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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 6/1992

~~Text No.~~

DATE OF DECISION 20.1.1995

Subodh Kumar

Petitioner

Mr. P.K. Handa

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Mr. N.S. Shevde

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No.

Subodh Kumar,
 Permanent Way Inspector Gr.I
 Near ET School,
 West of Railway Station,
 P.O. Nadiad, Dist. Kaira,
 Pin Code 387 001

.. Applicant

(Mr. P.K. Handa, Advocate)

Versus

1. Union of India,
 through :
 The General Manager,
 Western Railway,
 Churchgate,
 Bombay - 400 020
2. Chief Engineer,
 Western Railway,
 Head Quarter Office,
 Churchgate, Bombay.
3. Divisional Railway Manager,
 Vadodara Division,
 Western Railway,
 Pratapnagar,
 Vadodara-390 004
4. Sr. Divisional Engineer (HQ)
 DRM Office,
 Western Railway,
 Pratapnagar, Vadodara. .. Respondents

(Advocate Mr. N.S. Shevde)

Dt. 20.1.1995

J U D G M E N T

OA No.6/1992

Per : Hon'ble Mr. N.B. Patel, Vice Chairman

The applicant, in effect, challenges his supersession by his juniors in the matter of promotion from the post of P.W.I. (Rs.2000-2300) to the post of C.P.W.I (Rs.2375-3500).

2. The material facts are not in dispute. They are as follows. The applicant was holding ^{the} lower post

of P.W.I since about 1985 and was within the zone of consideration for promotion to the post of CPWI at the time when the consideration process was undertaken sometime prior to 21.12.1990 or on 21.12.1990 itself. On the very same day, promotion order (Annexure-A) in respect of 5 persons was issued. So far as the question of consideration of the applicant Shri S.K.Saxena and two others, who were also within the zone of consideration, is concerned, it was put off as their CRs were not received. This is made clear in the order Annexure-A by which five other PWIs are promoted. Another promotion order by which ten PWIs were promoted was issued on 26.6.1991 (Annexure-A1) and a third promotion order dated 11.7.1991 promoting five more PWIs was issued on 11.7.1991. In these two orders namely, A1 and A2 also, the name of the applicant did not figure. It is an admitted position that some persons junior to the applicant are among ^{the} twenty persons promoted by the orders Annexures-A, A1 and A2 dated 21.12.1990, 26.6.1991 and 11.7.1991 respectively. The post of C.P.W.I is a non-selection post which means that promotions are given on the basis of seniority but subject to rejection of unfit persons. It, therefore, follows that either the applicant was not considered for promotion or that he was found unfit.

3. In the reply filed by the Railway Administration, it is stated that the relevant CRs of the applicant were received by 26.6.1991 and the case of the applicant

was also considered but he was found unfit and it is, therefore, that the applicant was by-passed and some of his juniors were promoted. It appears that there were some adverse remarks in the CRs of the applicant for the years 1987-88, 1988-89 and 1989-90. It is not clear whether the applicant was found unfit solely on the ground of there being adverse remarks in his CRs for the said three years or whether there was also any other ground or grounds for assessing the applicant as unfit for promotion. Be this as it may, it is clearly stated in the reply that there were adverse remarks in the CRs of the applicant for the aforesaid three years and those remarks had gone into consideration while assessing the fitness or otherwise of the applicant. It is thus clear that the existence of the adverse remarks in the CRs of the applicant for the aforesaid three years was at least one of the factors, which was considered against the applicant.

4. When the aforesaid position was disclosed in the reply filed by the respondents, the applicant has specifically stated in his affidavit-in-rejoinder that no adverse remarks were communicated to him ~~in~~ ^{for} 1987-88 or 1988-89 or 1989-90. He has contended that since these adverse remarks were not communicated to him before the date of consideration i.e. 21.12.1990 or thereabout, his assessment by the Competent Authority or the Selection Committee or DPC was vitiated. There was no dispute raised before us about the

well-established position that uncommunicated adverse remarks could not have been taken into consideration while assessing the fitness or otherwise of a person whose case was considered for promotion. However, the contention raised on behalf of the respondents is that the adverse remarks in the CRs of the applicant for the aforesaid three years were actually communicated to him and, therefore, there was nothing wrong in considering the said adverse remarks while deciding the fitness or lack of fitness of the applicant for promotion. It is stated that for the year ending with 31.3.1988, adverse remarks in the CR for 1987-88 were communicated to the applicant vide Conf/E/246/5/SKS dated 29.9.1989 through the Senior Divisional Engineer(I), Baroda. Similarly, it is stated that, for the year ending with 31.3.1989, the adverse remarks in the CR of the applicant for the year 1988-89 were communicated to him vide Conf/E/246/5/SKS dated 15.12.1989 through the Senior Divisional Engineer (I), Baroda. In the same way, it is stated that the adverse remarks in the applicant's CR for the year 1989-90 were communicated to him vide Conf/E/246/5/SKS dated 5.12.1990 through the Assistant Engineer-Works-Baroda. The applicant has categorically denied in his rejoinder-affidavit that the adverse remarks in the CRs for the aforesaid years were communicated to him either through the Senior Divisional Engineer (I), Baroda or through the Assistant Engineer-Works-Baroda or through any other person. In view of this controversy, we had twice called upon the respondents (vide proceedings dated 18.6.1993 and 8.12.1994) to bring on record the file

or the material showing actual communication of the adverse remarks to the applicant. The respondents have, however, not brought on record any material to show that the adverse remarks which were sent to the Senior Divisional Engineer (I), Baroda, for the years 1987-88 and 1988-89 and the adverse remarks which were sent to the Assistant Engineer-Works-Baroda for the year 1989-90 had actually been delivered to the applicant or had actually reached his hands. Nothing is produced to show that the applicant had acknowledged receipt of these adverse remarks at any time before the consideration for promotion to the post of CPWI was undertaken in December, 1990. Even in the OA, the applicant has averred that no adverse remarks were ever passed against him prior to the consideration undertaken in December, 1990. When in the reply, it was stated that adverse remarks were communicated to the applicant through the Assistant Engineer Senior Divisional Engineer (I), Baroda and the Assistant Engineer-Works-Baroda, the applicant has stated in his rejoinder that no such adverse remarks were actually communicated or delivered to him at any time. The respondents have taken the case only to the length of showing that adverse remarks meant to be communicated to the applicant were sent to the Assistant Engineer-Works-Baroda and the Senior Divisional Engineer(I), Baroda but they have failed to prove that the said officer had actually delivered or caused to be delivered to the applicant the adverse remarks in the CRs for the aforesaid three years or any of the said three years. The respondents have failed to prove this despite all possible opportunity given to them and,

therefore, we are left with no alternative but to hold that adverse remarks for the aforesaid three years were not communicated to the applicant and still they were taken into consideration while adjudging upon the fitness or otherwise of the applicant for promotion to the post of CPWI or at least that the said factor of adverse remarks was one of the factors that had gone into the consideration of the Selection Committee or the Promotion Committee. Since it was not legal to take into consideration such uncommunicated adverse remarks, it must be held that the process of consideration of the case of the applicant was ~~initiated~~. In this connection, it may also be noted that in the reply it is stated in para 7 that copies of the adverse remarks in the CRs of the applicant for three previous years (meaning 1987-88, 1988-89 and 1989-90) were sought to be served on the applicant through a Welfare Inspector on 17.3.1992 but the applicant had refused to acknowledge the same. On behalf of the applicant, it was rightly contended that this averment in the reply also indicates that the adverse remarks were not communicated or tried to be communicated to the applicant prior to 17.3.1992. The present OA was filed on 11.10.1991 and on 26.2.1992 it was admitted and notice was issued to the ~~respondents~~ ^{respondents} ~~applicant~~. It shows that an attempt was made to serve the applicant with adverse remarks after the admission of this OA and, very probably, after the service of the notice on the respondents. The averment in the reply that an attempt was made on 17.3.1992 to serve the adverse remarks on the applicant was tried to be explained away on the ground that it was ~~a~~ an additional attempt apart

from the actual service which was earlier made through the Senior Divisional Engineer (I), Baroda and the Assistant Engineer-Works-Baroda. It is not possible to accept this explanation. The fact, therefore, remains that adverse remarks for the relevant three years were not communicated to the applicant and, yet, they were taken into consideration at least as one factor while assessing the fitness or otherwise of the applicant for promotion to the post of CPWI. We have, therefore, no hesitation in holding that the consideration of the case of the applicant was vitiated by the illegality of taking into consideration something adverse to the applicant ^{which} ~~which~~ it was not open to consider.

5. The applicant's learned advocate Shri Handa contended that, since the applicant's supersession was based on the uncommunicated adverse remarks, the respondents should be directed straightaway to issue promotion order in favour of the applicant granting him promotion with effect from the same date from which his immediate junior was promoted. While holding that the consideration of the case of the applicant is vitiated by illegality, we are not prepared to accept this contention of Mr. Handa, because it is not clear whether the supersession of the applicant or his assessment as unfit for promotion to the post of CPWI was based solely on the fact of the uncommunicated adverse remarks in his CRs for the aforesaid three years. We can only direct the respondents to reconsider the case of the applicant

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as at the time of the consideration made in December, 1990 ignoring totally the adverse remarks entered in the CRs of the applicant for the years 1987-88, 1988-89 and 1989-90. It may be noted that subsequent to the promotion order Annexure A-2 issued on 11.7.1991, the applicant's case was considered and he is actually promoted to the post of CPWI on 3.5.1993 or, thereabout. Therefore, if, on reconsideration of the applicant's case, in the light of the above observation made by us, the applicant is found fit for promotion, he will be entitled to be given notional promotion with effect from the date from which his immediate junior is promoted.

6. In the result, therefore, the OA is partly allowed and the respondents are directed to reconsider the case of the applicant for promotion to the post of CPWI on the basis of the records available on the date of the consideration made in December, 1990 but totally ignoring from such consideration the adverse remarks made in the CRs of the applicant in the years 1987-88, 1988-89 and 1989-90. Such reconsideration is ordered to be made within four weeks of the date of receipt of a copy of this judgment. If as a result of such reconsideration, the applicant is found fit for promotion, he may be given deemed promotion with effect from the date from which his immediate junior is given promotion. If the applicant is found unfit even after ignoring the adverse CRs of 1987-88, 1988-89 and 1989-90, he may be accordingly intimated about such decision of the Promotion Committee or Selection Committee within one week after it is taken. No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman