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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 118 of 1989  
~~EX-106~~

DATE OF DECISION 15-12-1994.

Shri M.A. Zafarkhan Petitioner

Shri B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble ~~Mr.~~ Dr. R. K. Saxena : Member (J)

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 ?
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Shri M.A.Zafarkhan,  
Assistant Traction Foreman (PSI),  
Railway Quarter No.247, A?  
N.G.Railway Colony,  
BHARUCH (GUJARAT).

...Applicant.

(Advocate : Shri B.B.Gogia)

Versus

1. Union of India,  
Owning & Representing  
Western Railway,  
Through : General Manager,  
Western Railway,  
Churchgate,  
Bombay.
2. The Divisional Railway Manager,  
(Engg)TRD, Western Railway,  
Baroda.
3. Senior Divisional Electrical Engineer,  
(Engg)TRD, Western Railway,  
Baroda.

...Respondents.

(Advocate : Shri N.S.Shevde)

JUDGMENT

O.A./118/89.

Date : 15-12-1994.

Per : Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.B.B.Gogia and Mr.N.S.Shevde, learned  
advocates for the applicant and the respondents  
respectively.

2. The applicant was working as Assistant  
Traction Foreman (PSI), Western Railway at Bharuch,  
as per orders issued by Railway Board letter No.

(PC III/83/UPG/3 dated 1.5.84). The Ministry of  
Railways decided to restructure certain Group 'C'



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category posts with effect from 1.1.1984. Accordingly, certain posts of Assistant Traction Foreman were upgraded to Traction Foreman. It was provided in above scheme that promotion from Assistant Traction Foreman to Traction Foreman will be based on scrutiny of service records as a one time measure instead of following the usual procedure of written test and viva-voce. It is not disputed that the applicant came within the zone of promotion to the upgraded post of Traction Foreman. The grievance of the applicant is that instead of promoting him on the basis of the records he was informed that as his reports were adverse he was not considered fit for promotion and he should appear for selection in the normal course by taking written test and viva voce. The contention of the applicant is that he had not been communicated adverse remarks for the year ending 31.3.1981 and 31.3.1982. As these were not communicated, it could not be considered. In so far as the adverse remarks for the year ending 31.3.1983 is concerned, they were communicated to him on 21.5.1984 after more than one year. This late communication of adverse remarks vitiated the action of the authorities. It is also contended by the applicant that as the promotion was to be given effect from 1.1.1984 the C.Rs. for three years upto 31.3.1983, could have only be considered. The C.R. for the year

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ending 31.3.1984 should not have been taken into account. The applicant made representation for expunction of the adverse remarks for 1983 but no reply has been received from the respondents so far. He also alleges prejudice against the report writing authority who had given the adverse remarks. He also says that the remarks "not yet fit for promotion" could not be considered as adverse remarks. Further no specific details were given in the remarks which proved, they were not based on facts. Accordingly he prays for the following reliefs:

- "(a) The respondents authorities may please be directed to dispose of the representation made by the applicant for expunction of adverse remarks in the CR of 1983.
- (b) The respondents authorities may be directed to consider the applicant for the promotion to the post of Traction Foreman in scale Rs.700-900 (R) since revised to Rs.2000-3200 (RP) with effect from 1.1.1984.
- (c) The respondents authorities may be directed to pay all the consequential benefits to the applicant with effect from 1.1.1984.
- (d) Any other relief as deem fit by the Honourable Tribunal in the interest of justice."

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3. The respondents have filed reply. They have not disputed the fact that the applicant was to be considered for promotion to Traction Foreman on the basis of seniority. The applicant was in fact considered for promotion but was not considered fit due to adverse confidential reports and service record. They have stated that the modified selection procedure viz., to be based on Confidential Reports and not on written test and viva voce was only one time exception and as the applicant was considered unfit for promotion on the basis of his Confidential Reports record, he could be considered in future vacancies only by following regular procedure, i.e., on the basis of written test and viva-voce. They have stated that the adverse remarks earned by the applicant for the year ending 31.3.1983 were communicated to him by letter dated 21.5.1984 (Annexure-R/1). The adverse remarks relating to 1984 were communicated vide letter dated 16.10.1984 (Annexure-R/2). According to them, the applicant had not given any representation against the adverse remarks. In so far as the question relating to the delay in communicating the adverse remarks for the year ending 31.3.1983, is concerned, they have stated that the guide lines issued are not mandatory.

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There was some administrative delay in communicating the adverse remarks. They have stated that the remarks 'not yet fit' for promotion is a adverse remark and this has to be taken in to account while deciding the promotion. The report for 1984, was also taken into account by the respondents and the orders regarding promotion were issued in November, 1985. The applicant had not made any representation against the adverse remarks in 1983 report as well as 1984 report before the issue of orders in November, 1985. They have stated that the adverse remarks for the year ending 1981-82 and 1982-83, were communicated to the applicant, but the acknowledgement was not on record. They have denied that the adverse remarks and the Confidential Reports were not specific. They have stated that the remarks were clear and specific. They have denied that the case of the applicant is similar to that of S/Shri R.P.Garg and Shri Jagdish Narayan. Hence, they have prayed for the dismissal of the application as the applicant was considered for promotion and not promoted due to adverse remarks earned by him.

4. The first question to be considered is as to whether the adverse remarks in respect of the applicant relating to years ending 31.3.1981 and 31.3.1982 were

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communicated to him or not. It has been averred by the applicant in his application that he had not received the adverse remarks for the above two years. The respondents have stated that even though the adverse remarks were communicated, and yet acknowledgement were not available. There is no other conclusion to be reached other than that the adverse remarks for the years ending 31.3.1981, and 31.3.1982 were in fact not communicated to the applicant as otherwise had they been communicated acknowledgements should have been on the file. And so far as the reports for the year ending 31.3.1983, is concerned, it is really strange that the report was written only on 11.4.1984, ie., more than one year after the due date. Even though the circulars regarding writing of Confidential Reports may not be mandatory yet we cannot, but <sup>we</sup> comment adversely on the inordinate delay in writing the report. The adverse remarks were communicated as late as 21.4.1984. The purpose of communicating the adverse remarks viz., that the concerned official should have opportunity to improve his proficiency, is defeated by the late writing and communication of the report. The applicant has averred that a representation against the adverse remarks was made by letter dated 17.6.1984 followed by reminders on 09.11.1984, and 3.7.1985.

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The respondents, however, denied that the representation was given. However, there is an endorsement of the office on the reminder dated 9.11.1984, forwarding this reminder saying that the application of the employee dated 17.6.1984, was forwarded by letter No.P/EL/TRD/1/1, dated 18.6.1984. Mr.B.B.Gogia on behalf of the applicant laid stress on the following points.

- " 1. The adverse remarks for the years ending 1980-81 and 1981-82 were not communicated to the applicant.
2. The late writing of the Confidential Reports for the year ending 31.3.1983 and communicating the adverse remarks at the late stage prejudiced the applicant's case.
3. Representation of the applicant was pending with the authorities and when representation was not yet decided, the adverse report should not be taken in to account while deciding the case of promotion."

He supported his arguments with the following cases :


1. 1989 Labour and Industrial Cases - P.45
2. 1984 Supreme Court Report Vol.II,- Pl 297
3. ATR- 1987 Vol.I, Supreme Court - P. 513, and
4. 1979 (1) SLR - P.837 - Calcutta High Court.



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5. Mr.N.S.Shevde on the other hand contended the contention of Mr.Gogia and stated that as per the laid down procedure, the case of the applicant was considered for promotion and as the applicant had earned adverse remarks he could not be promoted. He denied that the applicant was prejudiced due to late writing of Confidential Reports. He denied the applicant's contention that he had represented against the adverse remarks for the year ending 31.3.1983. The applicant had only right to be considered for promotion and once he was considered and declared unfit he could be promoted to the higher posts without selection. As he did not get promoted at that time due to one time exemption granted after upgradation, he had to undergo selection procedure before being considered against promotion in future.

6. After hearing the learned counsels and after going through the documents on record, the following points emerge. The respondents have not been able to establish that the adverse remarks for the year ending 31.3.1981 and 31.3.1982, were in fact communicated to the applicant. In this view of the matter the applicant's contention that he had not received any remarks adverse in nature for these two years has to be accepted. Accordingly the reports for these two years shall be treated as



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free from adverse remarks. In so far as the report for the year ending 31.3.1983, is concerned a representation made by the applicant even though alleged not to have been received by the respondents, has to be assumed to be pending. It is also not disputed that the report for the year ending 31.3.1983, was written on 11.4.1984, after lapse of more than one year and adverse remarks communicated after that date. Such late writing of Confidential Reports and late communication of adverse remarks defeats the very purpose of writing Confidential Reports. It appears that as per Mr. Gogia's contention that the reports of the year ending 31.3.1983, was written only before starting the proceedings for promotion due to upgradation. It is also not clear as how the report for the year ending 31.3.1984 was taken into consideration, as the promotion were to be given effect from 1.1.1984. The correct procedure would have been to take into account and the Confidential Reports for three years prior to that date i.e., years ending 31.3.1983, 31.3.1982, and 31.3.1981.

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7. Taking into account the facts and circumstances of the case, we direct the respondents to reconsider the applicant's case for promotion to the post of Traction Foreman in the scale of Rs.2000-3200 (RP),

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with effect from 1.1.1984, by taking into account the reports of year ending 31.3.1981, and 31.3.1982, as free from adverse remarks and to consider the report for the year ending 31.3.1983, after deciding the representation of the applicant against the adverse remarks communicated to him. The above action should be taken by the respondents within three months from the date of receipt of this order and if the applicant is found suitable for promotion to Traction Foreman he shall be eligible for all consequential benefits. The application stands disposed of accordingly. No order as to costs.



(Dr.R.K.Saxena)  
Member(J)



(V.Radhakrishnan)  
Member(A)

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