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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY - 400 614

TR.A. No.26/1987

1. B J Rawadka
19/3 Shantinagar
Sane Guruji Road
Bombay 400011

2. Kandaswamy Rajiah
C/o. B J Rawadka

3. C.S. Khadilkar
C/o. B J Rawadka

...Applicants

V/s.

1. Union of India
through Ministry of Transport
Department of Railways
Railway Board, Rail Bhavan;
New Delhi 110001

2. General Manager
Central Railway
Bombay V T 400001

3. Chief Personnel Officer
Central Railway
Bombay VT 400 001

...Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri M Y Priolkar, Member (JA)

Appearance

Shri D V Gangal
Advocate
for the applicants

Shri J G Sawant
Advocate
for the respondents

JUDGMENT:

(PER: U.C. Srivastava, Vice Chairman)

DATED: 20-8-1991

This application filed as a writ petition before Bombay High Court has been transferred to this Tribunal for adjudication of dispute raised therein after coming in force of the Administrative Tribunals Act. The applicants 3 in number, first two member of Scheduled Caste Community and number 3 of a Scheduled Tribe have raised grievances against their non promotion to the posts of Senior Personnel Officer

in the Central Railway. They have prayed for issue of writ of mandamus directing the respondents to follow the Railway Board's order dated 26.2.1985 and 11.9.1985 and for promoting the petitioners 1 and 2 to the post of Senior Personnel Officer with effect from October 1985 and the third petitioner with effect from March, 1985. By amendment a further prayer has been made that the Annual Confidential Reports issued to them are illegal and contrary to law and adverse entries be expunged and quashed and the proceedings of Departmental Promotion Committee are vitiated and illegal denying promotion to applicants and respondents be directed to promote them.

The applicants were promoted to the Gazetted post of Assistant Personnel Officer vide order dated 2.7.1980. The next promotional post which they are claiming viz., Senior Personnel Officer according to them is on basis of seniority-cum-suitability which is to be judged on the basis of service record. The applicants have made reference to orders passed on writ petitions filed by All India Scheduled Caste Federation in respect of other posts, interim orders on it and the promotions made thereafter and the orders passed by Allahabad High Court which is ~~is~~ not in their favour and the interim order of Supreme Court thereon and that of Bombay High Court said to be supporting their case.

The two Railway Board's orders relied on by the applicants provide (1) in order dated 26.2.1985, the interim order passed by Hon. Supreme Court in Girdhari Lal ~~Kohli~~ Kohli's case would only apply to promotions to implement restructur-

in the categories and grades covered by Board letter dated 16.11.1984 and in other promotion orders regarding reservation of SC/ST will continue and that SC/ST who are in turn for promotion in upgradation scheme should be promoted notwithstanding whether promotion quota has been achieved or not, (2) order dated 11.1.1985 reiterates what was said in the earlier letter referred to above.

The applicants have stated that out of the list, employees upto No.10 have been promoted while their numbers are 14, 12 and 5 respectively and as such applicant no. 5 was wrongly excluded. A panel of six persons was to be formed for three more posts and the six officers were promoted. But posts of senior Divisional Personnel Officers continued to be operated by officers of Mechanical/Civil Engineering Department the applicants were excluded as Senior Personnel Officers would have been promoted to the post creating vacancies and for members of general community in order to promote him even posts of Senior Divisional Personnel Officer were downgraded.

The respondents in their reply have denied various statements made by the applicants. It has been stated that the applicants were also considered for the promotion to Senior Personnel Officer along with officers on seniority-cum-suitability basis but were not found fit for empanelment in view of their promotion on ad hoc basis performance as reflected in Annual Confidential Reports. Out of 15 posts it has been stated that 9 posts are being held by member of general community 3 by S.C. and 3 by S.T.

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and the averments made regarding exclusion of SC/ST are incorrect. The interim orders referred to by the applicants including by the Tribunal according to the respondents were followed.

It was after the reply by respondents the applicants took the applicants challenged the adverse remarks against which they have stated that representations were filed but no reply was given. Before giving adverse remarks they were not apprised on their shortcomings or failures if any and as such remarks could not have been given and as such were illegal and could not have been looked into by DPC which was to look into five year records and further if representations were rejected and not intimated even then DPC could not have considered these remarks for excluding the applicants from promotion. The respondents in this behalf have stated that applicants were considered for Senior Scale in 1985, 1987 and 1988 and every time they were found unfit. In 1987 as there was no vacancy there was no meeting of DPC. They were considered in 1988 but applicants 1 and 2 were not found fit. Regarding applicant no.3 it has been stated that his case could not be considered as quota for SC/ST was already in excess of percentage of 15% for SC and 7½% for ST. The applicants were not found suitable in view of the aggregate marks allotted to them and their marks according to formula for promotion fell short of minimum requisite.

We have heard the learned counsel for the parties and perused the record, including the ACRs and the DPC proceedings. From the DPC proceedings, we have found that the marks given to applicants fell short of the minimum

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requisite for being empanelled appears because the adverse remarks were the cause of their securing lesser marks. We have looked into the adverse remarks and have found that the representation of the applicants were rejected after consideration but intimation of rejection was not given to them at any point of time. So far other two applicants viz., no.2 and 3 are considered the remarks as such were not assailed. Lot of arguments were advanced in respect of applicant no.1. In 1980-81; 1981-82; 1982-83 he was rated to be good and 1983 entry of 'fit' was given and no adverse remarks were given to him in these years. In 1983-84 he was rated to be average and noted not yet fit for promotion to selection scale. The adverse remarks were that he was not considered by reviewing officer to be resourceful and energetic and was superficial and lazy. The representation of the applicant was rejected on 20.12.1984. In 1984-85 he was graded to be good and fit with the remarks that his work will have to be watched for some time before he is considered for promotion. In 1985-86 he was again graded to be average and with remarks needs some more experience and not yet fit for promotion. Section-I adverse remarks were noted by him and adverse remarks in Section-II were communicated to him and his representation was rejected on 16.8.86. In 1986-87; 1987-88 and 1988-89 he was graded to be good and fit. So far as remarks of 1985-86 are concerned it is to be noticed that the same were in respect of 5 months as the officer who gave him remarks had occasion to watch his work for 5 months although he had no occasion to watch his work between

6.9.85 to 31.3.86 yet he gave entry for 7 months (full year) and his remarks were good and keeping in tune with the applicants distinguished service who earned praises certificates and awards also. According to learned counsel for respondents even in April 1983, awards etc., were given for specific good work and further the applicant was on leave for 2 months during the second part of the year and the maximum period on either side of leave was 2½ months and as such there was no question of giving any remarks.

The ACRs indicate that the representation against adverse remarks was reflected and the reference to same finds place in the ACR itself. No separate order regarding the representation seems to have been passed.

Learned counsel contended that as rejection of representation was not communicated to the applicant the adverse remarks could not have been considered and DPC was bound to recommend their names for promotion and in this connection placed reliance on the case of Union of India v. Gurdyal Singh Pippi, AIR 1979 SC 1622. But the said case nowhere lays down that promotion cannot be denied on the basis of uncommunicated remarks and what it has laid down was that the adverse remarks without considering the representation pending against the same cannot form basis of exclusion from promotion. The plea that DPC wrongly applied the ~~xxxxxx~~ inference of selection post instead of seniority cum fitness does not stand established and the records speak against such a plea. It is on the basis of criteria laid down for suitability the applicants did not come within the minimum marks in view of entries they were excluded.

Learned counsel then contended that non-reasoned order of representation was no order and it ought to have been ignored and the applicants should have been promoted which even otherwise was to be done as the ACRs were illegal and the instructions and procedure regarding adverse remarks was not followed and the entries were quietly given without giving any warning to the applicants for sudden or their newly developed shortcomings, failures or lapses. In this connection reference was made to the case reported in ATR 1987(2) 510 KRISHNALAL SHARMA V. UNION OF INDIA and contended that in the said decision adverse remarks of being indesplined, irregular, careless, casual without furnishing details are liable to be quashed.

Reference was also made to the case of C.K. GAZANAN V. UNION OF INDIA (1991) 15 ATC 586 in which the Hyderabad Bench of CAT after taking into consideration cases on the subject and the Government of India instructions in this behalf which show that considerable care should be exercised by the supervisory officer in writing CRs and these entries are not meant for fault finding but to develop an officer, and that the reporting officer should meet the officer reported upon during the course of year at regular intervals to review the performance and to take necessary corrective steps. It was observed when making adverse entries in the Confidential Roll of an officer there should be compliance with the instructions issued by the Government. The adverse entries must be based on relevant material and made on objective assessment of the material and cannot be done arbitrarily, for noncompliance with the instructions or because the assessment is done without material, the adverse entries can be ignored.

The third preposition is that if the officer makes an representation against the adverse entries the contentions or objection raised by him are to be dealt with, a bald order of rejection would not suffice. The disposal of representation is not an empty formality. Consequently if the Government rejects the representation by a non-speaking order then the order is liable to be set aside. Reference was also made to the case of K B MOHAN DAS V. ASSISTANT COLLECTOR OF CENTRAL EXCISE, CALICUT & OTHERS (1991) 16 APC 177 decided by Ernakulam Bench of CAT in which it was held that rejection of first and second appeals against adverse remarks were invalid because it was by a non-speaking order and also did not indicate exercise of mind by the authorities.

But so far as the rejection of the representation regarding non-speaking orders is concerned, the cases referred to above will stand overruled in view of the latest announcement of judgment by the Supreme Court in UNION OF INDIA & ORS V. E.G. NAMEBUDIRI, 1991(1) SCALE 783. In the said case the representation of the employee was rejected by the competent authority, on a memorial the President expunged the first four out of six entries. The matter went upto the Supreme Court. It was held that ~~themo~~ order of and administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the Court to interfere with such orders merely on the ground of absence of any reason. Further it was held that President was under no obligation to record reasons. Consequently the order was not vitiated in law. But in the said case it was also

observed that the competent authority has no licence to act arbitrarily, he must ~~exist~~ act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. But in the instant case before us, the position is that the representation ~~by~~ filed by the applicants were not considered and rejected and the rejection was not communicated though the adverse remarks were coolly used though they were not communicated obviously for reasons best known to the authority concerned. The non-communication of the remarks on representation and the way in which it is decided arbitrarily without fulfilling the test of decision in a fair and just manner.

The representation was rejected by competent authority without taking into consideration the instructions of the Government in a perfunctory manner and accordingly this case is covered by UNION OF INDIA & ORS. v. E.G. NAMBUDRI, 1991(1) SCALE 783, and accordingly the application is allowed to the extent that the order by which the representation of the applicant was ~~extinct~~ rejected was illegal and stand quashed. Accordingly, the competent authority disposing of the application/ representation is directed to dispose of the same again in accordance with law taking into consideration the plea raised by the applicant and the instructions issued in the matter of ACR by the Government of India ~~to~~ Railway Board and the

same be communicated to the applicant without any delay. It would be open for the applicant to submit fresh copies of the very same representation against adverse remarks before the competent authority. In case the adverse remarks are expunged respondents will consider whether in the light of the criteria which was followed by the DPC in the applicants cases for promotion ~~is~~ ~~was~~ it should be considered whether they will get more marks and will come within zone of promotion and if so Review DPC may be called and the cases may be referred to the Review DPC within a period of 2 months and consequences thereof will follow without loss of time. There would be no order as to costs.


(M Y PRIOLKAR)
MEMBER (A)


(U C SRIVASTAVA)
VICE CHAIRMAN