

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, CAMP AT NAGPUR.

Original Application No.413/89.

Shri G.P.Bhargava.

..... Applicant.

V/s.

Union of India & Ors.

..... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,  
Hon'ble Shri M.Y.Priolkar, Member(A).

Appearances:-

Shri  
Applicant by S.P.Saxena.  
Respondents by Shri Ramesh Darda.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dated: 22.7.1993.

Heard counsel for the parties. The applicant was appointed in 1958 as an Engineering Apprentice and came to be appointed on 27.6.1967 as a Group 'A' Officer as Assistant Works Manager. He was raised to the post of Works Manager in 1973 and Deputy General Manager in July, 1981. In the year 1987 pursuant to the recommendations of the IVth Pay Commission regarding the Selection Grade post of Group 'A' services, the Respondents decided that in all Group 'A' Central Services the number of posts in the Selection Grade shall be equal to 15% of the senior duty post that is all duty posts at the level of senior time scale or above in the cadre that there would be no increase in the overall strength of the cadre (Annexure M-4). A number of Officers came to be considered for this selection and the applicant was one of them. The Selection Committee met on 6.3.1989 but the applicant was not considered for the Selection Grade. According to the applicant the decision presumably was based on uncommunicated adverse C.Rs for the period from 1.10.1984

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to 31.3.1988 and the uncommunicated adverse entries in the CRs could not have been taken into consideration nor could they be considered without deciding the applicant's representation which he made after entries were communicated to him. Secondly, it is urged that since on Shri M.P.Sharma who was the Reporting Officer was biased against The adverse CRs entry recorded by Shri M.P.Sharma should not be taken into consideration.

2. The relevant records of the applicant which ~~were~~ was taken into consideration by the Selection Committee were produced before us. On its perusal it is apparent that the A.C.R. for the period from 1.10.1984 to 30.9.85 which were communicated on 1.5.1986, the applicant made a representation on 29.5.1986 and that representation was decided on 8.12.1986. The grievance in respect of that C.R. cannot be made in this application which was filed in the year 1989 and we find that it was open for the Selection Committee to look into the A.C.R. for that period while considering the case of the applicant.

3. With regard to the A.C.Rs for the period from 1.10.1985 to 30.9.1986 and 1.10.1986 to 31.3.1987 ~~the grievance~~ is that they were communicated respectively on 23.2.1987 and 3.3.1989 and representations against these entries were made on 21.7.1987 and 25.3.1989 respectively. The reply to those representations were despatched on 5.6.1989 rejecting the representations, The C.R. for the period 1.4.1987 to 31.3.1988 was communicated on 6.3.1989. The applicant sent a representation against it on 25.3.1989 and he was informed about it on 5.6.1989. It is apparent that the representation with regard to the ACR for the period 1.10.1985 to 30.9.1986 had not been decided when the Selection Committee met and no finality had attached to the ACR

for that period. The CRs for the subsequent two years were communicated on 3.3.1989 and 6.3.1989 as already observed and the representations against those ACRs were pending when the committee met on 6.3.1989. The position therefore was that the ACRs for these two years not having been intimated to the applicant could not have been taken into consideration by the Selection Committee.

4. Shri R.Darda, learned counsel for the Respondents urged that with regard to some of the periods the applicant was informed that the remarks had been made only in an advisory capacity, but if certain entries which could have been construed as adverse were on record and it remained uncommunicated, it is obvious that the Selection Committee could not have taken the same view as has been stated by the Respondents in the ~~return~~ <sup>written</sup> before us. Evidently, the entries in the CRs for the three years from 1.10.1985 to 31.3.1988 were therefore adverse and the could not have been considered by the Selection Committee in the circumstances narrated above. From the records of the Selection Committee it is apparent that they have considered the entire service record of the applicant including the C.Rs for the three years immediately preceding the selection which must have ~~mix~~ weighed with the selection committee.

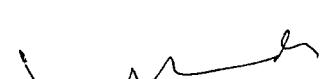
5. We are not impressed by the submission ~~or~~ that Shri Sharma who wrote the C.R. <sup>was</sup> ~~was~~ biased. The ACR for the period from 1.10.1985 to 30.9.1986 was written by Shri Sharma. According to the Respondents it was only in the spirit of advice, but it is difficult to accept this submission considering the notings which had been

made against certain columns and they had in fact been communicated to the applicant. However, the circumstances under which Shri Sharma came to be biased against the applicant as narrated by him do not appear to be sufficient ground for inferring that Shri Sharma was biased and more cogent and convincing particulars should have been given to support the allegation of bias. However, since the remarks written by Shri Sharma for the period from 1.10.1985 to 30.9.1986 have to be ignored for the reasons for which we have given above and we need not say anything <sup>more</sup> on that aspect.

6. In the result, we allow the application and direct the Respondents to hold a Review I.C. for considering the suitability of the applicant for the placement of the applicant in the J.A.G. Non-functional Cadre. That I.C. shall ignore the CRs for the period from 1.10.1985 to 31.3.1988 and on the basis of the representations up to the period ending 30.9.1985 decide upon the suitability of the applicant for promotion to the aforesaid post. If he is found suitable and is promoted on the basis of that I.C. the applicant should be considered for further promotion by holding a Review I.C. and if he is selected, he shall be placed for the further promotions above his juniors. The applicant would be entitled to all consequential benefits should he be found suitable for one or both of the promotions. The Review I.C. be held within four months from to day.

7. The application is accordingly disposed of with no order as to costs.

  
(M.Y.PRIOLKAR)  
MEMBER(A)

  
(M.S.DESHPANDE)  
VICE-CHAIRMAN