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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 199/88 and 305/89  
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Transfar Application No:

DATE OF DECISION: 4.3.1994

Shri Ishwarbhai J. Pathak Petitioner

None for the Applicant Advocate for the Petitioners

Versus

The Union of India & Others Respondent

Shri Rao Advocate for the Respondent(s)

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)

The Hon'ble Shri M. R. Kolhatkar, Member (A)

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, Member (J)

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

M. R. Kolhatkar  
(M. R. Kolhatkar)  
Member (A)

(14)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. No. 199/88 & 305/89

Shri Ishwarbhai J. Pathak

... Applicant

Vs.

1. The Union of India, through the Secretary to the G.O.I. Ministry of Home Affairs, New Delhi.
2. The Administrator, Dadra and Nagar Haveli, Raj Bhavam, Panaji, Goa.  
  
The Collector, Dadra and Nagar Haveli, Silvassa.
3. Shri N. M. Bhavsar, Education officer, Dadra and Nagar Haveli, Silvassa.
4. Shri M.P.Patel, land reforms Officers and Purchase and Supply Officers, Dadra N. H. Silvassa.
5. Shri B. N. Parmar, Project Director, R.D.A. Dadra and Nagar Haveli, Silvassa.
6. Shri L. P. Vyas, Asstt. Secretary to the Administrator Dadra and Nagar Haveli, Silvassa.
7. Shri J. R. Mahyawanshi, L.R.O., Dadra and Nagar Haveli, Silvassa.
8. Shri R. L. Patel, Social Welfare Officer, Dadra and Nagar Haveli, Silvassa,
9. Shri K. D. Patel, Divisional Accountant, P.W.D., Dadra and Nagar Haveli, Silvassa.
10. Shri D. V. Prabhu, Education Officer, Dadra and Nagar Haveli, Silvassa.

In respect of  
OA No. 199/88  
and OA 305/89

... Respondents

In respect of  
OA 199/88 only.

CORAM : Hon'ble Shri M.R.Kolhatkar, Member (A)  
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance :

None for the Applicant

Shri Rao, counsel for the Respondents.

ORAL JUDGMENT

Date : 4.3.94

For : Hon'ble Shri M. R. Kolhatkar, Member (A)

As the parties are substantially identical  
and the reliefs are inter-dependent we are disposing  
of these two OA's by a common judgment.

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2. In OA. number 199/89, the basic prayer of the applicant is for grant of promotion to him to the Group B post in the grades 1640-2900 and 2000-3500 in the Accounts Wing of Dadra and Nagar Haveli Administration since he is the Senior most person in the feeder cadre of the post in the grade of Rs. 1400-2300. In this OA, apart from Dadra and Nagar Haveli Admn. (Respondent No. 1 to 3), there are 7 Private respondents (Respondents No. 4 to 10). OA No. 305/89 is in respect of expunction of adverse entries in the Confidential Reports of Applicant for the years 1982-83 and 1983-84. In this OA, as amended there are no private respondents.

3. We dispose of OA 305/89 first because a decision in this case would have an impact on the decision of OA 199/89. The adverse remarks for the year 1982-83 are to the effect : "pays attention but not as adequate as expected". The adverse remarks for the year 1983-84 are : "pays attention but occasionally has to be prompted". It is not disputed that these adverse remarks in the CRs were not communicated to the applicant at any time. The applicant's name came to be considered by the various D.P.C.'s as below :

- i) Normal DPC 14.9.1983
- ii) Normal DPC 9.8.1986
- iii) Normal DPC 27.8.1987
- iv) Normal DPC 16.10.1987

1983 DPC recommended him for promotion as Sr. Accountant in the scale Rs. 1400-2600 but the review DPC of 27.8.87

held that his CR's were not given due weightage which should have been given. It held him "not fit" for promotion and recommended his reversion to the lower cadre with retrospective effect from 14.9.1983 but his ad-hoc promotion to the same with effect from 9.8.1986. The normal DPC held on 16.10.1987 held him as "unfit" for ad-hoc promotion to the higher grade of Rs. 1640-2900.

4. It is now well established that the un-communicated adverse entries cannot be taken into account by the DPC for the purpose of assessing suitability of an employee for promotion as held in BISWANATH MAHARANA V. UNION OF INDIA, 1987(4) CAT 5 and BANISINGH V. UNION OF INDIA, 1989(9) ATC 849. It is also to be noted that these cases are based on the authority of the Supreme Court in Fijji's case. (1979) 2 SCC 368. While, therefore, we are not in a position to order expunction of these adverse remarks/entries, we hereby direct that these adverse entries in the Confidential Reports of the applicant for the years 1982-83 and 1983-84 can not be considered by the DPC **or any other authority** for assessment of the applicant for purpose of promotion.

5. Coming to OA No. 199/88 it is the contention of the respondents that applicant could only have been considered for ad hoc promotion in Group B because of non availability of requisite personnel who could have been considered for regular promotion to Group B because he did not have the requisite length of five years' regular service as required by the recruitment rules. The applicant

worked for less than five years in the feeder cadre viz., from 16.7.1979 to 18.2.1980 (5 months 16 days) and 13.7.83 to 16.10.1987 (4 years 3 months 10 days Total 4 years, 8 months, 26 days). The applicant has contended that the reason he fell short of requisite length of service in spite of being the senior most of experienced employee of the Accounts wing was because he was sent to do commercial accounts in 1979 against his wishes rather than being appointed as Sr. Accountant in his own line as was allowed to Respondent No.10 in OA 199/89. Respondent Union Territory Administration has denied that applicant's willingness was required to be ascertained.

6. We have gone through the CRs of the applicant and the respondents have also given us a chronological classification of the CR entries in respect of the applicant reproduced below :

<u>C.R. GRADINGS OF SHRI I.J.PATHAK.</u>		<u>FITNESS FOR PROMOTION</u>
1979-80	Good/Average.	
1980-81	Good.	
24.11.80 to 31.3.81	Very Good.	
1.4.81 to 2.12.81	Very Good.	
1.4.82 to 31.8.82	Good.	
1982-83	Good.	Fit or <u>Fit</u>
1.8.83 to 31.3.84	Good.	in his turn.
1.4.84 to 4.1.85	Good.	
1.4.85 to 31.3.86	Good.	
1.4.86 to 30.9.86	Good.	
1.10.86 to 31.3.87	Very Good.	

7. One of the contentions raised by the applicant is that the DFC was raised against him because a Member Mr. Dhawan H.C., Deputy Conservator of Forests had a

grudge against the applicant who had objected to several proposals of Mr. H.C. Dhawan. The DPC dated 27.8.1987 also did not include EE who was absent. The applicant has given a list in this respect which is reproduced below :

- " a) The Finance Division in which my self is working as Sr. Acctt. and Shri H. N. Patel as Head Clerk did not clear following cases since the codal formalities were not followed strictly and the guidelines given in the General Financial Rules and Delegations of Financial Powers Rules were violated completely.
  - i) The proposal of purchase of polithine bags at higher rates.
  - ii) The Proposal of purchase of Furniture from Godrej.
  - iii) Payment of paid Holiday, Sunday without work to the Forest Labour Workers without the sanction of G.O.I.
  - iv) Purchase of Toyoto Mini Truck without approval of Govt. of India.
  - v) Purchase of furniture articl es for Rest House Bombay.
  - vi) Purchase of furniture and other equipments for office of the Dy. C.F.
  - vii) Construction of tourist cottage at Khanvel.
  - viii) Declaring Dy. C.F. as Head of the Department without approval of the G.O.I. and without issue of ammendment to the list of Heads of the Deptts given in the Delegation of Financial Powers, Rules.
  - ix) Demolition of the part of residential quarter behind Jain Temple at Silvassa without proper approval of the G.O.I.
  - x) Furnishing/additions alterations to bungalow of the Dy. C.F.
  - xi) There were many files returned back to the Forest Department since proposals contained therein were not in accordance with the General Financial Rules. "

(9)

8. The respondents have contended that while making allegations against a Member of DPC regarding ~~that~~ <sup>that Shri</sup> the applicant has failed to make him a party respondent. We are, however, of the ~~view~~ <sup>view</sup> ~~of~~ <sup>that Shri</sup> H.C. Dhawan as a member of DPC is part of the Administration and it was open to the Administration to file a clear affidavit denying the allegations of bias <sup>made</sup> ~~against~~ <sup>Shri</sup> Dhawan. Apart from the circumstantial evidence, the record shows that the applicant by no stretch of ~~imagination~~ could have been assessed as "not fit" for promotion by the DPC in the year 1987 even after taking into account the adverse entries. Secondly we have already held in the order in OA 305/89 that these adverse entries are to be disregarded by the DPC <sup>or by any other authority</sup> ~~for~~ assessment of the applicant for promotion.

9. We, are therefore satisfied that the proceedings of the DPC which have been produced before us ~~viz.~~ <sup>viz.</sup> proceedings dated 27.8.1987 and dated 16.10.1987 are vitiated because of consideration of material which ought to have been disregarded viz., the un-communicated adverse remarks and because a plausible case has been made out that a bias could have been at work so far as ~~one~~ <sup>one</sup> of the Members of the DPC is concerned.

10. We are particularly pained to note that review DPC dated 27.8.87 thought it fit to hold the promotion of Applicant from 14.9.83 as unjustified and recommended his post fact<sup>o</sup> reversion and promotion on ad hoc basis only from 9.8.1986. The subsequent regular

DPC also held him to be unfit for promotion to higher grade in Group 'B'.

11. We note that the Applicant has since retired from service with effect from 1.11.1989 having sought voluntary retirement.

12. Normally, we should have asked the <sup>Union Territory</sup> Administration to hold a fresh review DPC to consider the applicant for promotion but since he has already retired, and keeping in view the background <sup>viz. the</sup> that Applicant was the senior most employee and suffered because of consideration ~~by~~ DPC of uncommunicated adverse remarks as well as unjustified down-grading of his assessment due to bias at work on the part of one of the members of DPC, we dispose of the application by the following order.

# O R D E R

of  
The minutes/ proceedings of the Review DPC dated 27.8.1987 and 16.10.87 so far as they relate to the Applicant are quashed and set aside. The Administration should consider that Applicant worked continuously from 13.7.1983 as Senior Accountant. His previous service of 1979 - 80 in this grade should also be taken into account. On this footing, the Applicant should be deemed to have been regularly promoted to the Group 'B' post in <sup>Rs.</sup> 1640-2900 after completion of 5 years of service. His pay and allowances should be refixed on this footing on notional basis and his pension should also be recalculated. We do not award arrears of ~~pay~~ and allowances in higher post since Applicant did not work in the higher post but if



(21)

the Applicant suffered any loss of pay/allowances in the scale Rs.  $\frac{1400 - 2300}{1400 - 2600}$  as a result of decision taken to revert his in terms of DPC dated 27.8.1987, the same should be calculated and refunded to him. The arrears of pension and dearness relief if any should be paid to the Applicant. All this action should be completed within 4 months of the communication of the order. The <sup>Union Territory</sup> Administration will be **liable** to pay interest @ 12% in respect of amount due and outstanding in terms of our order above beyond 4 months of the communication of the order.

*Lakshmi Swaminathan*  
(Lakshmi Swaminathan)  
Member (J)

*M.R. Kolhatkar*  
(M.R. Kolhatkar)  
Member (A)