

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 506/89 199
T. A. No.

DATE OF DECISION 14-6-1990

TV Raveendran Applicant (s)

Mr M Girijavallabhan Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)
Secretary, Ministry of Defence
New Delhi and another

Mr C Kochunni Nair, ASC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

Mr SP Mukerji, Vice Chairman

The applicant is a member of the Scheduled Caste and has been working as Turner (Skilled) in the Naval Ship Repair Yard. His next promotion was to the post of Turner (HS-II). His grievance in brief is that instead of being promoted to one of the reserved vacancies at least from 1989, he has been given belated promotion in February, 1990. It is admitted that the applicant got himself qualified for being considered for promotion on 12.5.86 by passing a Trade Test. It is also admitted that in 1989 there were as many as nine vacancies in the grade of Turner (HS-II) of which two posts were reserved for Scheduled Caste and one for Scheduled Tribe candidates.

The respondents indicated that the applicant was duly considered by the DPC which met on 29.3.89, but he was not recommended by the Committee because of his "poor performance assessment". Therefore, the vacancy was carried forward to 1990 and the DPC which met in January, 1990 included him in the panel for promotion to the post of Turner (HS-II). The applicant was accordingly promoted with effect from 1.2.90. The respondents have also accepted that the promotion to the post of Turner (HS-II) was to be on the basis of seniority-cum-fitness.

2 We have heard the arguments of the learned counsel of both the parties and gone through the documents carefully. We are conscious of the fact that the assessment of a candidate by a DPC cannot ordinarily be subjected to judicial review nor can this Tribunal assume the functions of a DPC. However, in consideration of the averments made by the learned counsel for the applicant that he had never been communicated any adverse entry, ^{and hence could not be declared as unfit for promotion,} we called for the confidential record of the applicant to re-assure ourselves that there are no uncommunicated adverse entries which might have been taken into account by the DPC in declaring him to be unfit for promotion. The learned counsel for the respondents produced the assessment record of the applicant. We have found that during the year 1989, the applicant was given 6 marks out of 10 marks under

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various heads of performance criteria. The award of 6 marks indicates the level of satisfactory accomplishment of work, reliability, satisfactory job knowledge, co-operation and proper utilisation of time. In that year on an overall basis ^{also} he was recommended by the Reporting Officer to be fit for promotion.

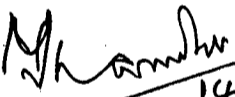
3 During 1988 also he was awarded 6 marks under various heads and recommended 'fit for promotion'. During 1987, however, except for one column regarding absentism and conduct for which he was given 6 marks, under all other heads he was awarded 4 marks. Award of ~~this~~ 4 marks according to the instructions, indicates that he barely meets the quality standard, that he required close supervision and follow up, that he is apt to be unreliable, that he has limited job knowledge, that he shows little interest and co-operation and also wastes time and needs watching. In 1987 itself he was ^{assessed} ~~communicated~~ ^{& in the confidential report also} by the Reporting Officer, 'not yet fit for promotion'. There is no indication in the assessment record to show that any of these adverse assessments including his being found to be unfit for promotion had been communicated to him, even though in the counter affidavit the respondents have stated that these were communicated to him orally. The learned counsel for the applicant vehemently denies ~~the~~ ^{adverse} ~~assessments~~ and indicates that neither orally nor in writing was ever any adverse remark communicated to him. During 1986 and

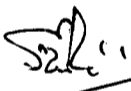
1985 also under certain column, he was awarded 4 marks and indication of the sub-standard qualities of performances ^{is} ~~was~~ ^{communication of} not available.

4 It is established law sanctified by the various rulings of the Hon'ble Supreme Court that uncommunicated adverse remarks cannot be taken into account for the purposes of promotion, compulsory retirement, crossing of efficiency bar etc. We are not at all convinced by the averments made by the respondents that there has been oral communication of the adverse remarks. It is also recognised judicially that unless the communication is in writing ^{by} and keeping of the adverse remarks uncommunicated, the officer concerned cannot be held to have been given sufficient opportunity to ^{fully} know what is against him so that he can make a viable rebuttal against the adverse remarks. This is particularly pertinent in case of the lower technical staff like the applicant who cannot by themselves be presumed to appreciate the implications of the adverse remarks by mere oral communication. It ~~could not~~ ^{cannot} also ^{be verified} ~~ascertain~~ whether the oral communication truly and adequately reflected the adverse remarks recorded.

5 In the facts and circumstances we are fully convinced that consideration of the applicant by the DPC in 1989 cannot be held to be fair and proper. In the interest of justice we allow this application to the extent of directing that a Review DPC should be held

as in 1989 and consider the fitness of the applicant for being promoted to the post of Turner (HS-II) on the basis of the assessment record without taking into consideration the un-communicated adverse remarks under the heads wherein he had been awarded 4 marks. The comment of the Reporting Officer of 1987 that he was not yet fit for promotion also should be ignored. If the applicant is found to be fit for promotion by the Review DPC, he should be notionally promoted to the post of Turner (HS-II) with effect from the date the junior-most candidate selected by the DPC of 1989 was so promoted. In that case, the applicant should be given consequential benefits of arrears of pay and allowances and seniority admissible to him.


14.6.90
(N Dharmadan)
Judicial Member


14.6.90
(SP Mukerji)
Vice Chairman

14-6-1990