

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX~~O.A. No. 10 OF 1987.
~~XXXXXX~~

(6)

DATE OF DECISION 10-4-1990.

ANANDRAO K. DHARMIK Petitioner

MR. S.N. SOPARKAR Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent(s)

MR. R.M. VIN Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.V. HARIDASAN, JUDICIAL MEMBER.

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Ye,*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

Anandrao K. Dharmik,
Block No. 905,
B/1 Opp. Bal Mandir,
West Yard,
Western Railway,
Valsad.

.... Petitioner.



(Advocate: Mr. S. N. Sox parkar)

Versus.

1. Union of India, through
General Manager,
Western Railway,
Churchgate,
Bombay.

2. Chief Electrical Engineer(Estt)
Western Railway,
Churchgate, Bombay.

.... Respondents.

(Advocate: Mr. R. M. Vin)

J U D G M E N T

O.A. No. 10 OF 1987

Date: 10-4-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant Anandrao K. Dharmik, from AC Traction Department of Western Railways, registered this original application on 8.1.1987 against the communications of adverse remarks in his Confidential Reports for the years 1982-83, 1983-84, 1984-84 and 1985-86 and against denial of promotion to the post of Chief Traction Foreman with effect from 19.8.1980. He therefore seeks directions to quash the adverse remarks in the four ACRs and to promote him to the higher post with effect from 19.8.1980 with all benefits including payment of wage difference.

2. It is in the averments of the applicant that the adverse remarks in his annual confidential remarks for each of the four years were communicated to him separately. It is therefore apparent that the cause of action with regard to each such remark arises separately.

It is also apparent that the applicant could not be denied promotion with effect from 19.8.1980 on account of these adverse remarks as they saw the light of the day after 19.8.1980, the date with effect from which the promotion has been claimed. It is therefore obvious that the fact of communication of these adverse remarks and the fact of denial of promotion with effect from 19.8.1980 are not connected with each other as cause and consequence and could therefore not properly be agitated in one and the same application. Also, the period of limitation for questioning each of the four adverse remarks has to be computed with reference to the date each such remarks was received by the applicant and his representation against the same made. The applicant made no representation against the adverse remarks except against the adverse remarks for the year 1982-83 dated 9.12.1983 and his representation against it is dated 4.1.1984. The representation elicited no decision from the respondents. As no decision was received, the applicant could validly question the adverse remarks only within one year from the expiry of six months from 4.1.1984 the date of his making the representation, according to the provisions of clause (b) of Subsection(1) of Section 21 of the Administrative Tribunals Act, 1985. As no representation was made against the adverse remarks for the year 1983-84 communicated in reference dated 12.11.1984, against adverse remarks for 1984-85 communicated in reference dated 29.7.1985 and against adverse remarks for 1985-86 communicated in reference dated 23.10.1986, agitating against the same in this application suffers from the defect of approaching this Tribunal without exhausting the statutory remedy available to the applicant and the same is not permissible in view of the provisions of Subsection (1) of Section 20 of the Administrative Tribunals Act, 1985. For these various

reasons, the application is liable to be rejected as if at the threshold. However, as if stands admitted, we feel it will be in the interests of justice at this juncture to closely examine the record and the submissions for a judgment on merits and we proceed to do so.

3. The relevant undisputed facts are that the applicant is a Scheduled Tribe employee and therefore eligible for promotion ^{on} roster point basis. He began his service in the Railways as an apprentice mechanic on 4.5.1964 and earned his promotion to his present rank on 1.12.1977. Upto 1980 there was only one post of Chief Traction Foreman. But in the same year seven posts of Chief Traction Foreman were created by abolishing the lower posts. The applicant, at that time, was working as Chief Traction Power Controller the cadre of which post was common with the cadre of Assistant Traction Foreman and the two posts interchangeable, and he entitled to be promoted as Chief Traction Foreman on roster promotion basis. By order dated 14.8.81 (Annexure 'A') five Assistant Traction Foreman were promoted as Chief Traction Foremen leaving two unfilled vacancies and though on roster basis the applicant had claim to one post as seniormost Scheduled Tribe employee he was not promoted. The applicant therefore submitted 19 representations between 3.9.81 and 17.1.1983 against the denial of promotion but to no avail. The selection board which met on 13/14-6-1983 marked the applicant suitable for promotion to the post of TFO(TRD) as a result of which the applicant's adhoc appointment against this post was regularised. Despite this and the inclusion of his name in the seniority list of Class III employees (Annexure 'N') at Sr.No.21, he was not promoted though his juniors at serial numbers 22 to 26

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and 27 and 28 were promoted to the rank of CTFO on 24.7.1985 and 1.5.1986 respectively.

4. According to the respondents' averments dated 1.7.1987 (signed by the respondents' advocate but not verified by any of the respondents) with the introduction of Electric Traction on Virar-Sabarmati section in March 1973, volunteers from those falling in any of the five pay-scales in the Electrical Department of Western Railway were invited for formation of a new AC Traction Cadre, the lowest of these pay scales being Rs. 205-280 and Rs. 450-575 the highest. Because of revision of pay scales with effect from 1.1.1973 as a result of the Third Pay Commission was introduced classification of posts as selection and non-selection and selection and screening of the various grades of employees to the full extent of manpower required for the new cadre took time. In the meantime, direct recruitment for AC Traction also started and in view of the uncertain situation of promotion rules of the new cadre, promotions were given on adhoc basis pending finalisation of the panel of promotion/seniority units. This finalisation took time as issues had to be discussed within the administration as also with the recognised trade unions. Implementation of the rules thus finalised was then started. Such of the volunteers officiating in the higher grades who had not been screened for absorption in the new cadre were not included in the first seniority list of the new cadre dated 4.4.1981 and the question of their seniority was kept under consideration to be finalised after further discussion with the recognised unions. A final seniority list dated 27.1.1982 was published from which, by selection, a panel of those eligible for promotion to the new cadre in the rank of Traction Foreman

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(scale Rs. 700-900(R)) was prepared. 29 names figured in this panel and as these panelists were officiating on adhoc basis due to the above reasons, orders regularising them in the pay scale Rs. 700-900(R) from 1.8.1983 were issued on 24/29-8-1983. The applicant was also so regularised. Against seven posts of CTFOs made available by upgradation in 1981, five directly recruited candidates were given appointment while two vacancies could not be filled up as the new cadre was in a state of flux and rules under formulation and finalisation as mentioned above. The two reserved vacancies could not be filled up because the railway board had laid down that the employees to be promoted to safety category posts (apparently these posts were safety category posts) should have a minimum of two years regular service in the next lower grade and as the applicant did not have two years regular service in the scale Rs. 700-900(R) in which scale he regularly figured from 1.8.1983 only as mentioned above, he was not eligible for promotion against the posts created in 1981 despite his belonging to the reserved catagory. With the restructuring of the cadre completed, the Traction Foreman in the scale Rs. 700-900(R) could be considered for promotion to scale Rs. 840-900(R) from 1.1.1984. This promotion was to be given on the basis of the Confidential record of the employees. However, as the applicant's Confidential reports contained adverse entries for the years from 1982 to 1984 which were considered, he could not be promoted. The vacancies reserved for Scheduled Tribes catagories were therefore dereserved by the General Manager for filling up by general candidates. Thus the respondents aver that for posts classified as the safety posts automatic promotion could not be given even to the reserved catagory candidates who are also required to fulfill the laid down requirement of experience of two

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years as regular incumbents in the feeder post besides satisfactory record of service.

5. The applicant's claim to the second relief namely promotion to the post of Chief Traction Foreman with effect from 19.8.1980, rests entirely on the basis of his being the seniormost employee of the Scheduled Tribes entitled for promotion on roster point basis. We are of the view that his claim on this basis only is not tenable. The applicant filed no rejoinder to the respondents' counter. Even at the time of hearing, no submissions to dispute the material in the respondents' counter and submissions on this subject came to be made. When technological improvements in a large public utility undertaking necessitate the formation of a new cadre of technicians, naturally such a cadre, to begin with and so that the utilisation of the new technology is not delayed, has to be manned by such hands on the muster rolls as can be tried to perform the required new jobs even while rules for recruitment and constitution of their new cadre get the attention of the concerned authorities. With the Railway Board's instruction that only those who have worked for at least two years in a regular capacity in the safety category posts could be considered for promotion to the higher post and, admittedly, the applicant regularised in the pay scale Rs. 700-900(R) from 1.8.1983, the applicant's claim to promotion on roster point basis with effect from 19.8.1980 is obviously untenable and can therefore not be allowed.

6. Coming to the first relief, the case of the applicant against the adverse remarks from the Annual Confidential Reports communicated is that the remarks are invalid (i) as the same do not adhere to the time frame laid down for the various steps about such remarks

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(ii) as their contents are not in accordance with instructions on the subject of writing of Confidential remarks, (iii) and as letters of appreciation the applicant received negatived the contents of the adverse remarks as the adverse remarks become contradictory to these letters of appreciation. The averments and submissions of the respondents on the contrary are that (i) the letters of appreciation did not appreciate the work of the applicant alone and are couched in general terms, (ii) because there is no strict adherence to the time frame, the remarks are not rendered invalid, and (iii) the contents of the remarks are in accordance with the instructions on writing of the same.

7. First with regard to the implications of the appreciation letters on the adverse remarks or on confidential remarks generally. Appreciation letters are no substitute for Annual Confidential Remarks recorded in compliance with the prescribed rules. In any case, it is farfetched submission of the applicant that such appreciation letters strike down the adverse remarks. The applicant was free to submit his representation against the adverse remarks incorporating in such representations any arguments based on the fact that he had received such appreciation letters. However, except for the representation against adverse remarks for the year 1982-83, no such representations were made. Annual Confidential Reports are not ordinarily to contain specific incidents as assessments are, by their very nature and purpose, intended to be a general assessment of work performed by a Government servant subordinate to his reporting authority. Even if, for the sake of argument, the applicant's submission that the letters of appreciation recorded his good work is accepted, such letters could be construed as given for a specific good

for any purpose whatsoever as the representation against the same has not been decided. The application fails and we hereby dismiss the same without making any order as to costs.

M. M. Singh (R460)
(M. M. SINGH)
Administrative Member.

Alenus
(A.V. HARIDASAN) 18/4/90
Judicial Member.