed, then a review DPC will be held to consider the

case of promotion of the applicant afresh within a further period of three months.

16. In the circumstances of the case, we leave the parties to bear their own costs.

Somnath
(J.P. Sharma) 31.10.90
Member (J)

Om
(P.C. Jain)
Member (A)