

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 447/96

Date of Decision : 11th April 2002

P.C.Bhargava \_\_\_\_\_ Applicant

Shri S.P.Saxena \_\_\_\_\_ Advocate for the  
Applicant.

VERSUS

Union of India & Ors. \_\_\_\_\_ Respondents

Shri Suresh Kumar \_\_\_\_\_ Advocate for the  
Respondents

CORAM :

The Hon'ble Shri Gopal Singh, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? Yes
- (ii) Whether it needs to be circulated to other ~~10~~ Benches of the Tribunal ?
- (iii) Library Yes

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(S.L.JAIN)  
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.447/96

Dated this the 11<sup>th</sup> day of April 2002.

CORAM : Hon'ble Shri Gopal Singh, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

P.C.Bhargava,  
Chief Engineer (MTP),  
2nd Churchgate Stn.Bldg.,  
Churchgate, Mumbai.

...Applicant

By Advocate Shri S.P.Saxena

vs.

1. Union of India  
through Secretary,  
Railway Board,  
Rail Bhawan, New Delhi.

2. Shri S.D.Gupta,  
Addl.General Manager,  
N.F.Railway, Guahati.

3. General Manager,  
Central Railway,  
CST, Mumbai.

...Respondents

By Advocate Shri Suresh Kumar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19. of the Administrative Tribunals Act, 1985 for the relief that the name of the applicant be got interpolated in the panel finalised from 1994 onwards and he be promoted to Additional Secretary grade

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Rs.7300-7600 w.e.f. 1.6.1994, the office order No.281/94 circulated vide General Manager, Central Railway's letter No.HPB/629/G/N/Admn. dated 1.6.1994 promoting Shri S.D.Gupta as Chief Engineer be set aside with a direction to the respondents to appoint him as PHOD in accordance with the rules, give the deemed date of promotion to Additional Secretary Grade Rs.7300-7600.

2. The applicant is a Group 'A' officer belonging to IRSE since August 1962. He has worked on N.F. Railway, Eastern, Western and Central Railways at different stations and in positions of responsibility also on B.G. construction projects of N.F. Railway. He was posted as Chairman, RSC, Bombay in the year 1981. Thereafter, he was given a jump of 3 positions for most outstanding CR in the preceding 5 years at the time of promotion to SA grade in the year 1983. He was empanelled for the post of DRM in 1986 and worked as DRM. He was deputed on 4 weeks training in 1990 to West Germany, Switzerland, USA under the auspices of World Bank on the basis of the outstanding performance, also looked after the current duties of Principal, RSC BRC which is in General Manager's Grade Rs.7300-8000 for more than two months commencing from March to May 1992 while working as Sr.Professor/Civil Engineer in the college. Presently, the applicant is working as Chief Engineer (MTP), Central Railway, Bombay since August,1993 which involves co-ordination and supervision of various departments in Railways and co-ordination with other than Railway viz. CIDCO, BMRDA, World Bank, concerned

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Ministries of Govt. of Maharashtra, BUTP, etc. Inspite of such excellant record, he was not empanelled for promotion to Additional Secretary grade Rs.7300-7600 Civil Engineer for panels declared from 1994 onwards on whimsical untenable grounds. The applicant claims that he preferred representation to Secretary, Railway Board, Secretary, Department of Personnel and the Cabinet Secretary's reply dated 8.9.1995 conveyed by CPO, Central Railway's letter dated 31.10.1995 was received after about a year. On receipt of the reply, he has preferred an appeal dated 23.11.1995 to the Establishment Officer, Department of Personnel, North Block, New Delhi vide letter dated 23.11.1995. Similar reply to the same has been received marked as Exhibit-10. Another representation dated 4.3.1996 addressed to the Prime Minister Incharge of Ministry of Railways and Minister of State for Railways was sent which was forwarded by General Manager, Central Railway on 20.3.1996.

3. The applicant has alleged that his performance had been mostly outstanding from the year 1978 onwards (5 years preceding 1983 when promoted to SA Grade by jumping 3 positions) right upto 1990 when he was sent on 4 weeks' training abroad under the auspices of World Bank selection for which was based on outstanding performance. Based on the extant rules issued in 1989 of promotion the applicant should have been empanelled in the panel formed in 1994 and should have been promoted before promoting Shri S.D.Gupta who is junior to the applicant. He has many achievements to his credit.

4. The applicant apprehends that in the year 1989 he was posted as Chief Bridge Engineer. His immediate boss was Shri Koppiker. Shri M.C.Bhide had worked as Chief Bridge Engineer and he had strained relation with Shri Koppiker. The applicant was not aware of strained relation as he was working as Divisional Railway Manager at Rajkot. Shri Bhide thereafter took voluntary retirement from Railways and became consultant. He also took charge as Honorary Executive Director of Institution of Bridge Engineers and undertook to organise National Seminar on bridge. The said organisation is officially recognised by Railway Board. Shri Bhide undertook to organise National Seminar on Bridges and requested the applicant to act as General Organising Secretary. Shri Koppiker learnt about the said fact and called the applicant in his office and asked him to disassociate with the said Seminar to which the applicant stated that his participation is not going to affect his performance and he shall achieve all targets laid down for him in his official duties and participation in such Seminar is desirable for technical personnel as the same enhances and updates technical knowledge to which Shri Koppiker did not accept the point of view expressed by him and was adamant about the disassociation, the same resulted in confrontation and annoyance on the part of Shri Koppiker. The result Shri Koppiker was prejudiced and out of vindictive attitude recorded the remarks against the applicant.

5. The applicant further apprehends that the Railway Board reviewed the policy for promotion of officers in the year 1987 and laid down criterion based on points earned in last 5 years  
~~ACRs~~ Norm decided for

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ACRs. Norm decided for Principal HODs in Grade Rs.7300-7600 was 22 points (Grey area of 20/21). The said criteria was adopted. There was considerable unrest amongst officers due to the point system which reduced selection to a mechanical process. Officers Association held discussions with the Board. Consequently revised Circular was issued in October, 1989, according to which selection committee was to make its own assessment on the service records and various entries made in the CR rather than overall assessment, i.e. Outstanding, Very Good, Good etc. This Circular superseded the Circular of 1987 and point system was given up substituted by Bench Mark which should be "Very Good".

6. The apprehension of the applicant regarding Shri Koppiker's prejudice enumerated above for the year 1989-90 and adopting of point system in para 4 & 5 is not true for the reason that on perusal of the record for the said period, the applicant's C.R. is outstanding and the DPC did not adopt the point system. As such the grounds which had been raised by the applicant as stated above for apprehension are not found to be true.

7. The DPC met on 2.2.1994 for empanelment to the post in the Grade Rs.7300-7600 from I.R.S.A. The applicant was considered. The DPC took into consideration the ACRs. of the year ending on March, 1989, March, 1990, March, 1991, March, 1992 and March, 1993. The applicant was not found fit. The reason appears to be the ACR for the year ending on March, 1991 for which instead

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of "Very Good", "Good" had been assessed. The Bench Mark is "Very Good". For the year ending on March, 1989, his performance was recorded "Outstanding". For the year ending on March, 1990, 1992 and 1993 his performance was recorded "Very Good". Thus, it is a case where for the year ending on March, 1991, the applicant's grading has been lowered. The learned counsel for the applicant relied on U.P.Jal Nigam's case and argued that it was the duty of the respondents to communicate the said down grading. Admittedly, the said down grading is not communicated to the applicant. The learned counsel for the respondents argued that for the first time in U.P.Jal Nigam's case this proposition of law regarding communication of lowering down was laid down by the Apex Court which was decided on 31.1.1996, it was not possible for the respondents to apprehend that such a proposition of law was to be profounded and therefore U.P.Jal Nigam's case can be applied prospectively and not retrospectively. It is true that the U.P.Jal Nigam's case was decided later in point of time but Gurdyal Singh Fizi's case was in existence since long even prior to March, 1991 in which it has been clearly laid down that adverse entries deserves to be communicated and non communication of the same or after communication and before decision on representation would result not to take into consideration of the said entries while considering the case of promotion etc. In U.P.Jal Nigam's case only the Apex Court has clarified what is meant by adverse entries as such, it is not a fact that for the first time the Apex Court has laid down a new law. As such 1995 (31) ATC 361, V.Palamraju vs. Union of India & Ors., the Full Bench which does

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not deal with the said proposition, 1993 (25) ATC 794, Managing Director, E.C.I.C. Hyderabad & Ors. particularly, para 67 and onwards does not assist the respondents in any way.

8. The learned counsel for the applicant relied on an order passed by this Bench in OA.NO.170/2001 in case of A.K.Verma vs. Union of India & Ors. which lays the proposition that in such a case the adverse entries are to be ignored and a review DPC was asked to reconsider the case of the applicant ignoring the ACR for the same period. This was the consistant view of the Bench since 1999 and we see no reason to deviate from the same view.

9. The learned counsel for the respondents relied on an order passed in OA.No.579/96 decided by CAT Jaipur Bench on 21.9.2001. We have perused the said case and on perusal of the same, we find that in the said case the adverse ACRs. were communicated to the applicant. As such, the said case is distinguishable.

10. The applicant in subsequent years was promoted to the grade of Rs.7300-7600 and thereafter retired.

11. We do not think it proper after a lapse of more than 10 years to ask the respondents to communicate the "Good" Bench Mark to the applicant, seek his representation and thereafter after deciding the said representation to hold a review DPC.

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12. In the result, OA. is allowed. The respondents are directed to hold a review, DPC, reconsider the case of the applicant ignoring the ACR for the year 1991 and if found suitable, give promotion from the date due with consequential benefits. The review DPC be held within a period of four months from the date of receipt of a copy of this order. No costs.

*J.L.Jain*  
(S.L.JAIN)

MEMBER (J)

*Gopal Singh*  
(GOPAL SINGH)

MEMBER (A)

mrj.

*dt 11/4/2*  
~~Order is issued~~  
~~to promote respondent (s)~~  
~~on 19/4/91~~

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