BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY

Original Applications Nos.58 & 59/87

1. Shri Vinay L. Masurkar,
   Sadanand Korge Chawl,
   Rook No.6, Eksar Thakur,
   Pakahadi, Boriwali(West),
   Bombay-400 092.

2. Shri Anant K. Vaidya,
   Gaikwad Building,
   2nd floor Room No.19,
   Shivajinagar,
   Sow.Tai Limaye Chowk,
   Dombivli(East)
   Dist: Thane .. Applicants

V/s.

1. General Manager,
   Western Railway,
   Churchgate,
   Bombay-20.

2. Chief Electrial Engineer(E),
   Western Railway,
   Churchgate,
   Bombay-20.

3. Narendra Singh
4. Stephen Fernandis
5. K.Balan
6. S.G.Shinde
7. H.C.Geolot
8. Triveni Prasad
9. A.R.Midliyar
10. H.M.Prajapati
11. A.S. Mulgaonkar
    C/o Divisional Elictrical Engineer,
    (Running Shed/Car Shed),
    Western Railway,
    Bombay Central, Tulshi Wadi,
    Bombay-400 034. .. Respondents

Original Application No.59/87

Shri Ramchandra Mahadeo Kadu,
13-B Parera House, St.Joseph Rd.,
Near Municipal Marathi School,
Bandra(West),
Bombay-400 050 .. Applicant

V/s.

1. General Manager,
   Western Railway,
   Churchgate,
   Bombay-20

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2. Chief Electrical Engineer(E),
   Western Railway,
   Churchgate,
   Bombay-20.

3. Narendra Singh

4. Stephen Fernandis

5. K. Balan

6. S.G.Shinde

7. H.C.Geolot

8. Triveni Prasad

9. A.R. Mudliyar

10. H.M.Prajapati

11. A.S. Mulgaonkar
    C/o Divisional Electrical
    Engineer(Running Shed/Car Shed),
    Western Railway
    Bombay Central,
    Tulshi Wadi,
    Bombay-400034. .. Respondents

Coram: Hon'ble Vice-Chairman, Shri B.C. Gadgil
Hon'ble Member(A), Shri L;H.A. Rego

Appearance:

O.A.Nos. 58 & 59/87

1. Shri S.M. Dharap,
   Advocate
   for the applicants

2. Shri J.D.Desai,
   Advocate
   (For Shri M.I.Sethna)
   for respondents Nos. 1 & 2

3. Respondents Nos.
   4, 5, 6, 8 & 9
   in person.

4. Rest of the respondents
   absent though duly
   served.

ORAL JUDGMENT:- Date: 5.4.1988

(PER: Shri B.C.Gadgil, Vice-Chairman)

These two applications can be conveniently decided by a common judgment.

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2. Application No. 58 of 1987 is filed by two railway employees namely Shri Vinayak L. Masurkar and Shri Anant K. Vaidya while the other application No.59 of 1987 is filed by Shri Ramchandra M. Kadu. There are certain undisputed facts in regard to the three employees. Respondents(R) Nos. 3 to 11 in both the matters were holding the post of Assistant Electrical Foreman (Electrical Chargeman Grade-I) in the pay scale of Rs. 550-750. The three applicants in both these matters are senior to R 3 to 11. The next promotional post is that of Senior Electrical Foreman, in the pay scale of Rs. 700-900. Oridinarily, these promotional posts are to be filed in accordance with certain specified rules. However, on 14.5.1984 the Railway Administration took a decision about cadre review and restructuring the Group 'C' cadre. According to this decision one promotion was to be granted in the Group 'C' cadre with due regard to the extant rules of promotion, solely on the basis of the scrutiny of the service record without holding any written test and/or viva voce. This restructuring of the cadre was to be effective from 1.1.1984. The Railway Administration processed the matter in accordance with the criteria spelt out in their communication dtd. 14.5.1984 and R 3 to 11 though junior to the applicants were promoted to the post of Senior Electrical Foreman with effect from 1.1.1984, in preference to the applicants. The grievance of the applicant is that the action of the Railway Administration in not promoting them to the above post is legal and that they are entitled to this promotion with effect from 1.1.1984.

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3. Both the applicants categorically aver that adverse remarks, if any, in their Confidential Service Record (CSR for short) for the relevant Assessment Years, namely: 1980-81, 1981-82, 1982-83 and 1983-84 have not been communicated to them. The applicants, therefore, contend that in this background it will not be open for the Railway Administration to consider any such adverse remark for the purpose of deciding their eligibility or otherwise for promotion to the post of Senior Electrical Foreman. There are certain other contentions raised by the applicants, which however, we do not intend to considered as the matter can be decided on the short point, as to what the legal effect would be, if the adverse remarks are not communicated.

4. The Railway Administration namely, the R 1 and 2 have filed their reply. In substance they contend that the concerned authority did not find the applicants suitable for being promoted to the post in question and that therefore the applicants have not been promoted. In the reply of the respondents, however, the statement made in the application that no adverse remarks have been communicated to the applicant has not been denied.

5. R No. 1 and 2 R No. 4, 5, 6, 8 and 9 stated before us that the dispute is mainly between the applicants and the Railway Administration and that the matter may be decided after hearing them. We have heard Shri Dharap for the applicants and Shri

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J.D. Desai for R No. 1 and 2.

6. The important point that has to be decided is, as to whether the adverse remarks have been communicated and if not what will be its effect. We have already observed, that the respondents have not specificaly denied the statement of the applicants that no adverse remarks have been communicated to them. It is true that in certain earlier correspondence with the Assistant Labour Commissioner, the Railway Administration has made vague averments about the communication of the adverse remarks. We would like to reproduce the relevant part of that communication, which is on pages 21 and 22 of Application No. 58 of 1987.

...1. Shri V.L.Masurkar:

(i) Adverse remarks for the year ending 31.3.82 conveyed on 13.11.82 and acknowledgement available on record.

(ii) Adverse remarks for the year ending 31.3.84 conveyed on 4.8.84 and acknowledgment still awaited.

Note: There are no records readily available to indicate whether adverse remarks for the year ending 31.3.81 and 31.3.83 were conveyed to him or not.

2. Shri R.M.Kadu:

(i) Adverse remarks for the year ending 31.3.82 conveyed on 13.11.82 and acknowledgment available on record.

Note: There are no records readily available to indicate whether adverse remarks for the years ending 31.3.81, 31.3.83 and 31.3.84 were conveyed to him or not.

3. Shri A.K.Vaidya:

(i) Adverse remarks for the year ending 31.3.82 conveyed on 20.8.83 and acknowledgement available on record

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(ii) Adverse remarks for the year ending 31.3.84 conveyed on 4.8.84 and acknowledgement still awaited.

Note : There are no records readily available to indicate whether adverse remarks for the year ending 31.3.81 and 31.3.82 were conveyed to him or not.....

In our opinion, the above mentioned observations are too vague to be accepted. For example, as far as Shri Masurkar is concerned, it is alleged that record is not available to show that adverse remarks have been communicated for the Assessment Year ending 31.3.1981 and 31.3.1983. As regards to the adverse remarks for the Assessment Year ending 31.3.1981 are concerned, it is alleged that acknowledgement of communication of these remarks is available, while for the adverse remarks for the Assessment Year ending 31.3.83, it is stated, that the acknowledgement is still awaited. Similar is the position with respect to the alleged adverse remarks pertaining to Sarvashri Vaidya and Kadu. These observations on pages 21 and 22 would need to be appreciated in the background of absence of any denial in the written reply filed by the respondents, with reference to the applicant's allegation that the adverse remarks have never been communicated to them. This apart, it is important to note that even acknowledgement of communication of adverse remarks for a few of the years as mentioned above has not been shown to us by Counsel for the respondents during the course of the hearing. It would, therefore, be necessary to proceed on the

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hypothesis that adverse remarks if any, were not communicated to any of these applicants.

7. Despite the foregoing, the legal position as it stands, is that uncommunicated adverse remarks cannot be taken into account while considering promotion of the concerned employees. It appears that the three applicants before us were denied promotion principally after assessing their service record inclusive of the adverse remarks not communicated to them. This manner of assessing the merit of the applicant on the basis of uncommunicated adverse remarks is patently erroneous. The necessary result is that denial of promotion to the higher post of Senior Electrical Foreman is bad and it cannot be allowed to stand.

8. Before passing final order we would like to reporduce a part of Exhibit-C to the reply namely para 2.5 in regard to the grading of Shri R.S.Masurkar and the three applicants before us on the basis of the CSRs for the Assessment Years from 1980-81 to 1983-84.

> ..." S/Shri R.S.Masurkar, R.M.Kadu, V.L.Masurkar and A.K. Vaidya, Asstt.Elect. Foremen scale Rs.550-750(R) who by virtue of their seniority position were within the field of eligibility for consideration for promotion against the upgraded cadre of Sr.Elect.Foremen scale Rs.700-900(R) with effect from 1.1.1984 were not found suitable for promotion by the competent authority viz. the Addl. Chief Elect.Engineer(D) on the basis of their adverse confidential Reports

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as shown below:-

S.No.	Name	Grading on the basis of CSRs			
		1980-81	1981-82	1983-83	1983-84
i)	Shri R.S. Masurkar	Not fit	Not fit	Not fit	Not fit
ii)	Shri R.M. Kadu	Not fit	Not fit	Not fit	Fit
iii)	Shri V.L. Masurkar	Not fit	Not fit	Not fit	Not fit
iv)	Shri A.K. Vaidya	Fit	Not fit	Not fit	Not fit

Thus, R.S. Masurkar was found "not fit" throughout the four year period. Even then, he was promoted as Senior Electrical Foreman with effect from 1.1.1984. Shri Kadu is found fit on the basis of the CSR for 1983-84 and "not fit" for the remaining three years. Shri Vinayak L. Masurkar was assessed as "not fit" for all the four years, while Shri A.K. Vaidya was assessed fit for 1980-81 but "not fit" for the remaining three years. We are at a loss to know as to how Shri Rajaram S. Masurkar who was found "not fit" during all the four relevant years, has been promoted as Senior Electrical Foreman. Of course we do not dilate on this aspect. Suffice it to say, that the case of the applicants has to be reviewed by the concerned authority after ignoring the adverse confidential remarks in the relevant CSRs as having not been communicated to them. It was urged by Shri Dharap, Advocate for the applicants that the net result of this process would be that the applicants cannot be termed as "not fit" for promotion, as there would not be any adverse remark against them. There is much substance in this contention but this aspect will have

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to be considered by the competent authority which has to take a decision about the promotion of the applicant.

9. The result, therefore, is that the application succeeds. Respondent No.2 is directed to consider the case of the three applicants namely Sarvashi Vinayak L. Masurkar, Anant Krishnaji Vaidya and Ramchandra M. Kadu for promotion to the post of Senior Electrical Foreman in the pay scale of Rs. 700-900 with effect from 1.1.1984 after ignoring adverse remarks, if any, for the ~~Assessment~~ Years 1980-21, 1981-82, 1982-83 and 1983-84 and in the light of observations made above and thereafter to pass appropriate orders in regard to the promotion of these three applicants. This order should be complied with, within a period of two months from today.

Parties to bear their own costs.

True copy.

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH,
NEW BOMBAY 400 614