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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 390 OF 2000
Cuttack this the 20th day of July, 2004


Rabindra Nath Behera ... Applicant(s)

- VERSUS -

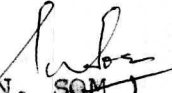
Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 7/3
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 7/4


(M.R. MOHANTY)
MEMBER (JUDICIAL)

29/07/04


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 390 OF 2000
Cuttack this the 20th day of July, 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

...

Rabindranath Behera, aged about 41 years,
S/o. Gandharba Behera, permanently working
as Section Engineer, Office of the Divisional
Signal & Telecom Engineer, South Eastern
Railway, Sambalpur

...

Applicant

By the Advocates

M/s. A. Kanungo
S.R. Misra
M.K. Biswal

- VERSUS -

1. Union of India represented through General Manager, S.E. Railway, Garden Reach, Calcutta-43
2. Chief Personal Officer, S.E. Railway, Garden Reach, Calcutta-43
3. Chief Signal & Telecom Engineer, S.E. Railway, Garden Reach, Calcutta-43
4. D.R.M., Sambalpur, S.E. Railway, Sambalpur Division, Sambalpur

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Respondents

By the Advocates

Mrs. R. Sikdar
A. Sikdar
S. Dutta

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicant (Shri Rabindranath Behera) has filed this Original Application ventilating his grievance with regard to inaction of the Respondents- Railways in promoting him to the post of Senior Section Engineer in the scale of Rs. 7450-11,500/- during the year 1999, when some of his juniors were promoted.

2. The facts of the case in nut shell are that the post of Senior Section Engineer (Telecom) is a selection post for which he was due to undergo suitability test which was conducted on 25.4.1997. However, he could not

appear in that test as the call letter could not reach him for the reason that his name was wrongly published as "Rabindranath Mishra" instead of Rabindranath Behera. The next test was held in 1999, in which he was called for the test, but although he did very well in the viva voce test, he was not selected for appointment because of giving him lower grading on the basis of confidential report. He filed representation against his supersession, but the same was disposed of by the Respondent No.2 (vide his letter dated 3.1.2000) with a remark that "the CRs are not encouraging. DSTE/SBP to watch him specifically give guidance for improvement".

3. The grievance of the applicant is that although Res. No.2 clearly stated in his letter dated 3.1.2000 that his CRs are not encouraging on account of which it would appear that he could not be empanelled in the list of successful candidates, but no adverse comments were ever communicated to him. He has further stated that it was illegal on the part of the Respondents to have taken note of the remarks which were never communicated to him. He has also stated that debarring him from appearing in the suitability test for the year 1997 was also equally an unreasonable act on the part of the Respondents and thereby he has been deprived of a legitimate right, for an advancement ⁱⁿ of his career.

4. The Respondents have admitted in their counter that the applicant's name was incorrectly spelt in the call letter due to typographical error. They have also admitted that the applicant was not selected during 1999 because of his unsatisfactory performance in the

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viva voce test. They have denied that there was any test in the year 1998. They have also admitted that had he qualified in the suitability test held in the year 1999, he would ~~xxx~~ have been given promotion with proforma benefit at par with his juniors, who qualified in the year 1997. On these grounds the Respondents have opposed the prayer of the applicant.

5. We have heard the learned counsel for the parties and perused the materials placed on record.

6. The learned counsel for the applicant strenuously argued before us that the Respondents having taken note of the alleged adverse remarks contained in his confidential report have committed an error in the matter of promotion, as the rules do not permit to act on the uncommunicated adverse remarks. During the oral argument, the learned counsel for the Respondents, while refuting the allegation levelled by the applicant submitted against him, that had there been any adverse remark/ this would have been communicated to the applicant. The learned counsel for the applicant has drawn our notice to the Railway Board's letter bearing Nos.E(NG)II/75 and E(NG)II/78 dated 10.11.1978 and No.E(NG)-1/81/CR/5 dated 26.30.9.1981, wherein it has been laid down that "any remarks recorded in the Confidential report of a Railway servant adversely reflecting on his performance of his basic qualities or potential shall be treated as adverse; and that the adverse remarks recorded in the Confidential report of a Railway servant should be communicated in writing irrespective of whether they are considered remediable or not to the Railway servant concerned along with the

substance of the favourable remarks contained in the Confidential Report". It has been admitted by the Respondents in the counter that the applicant could not qualify in the suitability test held in the year 1999, because of his unsatisfactory performance. It is in this background, it would be worthwhile to quote what the Respondents have replied while disposing of the appeal filed by the applicant in this regard, as under :

"Sri Behera may be advised to improve his performance so as to enable him to do well in future Selection.

His CRs are not encouraging. DSTE/SBP to watch him specifically to give guidance for improvement".

7. It is also an admitted fact that the adverse remarks were not communicated to the applicant and thereby the Respondents have violated the instructions issued by the Railway Board, as referred to earlier. It is now a well established law that uncommunicated adverse remarks are to be ignored in the interest of justice and fair-play. In fact order/instruction to this effect has also been communicated by the Railway Board to all the field units vide their Confidential DO letter No.98/89/SECY/ADMN dated 6.4.1998, wherein it has been instructed that if the deficiencies pointed out in the CR are not communicated to the concerned officer "the grading of average should not be accepted as valid". From the facts and circumstances of the case, it appears that the applicant was either graded 'average' and/or had received adverse comments in his CRs which were not communicated to him. By their not communicating the adverse remarks to the applicant, the Respondents-Department have not only violated their

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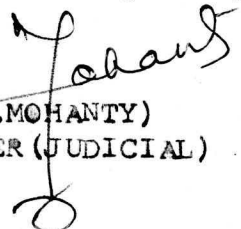
own instructions/guidelines, but have also denied the applicant reasonable opportunity to defend his case on merit. As the adverse comments were not communicated, these deserve to be ignored; and accordingly, we hereby expunge these adverse remarks.


8. It has also been admitted by the Respondents that the applicant could not be called for the suitability test for the year 1997 due to administrative fault. In the circumstances, it is nobody's case that the applicant should suffer for ~~not~~ fault of his. The Respondents have, therefore, during argument accepted that they are willing to hold a supplementary test for the year 1997 in respect of the applicant and should he succeed in the test, he would be entitled to consequential benefits.

9. The Respondents in their counter (Para-12) have admitted that "if he had qualified in the suitability test held in the year 1999, he would have been given promotion with proforma benefit at par with his juniors, who qualified in the year 1997." Having regard to the above ^{uncommunicated} facts of the case, we, therefore, direct that as ~~adverse~~ remarks contained in the CR of the applicant were considered by the Selection Committee of 1998 - ^{though} rather those were to be ignored as per the Railway Board's instruction (supra), a review Selection Committee meeting pertaining to the year 1998 should, in the first instance, be convened to assess the service records of the applicant, keeping in view the direction as contained in Para- 7 (above) and in case the applicant is qualified to be chosen, he should be given promotion on proforma basis at par with his juniors, who qualified in the year 1997, as admitted by the Respondents themselves. In case the review Selection

Committee does not find the applicant suitable for being empanelled for the year 1999, a supplementary test should be held for the year 1997 in respect of the applicant. We further direct that the Respondents should carryout the supplementary test as well as the meeting of the Review Selection Committee within a period of 120 days from the date of receipt of this order.

10. For the foregoing, we dispose of this O.A. leaving the parties to bear their own costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE - CHAIRMAN

BJY