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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 11/87

Transfar Application No:

DATE OF DECISION: 28.6.1994

Shri P.R.Gadgil Petitioner

Shri D.V.Gangal Advocate for the Petitioners

Versus  
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Union of India & Ors. Respondent

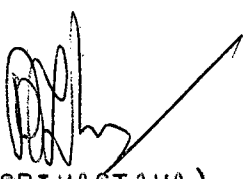
Shri V.G.Rege Advocate for the Respondent(s)

CORAM :  
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The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ? M
2. Whether it needs to be circulated to other Benches of the Tribunal ? M

  
(P.P.SRIVASTAVA)  
MEMBER (A)

  
(M.S.DESHPANDE)  
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

DA.NO. 11/87

Shri Pradyumna Ratnakar Gadgil

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM : Hon'ble Vice Chairman Shri Justice M.S.Deshpande  
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri D.V.Gangal  
Advocate  
for the Applicant

Shri V.G.Rege  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 28.6.1994

(PER: M.S.Deshpande, Vice Chairman)

The applicant by this application claims promotion to the post of Assistant Foreman (Tie Tamping) Grade Rs.550-750 with effect from 1.1.1984 or from such date as the Tribunal find fit together with the arrears and seniority. It is also urged that the respondents could not have taken into consideration the confidential report 'Not fit for promotion' while assessing the suitability of the applicant for the post of Foreman.

2. The applicant claims to be the senior-most for the post of Assistant Foreman (Tie Tamping) as he was working in the cadre from which promotions could be made. According to the applicant the confidential reports which were taken into consideration contained a column 'Not fit for promotion' which went into consideration though that column has been deleted by the letter dated 5.3.1986 issued by the Railway Board and that column was to be restricted only in the

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confidential report of the senior supervisors who had to be promoted to Group 'B' post and not those who were promoted to Group 'C' post. It is also urged that selection process came to be modified and the assessment was made on the annual confidential report and the promotions were to be made on the basis of seniority-cum-suitability, though it was urged that the promotions should have been made by a committee or a Board comprising of three persons, such a stand has specifically <sup>not been</sup> taken in the application. The respondents have stated in the reply that the Chief Track Engineer was the final authority vested with powers to decide whether one is fit and suitable for promotion or not and this was not for the promotion to a select <sup>ion - for promotions</sup> post but on the basis of seniority-cum-suitability. Shri Gangal, the learned counsel for the applicant could not point out ~~to~~ any binding circulars in this respect though he referred to Rule 211 & 216 of the Railway Establishment Manual in this respect. These rules relate only to the posts which have to be filled in by selection and obviously the post of Assistant Foreman could not have been filled by promotion by adopting the criteria of selection by committee.

3. The second submission on behalf of the applicant is that the requisite procedure has not been followed. Again in this respect no details have been <sup>given</sup> produced, but it was argued on behalf of the applicant that <sup>the</sup> annual confidential report which has been taken into consideration contained remarks against the applicant that he was not fit for promotion. Our attention was drawn to the letter dated 5.3.1986 bearing on this subject in which it is stated that the column 'Fitness for promotion' would stand deleted. That Circular only emphasise <sup>from</sup> that it should be deleted in the form of confidential report for Group 'C' staff. However, the column

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in section II of the confidential Report Form for senior supervisors regarding 'Fitness for promotion' to Group 'B' <sup>was to</sup> ~~will~~ be retained." The applicant did receive his promotion as Assistant Foreman by the order dated 27.2.1992 and the question ~~really~~ before us is whether the applicant would be eligible for promotion from 1.1.1984. As ~~was~~ already indicated the Chief Engineer was the final authority and it was this authority which had considered the suitability of the applicant for promotion based on the annual confidential report.

4. The learned counsel for the respondents produced for our perusal the annual confidential reports which were written from 1982 onwards and we have perused the confidential report from 1982 to 1986. All these confidential reports show that the applicant was not fit for promotion. Thus, the report for the year 1981-82 was written and was communicated on 23.8.1982, The applicant's representation was received on 3.9.1982 and reviewing officer as well as reporting officer mentioned ~~after~~ that they ~~are~~ agreeing with the remarks of the reporting officer. Similarly in the year 1983 the accepting authority and the reviewing authority accepted the remarks of the reporting officer that the applicant was unfit for promotion. No representation was received in respect of remarks of 1983 and 1984. The A representation was made in respect of remarks dated 6.5.1985 and that was considered, with the reviewing and accepting authority agreeing with the assessment made by the reporting officer.

*[Handwritten signature]*

5. The submission on behalf of the applicant was that he had filed an application for amendment questioning the annual confidential report. That amendment was allowed on 8.1.1993 but was not incorporated in the original application. If the amendment was not incorporated, it would mean that the amendment was rejected and we would not be required to look into that amendment. Even if we were to look into the amendment, what is challenged is the fact that representations were not received. The reply filed by the respondents shows that these representations were not received. From the perusal of the record of the annual confidential report, it is apparent that an endoresement was made in the usual ~~course of report~~ that no representation was received in respect of annual confidential report for the year 1983-84. The applicant has filed <sup>an</sup> affidavit to show that <sup>the</sup> usual practice was to leave the representation on the site. Considering ~~that~~ in the two years the respondents had received and considered the representations, it is difficult for us to accept the affidavit belated<sup>ly</sup> ~~filed~~ by the persons who ~~are~~ not connected with the case. We are not inclined to accept the truth of the statement made by the applicant against the annual confidential report communicated and we are not inclined also to entertain the belated challenge that is being raised to the annual confidential report. We have seen the file and even if we were to consider the representations made by the applicant, we find that there <sup>was</sup> ~~is~~ adequate material for the respondents to come to the conclusion that the applicant was not suitable and no exception can be taken to the assessment made by the reporting officer, reviewing ~~authority~~ <sup>is</sup> and the accepting authority. The position therefore ~~was~~ <sup>is</sup> that the remark that the applicant was not fit for promotion could have been taken into consideration before the year 1986-87. The suitability of the applicant was

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assessed on the basis of those annual confidential reports and we see no merit in the <sup>plea</sup>stand raised by the applicant that the modified selection process has not been adhered to, that the authority which assessed the suitability was incompetent to do so and that the annual confidential report which were taken into consideration were biased.

6. In the result, we see no merit in the application, it is dismissed.

(P.P. SRIVASTAVA)  
MEMBER (A)

(M.S. DESHPANDE)  
VICE CHAIRMAN

mrj.