

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 383/89 199k

DATE OF DECISION 16.7.90

M. VASUDEVAN NAIR

Applicant (s)

M/s O.V. Radhakrishnan,
and K. Radhamani Amma

Advocate for the Applicant (s),

Versus

Chief Post Master General Kerala Circle, Tvm and others
Respondent (s)

Sh. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)
for R.1 to 3 and 7.

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? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? M

JUDGEMENT

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

In this application dated 24th June, 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Inspector of RMS under the Chief Postmaster General, Kerala Circle has prayed that the impugned orders at Exbt.A.18 dated 9.3.89 and Exbt.A.19 dated 20.4.89 promoting his junior Inspectors to the post of Assistant Superintendent should be set aside and a review D.P.C. should be convened to consider the applicant for promotion to the cadre of Assistant Superintendent, RMS without taking into account the caution administered to him at Exbt.A.4 dated 30.11.84, the adverse entries for the year 1984-85

communicated through Exbt.A.5 dated 13.5.85, adverse entry for 1985-86 communicated through Exbt.A.7 dated 30.5.86, the appellate order dated 7.7.87 reducing the penalty of withholding of his next increments from three years to three months, adverse entry for the year 1986-87 communicated through Exbt.A.0 dated 8.6.87 and the adverse entry for 1987-88 communicated through Exbt.A.12 dated 28.4.88.

2. The brief facts of the case are as follows.

The applicant was appointed as Inspector of RMS in August, 1977 and had earned a number of commendations as at Exbts A.1 and A.2. Even though respondents 4 to 6 were junior to him in the cadre of Inspector, RMS they were promoted as Assistant Superintendent of RMS by the impugned orders superseding him. For seeking some clarifications he was cautioned at Exbt.A.4 without holding any disciplinary proceedings. The fact of cautioning was mentioned in the Confidential Report contrary to Rule 174(8) of the P&T Manual Vol.III. He was charge-sheeted on 30.8.84 for certain irregularities in the recruitment for the post of EDMM for which he was awarded the punishment of censure. This fact was mentioned in the adverse report for 1985-86. He concedes that before censuring him his representation had been considered. He was again

charge-sheeted on 29.9.86 for signing certain documents as Senior Superintendent of RMS while working as an Office Supervisor and for converting Extra Ordinary Leave granted to some officials into half pay leave. After getting his explanation he was awarded the punishment of withholding of increments of three years with cumulative effect. This punishment was reduced to withholding of increments for a period of three months by the appellate authority. On 8.6.87 adverse remarks for 1986-87 were communicated to him against which he represented and these entries were modified and toned down by the first respondent on 3.3.88. His contention is that neither the toning down of the punishment by the appellate authority from three years to three months of withholding of increments nor the toning down of adverse entries of 1986-87 was reflected in the Confidential Report. His further contention is that adverse entries for 1987-88 against five items were communicated to him on 28.4.88 against which he represented on 2.6.88. Barring two adverse entries, one adverse entry was expunged and two adverse entries were made 'satisfactory' by the Addl. Postmaster General vide his order dated 29.9.88 (Exbt.A.13). He has challenged the retention of two adverse entries of 1987-88 before this Tribunal in O.A.339/89. His grievance is that even though he was found fit for officiating ad hoc promotions intermittently as Assistant Superintendent, RMS

between the beginning of 1988 and the beginning of 1989 his juniors were promoted as Assistant Superintendent and his ad hoc promotion beyond January, 1989 was discontinued. According to him promotion to the post of Assistant Superintendent is not by selection but on the basis of seniority. The DPC which held its meeting on 22.2.89 for recommending candidates for promotion to the two posts of Assistant Superintendent, recommended the seniormost Inspector and the 4th respondent ignoring him who was the second seniormost Inspector. The 5th respondent was recommended against the anticipated vacancy even though he was junior to the applicant. Later, respondents No.5 and 6 who were also junior to him were promoted as Assistant Superintendent though on ad hoc basis. The representation against the promotions of respondents 4 to 6 was rejected on the ground that the supersession was based on the recommendations of the DPC. The applicant concedes that he was again charge-sheeted on 29.4.88 which was cancelled on his explanation but he was administered a severe warning on 31.5.88. He had appealed against the warning on 27.4.89 which is still pending. He was communicated adverse entry for 88-89 on 26.4.89, which was expunged on 26.9.89 (Exbt.P.24). The applicant's contention is that the DPC which met again on 2.5.89 recommended

more of his juniors superseding him. The applicant's further contention is that the DPC which met on 22.2.89 was not properly constituted as instead of the Director of Postal Services to be nominated by the Post Master General or the Post Master General, the Director of Vigilance who was holding the charge of the Director of Postal Services (Northern Region) chaired the meeting. The applicant's argument is that since a number of disciplinary enquiries had been initiated against him the Director of Vigilance was naturally prejudiced. His further contention is that he was the Circle Secretary of the All India Assistant Superintendents and Inspectors Association from 1979 to 1983 and the Senior Superintendent of RMS, who is his Reporting Officer, recorded adverse remarks in his Confidential Report because of prejudice. He has also argued that the DPC discriminated him by considering five years' Confidential Reports instead of three years as in other cases. He has challenged the adverse entry of 1984-85 as it was entered without any disciplinary proceedings and taken into account by the DPC. Adverse entries of 1986-87 which had been ~~toned~~ down by the appellate authority also should not have been considered by the DPC without proper modification. The adverse entry of 1987-88 at Exbt.A.12 was also under consideration and was expunged on 29.9.88 and thus should

not have been considered by the DPC. The warning dated 29.4.88 was also under appeal when the DPC took this into account. The adverse entry for 1988-89 communicated on 26.4.89 at Exbt.A.23 which was subsequently expunged on 26.9.89 on his representation dated 16.5.89 also should not have been taken into account by the DPC which met on 2.5.89. He has also argued that since he was allowed to officiate as Assistant Superintendent between 1988 and 1989 all the adverse entries stood wiped out considering that as Assistant Superintendent his work was satisfactory.

3. The respondents have stated that the DPC considered the fitness of the applicant along with that of respondents 4 and 5 on 23.2.89 and along with respondent 6 on 3.5.89 and on both these occasions he was not found fit for promotion as Assistant Superintendent, RMS. As regards the adverse entry of 1984-85 they have stated that the same had been communicated to him and he had not appealed against the entry which could not be challenged now. The adverse entries of 1986-87 had been communicated to him and on his appeal it was toned down and the revised communication was sent to the applicant by Registered Post. They have stated that his Confidential Reports had been modified on the basis of the final order on his representation and it was mentioned in the Confidential Report that

22

the period of stoppage of increments was corrected from three years to three months. The respondents, however, have conceded that the correction of the punishment period that is after two meetings of '89DPC from three years to three months was made on 7.7.89. The respondents have argued that he was intermittently promoted as Assistant Superintendent on ad hoc basis as a local arrangement and that does not entitle him to get regular promotion. They have conceded that appeals against impugned orders at Exbt.A.22 administering severe warning and Exbt.A.23 communicating adverse entry, were pending till the counter affidavit was filed on 5.1.90. The respondents have also conceded that the D.P.C. which met on 23.2.89 was to be chaired by the Director of Postal Services (Northern Region) but by sheer accident, on that day the Director (Vigilance) happened to hold the additional charge of the post of Director of Postal Services and thus chaired the meeting. The respondents, however, have indicated that five years of Confidential Reports were taken into account in all cases and there was no discrimination. They have stated that the D.P.C. met on 3.5.89 was chaired by the Director (Northern Region) himself and that Committee also did not find the applicant fit for promotion.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We have no doubt in our mind that the DPC which met on

22.3.89 was not properly constituted as it was not chaired by the Director of Postal Services. The Director of Vigilance could not chair the meeting even though he was holding the charge of Director of Postal Services because statutory duties of the Director of Postal Services cannot be discharged by the Director of Vigilance. This is supported by the ruling in Paresh Chandra Dutta Vs. Collector of Calcutta and others, 1979(1) SLR 44. It is also evident that when the DPC met on 3.5.89 the correction of the recorded punishment of withholding of increments from three years to three months by the appellate order had not been made. The respondents have stated categorically that the correction was made on 7.7.89. They have also conceded that the warning administered on 31.5.88 was appealed against on 27.4.89 and was pending when the DPC met on 3.5.89. Further the adverse entry which was communicated to him on 26.4.89 was appealed against within the period of one month i.e. 16.5.89 and was expunged on 26.9.89 after the DPC had already met on 3.5.89. They must have taken into account the adverse entry for 1988-89 which was expunged later. Likewise adverse entries for 1987-88 which were communicated on 28.4.88 were represented against by the applicant on 2.6.88. The representation was disposed of by expunction of one entry and toning down of other entry on 29.9.88. For the other entries an

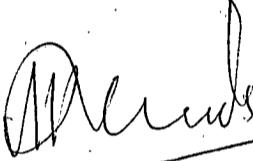
22

O.A. was filed (O.A. 339/89) before the Tribunal and by our judgment delivered today, one of the two adverse entries has been expunged and the other modified. The Supreme Court has held in Gurdial Singh Fijji Vs. State of Punjab and others, AIR 1979 SC 1622 that adverse reports cannot be acted upon to deny promotion unless it is communicated and an opportunity given to improve and explain and the representation if any disposed of. A similar view had been expressed earlier by a Constitution Bench of the Supreme Court in R.L. Butail Vs. Union of India and others, 1970(2) SCC 876 wherein it was observed that where representations against adverse remarks has not been decided it cannot be made the foundation for compulsory retirement. Still in Brij Mohan Singh Chopra Vs. State of Punjab, ATR 1987(1) SC 513 the Supreme Court held that an uncommunicated adverse remark and those against which representations are pending cannot be acted upon for withholding promotion or compulsory retirement.

4. In view of the clear rulings of the Supreme Court as regards and in the circumstances indicated above, we hold that the DPC which met on 22.3.89 being not validly constituted, and the DPC which met on 3.5.89 which took into account certain adverse reports in the Confidential Reports of the applicant against which representations were pending, their recommendations in so far as the applicant is concerned are not valid.

-; 10 :-

5. Accordingly, we allow this application to the extent of setting aside the promotions of respondents 4 to 6 and direct that a review D.P.C should be held as on 23.2.89 and on 3.5.89 and consider the applicant and respondents 4 to 6 for promotion as Assistant Superintendent, RMS after modifying, correcting and expunging the adverse remarks upto the year 1988-89 in accordance with law. The adverse remarks against which any appeal or representation is pending should not be considered by the D.P.C till the representation is disposed of in accordance with law. There will be no order as to costs.


16.7.90

(A.V. HARIDASAN)
JUDICIAL MEMBER


S.P.M/16.7.90

(S.P. MUKERJI)
VICE CHAIRMAN

16.7.90

Ksn.