

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /429/92
TAXNO.

DATE OF DECISION 17 May 2000

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Umesh J. Chauhan Petitioner

Mr. K.K. Shah Advocate for the Petitioner [s]
 Versus

Union of India & Others Respondent

Mr. N.S. Shevde Advocate for the Respondent [s]

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The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. A. S. Sanghavi, Member (J)

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 Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *✓*

Umesh J. Chauhan
Senior Clerk (Sp. Pay)
Working at Machine Shop, Dohad

Address of Service of notice:

G/o. Kiran K. Shah
3, Achalayatan Society, Div. II
Navrangpura, Ahmedabad.

Applicant

Advocate: Mr. K.K. Shah

Versus

1. Union of India

Notice to be served through the
The General Manager
Western Railway, Churchgate,
Bombay- 400 020.

2. The Deputy Chief Mechanical Engineer
Western Railway
Dohad. Dist. Panchmahal.

3. Chief Works Manager
Western Railway
Dohad.

4. Chief Works Engineer, H.Q. Office,
Churchgate, Bombay.

Respondents-

Advocate: Mr. M.S. Shevde-

JUDGEMENT

IN

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Dated 17 May, 2000

O.A./429/92

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

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The applicant a Railway servant was working as Senior Clerk in the scale of Rs.1200-2040 with the benefit of special pay. He is aggrieved by the fact that he has not been promoted to the level of Head

Clerk whereas his juniors have been so promoted. He seeks a direction that he should be promoted from the same date on which his juniors have been promoted as such.

2. We have heard Mr. K.K. Shah for the applicant and Mr. N.S. Shevde for the respondents.

3. Mr. Shah for the applicant has contended that the post of Head Clerk is a non-selection post and the applicant has not been communicated with any adverse remarks nor any disciplinary proceedings were pending against him. He states that no reasons have been assigned for not promoting him as Head Clerk and Note 3 in order dated 9th January 1991 as at Annexure-A merely says that he is not considered suitable by the competent authority for promotion. He also states that he was assigned to work in the post of Senior Clerk carrying special pay only in 1990 and the failure to promote him to the next higher level in 1991 is not justified. He presumes that some adverse remarks were recorded in the C.R. but as no such remarks were communicated to him it is not open to the authority to reply upon them while refusing to promote him.

Mr. Shah contends that such adverse remarks which are not communicated to the applicant should not be taken into account. He refers in this connection to the decision of the Supreme Court which states that uncommunicated adverse remarks cannot be taken into

account while deciding the case of promotion of a Government servant. Mr. K.K. Shah has also produced copies of certain documents including the representation given by the applicant where he has contended that in absence of any communicated adverse remarks and any disciplinary proceeding he gaught to have been promoted to the level of Head Clerk. He also has submitted that if there were remarks made in the C.R. that he was not fit for promotion, the same would be adverse which should have been communicated to him. He has also referred to the decision of the Supreme Court in the case of Union of India vs. Mohanlal Kapoor where the Supreme Court has held that the adverse comments in a C.R. cannot be acted upon to deny promotion unless it is communicated to the person concerned. He has also apprehended that the C.R. for the relevant year had been initiated by one Shri Kantharia under whom he had not worked for more than three months.

4. The respondents have contended that while there were no adverse remakrs, his performance has been average and he had not come upto the required points on the basis of last three years C.Rs. There is a requirement that the official must have got minimum of 9 points out of maximum 15 points on the basis of the performance in the last three years and the applicant had fallen below the threshold and as such he could not be promoted. It is also denied

that the C.R. was initiated by an incompetent person namely Kantharia as in the reply of the Railways dated 26.9.91 as at Annexure A-13 to the representation they have brought out that the C.R. for the relevant year was not initiated by Shri B.D.Kantharia the Office Superintendent. The fact that ^{the applicant} ~~he~~ was given a special pay post on the basis of seniority at the level of Senior Clerk would not entitle him to be granted promotion automatically to the next higher level of Head Clerk. Mr. Shevde for the respondents states that the applicant has been subsequently promoted as Head Clerk.

5. We have carefully considered the contentions of both sides.

It is clear that the promotion was not denied on the basis of un-communicated adverse remarks. The applicant was duly assessed by the competent authority which had considered the C.Rs. for the last three years as per the relevant instructions. It is necessary for the authority to make its own assessment on the basis of the entire entries in the C.R. There is nothing to show that authority had not made its own assessment when it came to the conclusion that the applicant's performance was average. The Grading as average is not an adverse remark which needs to be communicated but average

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would not entitle the Railway servant for promotion.

We may refer in this connection to para 6.1.4 of the Govt. of India C.M. dated 10th April 1989 which is reproduced below:-

" 6.1.4: Government also desires to clear the misconception about "Average" performance. While "Average" may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion".

It is clear from these instructions that while the average grading will not be taken as an adverse remark which calls for communication, the average performance is not sufficient to earn promotion. The respondents have acted on the basis of these instructions.

6. In the facts and circumstances of the case, we hold that the action of the respondents in not giving promotion to the applicant on the basis of the recommendation of the competent authority which had duly considered him cannot be termed as arbitrary. The O.A. is dismissed with no orders as to cost.

A. —

(A. S. Sanghavi)
Member (J)

DR
17/5/2003

(V. Ramakrishnan)
Vice Chairman