

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 331/89
TxXXXNo.

198

DATE OF DECISION 22.2.1991Shri L.B.Waghmare PetitionerShri M.D.Rana Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentShri N.K.Srinivasan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr. T.C. Reddy, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(6)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

OA. NO. 331/89

Shri Laxman Bhaurao Waghmare

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar
Hon'ble Member (J) Shri T.C.Reddy

Appearance

Mr. M.D.Rana

Advocate

for the Applicant

Mr. N.K.Srinivasan

Advocate

for the Respondents

ORAL JUDGEMENT

Dated: 22.2.1991

(PER: M.Y.Priolkar, Member (A))

The applicant in this case while working as Assistant Traffic Officer on ad hoc basis was prematurely retired from service from 21.7.1988 under the provisions contained in Rule 2046 (h) of the Indian Railway Establishment Code Volume II. The grievance of the applicant is that this is an entirely arbitrary and illegal order which is not based on any material.

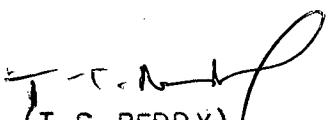
2. The applicant has inter alia contended in the application that there were no adverse remarks in his C.Rs. ever communicated to him during his entire service nor was any memorandum given to him against his work at any time. In the written reply filed by the respondents, these averments of the applicant have not been disputed. The learned counsel for the respondents argued that the applicant's retirement had been ordered after observing the prescribed guidelines and on the basis of recommendations by the review committee. One of these guidelines is that the performance record of all officers coming within the review is to be seen for the previous 5 years.

3. The confidential C.Rs of the applicant for the previous 5 years have also been produced before us for perusal by the respondents. It is seen therefrom that there are a number of remarks in these C.Rs which are clearly adverse. For example, in C.R. for the year ending 31.3.1984 on the work of the applicant, it is commented by the Reporting Officer that "He was found lacking in his day to day work. At every step he needs chasing and guidance. He is unable to take independent decisions, and does not have any hold over staff whatsoever". The Reviewing Officer has also commented in this report in the Col. General Assessment as under : "He needs prodding at every stage even for routine work. Lacks initiative and drive. Cannot extract work from his subordinates and tends to be browbeaten by them". In the C.R. for the year ending 31.3.1986, the Reviewing Officer in Section II of the C.R. has remarked as under : "An average calibre operating Officer. Needs frequent prompting & prodding. Tends to take things easy and not exert himself. Lacks initiative & drive". These remarks were also accepted by the Head of the Department who in the C.R. for the year ending 31.3.1985 has himself remarked as follows :- "He is indisciplined, he has brought a stay order from the Court against his reversion to Class III consequent to his failure in the Class II selection". Admittedly, these are adverse remarks in C.Rs, but there is no noting anywhere in the record produced before us that these adverse remarks were communicated to the applicant. In the face of the averment by the applicant in his application that no adverse remarks were communicated to him during his entire service and non-denial of this averment specifically by the respondents in their written reply and their inability even today to show us that these adverse remarks were communicated to the applicant, the conclusion is inescapable that the adverse remarks contained in the C.Rs. would have been considered by the Review Committee

without their having been communicated to the applicant.

In the case of Brij Behari Lal Agrawal v Hon'ble High Court of Madhya Pradesh and others (1981 1 SCC 490), the Supreme Court has held that uncommunicated adverse remarks should not have been considered by the competent authority while taking the decision for compulsory retirement of the applicant in that case.

4. We are of the view that this order of premature retirement cannot be sustained on this ground alone that uncommunicated adverse remarks in C.Rs have been considered by the Review Committee based on which the retirement order was passed by the competent authority. It is not, necessary, therefore for us to go into the other grounds urged by the applicant for challenging that order. Accordingly, we set aside the order dated 15.6.1988 of the Railway Board and also order dated 21.7.1988 issued by the General Manager, Western Railway, compulsorily retiring the applicant w.e.f. 1.7.1988. The applicant should be reinstated in service within a period of three months from the date of receipt of a copy of this order. It will, however, be open to the respondents to consider the matter afresh in accordance with law. There shall be no order as to costs.


(T.C. REDDY)
MEMBER (J)


22-2-81
(M.Y. PRIOLKAR)
MEMBER (A)