

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABAD BENCH
 XXXXXXXXX

O.A. No. 725 OF 1988.
 XXXXX

DATE OF DECISION 14-12-1989

SHRI CHIRANJILAL N. GURJAR, Petitioner

MR. D.M. THAKKAR Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

MR. B.R. KYADA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr.

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?

Shri Chiranjilal N. Gurjar,
L/11, Opp. Railway Station,
Mehsana.

..... Petitioner.

(Advocate: Mr. D.M. Thakkar)

Versus.

1. Union of India
(Notice to be served through
The General Manager,
Western Railway,
Churchgate, Bombay.

2. The Divisional Railway Manager(E),
Western Railway,
Mothi Compound,
Rajkot.

3. The Chief Mechanical Engineer,
Western Railway,
Churchgate, Bombay.

..... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A.No. 725 OF 1988

Date : 14-12-89

Per: Hon'ble Mr. P.H. Trivedi, Vice Chairman.

In this application under section 19 of the Administrative Tribunals Act the petitioner has asked for the relief of direction for expunction of the adverse remarks dated 22.7.1985 and 5.9.1986 on the ground, that the impugned adverse remarks are self-contradictory and illegal. The adverse remarks dated 22.7.1985 state that the relations of the petitioner with others are poor, that the knowledge of rules and regulations and procedure is poor, that the ability to conduct enquiry is poor and that his work is not satisfactory. The adverse remarks dated 5.9.1986 show that tact and temper of the petitioner are poor, power to control others, ability to conduct enquiry, sift evidence and prepare reports are poor; Regarding any adverse remarks including penalties

imposed or warnings or displeasure communicated it is stated that the petitioner is warned verbally ^{and} warned several times. Further, his work has been regarded as not satisfactory and his out put and earnestness are poor ; his fitness for promotion to Class II service is regarded as not fit. Against both letters communicating adverse remarks the petitioner has filed representation dated 1.8.1985 in respect of adverse remarks dated 22.7.1985 and 14.9.1986 in respect of adverse remarks dated 5.9.1986. The petitioner has received a communication dated 3.10.1986 for his representation dated 14.9.1986. The petitioner has challenged the adverse remarks on various grounds. Firstly, he alleges that the remarks have been recorded by Shri Phoolsingh against him on account of certain earlier orders made which were challenged by the petitioner and in respect of such orders in O.A.No. 126/86 the petitioner obtained relief. The petitioner also claims that no departmental enquiry was entrusted to him in the year concerned and therefore the remarks i.e. ability to conduct enquiry or sift evidence is poor could have no basis. For other remarks the petitioner states that there has been no basis indicated. Contrary to instruction, he has not been given any specific reasons regarding unsatisfactory work which is required before the remarks are made. In reply the respondents have urged that the petition is time barred in as much as the grievance regarding the adverse remarks in July 1985 and September 1986 is agitated by an application in October 1988. The conduct and the work of the officers have been observed from day to day and the remarks have recorded on the basis of his performance and have been duly communicated. The petitioner was promoted to the higher scale of Rs. 840-1040 after 31st March, 1985 for which the adverse remarks were communicated on 22.7.1985 and therefore

they are not significant. The petitioner has been informed after consideration of his representation that remarks stand and therefore it can not be stated that the representation was not considered.

2. The petitioner has also taken a ground that on the basis of the adverse remarks, his promotion will be adversely affected and he has taken up this cause in separate application in O.A.No. 554/88. The respondents has stated that this petition is rejected ^{for} ~~the~~ cause in 554/88 and therefore the reply of the respondents should be read with the reply in O.A.No. 554/88 which should be adopted for the purpose of this application.

3. We find that there is considerable force in the plea that the case is barred by limitation. The application has been made on 1.11.1988. The adverse remarks are dated 22.7.1985 and 5.9.1986 representation against this remarks were made on 1.8.1985 in the case of remarks dated 22.7.1985 and 14.9.1986 for remarks dated 5.9.1986. Reply to the petitioner has been given regarding the remarks dated 22.7.1985. The period of one year allowed under section 21 of the Administrative Tribunals Act in respect of this cause therefore expires on 1.2.1987 and in respect of the adverse remarks dated 5.9.1986 on 3.10.1987. However inspite of the bar of limitation the case has been considered on merits ^{for} the ends of justice.

4. Both parties were allowed to file written submissions at their request but have not done so.

5. The Administrative Tribunals Act and Rules thereunder requires separate application to be filed for separate cause of action. Parties are required therefore not to adopt the submissions or pleadings of cases which are to be perused separately for the purpose of each

petition. Just as the applicant can not be allowed to pursue the cause of his promotion along with the cause of his adverse remarks against him the respondents can not be allowed to make up their contentions in reply to O.A.No. 554/88 for the purpose of this case.

6. No rules instructions or settled law to support the proposition that reply to the representation against adverse remarks requires to give detail/reasons have been adduced by either party. We therefore do not find any force in the plea that without such detailed reasons the representation against adverse remarks can not be disposed of. We however find that the petition specifically discloses that the petitioner has contended that no departmental enquiry was ever entrusted to him and therefore the observation that his knowledge of the rules and procedure and to sift evidence are poor can not be factually true. In reply the respondents have not given any details for successfully contesting this contention. While the opinion formed may not always be supported by specific instances, when the petitioner challenges any adverse entry on grounds of fact there should be some evidence or averment relating to whether such facts existed or not. Their total absence in the reply would show that the petitioner is entitled to a presumption in his favour.

7. The petitioner has stated that relating to other entry no previous warning has been ever given. The respondents have admitted that the petitioner was promoted to higher grade after the remarks on 22nd July 1985 and the remarks relating to which by an order against the representation dated 3.10.1985 are allowed to stand. The whole record will be placed before the relevant committee which will decide the matter on the basis thereof. We will not advert to the decision regarding

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the promotion being properly made on the basis of such remarks in this case as that cause is being pursued separately. We must however observe that in view of the challenge of the petitioner the respondents should have established that the order dated 3.10.1986 was passed after the contentions of the petitioner relating to grounds taken into relevant documents were fully examined. Had the respondents made averments in this regard in their reply and supported them with relevant extract from the file or shown the file to the Court to discharge the burden on them, it is possible that a different conclusion might have emerged. In their absence however it is necessary to observe that the retention of the adverse remarks on the record will affect the outcome of the selection for promotion in future.

8. In the facts of this case therefore it is appropriate and adequate to decide the case to be remitted to the competent authority disposing of the representation for recording a speaking order with reference to the representation dated 5.9.1986. Such a speaking order should show how the adverse remarks are allowed to stand in respect of competence regarding DAR enquiry or sifting of evidence or on what basis unfitness of promotion or poor capacity are concluded. Such a speaking order may give details to the necessary extent to show that the representation has been examined with reference to the facts brought on the file regarding the performance of the petitioner in the relevant year for which the adverse remarks have been communicated. Such a speaking order be passed within 4 months from the date of this order. Until such a speaking order

is passed it is further directed that the relevant promotion committee should not consider such remarks to prejudice the petitioner regarding his promotion.

9. With the aforesaid observations and directions and to the extent stated therein the petition is found to have merit and is allowed. No order as to costs.

P.H. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN