

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 135 1986
XXXXXX

DATE OF DECISION 29.5.1986

SHRI M.RAMJI

Petitioner

SHRI K.K.RAI

Advocate for the Petitioner(s)

Versus

UNION OF INDIA

Respondent

SHRI P.H.RAMCHANDANI

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P.BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

JUDGEMENT

The petitioner had moved the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying that the order of the Appointments Committee of the Cabinet refusing to expunge the adverse remarks in the three Confidential Reports be set aside

and the Government of India be directed to promote the applicant to the post of Financial Commissioner, Railways or an equivalent post of the rank of Secretary to the Government of India.

2. The brief facts of the case which are not in dispute are as follows. The petitioner belongs to the Indian Railway Accounts Service and was appointed to the post of Adviser (Finance) in the Ministry of Railways in July/August 1981. His immediate superior was Shri A.V.Poulose holding the post of Financial Commissioner, Railways in the rank of Secretary to the Government of India. On Shri Poulose's retirement in April 1984 the Govt. of India appointed Shri C.Venkataraman, an Indian Audit and Accounts Service officer as Financial Adviser. On this the petitioner made a number of representations when for the first time in October 1984 he was informed about some adverse remarks made against him in 1981-82, 1982-83 and 1983-84. The petitioner represented against these remarks but while the representations were pending he was transferred from Delhi. The petitioner has challenged the adverse remarks on the grounds of prejudice, delayed communication and on various counts of violation of orders and instructions governing the annual entries. He has argued that the adverse entries which were not communicated to him should not have been taken into account at the time of selection for the post of Financial Commissioner. According to the respondents the post of Financial Commissioner is an ex cadre post and the petitioner does not have any right of either seeking promotion to the post or even being considered for such promotion. The petitioner according to the respondents has been delaying cases and files sent to him and has not been responsive to the suggestions of improvement given to him by his superiors. Since the selection for the post of Financial Commissioner has been made by the

highest executive authority at the level of the Appointments Committee of the Cabinet the question of prejudice does not arise.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The petitioner's main contention is that the three adverse reports for the years 1981-82, 1982-83 and 1983-84 were communicated to him as late as on 13.10.1984 in violation of the instructions of the Government of India dated 20th May, 1972 (Exhibit VIII) according to which the adverse reports should have been communicated within one month of their completion. It has also been contended that if these reports had been communicated to him in time and he had been given an opportunity to represent against them, they would have been expunged and accordingly he could have been considered favourably for appointment as Financial Commissioner in the Railway Board. The three adverse reports which were communicated to him are as follows:-

"1981-82 Cannot be certified fit for further promotion with the present level of performance.

Sd/-Chairman"

"1982-83 Has managed his work fairly well except that he has a tendency to delay cases. This has been brought to his notice several times orally and also in writing. He is making some efforts to speed up work but a lot more improvement is required. He has been orally advised about this. About the tendency to delay cases he has already been advised both orally and in writing. He has started making some effort to speed up. This aspect needs to be watched further.

A very good officer who should correct the tendency to delay disposals so that he can qualify for further promotion. He is more suited for executive jobs than for finance functions because of his over-liberal approach to staff demands."

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"1983-84 Has acquitted himself fairly well but has a tendency to delay cases. When a census of files pending with him was taken in January 1984 there were more than 100 files pending of which several were pending from September, 1982 onwards.

More suited for executive functions than for finance function. He is unable to curb the tendency to delay disposals. "

4. It is admitted that the selection for the post of Financial Commissioner which is at the level of the Secretary to the Government of India was made with the approval of the Appointments Committee of the Cabinet in March, 1984. The adverse reports of 1983-84 which covers the period of one year ending on 31.3.1984 would not have been available for the aforesaid selection. It is admitted by the petitioner that his representations against the adverse remarks were rejected on 24.7.1985 (Exhibit I) which indicates that his various representations against the adverse remarks were considered by the Appointments Committee of the Cabinet and were rejected. His representations thus received consideration at the highest level in the Government.

5. We do not wish to go into the merits of the adverse reports. However, a copy of the note dated 2.7.1982 which the immediate superior (i.e. Financial Commissioner) of the petitioner had recorded, and another note dated 2.1.1984 written by the Secretary of the Railway Board, may be quoted as follows:-

" I have been receiving complaints from the various Directorates in the Board's office and some outside parties as well about the time taken in the disposal of cases. On a couple of earlier occasions I had requested you to speed up the disposal of files.

Yesterday morning I received representations from two public sector undertakings (BHEL AND BEML) about the inordinate delay in settling their cases. Following this, I paid a brief visit to your room when I was shocked to see the large accumulation of files in your room.

When you met me later I mentioned this to you and requested you to clear up the backlog. Your response to this was that the standard of examination at the lower levels and in other Directorates had fallen necessitating further detailed examination by you personally and that a delay of a month or two in the disposal of cases in the Secretariat is not unusual. When I pointed out that the time taken in disposal of files could be reduced considerably if you avoided writing long notes even in cases where you were agreeing with the recommendations put up, you replied that habits and styles cannot be changed.

From your responses, I get the impression that you have not appreciated the seriousness of the situation. While I can understand that some cases do take time, the disposal of every case should not take a month or two. I am compelled to draw your attention to this in writing as the situation has become somewhat intolerable.

Please make sure that the backlog is cleared within the next ten days. If you have any difficulty in clearing any particular case, you may please discuss with me.

Please acknowledge receipt of this note on the duplicate sent herewith.

Sd/- 2.7.1982
F.C, "

In the context of disposal and delays in the various cases, a check of the movement of the files in the Board's Office indicated that the files were pending disposal with you. The enclosed list given the details and dates from which these files are awaiting disposal. As the number of files is high, namely, 106 Nos., and some of these are noticed to be pending disposal from September, 1982, it is requested that special action may be taken to have these files cleared in the next fortnight or so. CRB has specifically desired that a special drive may be initiated with regard to disposal of files in the office and everyone's cooperation has been sought to that end.

Sd/-
Secretary
2.1.1984 "

Adverting to these two notes, the petitioner made the following observations:-

"Instead, he chose to send 2 written notes- one in July, 1982 and a second time in

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January, 1984- urging the applicant to speed up clearance of files. The applicant did not consider it necessary to respond to these notes in writing at that stage as the position had already been explained in sufficient detail in discussions. He, therefore, preferred to reserve his compulsive right to respond only in the eventuality of such remarks finding any mention in the Annual Confidential Reports. "

In his representation to the Chairman, Railway Board dated 25.7.1983 (Exhibit IX), the petitioner had himself admitted that at the end of December, 1983 there were around 190 files pending with him.

6. In the above factual context, we do not see any *prima facie* case to challenge the merits and justification of the adverse remarks. The contention of the petitioner that these remarks were recorded by his immediate superior officer Shri Poulose out of malice and jealousy has not been established before us. Shri Poulose was his immediate superior and there was no question of jealousy and competition between him and the petitioner. If there were differences of opinion between the two, such honest differences of opinion cannot be cited to prove animus at such senior levels. The assessments recorded by the Reporting Officer, Shri Poulose had been put up to the next higher level, i.e. Chairman of the Railway Board during the years in question and the Reviewing Officer had accepted the assessment made by the Reporting Officer. The contention of petitioner that during 1982-83, the assessment of the Reporting Officer was not put up to the Reviewing Officer is explained by the fact that during this period, there were changes in the Office of the Chairman, Railway Board and the new incumbent did not record his comments presumably because he had not seen the work of the petitioner for a minimum period of three months.

7. The learned counsel for the petitioner has argued that with considerable effect that non-communication of the adverse

reports or delayed communication being violative of the administrative instructions of 1972 makes them ab initio void and they should be expunged on this ground alone. We are unable to accept this view as the instructions of the 20th May, 1972 are in the nature of guidelines to be followed and there is nothing to indicate that any departure from these guidelines issued by the Central Department of Personnel, will render the adverse remarks void. These remarks were communicated to the petitioner though belatedly and the petitioner was given an opportunity to represent and his representations were duly considered and rejected. The facts and circumstances of the adverse remarks also do not warrant any intervention to avoid any miscarriage of justice.

8. The other prayer of the petitioner that the Government should be directed to promote the applicant to the post of Financial Commissioner, Railways or an equivalent post of the rank and status of Secretary to the Government of India, does not carry much force. The posts at the level of the Secretary to the Government of India are inherently selection posts for making appointment to which the Government has an absolute sovereign right and power and discretion. In the instant case, the post of Financial Commissioner is not borne on the cadre of the Indian Railway Accounts Service to which the petitioner belongs nor on the cadre of any other service. Since 1949, the following officers held this post:-

1. Shri A. K.Chanda, IAAS
2. Shri P.C.Bhattacharya, IAAS
3. Shri J.Dayal, IDAS
4. Shri S.J.Jagananathan, ICS
5. Shri B.Mukherjee, ICS
6. Shri K.S.Sundararajan, IDAS
7. Shri K.S.Bhandari
8. Shri P.N.Jain
9. Shri A.V.Poulose, IRAS
10. Shri C.Venkataraman, IAAS
11. Shri S.Ramaswamy, IRAS

9. From the above, it is clear that the posts were filled up from time to time from various Services and only on three

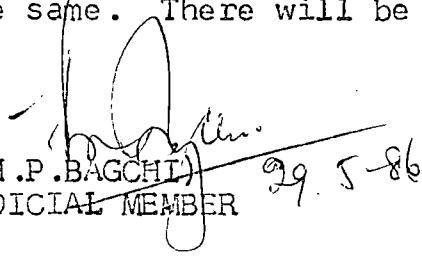
out of eleven occasions officers of the Indian Railway Accounts Service were selected. The learned Senior counsel for the petitioner drew our attention to the recommendations of the report of the Railway Reforms Committee extracts from which were appended to the rejoinder in which it was recommended that IRAS officers should be given preference for appointment as Financial Commissioner when merits are comparable. The recommendations were made in 1985 while the appointment to the post of Financial Commissioner was made in April 1984 hence the guidelines do not help the petitioner in any way. This recommendation by itself, even if it is presumed that the Government has accepted this recommendation, does not give any inherent ~~right~~ ^{title} to the petitioner to claim a right of being considered for appointment to the post. The learned counsel for the respondent indicated that the Government has not yet accepted the recommendations of the Railway Reforms Committee. At senior policy levels for appointments to the posts of the rank of Secretary to the Government of India or equivalent, extraordinary qualities of head and heart, of skill and leadership and management are required and final selection has to be left with the Government by keeping the various administrative considerations in view in public interest. Even if for the sake of argument, we presume that the adverse remarks recorded on the petitioner's character roll had not been there, it cannot be said with any degree of certainty that he would have been selected for the post. With his background of the manner in which the files were disposed of by him, even with other excellences in various facets of his professional and human qualities, any authority could reasonably have reservations about appointing him to a key post of Financial Commissioner to the Railways.

10. In the facts and circumstances of the case,

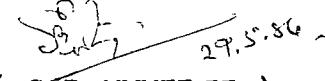
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we do not find any merit in the application and reject
the same. There will be no order as to costs.


(H.P.BAGCHI)
JUDICIAL MEMBER

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(S.P.MUKERJI)
ADMINISTRATIVE MEMBER

29.5.86