

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD. BENCH  
ALLAHABAD

DATED : THE 6th DAY OF NOVEMBER, 1997

CORAM : HON'BLE DR. R.K.SAXENA, J.M.  
HON'BLE MR. D.S.BAWEJA, A.M.

ORIGINAL APPLICATION NO.1104 OF 1996

1. K.K.Misra S/o Late Ram Lagan Misra  
R/o H.No.845-B, North Jatepur  
Gorakhpur, District Gorakhpur.

2. R.N.Pandey S/o Late J.P.Pandey  
R/o Officers Rest House, Suit No.29,  
N.E.Rly., Gorakhpur, Distt. Gorakhpur

..... Applicants

C/A - Shri S.C.Budhwar  
Shri D.K.Singh

Versus

1. Union of India through the Secretary  
Ministry of Railway, New Delhi.

2. General Manager, North Eastern Railway,  
Gorakhpur.

3. Chief Engineer, North Eastern Railway,  
Gorakhpur.

4. B.K.Srivastava, Executive Engineer/Special  
Azamgarh at Mau Jn., N.E.Railway.

5. T.P.Srivastava, Divisional Engineer/Line  
Gonda, N.E.Railway

6. Ram Charan, Executive Engineer/F.C.W.  
Gorakhpur, N.E.Railway.

7. S.C.Sethi, Executive Engineer/Construction  
Gorakhpur, N.E.Railway.

..... Respondents

C/R - Shri V.K.Goel, Adv.

O R D E R

( BY HON'BLE DR.R.K.SAXENA, J.M. )

This is a petition filed jointly by K.K.Misra  
and R. N. Pandey with the prayer that the impugned  
orders Annexures A1 and A(1)(b) about the promotions

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of respondents nos. 4 to 7 made by respondent no.2 alongwith the order passed by the General Manager on their representations Annexure - A1(c), be quashed ; direction to the respondents nos.1 to 3 to promote the applicants on the post of Executive Engineer / Divisional Engineer(Senior Scales)w.e.f.22.08.96 be given ; and the adverse entries recorded in the Annual Confidential Records of the applicants, be also quashed.

2. The facts of the case are that the applicants are presently working as Assistant Engineers-Group-B under the respondents. Both the applicants had qualified Limited Departmental Competitive Examination as against 25% of vacancies, and thereafter they were promoted on 19.05.1989 & 01.06.1989 respectively. It is contended that they had been discharging duties of the post of Assistant Engineer with sincerity, devotion to duty and to the full satisfaction of the Superiors. They had earned certificates of appreciation and even of cash reward but to their utter surprise when the time of promotion on adhoc basis to the post of Executive Engineer / Divisional Engineer(Senior Scale) came, their names did not find place in the panel while their juniors respondents nos.4 to 7 were given promotion.

3. The applicants had represented to the General Manager, who informed that because of the entries given to them in the previous five years, they were not found suitable for promotion by the Departmental Promotion Committee. The representations made by the applicants were rejected by the General Manager. Feeling aggrieved by the impugned promotion of respondent nos.4 to 7 and rejection of their representations , they have filed this O.A. with the reliefs mentioned here-in-before.

4. The respondents nos.1 to 3 have contested the case by filing the counter reply. It is admitted that the applicant K.K.Misra is Senior to B.K.Srivastava, respondent no.4 but below Shri R.B.Chaudhry. It is stated that the suitability even for ad-hoc promotion is assessed on the basis of five years Annual Confidential Reports. In the case of the applicant no.1, his Annual Confidential Reports were not of such a

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mark on the basis of which he could have been promoted in the senior scale. It is averred that the award of appreciation certificates or other rewards by his superior authorities, which were given for specified work, have no bearing while considering a Group-B officer for promotion in the senior-scale. It is furthered that the appreciation letters are not sufficient for granting promotion to higher grade. According to the respondents, the letters of appreciation & rewards are given by the authorities for specific work done by the person concerned whereas Annual Confidential Reports are written on the basis of overall performance of the officer in a particular financial year. It is also pointed out that the certificates of appreciation and rewards have only persuasive value but cannot alter the grading decided by the accepting authority after considering the performance of the officer.

5. The similar averment is made with respect to the applicant no.2. It has been stated that the entries of last five years were such that he was found not entitled for promotion even on adhoc basis. It is pleaded by the respondents that the Departmental Promotion committee found respondents nos.4 to7 suitable for ad-hoc promotion in the senior-scale whereas the applicants were not found suitable and were adjudged by the Departmental Promotion Committee strictly in accordance with the Railway Board's letter dated 25.05.92. It is, therefore, urged that there is no merit in the Original Application.

6. The applicants have filed rejoinder and reiterated the facts which were made in the O.A. & also stated that the entries on the basis of which they were not found suitable for promotion, were never communicated to them; and thus they were not aware of the nature of the entries.

7. We have heard Shri S.C.Budhwar, counsel for the applicants and Shri V.K.Goel, counsel for the respondents. We have also gone through the record. We had desired to go through the Annual Confidential Reports of the applicants of the relevant period and they have been shown to us. We have also perused them.

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8. The questions which cropped up in this case are whether the entries recorded in the Character Rolls of the applicants are adverse in nature; and if so, whether they should be quashed. The second question is whether the applicants should have been considered for promotion as Executive Engineer/Divisional Engineer (Senior-scale). First of all we take up the first question of entries in the Character Rolls because the second question is interlinked with the decision of the former. The applicants have come forward with the plea that they had been working on the post of Assistant Engineers with sincerity and devotion. They further contended that no adverse entry was <sup>1</sup>never communicated to them during last five years which was a period taken into consideration by the Departmental Promotion Committee for assessing the suitability of Assistant Engineers for ad-hoc promotion to the post of Executive Engineer/Divisional Engineer (senior-scale). The respondents have come with the plea that the applicants didn't get such entries as may warrant their promotion to the post of Executive Engineer. The nature of the entries of the last five years, a period which was taken into consideration by the Departmental Promotion Committee for assessing the suitability of Assistant Engineers including the applicants for the next promotion, has not been disclosed in the counter-affidavit. It was this reason that the perusal of the five years record of the applicants was necessitated. The learned counsel for the respondents argued that the entries which were given to the applicants, were not communicated because they were not adverse but at the same time, it is contended that they were not so good as to find the applicants suitable for promotion.

9. Before we deal with this aspect, we would like to refer and assess the remarks which were given to these applicants in different years. The original entries for the years 1991-92 to 1995-96 are before us. In the year 1991-92, Shri K.K. Misra, applicant no. 1 was found fit for promotion in the department by both the reviewing and accepting authorities while he was not found fit for promotion on general post by the reviewing authority but the accepting authority found fit even for general post. It may be mentioned that the columns which were required to be filled-in by the Reporting authority, are lying blank. There is a remark of Sri C.R. Sagar, Engineer that the applicant had been

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under-assessed almost against all the attributes. It was mentioned that he had played commendable role in improving the track. He was reported to be a dedicated officer. He was found an officer of "very good" grade. In the year 1992-93, the Reporting Officer placed the applicant no.1 as "very good" in the grading while Reviewing & Accepting authorities placed him as "good". He was found fit for promotion in the department. The reasons of difference in grading were not given. In the year 1993-94, this applicant K.K.Misra was found "good" in grading by the reporting and reviewing authorities but "average" by the accepting authority. It may be pointed out that the grading of good recorded by the Reporting Officer is over-written. It appears that first he was given a "very good" grading and after erasing "very good" he was simply shown of a "good" grading. The applicant was found fit for promotion by the Reporting and Reviewing authorities but the accepting authority found him not fit. Below the column of grading, there is a note no.3 which requires that if there is a difference of opinion, reasons should be given otherwise grading of Reviewing/Accepting authority shall not be accepted. No doubt, the Accepting Authority graded the applicant no.1 as an average officer and not fit for promotion but no reasons of difference of opinion have been given. In Part VI of this form of Confidential Report, again no reasons are given.

10. In the year 1994-95, the Reporting Authority placed the applicant no.1 in the "excellent" grading & found fit for promotion but the Reviewing & Accepting Authorities found the applicant of "average" grading & unfit for promotion. Interesting feature of this years report is that Sri P.N.Singh had written the remarks as Reporting Officer, and also as Reviewing Officer. As Reporting Officer, he found the applicant no.1 as an excellent officer but as Reviewing Officer he found of average calibre. It is a self-contradictory assessment made by Sri P.N.Singh as Reporting and Reviewing officer. We have minutely observed & found that Sri P.N.Singh had written the remarks in blue ink and had also put his signatures in blue ink where as the Accepting Authority Shri M.M.Goel had used black ink and the grading made by the reviewing & accepting authorities was in black ink. What appears,





therefore, is that actually this accepting Authority had given the grading of the applicant no.1 in the capacity of reviewing & accepting authorities. Again the reasons for difference of opinion below the column of grading, are not given. In Part VI of the form, only this much is written that his performance as ATEN/S was quite unsatisfactory. No reasons are given. In the year 1995-96, all the three authorities gave good grading to the applicant no.1 & reporting & reviewing authorities found him fit for departmental promotion but the accepting authority found him unfit. The reasons have not been given below the column of grading. In Part VI, it was written by the accepting authority that he (the applicant) had limited potential for further promotion.

11. The remarks which have been mentioned above, would show that reasons were avoided to be given for down-grading the applicant no.1 by the Accepting Authority. The contention of the learned counsel for the applicants is that it has been done deliberately so as to debar the applicant from further promotions. He has, however, drawn our attention towards the certificates or rewards which were given to the applicant no.1 in different years. On the report dtd.15.04.1994 of the Deputy Chief Engineer for his excellent & hard work, Sri K.K.Misra was recommended for a cash award of Rs.1,000/-. The said report was accepted by the Chief Engineer & by Divisional Manager & ultimately the reward of Rs.1,000/- was given. On 28.05.1995 Sri P.N.Singh, Chief General Engineer had written a letter of appreciation to the applicant no.1 disclosing that he was most sincere & devoted officer & left no stone unturned to complete the task entrusted to him. This very P.N.Singh had found the applicant no.1 as an officer of excellent grading in the year 1994 - 95 but looking to the report which he had also given as Reviewing authority & which does not appear to be in his hand-writing, the applicant was simply found an average officer. Definitely, the entry of "average" can not be given by Sri P.N.Singh, who had given appreciation letter Annexure-10 to the applicant no.1 and had also graded him as excellent in the capacity of Reporting officer. Thus the down grading has been done by the accepting authority without giving any reasons therefor. In the year 1996, the applicant was again given a letter Annexure-All with the remark that he

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was very sincere & hard working officer, always ready to shoulder any responsibility entrusted to him. It was further mentioned that he had been always enthusiastic in his working and took initiative & led his under-staff to keep the work done to the full satisfaction of the superiors. In view of these letters of appreciation & reward being given to the applicant no 1 in the same years, he was also given entries of downgrading him & disclosing him to be unfit for promotion. This aspect shall be considered after we also examine the entries given to the applicant no.2.

12. In the case of Shri R.N.Pandey, applicant no.2 there was no remark from the reporting authority in the year 1991-92 but reviewing & accepting authority placed him as good officer and fit for promotion. This applicant was given a certificate on 27.2.92 Annexure A12 with the remark that the services of this applicant had been excellent to the organisation. His knowledge, both on design & executive, was commendable. Thus we find that the certificate speaks of his excellence but his grading is only good in the said year. In the year 1992-93 all the three authorities placed him in the good grading and found fit for promotion. Again in the year 1993-94, three authorities found him good and fit for promotion. In the year 1994-95, the reporting & reviewing authorities placed the applicant no.2 in the good grading whereas the accepting authority mentioned him as an average officer. The first two authorities found him fit for promotion but accepting authority found not fit. No reasons have been given by the accepting authority. In the year ending 31.3.96, there is no entry of reporting authority but reviewing authority had placed him in good grading and found fit for promotion. The accepting authority appears to have given the same kind of entry previously but after using whitener, he was placed on average grading and disclosed unfit for promotion. It is interesting to note that on 27.10.95 this applicant no.2 was given a letter of appreciation Annexure-A13 to the effect that he was hard working & sincere and he had done the work of reconstruction of the Bridge Calendar Hamilton Girder within 7 days which could ordinarily be done within 15 days.

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13. Thus it is clear that the entries which have been given to the applicants are not in consonance with the letters of appreciation which were given to them by the authorities. It is not understandable as to how the applicants who were excellent in their performance or who had done very well for which the appreciation letters could be issued, were found so poor in their performance by the accepting authorities that the grading only of good or average could be given to them. It indicates that the entries have been given subjectively and not objectively.

14. We would like to observe the objectivity with which confidential reports are required to be written. The first is to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Second is to seek improvement of quality and excellence and efficiency of public service. These guidelines were laid-down by their Lordships of Supreme Court in State Bank of India & Others V/s. Kashi Nath Kher & Others J.T.1996(2) SC 569. If that objectivity is not kept in view by the Controlling Officer, the Sword of Damocles hanging over the head of a public servant, would inevitably create a sense of insecurity. Their Lordships of Supreme Court in Delhi Transport Corporation v/s. D.T.C. Mazdoor Congress & others J.T.1990(3) SC 725 held that unbridled wide discretionary powers would conceivably be abused. In the present case, we also find that the accepting authority had abused the powers of recording entries. It is specifically mentioned in the form of Character Roll that if there is a difference of opinion with reporting or reviewing authority or by any of them with the previous authority, the reasons must be given. An order or even an entry passed or recorded without any reasons, should not be and is not acceptable in the modern age when the principles of natural justice have been widened to the great extent. The reasons are not necessary to be recorded only in judicial proceedings but in administrative matters, it is expected that there should be reasons behind any or every act. Their Lordships of Supreme Court in the case of A.K. Kraipak V/s. Union of India & Others, 1969 SLR 445 were of the view that the dividing line between the administrative power and quasi-judicial power, was quite thin. It was further observed that the Rule of Law pervaded over the entire field of administration.

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This principle has been thrown to winds by the accepting authority. In view of these facts and the entries given by the authorities to these two applicants, we find that they are bereft of reasoning. The contention of the learned counsel for the respondents is that the reports given to these applicants were not adverse and thus they were not communicated to them but at the same time those entries were found of such nature that the applicants were not held suitable for promotion. It could hardly be accepted. It may be mentioned that if the entry of grading is going a step down like falling from "very good " to "Good", that may not ordinarily be an adverse entry since both are of positive grading but that is certainly creating a situation which may affect the promotional prospect of an employee. Their Lordships of Supreme Court, therefore, held in the case of U.P. Jal Nigam & Others V/s. Prabhat Chandra Jain and others J.T.1996(1)SC 641 that in a situation where there was downgrading, what was required by the authority recording confidentials in the situation, was to record reasons for such downgrading on the personal file of the officer concerned and to inform him of the change in the form of an advice. It was further observed that if the variation warranted to be not permissible, then the very purpose of writing Annual Confidential Reports would be frustrated. It is further observed that the sting of adverseness must in all events be not reflected in such variations as otherwise they should be communicated as such. Their Lordships are of the view that even a positive confidential entry, in a given case, can perilously ~~be~~<sup>be</sup> adverse and to say that an adverse entry should always be qualitatively damaging, may not be true. The same situation is obtainable in the case before us. The applicant no.1 who was found excellent in grading was placed as average in the year 1994-95. It is strange that he had been down-graded to this extent and yet the entry was not communicated. An employee who gets such entries, can not know anything till his promotion stage comes and he is found unsuitable. Thus we strongly feel that when the adverse entries could be communicated to the applicant, without any adverse effect on the concerned authorities, no harm would be caused to the reporting, reviewing and accepting authorities, if the entry in which grading other than bad is made, is communicated to the officer concerned. The present page

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is of transparency and we do not find any good reason for not communicating to the concerned Govt. Servant, even if good, very good or excellent remark is given to him.

15. From the perusal of the records, we come to the conclusion that the applicants have been down-graded in the preceding years to the selection for promotion to the post of Executive Engineer by the authorities and influenced the Departmental Promotion Committee. The applicants had no occasion to make any representation. They have, therefore, sought a relief that if the entries given to them are found adverse, they may be expunged and to this effect argument has been advanced. The learned counsel for the respondents has opposed on the ground that in this case, the only relief of promotion to the post of Executive Engineer, is sought. Thus the relief of expunction of the entries cannot be granted. We are in agreement with the learned counsel of the respondents. What we have discussed above and what law has been laid down by their Lordships of Supreme Court, it is clear that even an entry in downgrading the officer may be positive but it does affect his future career. In such a situation and particularly in the present case where the letters of appreciation and of reward were given to the applicants and the same having been shown to us, we find that the accepting authority had written the reports of these two applicants arbitrarily and without any rhyme or reason. In such a situation, the grading which has been given by the accepting authority in contrast to what has been written by the reporting authority, remains no more sustainable in the eye of law. The result is that the grading of the accepting authority for the years 1993-94, 1994-95 in the case of K.K. Misra and of the years 1994-95 and 1995-96 in the case of R.N. Pandey, applicant no. 2, are quashed.

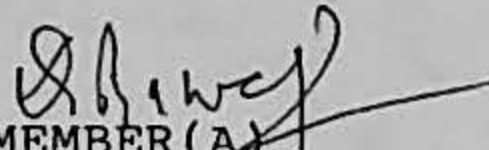
16. The applicants have also sought relief that they should have been promoted as Executive Engineer when their juniors were promoted. It has been emphasised that these posts are non-selection posts in view of the Circular dated 25.05.1992 Annexure-A4 in which the procedure for Group-B officer to senior scale on adhoc

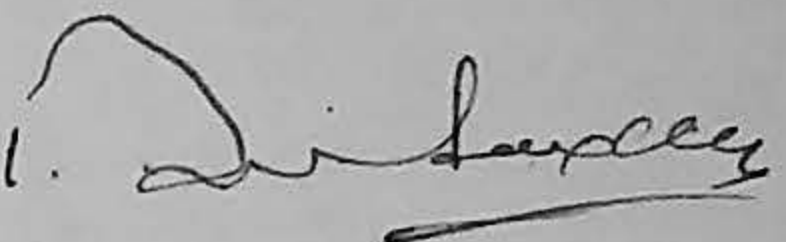
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basis is prescribed. Unless one is found unsuitable, the promotion on the basis of seniority, is to be considered. The respondents have not shown any other ground except the nature of the entries given to them during last five years and which entries we have expunged for the reason of non-sustainability in the eye of law. We, therefore, direct the respondents that the applicants should be considered for promotion to the post of Executive Engineer. The review D.P.C. is directed to be held within a period of three months; and if the applicants are found suitable, they should be promoted as Executive Engineer maintaining their seniority vis-a-vis respondents nos. 4 to 7.

17. On the consideration of the facts of the case, we allow the O.A. with the direction as are given here-in-before. No order as to cost.

  
MEMBER (A)

  
MEMBER (J)