

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXAxxNex~~

3038

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DATE OF DECISION 30.4.1991

P.C.Thomas

Applicant (s)

M/s K Ramakumar &
VR Ramachandran Nair
Versus

Advocate for the Applicant (s)

Union of India rep. by the Respondent (s)
Secy., Ministry of Communication,
New Delhi & 3 others

Mr.NN Sugunapalan, SCGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji

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Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan

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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? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT


(Mr.A.V.Haridasan, Judicial Member)

who is
In this application, the applicant/working as
Assistant Engineer (Group B) under the Director Maintenance, Southern Telecom Sub Region, Ernakulam under the Ministry of Communication, has prayed that it may be that declared/the non-inclusion of his name in the select list dated 15th March, 1989 at Annexure-K and denial of promotion to the post of Assistant Divisional Engineer is illegal, and that the respondents may be directed to promote him to the post of Assistant Divisional Engineer in the Junior Time Scale along with those in Annexure-K list.

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2. The applicant who joined the service as Junior Engineer on 9.10.1962 was promoted as Assistant Engineer on a regular basis with effect from 27.10.1973. Major part of his service was spent in out-door work including project work in remote areas of UP, Rajasthan and Gujarat, etc. For his good work he had received letters of appreciation from his superiors. He had no reason to receive any adverse criticism or adverse entry in his Annual Confidential Reports. He had been promoted as Divisional Engineer in the Senior Time Scale on different occasions on adhoc basis during the period 1985 to 1989. While so, to his dismay, the applicant found that in the list at Annexure-K, he was not selected for promotion to the post of Assistant Divisional Engineer which is a selection post, while many of his juniors were included in the list. Aggrieved by the denial of promotion to him, the applicant made a representation dated 22.3.1989 to the Secretary Department of Telecom, New Delhi. In reply to this, the applicant received a letter dated 17.2.1989, at Annexure-N informing him that, though he was actually considered by the DPC did not recommend him for promotion taking into account his over all performance as reflected in his Confidential Records, and that he would be again considered for selection when the next DPC meets. During the period 1984-1985 and 1985-1986 there had been some misunderstanding between the applicant and his immediate

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superior Shri K.C.Anandakrishnan, Divisional Engineer, Coaxial Maintenance, Ernakulam. The applicant being a member of the Christian Minority Community (Church of South India), it so happened that he was nominated to represent that community as well as the maintenance and project telecom circles in the DPC as a member for promotion to the post of Line man, etc. Shri Ananda-Krishnan wrote to the applicant a letter expressing displeasure on the applicant's nomination as a member of the DPC, on 3.7.1985 (Annexure-G). The applicant sent a reply to the letter of Shri Ananda Krishnan, narrating the circumstances ^{by} which he was nominated as a member of the DPC. Again Shri Ananda Krishnan wrote another letter to the applicant on 17.7.1985, Annexure-I expressing his dissatisfaction on the applicant's participation in the DPC. The applicant felt that the above episode had infuriated Shri Ananda Krishnan, Divisional Engineer and on account of that, he must have made some adverse entry in the Confidential Report with a view to spoil his career. The applicant had also filed an application No.OA 565/89 claiming House Rent Allowance which was dismissed. This also according to the applicant must have added to the wrath of the Divisional Engineer towards him. As the applicant's service career had been all along blemishless, his supersession in the matter of promotion to the Junior Time Scale of Group 'A'

according to the applicant, must have been the result of improper and adverse entries in the Confidential Reports which were not communicated to him. The applicant suspects that it was as a result of the conjoint effect of the attempts made by his superior officers, that his name was not included in the select list, and that he was denied promotion. Therefore, the applicant prays that the impugned order at Annexure-N, informing him that he was not recommended by the DPC for promotion may be quashed, that it may be declared that the non-inclusion of his name in the select list is illegal, and ^{that} the respondents may be directed to promote him to the post of Assistant ^{Divisional} Engineer in the Junior Time Scale along with those ~~whom~~ in the Annexure-K list and to grant him all consequential benefits.

3. In the reply statement filed on behalf of the respondents, it has been contended that the non-inclusion of the applicant in the select list at Annexure-K was only because the performance of the applicant did not come up to the level to merit entry in the list as assessed by the Departmental Promotion Committee. It has been clarified that the apprehension of the applicant that Shri Ananda Krishnan or any other Divisional Engineer has made any adverse entry in the ACR of the applicant is not correct, and that there has never been any adverse entry at all in his ACR. It is contended that the selection was made by the DPC making an assessment on the basis of

the ACR in accordance with the executive instructions issued by the Department of Personnel and Administrative Reforms, and that the applicant has no legitimate grievance.

4. In the rejoinder filed, the applicant has stated that the continued correspondence regarding forwarding the ACR of the applicant as evidenced by Annexure-O, P, Q and R, the applicant suspects that, there had been some manipulation in the matter of finalisation of his Confidential Reports.

5. We have heard the arguments of the counsel on either side and have perused the documents produced.

6. The C.R. folder of the applicant and a copy of the minutes of the DPC were made available for our perusal by the learned Sr. Central Government Standing Counsel. We have gone through the ACR of the applicant from 83-84 onwards. We find that there is no adverse entry in any of these reports. The ACR of the applicant for the period from 1.4.1983 to 31.3.1984, 1.4.1984 to 31.3.1985 and upto 26.8.1985 were written by Shri Ananda Krishnan, Divisional Engineer as Reporting Officer. It is seen that during this period against Column.B "General comments on the results achieved and the quality of performance and application of knowledge, delegated authority and conceptual provisional skill on the job" the entry is satisfactory and against the other entries

"Very Good" is seen made. It is seen that nowhere anything adverse is recorded. For the later period also he has earned 'Good' reports. We have very carefully gone through the CR Dossier of the applicant and we do not find that any adverse entry had been recorded. Our scrutiny of the remarks made in the ACR of the applicant during the period in question do not reveal that there was any reason to suspect that there has been an attempt to spoil the career of the officer. The reports appeared to be written in conformity with the rules on the subject and with an open mind. The CR of the applicant for the relevant period was placed before the DPC. The DPC consisting of ^{the} Chairman of the Union Public Service Commission, Member (Personnel), Telecom Board, Ministry of Communications and Deputy Director General, Department of Telecom, Ministry of Communications have graded the officers who came within the zone of consideration on the basis of their service records. The officers were graded Unfit, Good, & Very Good. It is based on the above gradation with due regard to seniority that the panel was prepared. We find that the name of the applicant was at Sl.No.181 in the list and his grading was 'good'. Nobody junior to the applicant with the grading 'good' had been included in the panel. Therefore, the case of the respondents that, applicant's name was not included in the list of officers to be promoted because he had not come up to that level in the grading is found to be true.


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The applicant has no case that the DPC or any Member thereof had any bias against him. His only case is that he must have ^{been} pulled down on account of adverse remarks in the ACR which were not communicated to him or entries in the ACR which did not reflect his actual merit. We have stated above that a careful scrutiny of the ACR of the applicant for the period in question has not revealed any adverse entry at all. Regarding the applicant's claim that his true merit was ^{not} reflected in the ACR ^{it} is only his own suspicion that Shri Ananda Krishnan who according to the applicant had reason to be biased against him should have calculatedly brought him down in estimating the quality of his performance. As stated earlier, we find that the ACR was written in accordance with the instructions with an open mind. Therefore, we do not find any reason to even suspect that the applicant's true merit was not reflected in the ACR. Therefore, on a careful and anxious considerations of the materials placed before us, we find that the apprehension of the applicant that his non-promotion was malafide has no factual or legal foundation.

7. In view of what is stated in the foregoing paragraph, we find that, there is no merit in the application. In the result, the application is dismissed without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

30/4/91


(S.P. MUKERJI)
VICE CHAIRMAN

30.4.91

30.4.1991