

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

O.A.No.31/86

Arun V Kulkarni

: Applicant

-Vs-

- 1 The Deputy Chief Engineer
Lakshadweep Harbour Works,
Karaparamba, Calicut-10
- 2 The Chief Engineer and
Administrator, Andaman Lakshadweep
Harbour Works, Port Blair, Andamans
- 3 The Union of India rep. by the
Secretary, Ministry of Shipping
and Transport, Department of
Surface Transports, Ports Wing,
New Delhi.
- 4 The Union Public Service Commission
New Delhi rep. by its Secretary.
- 5 Shri K Sekhar,
The Executive Engineer
Lakshadweep Harbour Works
Kavaratty, UT of Lakshadweep.
- 6 Shri V R Joshi,
Executive Engineer
Andaman Lakshadweep Harbour Works
Port Blair, Andamans.

Respondents

M/s KP Dandapani & K Jaju Babu

: Counsel of Applicant

Mr PVM Nambiar, Sr CGSC

: Counsel of Respondents

CORAM

Hon'ble Shri G Sreedharan Nair, Judicial Member

and

Hon'ble Smt J Anjani Dayanand, Administrative Member

(Order pronounced by Hon'ble Smt J Anjani Dayanand,
Administrative Member)

O R D E R

The applicant, Shri Arun V Kulkarni, Executive
Engineer (in-Charge), Andaman Lakshadweep Harbour
Works, Kavaratti, has filed this application against

Respondents 1 to 6.

2 The applicant seeks relief by way of issuing an appropriate order or direction calling for the papers leading to the selection of the Respondents No. 5 & 6 as Executive Engineers(Civil) in the meeting of the Departmental Promotion Committee held on 17.9.85 and to quash the same. The applicant also seeks a direction for setting aside Ex.P6 and P7 and for issue ^{of} an appropriate direction to the Respondent No.1 and 3 to convene a denovo Departmental Promotion Committee Meeting and make a fresh selection to the post of Executive Engineer and to exclude from consideration the confidential reports relating to the applicants for the year 1980 to 1982. It is stated in the application that the applicant is a First Class Masters Degree holder in Marine Structure Engineering and was appointed as Assistant Engineer (Civil) on the recommendation of the UPSC on 15.11.78. He was ranked first among those selected, and ~~who~~ joined the department on 22.12.78. By Office Order No.97/80 dated 8.6.80 (Ex.P2) he was transferred to the office of the Deputy Chief Engineer, Lakshadweep Harbour Works, Calicut. Again by another office order dated 24.7.80 he was put in additional charge of Assistant Engineer (Mech.) (Ex.).3). On 20.6.84 the applicant was transferred from Calicut to Little

Andaman Circle (Ex.P4). This was deferred until further orders and thereafter by order dated 23.7.84 he was put in charge of the post of Executive Engineer (Ex.P5).

3 On 22.11.85 by an order of the Government of India, Respondent No.5 & 6 were given officiating appointment to the post of Executive Engineer(Civil), in the Andaman Lakshadweep Harbour Works (Ex.P6). Respondent No.5 & 6 who have been promoted figure at Sl No. 7 and 2 respectively in the seniority list published by the Respondent No.2 on 12.7.84 in the cadre of Assistant Engineer (Civil) in the Andaman Lakshadweep Harbour Works. The applicant is listed at Sl No.5 in the seniority list.

4 While acknowledging that the post of Executive Engineer (Civil) is a selection post, the applicant has questioned the merit of the decisions arrived at by the Departmental Promotion Committee on the basis of the entries made in his confidential roll between 1980 and 1982, ^(three calendar years) ~~During which period 1980 to 1982 (three calendar years)~~ the normal procedure for writing of confidential roll of an officer is for the immediate senior officer under whom he is working ^{to} initiate the confidential roll which is then reviewed by the Reviewing Authority and then countersigned by the next higher authority. In this

case, the Executive Engineer should have been the Reporting Officer, the Deputy Chief Engineer should have been the Reviewing Officer and this should have been countersigned by the Chief Engineer and Administrator. Instead, for the three calendar years his confidential roll was written by the Deputy Chief Engineer who should only ^{have} been the reviewing authority. This action of the Deputy Chief Engineer in denying an opportunity to the Executive Engineer to give his remarks on the work of the applicant has resulted in the applicant being aggrieved. Though no adverse entries have been communicated to the applicant it would be safe to presume that the report given was not adequate to merit his being considered for inclusion in the list of the Departmental Promotion Committee which met on 17.9.85. The applicant has alleged that the Deputy Chief Engineer Shri M V Raju ~~have~~ developed personal ^{animus} ~~enmities~~ against ^{him,} arising out of several incidents where there was difference of opinion in the finalisation of tenders or ^{works like} placing of orders for some equipments, etc. The application details a number of these cases wherein there was difference of opinion. One or two of these cases are also reported to be under investigation by the CBI.



5 The applicant states that he is confident of being included in the list if the confidential roll entries for the period 1980 to 1982 are ignored and subsequent entries are taken into account for the purpose of assessment.

6 The counter has been filed by the Respondent No.1 on behalf of Respondents No 1, 2 & 3. It is stated therein that the promotion order issued to Respondent No.5 & 6 had been correctly issued on the basis of the assessment of the records and selection by UPSC. The applicant also was assessed at the same time alongwith ~~orders~~ ^{others}. Since the post is a selection post, the more meritorious got selected. The applicant has therefore no grounds for complaint.

7 The applicant who was Executive Engineer (in-Charge) has since been relieved by the Respondent No.5 on promotion. The counter goes on to state that the procedure followed by the DPC for selection posts has been meticulously followed and no injustice has been caused. It has also been stated in the counter that if the contention of the applicant is upheld it will inflict a serious blow to the well established government policy of merit based promotion. The counter has contested the allegation made by the

applicant that the confidential roll of the applicant for the years 1980 to 1982 was not written in accordance with the proper procedure by the appropriate authorities. It states that the procedure in this regard has been correctly followed and there has been no denial of fair and proper assessment.

8 The counter also denies all the allegations made regarding the difference of opinion between the applicant and the Deputy Chief Engineer on matters relating to procedure to be followed for procurement of materials through restricted tenders, etc. The counter goes on to state that the applicant has failed to establish the proper nexus between his promotion and the various cases quoted by him.

Dis-agreement on technical issues between the superior officer and the subordinate are not uncommon but unless a definite nexus is proved, it would be difficult to accept that the alleged difference of opinion affected the case of the applicant for promotion to the post of Executive Engineer. All the allegations made against Shri M V Raju regarding various irregularities committed in awarding the contract have also been denied.

9 Counsel for the applicant stated that the short point for decision was regarding the validity of the entries made in the confidential rolls for

the years 1980 to 1982 by an officer who should have been only the reviewing officer and who was not in the direct knowledge of the day to day work of the applicant. By denying an opportunity to the Executive Engineer to write the report, the Deputy Chief Engineer had himself recorded the confidential report of the officer for three consecutive years. Though no adverse entries were communicated, even a routine, average or just an adequate report, would have been sufficient to damn his career prospects. Counsel for the applicant also pointed out that on 27.10.87 the Bench had directed the respondents to make available the confidential roll of the applicant for the period 1980 to 1984, but even as of to-day, the confidential rolls have not been produced before the Bench. The counsel, therefore, prayed for relief to the applicant as sought for in the application. The counsel for the applicant also

¹¹⁵
quoted from ~~a~~ judgement delivered by ~~another Bench~~
one of us (Sri. G. Sridharan Nair) sitting single
~~of this Tribunal~~ in OA No.K-39 of 1987 decided on
October 8, 1987 (1988 ATC.Vol.6- 385) wherein it
has been observed:

" Adverse remarks in Confidential Rolls do cause hardship to a government servant, and if such remarks are made without justification and without paying heed to the instructions regarding writing of Confidential

Reports, it is needless to emphasise that it will result in demoralisation of the services. The assessment of a government servant for the purpose of making entries in his Confidential Report cannot be made arbitrarily. It has to be done taking into account the quality of his performance of the duties assigned to him and by his conduct in general. The Reporting Officer, the Reviewing Officer and the Countersigning Officer have to make their assessment and write the entries with maximum degree of objectivity and impartiality, for if it is done otherwise, it will prejudicially affect the officer reported upon, and his career itself will be damned. There are clear instructions in this regard issued by the Government of India, and if they are followed strictly by the concerned officers, to a large extent unfairness or caprice can be avoided, so that the service cannot have scope for grievance. According to the instructions, the Reporting Officer, the Reviewing Officer and the Countersigning Officer are ordained to follow certain norms. Hence if in a given case it is shown that without following such instructions, entries have been made in the Confidential Report of a government servant to his detriment, such entries have necessarily to be struck down".

10 The Sr CGSC who appeared on behalf of the Respondents No 1 to 3 stated that the Confidential Rolls had not been made available to him, perhaps because they were held up in the UPSC. He was not able to substantiate the same.


11 We have heard the counsel for the applicant and the respondents. We have also perused the records.

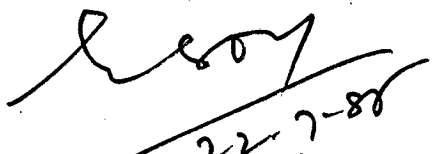
It is unfortunate that even though considerable time was given to the respondents, the Confidential Rolls of the applicant and the DPC file were not produced before the Bench. We can, therefore, only draw an adverse inference on account of the non-production of the same. It is not disputed that during the period 1980 - 82 the confidential report of the applicant was not written by the Reporting Officer, the immediate superior officer who had the occasion to assess his work, aptitude, tact, etc. As such, the reports during that period being contrary to the instructions regarding the writing of Confidential reports, and not in consonance with the principles laid down in the decision in M. Sasidharan's case referred to earlier (1988 ATC.Vol.6-385), cannot afford the foundation for judging the applicant as regards his promotion to the next higher cadre. A meritorious young officer who had topped in the list during the year he was selected by the UPSC for the post has been subjected to such an adverse experience. Such action can only result in demoralisation of the services.

12 In the circumstances of the case we are of the view that the ends of justice will be met by giving the applicant notional promotion from the date from which his juniors were promoted. However,

since the DPC has finalised the list, on the basis of which the department has also issued appointment orders to Respondents 5 & 6, we direct that the applicant after being given notional promotion, be placed below Respondents 5 & 6 in the Select List of Executive Engineers for that year. Consequentially, the monetary benefit will be taken into account for purposes of pay fixation only.

13 The application is disposed of accordingly.


(J Anjani Dayanand)
Administrative Member
22.7.88


(G Sreedharan Nair)
Judicial Member
22.7.88

Index: Yes/~~No~~