

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 558/90

~~A. No.~~

~~108~~

DATE OF DECISION 27.3.91

T.G.Chandrasekharan Applicant (s)

M/s.P.Sivan Pillai, R.Sreekumar Advocate for the Applicant (s)

Versus

Union of India represented by the Respondent (s)
General Manager, Southern Railway,
Madras-3 and 3 others

Smt. Sumathi Dandapani(R1 to 4) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 5th July, 1990 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as a Chief Clerk in the Southern Railway has challenged the impugned communication dated 23.11.89 communicating adverse remarks in his Confidential Report for the year ending 31st March, 1989 and the order dated 5.1.1990 conveying rejection of his appeal by the Accepting Authority. The brief facts of the case are as follows.

2. The applicant was promoted as Chief Clerk after having been found suitable for that post by a duly constituted Selection Committee with effect from 1.3.1989 by an order dated 27.9.1989. The panel was approved by the competent authority on 30.1.1989 and was released on 1.2.89. After the applicant had been so promoted as Chief Clerk by the

impugned communication dated 23.11.1989 he received the following adverse remarks recorded against him for the year ending on 31st March, 1989:-

"His attendance is not satisfactory. His maintenance of stores records & accountal are not proper. Besides he is not reliable. He is not fit for the present post."

The applicant appealed against the adverse remarks on 26.12.89 (Annexure-A2). But the appeal ~~was appeal~~ was rejected by the communication dated 5.1.1990 by the curt and non-speaking impugned order at Annexure-A3 which reads as follows:-

"Your above appeal has been considered by the Accepting Authority and passed the following remarks:

Appeal was gone through in detail & rejected, since there is no improvement in his performance."

The applicant has challenged the adverse remarks and the rejection of his appeal on several grounds. According to him in accordance with Rule 1619 of the Indian Railway Establishment Code, Vol. I the General Manager issued rules on 1.4.1975 at Annexure-A4 for "preparation and submission of Confidential Reports on Railway Servants belonging to Class III Service and those employed in Workshops". Rule 6(iii) and 6(iv) of those Rules relied upon by the applicant read as follows:-

"(iii) Opportunity be given to the employee who is given an adverse report - Attention is invited to Para 1609-R-1 in this connection. An employee shall not ordinarily be given an unfavourable Confidential report before an opportunity has been taken, preferably to a personal interview, or if that is not practicable, by means of a letter pointing out to him the direction in which his work has been unsatisfactory or the shortcomings which require to be remedied. If there is no appreciable improvement as a result of this warning and an adverse report has to be made, the reporting official shall give the reasons, and as far as possible the facts on which the reports are based. The reporting official should specifically state whether the defects reported have been already brought to the notice of the employee concerned.

(iv) Timely warning may eradicate the fault - In no circumstance should an employee be kept in total ignorance for any length of time if his superiors after sufficient experiences of his work are dissatisfied with him; where a warning might eradicate a particular fault the advantages of prompt communication are obvious.

(emphasis added)

According to him he was neither given any warning nor a personal hearing about late attendance or improper maintenance of stores. He has emphatically stated that there was not a single day of late attendance of office by the applicant and no allegation of improper maintenance of stores record and accountal was levelled against him. According to him there was not

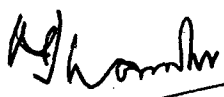
a single instance during the whole period of applicant's service to doubt his reliability. On the other hand, during this period the applicant was selected by a duly constituted Selection Board and he was promoted to the higher post of Chief Clerk with effect from 1.3.89. His suitability to hold the higher post was fully assessed and determined in his favour by the Selection Board. He has referred to rule 6(iii) again to say that the Reporting Officer has not given any reasons on which the report is based nor has the Reporting Officer stated whether the defects reported has been brought to the notice of the officer reported upon. The applicant has further referred to the Railway Board's circular at Annexure-A5 in which it has been laid down that the Reviewing Authority where he is not familiar with the work of the officer reported upon should verify the correctness of the remarks of the Reporting Officer after making necessary enquiries and may also give a hearing to the person reported upon before recording his remarks. He has also indicated on facts that between 1.4.88 and 31.3.89 he had availed of the entire period of casual leave of 15 days to which he was entitled, 15 days of earned leave as against 30 days which he had earned, and 10 days of sick leave against 20 days of such leave he had earned. According to him the 4th respondent who had initiated the adverse remarks was biased against him. Against the appellate order at Annexure-A2 he has stated that he was not given a personal hearing nor did the Appellate Authority consider the various grounds raised in the appeal. In the counter affidavit the respondents have stated that a personal interview prescribed in rule 6(iii) is not mandatory but have stated that the applicant had been personally warned by the 4th respondent who had given the adverse entries. Any personal bias has been denied. They have clarified that when the Selection Committee met before 1.2.89 his Confidential Report upto the period ending 31.3.88 was considered as the Confidential Report for the period upto 31.3.89 had not been recorded. In the rejoinder the applicant has argued that even though the panel was released on 1.2.89 his promotion order was passed on 27.9.89 by which date the Confidential Report with adverse remarks had already been recorded. If the respondents had found him not suitable he could not

have been promoted by the order in September, 1989 with retrospective effect from 1.3.89. The mention in the appellate order at Annexure A-3 that there is no improvement in his performance subsequent to 31.3.89 is belied by the fact that the adverse remarks given to him for the year ending 31.3.1990 ^{were} ~~are~~ expunged by the Divisional Railway Manager at Annexure A7. He has further indicated that the 4th respondent was the Head of the Department in the Division whereas the applicant was working under the Assistant Mechanical Engineer of the Department. Thus the 4th respondent could not initiate the adverse report 'surpassing' his immediate supervisor. The 4th respondent who is the approving authority has also ^{acted} ~~acted~~ as a Reporting Officer.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We have already quoted rule 6(iii) and 6(iv) earlier in this judgment. These rules specifically provide that before an adverse remark is recorded, the official reported upon should be given an opportunity preferably by a personal interview or by means of a letter pointing to him the direction in which his work has been unsatisfactory. If there is no appreciable improvement, the Reporting Officer shall give the reasons and the facts on which the reports are based. Even if we accept the contention of the respondents that the applicant had been given oral warnings which the applicant has repeatedly denied, it was incumbent upon the Reporting Officer to give reasons and facts to substantiate the adverse reports and also he should specifically state whether the defects reported had already been brought to the notice of the employee concerned. The impugned adverse remarks at Annexure-A1 neither give ^{any} ~~any~~ reason ^{or} ~~or~~ factual substantiation nor does it indicate that the defects had been brought to the notice of the applicant. In the circumstances we find that the salutary principles of rule 6(iii) have been violated and because of the non-recording of the defects having been brought to the notice of the employee, we have grave doubts whether the defects had ever been brought to the notice of the applicant. Further we find that the appellate order at Annexure-A3 is hopelessly non-speaking. Rejecting

an appeal against an adverse report which can spoil the entire career of the Government servant is a quasi-judicial function and it is an established law that the order dismissing an appeal has to be a speaking order. Without the reasons being given, the applicant is deprived of defending his case by any further representation and he is denied the natural justice to which he is entitled in such a case. The mention in the appellate order that there is no improvement in his performance is not only unwarranted but also shows the bias in the mind of the Appellate Authority especially in view of the fact that the adverse remarks for the subsequent year 1989-90 were expunged in toto at Annexure A-7 by the Divisional Railway Manager. We also find considerable force in the argument of the applicant that the Selection Board found the applicant fit for promotion. The Selection Board consists of officers senior to the Reporting Officer in the applicant's case and if there was no deficiency in the applicant's performance they would not have recommended his promotion. The respondents themselves having ordered his promotion in September 1989 with retrospective effect from 1.3.89 long after the adverse report had been recorded cannot now take the plea that the applicant's promotion was made in ignorance or in absence of the adverse remarks at Annexure-A3.

4. In the conspectus of facts and circumstances we allow the application, set aside the impugned orders at Annexures-A1 and A3 and direct that the entire adverse remarks communicated to the applicant through Annexure-A1 letter dated 23.11.1989 should be expunged in toto. There will be no order as to costs.


27.3.91
(N. Dharmadan)
Judicial Member


27-3-91
(S.P. Mukerji)
Vice Chairman