

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No.  
P. A. No.

351/89

499

DATE OF DECISION 14.9.90

Mrs. Mary Varghese Applicant (s)

Mr. K.A.Abdul Gafoor Advocate for the Applicant (s)

Versus

Chief Personnel Officer, Respondent (s)  
Southern Railway, Madras & 4 others.

Smt. Sumathi Dandapani (for R-1 and 2) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P.Mukerji, Vice Chairman**

The Hon'ble Mr. **A.V.Haridasan, 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? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 15.6.89, the applicant who has been working as a Chief Clerk in the Southern Railway at Trivandrum, has prayed that the impugned order dated 4.4.89 promoting respondents 3, 4 and 5 as Office Superintendents be set aside and respondents 1 and 2 directed to promote the applicant with retrospective effect as Office Superintendent, treating her as senior to respondents 3 to 5. The brief facts of the case are as follows:

2. The applicant is a member of the Scheduled Tribe and joined service as a Junior Clerk on 15.5.78. She was promoted as Senior Clerk on 11.12.79, as Head Clerk on 31.5.83 and as Chief Clerk on an ad hoc basis for a period of six months on 27.7.83. In accordance with the order issued on 9.5.85 (Annexure-III), she was promoted

as officiating Chief Clerk retrospectively with effect from 1.1.84. The applicant's claim is that she had all along been senior to respondents 3 to 5 who were appointed as Junior Clerk only in 1979 and were promoted as Chief Clerk on 1.1.84, whereas the applicant had been appointed as Junior Clerk on 15.5.78 and promoted as Chief Clerk on 27.7.83. She has also referred to the Promotion List (Annexure-II) in which she had been shown at Sl.No.135, whereas respondents 3 to 5 were shown below her between Sl.Nos. 138 and 140. She has also mentioned that in the Seniority List of 150 Chief Clerks published on 31.8.84, she had been shown at Sl.No.149, whereas respondents 3 to 5 were not even included in that List. She was, therefore, surprised that, by the impugned order dated 4.4.89 (Annexure-V) whereas respondents 3 to 5 were promoted as Office Superintendents, she was not so promoted. Her presumption is that she was superseded because of the adverse remarks for the period 1984-85 which were communicated to her on 10.3.86 (Annexure-VI). She had filed an appeal against the same, but there has been no reply. Her representations dated 5.4.89 and 11.4.89 against her supersession by the impugned order at Annexure-V were also not disposed of. According to her, since her representation against the adverse remarks had not been disposed of and were not really adverse as such, the same should not have been taken into account while considering her for promotion as Office Superintendent. She has further argued that the promotion to the post of Office Superintendent from the grade of Chief Clerk is not by selection but by seniority subject to fitness and for promotion in 1989 the confidential reports of three preceding years should have taken into account. On that basis also, the adverse remarks of 1984-85 should not have been taken into account by the Selection Committee. She has also adverted to the certificate of merit given to her for her performance in 1986 and argued that her supersession is arbitrary and violative of Articles 14 and 16 of the Constitution.

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3. In the counter affidavit, respondents 1 and 2 have stated that subsequent to her supersession by the impugned order dated 4.4.89, the applicant was promoted as Office Superintendent by the order dated 25.10.89 (Exbt. R1). They have conceded that the post of Office Superintendent is a non-selection post for promotion of Chief Clerks, but "since the performance of the applicant was not found suitable, based on her confidential report for the year 1988, she was passed over for promotion and her juniors who were found fit were promoted. However, she has been considered for promotion and issued with orders of promotion to Mysore Division based on her confidential report for the year ending 31.3.1989." They have denied that the applicant had preferred an appeal against the adverse remarks communicated vide the letter dated 10.3.86 at Annexure-VI. Thus, she is estopped from raising any objection to her supersession by her juniors. They have stated that her representation of April 1989 was duly replied to on 28.8.89.

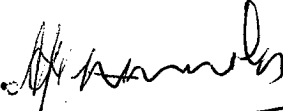
4. In the rejoinder, the applicant has stated that no adverse report in her confidential report for the year 1988 or any preceding or subsequent years had been communicated to her. She has further argued that since she was superseded by the order dated 4.4.89, the confidential report for the year ending 31.3.89 should have been the basis. Since that report was not adverse, as admitted by the respondents themselves, she is entitled to promotion in April 1989 itself. She has argued that the adverse remarks communicated to her for the period 1984-85 are not adverse in nature and promotion should not be withheld on the basis of those remarks.

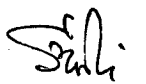
5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Respondents 1 and 2 have admitted that the promotion of Chief Clerks to the post of Office Superintendent is on the basis of seniority-cum-suitability. They have also admitted that the applicant is senior

to respondents 3 to 5. They have also admitted that though she was not found suitable based on her confidential report for the year 1988, she was considered again for promotion based on her confidential report for the year ending on 31.3.89 and was promoted. We think that, on the basis of the admissions and averments made by respondents 1 and 2, the applicant could not have been superseded on 4.4.89. The supersession of 4.4.89 has to be on the basis of her confidential reports for the year ending on 31.3.89. It is possible that when she was considered for promotion ~~as~~ in April 1989, her confidential report for the year ending on 31.3.89 was not available and when it was available later in the year, she was promoted in October 1989. The non-availability of the confidential report upto 31.3.89 cannot be recognised as a ground for superseding her for promotion after 31.3.89. If she was found suitable on the basis of the confidential report for the year ending on 31.3.89, she has to be promoted along with her juniors in April 1989. During 1988-89 she earned a very good report. During 1987-88 the Reporting Officer found her to be good and fair on various counts, but the Reviewing Officer indicated that she was "average in her work--needs to show more initiation." He also found her to be "not yet fit" for promotion. There is nothing to show that these adverse remarks had been communicated to her. It is now established law that uncommunicated adverse remarks cannot be considered for the purposes of <sup>withholding</sup> promotion. During 1986-87 the Reporting Officer and the Reviewing Officer both found her to be good and her work <sup>^</sup> satisfactory. But, yet, the Reviewing Officer indicated that she was not yet fit for promotion and that she required more experience before being promoted further. Again, these adverse remarks were not communicated to her and therefore, cannot be taken into account for superseding her. During 1985-86 the Reporting Officer found her to be good and the Reviewing Officer found her to be sincere, trustworthy and taking lot of pain in keeping her work current. However, the Reviewing Officer indicated that she was not yet <sup>^</sup> fit for promotion as she must gain more experience. Again, this was not communicated to her nor does the entry of her not being fit for promotion harmonise with the general assessment of her work being good and sincere.

6. For the reasons indicated above, we have no hesitation in finding that the entry for the year ending on 31.3.89, on the basis of which respondents 1 and 2 found the applicant to be fit for promotion and promoted her in October 1989, would entitle her to be promoted in April 1989 itself along with her juniors. There is no assessment of her work between April 1989 and October 1989 which would indicate that while she was unfit in April 1989 she became fit by virtue of her good performance during these 6 months for being promoted in October 1989. Her performance was found good for promotion for the year ending on 31.3.89, on the basis of which her promotion in April 1989 cannot be withheld.

7. In the facts and circumstances, we allow this application and direct that the applicant's promotion as Office Superintendent should be pre-dated from 25.10.89 to the date on which her juniors were promoted by virtue of the order at **Annexure-V**. There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

  
14.9.90  
(S.P. Mukerji)  
Vice Chairman