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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1145/1988

Date of Decision : 21.10.91

Lall Chand ... APPLICANT

Vs.

Union of India & Ors. ... Respondents

Shri G. D. ^{Bhargava} Gupta, counsel for the applicant

Shri P. H. Ramchandani, counsel for the respondents

CORAM : HON'BLE MR. JUSTICE RAM PAL SINGH, V.C. (J)

HON'BLE MR. I. P. GUPTA, MEMBER (A)

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J U D G M E N T

(Shri I. P. Gupta, Member) :

This is an application under section 19 of the Administrative Tribunals Act, 1985. The applicant holds a civil post in the Indian Railways as a Deputy Chief Mechanical Engineer. He joined the Indian Railways on 16.11.1966 after going through a competitive examination held by the U.P.S.C.

2. The applicant has alleged that he has received several awards and recommendation certificates year after year. He received such awards and certificates in 1978, 1979-80 and 1981-82.

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3. The reporting authority of the applicant passed some adverse remarks in the ACR of the applicant for the year ending 31.3.1984. These adverse remarks were, however, expunged by the appellate authority on representation.

4. The applicant received another communication of adverse remarks in the C.R. for the year ending 31.3.1986, as reproduced below :

"A quiet officer who does not have any initiative. As he had not worked in divisional set up earlier, being a workshop man through and through, his interaction with other depts. and his own branch was not of the required order. He also lacks a sense of responsibility".

The aforesaid adverse entries for the year ending 31.3.1986 were communicated to him on 28.3.1987. The applicant represented on the adverse entries on 8.4.1987 and by communication dated 12.12.1988 his representation was rejected by the Railway Board. The General Manager, RCF Complex, Railway Colony, Jalandhar was asked by the Railway Board to inform the applicant accordingly. The letter dated 12.12.1988 rejecting the representation of the applicant contained the following observations :-

- "a) Sh. Lal Chand's contention that he was not conveyed the shortcomings in his working has been found to be not based on facts as the concerned Reporting Officer has stated that he had been advised of his failures orally by him as well by as the ADRM.
- b) In regard to Sh. Lal Chand's claim that performance improved during his tenure, it has been found that no special credit could be given to him in this regard as results achieved were because of the continued guidelines of the ADRM, who was his predecessor and the excellent support from the AMR, who pulled up the work.
- c) As regards the mention about lack of interaction with other departments, it has been found that these remarks of the Reporting Officer were based on the day to day working and feedback received by him in this regard."

5. The applicant has sought for the following reliefs:-

- i) To set aside and quash respondents' letter dated 12/18.3.1987 communicating the adverse

remarks, as it is bad in law and arbitrary.

- ii) To consider the applicant for promotion in Senior Administrative Grade from retrospective date, i.e., the date his first junior was promoted and interpolate the name of the applicant at the appropriate place in the promotion letter dated 19.1.1988 (Annexure A-1).

6. The learned counsel for the applicant contended that:-

- i) The adverse remarks for the year ending 31.3.1986 were communicated beyond the period scheduled for communicating adverse remarks as the communication was issued after 12 months. A period of one month has been fixed for the purpose vide Railway Board's instructions dated 10.3.1987 (Annexure A-17).
- ii) The respondents have not furnished any specific instances or material in support of adverse remarks.
- iii) No warning or displeasure note was ever received by the applicant before the receipt of the communication of adverse remarks in the ACE.
- iv) The disposal of his representation also took nearly a year and a half. Thereafter his representation was rejected.
- v) Due to delayed communication of adverse remarks and disposal of his representation he was affected adversely in matters of promotion when his juniors have been promoted.

7. The learned counsel for the respondents brought out that :-

- i) The delay in communicating the adverse remarks was due to the fact that the applicant had meanwhile been transferred from Central Railway.

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- ii) The reporting officer had advised the applicant of his defficiency in his work orally during the course of the year.
 - iii) No mandatory provisions of rules have been denied.
 - iv) The representation of the applicant on the adverse remarks was not received in the Central Railway and the applicant himself handed over a copy of the same to the Chief Mechanical Engineer, Central Railway in December, 1987. Action thereon was initiated by the Central Railway. However, as the reporting officer had meanwhile been transferred to Eastern Railway, a reference had to be made to him seeking his remarks. This took some time. Further, along with his representation the applicant had appended statistical data claiming that his performance during the year had been creditable. The verification thereon also took some more time. His representation was finally rejected on 12.12.1988.
 - v) The applicant was considered for promotion in January, 1988 and August, 1988 but he was not selected for promotion. In terms of the Railway Board's letter dated 6.3.1986 the promotion from Junior Administrative Grade to Senior Administrative Grade is made on the basis of selection by a duly constituted DPC and the applicant having been considered but not selected, cannot claim promotion to such post.
 - vi) The ACRs of the applicant even for 1986-87 and 1987-88 as shown to us though not adverse were not too bright.

8. Let the issues be analysed in the light of the above facts. It is clear that the adverse remarks were communicated much after the period scheduled for communication of adverse remarks in the Railway Board's letter dated 10.3.1987 (Annexure A-17). It has also been mentioned in that letter that 'no decision should be taken regarding promotion of such staff till adverse remarks have been conveyed to him, his representation, if any, received within time limit laid down for him, and considered by the accepting authority and during this time a vacancy should be kept reserved for him.' Further according to Indian Railway Establishment Code, as quoted at p. 183 (Annexure A-18), 'A gazetted Railway servant shall not ordinarily be given an unfavourable confidential report before an opportunity has been taken preferably at a personal interview or, if that is not practicable, by means of a personal letter pointing out to him the direction in ^{which} his work has been unsatisfactory or faults of character or temperament which require to be remedied.'

9. In Union of India & Ors. vs. E. G. Namboodiri (JT 1991 (2) SC 285) it was held that in the absence of any statutory or administrative requirement, order rejecting the representation on adverse entries is not rendered illegal for absence of reasons or non-communication of the same to the person concerned. It was also observed therein that the superior authority was not obliged to write detailed judgment or order giving the details of warnings or materials on which he formed opinion.

10. In the light of the above view of the matter, though the order communicating the adverse remarks or rejecting the representation of the applicant cannot be treated as bad in law, yet we do observe that it

would have been appropriate if the applicant had been given an opportunity of a personal interview by his superior authorities before finally rejecting his representation, more so, when Rules 24 of the Indian Railway Establishment Code mentions that a gazetted Railway servant shall not ordinarily be given an unfavourable confidential report before an opportunity has been taken preferably at a personal interview or if that is not practicable, by means of a personal letter pointing out to him the direction in which his work has been unsatisfactory and furthermore^{when} the applicant has contended that no warning or displeasure^e was ever conveyed to him.

11. As regards promotion of the applicant to Senior Administrative Grade, since the post is^a selection post as brought out in the letter of 6.3.1986 (Annexure A-19), the applicant has only a claim to be considered and he cannot ~~has~~ demand his selection which is done on the basis of over-all rating in the ACRs of successive years. He was so considered twice in January, 1988 and August, 1988. He was, however, not selected. However, the final orders on his representation against adverse remarks were passed only on 12.12.1988. Therefore, it is clear that when he was considered for promotion, his representation had remained undisposed of. In accordance with Railway Board's instructions dated 10.3.1987 (Annexure A-17) a vacancy should have been kept reserved for him until the final decision on his representation. This was not done.

12. In the conspectus of the above view of the matter in this particular case, we direct as follows :-

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- i) The applicant ^{shall} ~~may~~ be given a personal hearing by the Secretary, Railway Board within a period of three months and thereafter consider whether any modification or expungement of the adverse remarks is called for.
- ii) Thereafter within a period of three months a review DFC should re-assess the case of the applicant for inclusion or otherwise of his name in the selection list for the higher post consequent upon any modification in his ACR for the year ending 31.3.1986.

13. With the above directions, the case is disposed of. There is no order as to costs.

I. P. Gupta
(I. P. Gupta)
Member (A)

Ram Pal Singh 21.10.81
(Ram Pal Singh)
Vice-Chairman (J)