

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED FRIDAY, THE TWENTYEIGHTH DAY OF JULY, ONE THOUSAND
NINE HUNDRED EIGHTYNINE.

P R E S E N T

Hon'ble Shri S.P Mukerji, Vice-Chairman

&

Hon'ble Shri N.Dharmadan, Judicial Member

ORIGINAL APPLICATION NO.358/86

N.T.Joseph	..	Applicant
v.		
1. Divisional Railway Manager, Southern Railway, Trivandrum.		
2. Divisional Commercial Superintendent, Southern Railway, Trivandrum.	..	Respondents
M/s. K.Ramakumar, C.P Ravindranath & C.M Joseph	..	Counsel for the applicant
Smt. Sumati Dandapani	..	Counsel for the respondent

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 15.4.1986 filed under
Section 19 of the Administrative Tribunals Act, the
applicant who has been working as a Head Commercial
Clerk in the Trivandrum Division of the Southern Railway
has challenged denial of his promotion as Commercial
Inspector when his juniors were so promoted and has
prayed that he should be so promoted in accordance with
the selection held in February, 1985. He has also prayed
that the adverse remarks for the year 1983-84 as
communicated to him by Annexure-B dated 5.3.1985
as also the communication dated 3.4.1985 at Annexure-D

rejecting his appeal against the adverse remarks should be set aside. The brief facts of the case are as follows.

2. As a Head Commercial Clerk the applicant's next promotion was to be by selection to the post of Commercial Inspector in the scale of Rs.425-640. He appeared in the Written Test for such selection on 18.11.1984 and the viva-voce test on 1.2.1985. The panel of selected candidates was published on 13.3.1985 in which his name did not figure. In between the test and the publication of the panel there were some developments. On 1.3.85 his junior one Shri S.Muthuramalingam was promoted on an adhoc basis as Commercial Inspector. On 6.3.85 the applicant represented against the denial of promotion which ^{had been} ~~was~~ given to his junior. On 5.3.85 the communication conveying the adverse remarks for the year 1983-84 were issued to him, which according to the applicant was received by him on 21.3.85. He represented against the adverse remarks on 28.3.85. His representation was rejected by the impugned order dated 3.4.85. He represented again about denial of promotion on 23.5.85, but there was no response. The applicant's contention is that non-inclusion of his name in the panel published on 13.3.85 and denial of promotion to him was solely due to the existence of the adverse report which were communicated to him on 21.3.85, i.e., after the written and viva-voce tests and publication of the panel on

13.3.85. He has referred to the rulings of the Supreme Court , according to which denial of promotion on the basis of uncommunicated annual confidential adverse reports has been held to be illegal and violative of Articles 14 and 16 of the Constitution of India. According to the respondents, the applicant could not be promoted as he was not successful in the selection. They have also challenged the application for non-joinder of his juniors who have been promoted. Regarding Shri Muthuramalingam it has been stated by them that he was promoted on an adhoc basis and the applicant has no right to be so promoted. They have also indicated that nobody junior to the applicant has been promoted as Commercial Inspector in the scale of Rs.425-640. The respondents have further indicated that on the basis of the recommendations of the Pay Commission, the applicant's present grade and the grade of Commercial Inspector in the scale of Rs.425-640 have been merged with the higher scale of Rs.455-700 and converted into the revised pay scale of Rs.1400-2300 from 1.1.1986.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. So far as the expunction of the adverse remarks is concerned, the applicant's appeal had been considered and rejected by the order dated 3.4.85 by the accepting authority. The applicant has not brought out

any justification for the Tribunal's intervention in the matter. As regards non-inclusion of his name in the panel published on 13.3.85, we are convinced that when the adverse remarks were considered by the selection committee either on 1.2.85 when the viva-voce test was held or between 1.2.85 and 13.3.85 when the panel was published, neither those adverse remarks had been communicated to the applicant, nor had his representation which was submitted on 28.3.85 been disposed of.

It has been held by the Supreme Court in *Gurdayal Singh Fijji v. State of Punjab and others*, AIR 1979 SC 1622 that an adverse report cannot be acted upon to deny promotion, unless and until it is communicated and an opportunity given to the official to improve and explain and his representation is disposed of. The same view was reiterated by the Supreme Court in *Brij Mohan Singh Chopra v. State of Punjab*, A.T.R 1987(1) S.C 513, in which it has been held that uncommunicated adverse remarks and those against which representations are pending cannot be acted upon for withholding promotion or compulsory retirement. In the instant case before us, the adverse remarks were communicated by a letter dated 5.3.85 which was received by the applicant on 21.3.85, against which he represented on 28.3.85. As against these dates the viva-voce test for selection was

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held on 1.2.85 and the panel of selected candidates was prepared on 13.3.85. In the process of selection the uncommunicated adverse remarks must have played a crucial role . The adverse remarks as communicated to the applicant were as follows:-

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|--|---|
| " 12(g) Amenability to Discipline .. | Bordering on indiscipline, argumentative and quarrelsome. |
| (h) Output and earnestness .. | Remains to prove. |
| 24. Has his work been satisfactory? If not, in what respect he has failed? | Not satisfactory - Casus of failure exist. |
| 25. Is he fit for confirmation in the present grade(if Officiating or on probation)? | .. Not fit. |
| 31. Fitness for promotion | .. Not yet fit. " |

The adverse remarks are of such derogatory character that no selection committee can be expected to ignore them and select a candidate who has earned such adverse comments. The argument of the respondents that the applicant was not promoted because he was not successful in the selection and therefore the adverse remarks are irrelevant is nothing but begging the question. The candidate was not successful in the selection because of the adverse remarks which had not been communicated to him at the time of selection and even if communicated, he had not been given any opportunity to represent against the same and get them expunged. As regards promotion of his junior Shri Muthuramalingam , since he has not been impleaded as a respondent, the applicant cannot claim any benefit at his cost.

4. In the facts and circumstances we allow the application only to the extent of directing the respondents to re-assess the merits of the applicant for promotion as Commercial Inspector as in February, 1985 without considering the adverse remarks of 1983-84 and subsequent years. He should thereafter be graded in the merit list and promoted as Commercial Inspector if any candidate lower in the merit list was so promoted. The promotion in that case should take effect from the date of promotion of such candidate in the panel. Action on the above lines should be completed within a period of four months from the date of communication of this order. There will be no order as to costs.


(N. DHARMADANI)
JUDICIAL MEMBER


28.7.89
(S.P. MUKERJI)
VICE CHAIRMAN

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