

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.533/2000

This, the 16th day of July, 2003

Shri Munendra Kumar Singh ... Applicant
(Applicant by Shri S.P.Saxena, Advocate)

Versus

UOI & Ors. ... Respondents

(Respondents by Shri V.D. Vadhavkar, Advocate)

CORAM:

HON'BLE Shri Justice R.R.K. Trivedi, Vice Chairman
HON'BLE Shri Shankar Prasad, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.

NO


(Shankar Prasad)
Member (A)

sj*

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Dated this, the 16th the day of July, 2003.

CORAM: HON'BLE SHRI JUSTICE R.R.K. TRIVEDI, VICE CHAIRMAN
HON'BLE SHRI SHANKAR PRASAD, MEMBER (A)

Shri Munendra Kumar Singh
Bridge Inspector Gr.II
(Bridge) (Jr. Engineer Gr I (Bridge),
Office of the Dy. Chief Engineer
Construction -II
Central Railway, Dadar (west). ... Applicant
(Applicant by Shri S.P.Saxena, Advocate)

vs.

1. Union of India
through the Secretary
Ministry of Railways,
Rail Bhavan,
New Delhi 110 001.
2. The Chief Personnel Officer
(Eng)
Central Railway, C.S.T.
Mumbai V.T. Mumbai 400 001:
3. The Dy.Chief Engineer
(Construction) -II
Central Railway,
Dada Saheb Phalke Road
Dadar (West)
Mumbai 14. Respondents

(Respondents by Shri V.D.Vadhavkar, Advocate)

O R D E R

[Per: Shankar Prasad, Member (A)]:

This is second round of litigation. The earlier
O.A.581/94, was allowed on 17.6.1999 with the following
directions:-

"5. Accordingly we allow the O.A. The respondents
are directed to convene a review DPC which will
consider the name of the applicant for promotion from
the date his juniors were promoted from Grade III to
Grade II. In case the review DPC finds him suitable, *Sh*

they will also consider his case for promotion from Grade II to Grade I from the date his next junior was so considered and promoted. The review DPC will also consider the aspect of non-communication of adverse entries to the applicant. This exercise will be done within a period of six months from the date of receipt of a copy of this order.

6. We would like to make it clear that considering the time frame in which the applicant has approached the Tribunal and also the fact that he had been given promotion in the Electrification Project, he will not be entitled to any arrears of pay and allowances in case he is found fit for promotion from Grade II onwards and that will be confirmed only to the determination of seniority."

Pursuant to the directions of the Tribunal, a review DPC meeting was held to consider the case of applicant for promotion as BRI II from 18.5.1986 i.e. from the date of promotion of his juniors and for his promotion to BRI I, which is a selection post w.e.f 1.3.1993. The respondents considered the case of the applicant and vide their order dated 24.1.2000 (A.1) have changed the date of regular promotion to BRI II from 23.11.1995 to 24.11.1988. The applicant is aggrieved by this order.

2. The case of the applicant in brief is that he was appointed as Bridge Inspector (BRI for short) Grade III on 26.6.1981 and was transferred to Chief Project Manager (CPM for short), Railway Electrification Project, Nagpur, a construction project and his lien was maintained on the main establishment. His case was not

considered in promotion in open line along with his juniors though he was promoted as such in the construction line.

The further case of the applicant is that the applicant has not been communicated any adverse ACR at any time in his career. The applicant was also not facing any departmental enquiry at any time. The applicant, is, therefore unable to understand as to why he has not been given promotion from the date his junior Shri A.G. Kurkure was given promotion.

3. The case of respondents in brief is that the Review DPC had considered his case for promoting to the post of BRI Grade II w.e.f. 18.5.1986, the date of promotion of his junior. However, in view of his overall record, the applicant could not be promoted from that date. He has subsequently been promoted from the date he has been found fit.

As far as promotion to the post of BRI Grade I is concerned, the said post is a Selection Post as the applicant was not found fit for promotion as BRI Grade II w.e.f. 1986 he could not come in the zone of consideration, by the DPC meeting in the year 1989 when his junior Shri A.G. Kurkure was first called for selection to the post of BRI I. Shri Kurkure was actually promoted to the post of BRI I from 1.3.1993 under the modified selection scheme against the 2 posts which became available against restructuring. The applicant came in the zone of consideration only in the year 2000 and was accordingly, considered for promotion only w.e.f. that date.

4. We have heard the learned layers on behalf of both the parties and have also gone through the DPC records.

We find that from the perusal of concerned file, that the factual position has been placed at page 141-142/c containing the summary of ACRs for March, 82, March 83, March 1985 and March 1986.

1986. The comments under CRs also contained details regarding warnings, censure, entry of "Not Yet Fit for promotion" and decision is pending on issue of chargesheet. This Note dated 1.12.1999 of SPO (Engg) was put up for consideration by Chief Bridge Engineer and he vide noted dated 18.1.2000 agreed that the earlier decision of the earlier DPC held in 1986 and he was found fit for promotion only in 1988.

5. The Apex court in the case of *Gurdial Singh Fijji vs. State of Punjab AIR 1979 1622* held as follows :

"The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the persons concerned, whether the adverse report is justified."

The Apex court in the case of *Amar Kant Choudhary vs. State of Bihar 1984 (1) SLR 470 (SC)* held that consideration for promotion connotes fair and proper consideration. A Selection Committee which has before it uncommunicated adverse remarks or deliberates at times that a representation against such remarks is pending, it cannot be said to be acting properly or in consonance with the principles of natural justice.

The Tribunal had in its earlier decisions also directed the respondents not to take the adverse entries into account. *h*

6. It is however, clear that these entries had been taken into account by the earlier DPC and the Review DPC has merely endorsed upon the earlier decision. These actions of the DPC is not in accordance with law.

7. We also find that number of warnings and censures have been mentioned below the CRs. Whether they are part of the CRs or have only been entered in the Service Book of the official is not clear. Four of such entries have been entered in the Service Book.

8. Ministry of Home Affairs OM No.39/21/56Estt. A dated 13.12.1956 has discussed the position of written warnings. The relevant part of the said OM is as under:

"The fact that a mere informal 'warning' cannot be equated to a formal 'censure' should not, however, be taken as tantamount to suggesting that a written warning may be freely given without caring whether or not it is really justified. It is a matter of simple natural justice that written warnings, reprimands etc. should not be administered or placed on an officer's confidential record unless the authority doing so is satisfied that there is good and sufficient reason to do so. Paragraph 6 of the M.H.A. O.M. 51/5/54-Ests (A) dated the 27th January, 1955, provides detailed guidance in the matter of recording adverse remarks in confidential reports. It may be reiterated here that in the discharge of the responsible task of recording the confidential reports, every reporting officer should be conscious of the fact that it is his duty not only to make an objective assessment of his subordinates' work and qualities but also to see that he

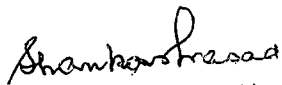
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gives to his subordinates at all times the advice, guidance and assistance to correct their faults and deficiencies. If this part of the reporting officer's duty has been properly performed there should be no difficulty about recording adverse entries because they would only refer to the defects which have persisted in spite of reporting officer's efforts to have them corrected. If after having taken such care the reporting officer finds that for the purpose of truly objective assessment mention should be made of any warning, admonition, etc. issued, especially those which have not produced the desired improvement, it is his right and duty to so mention them. In the process of bringing the defects to the notice of person concerned, where an explanation is possible an opportunity to do so should be given. This cannot, however, be equated to the formal proceedings required to be taken under Rule 55(A) (now Rule 16) of the Central Civil Services (Classification, Control and Appeal) Rules, nor the warning given amounts to the imposition of a formal penalty."

9. In view of what has been discussed above, we are of the considered view that the recommendations of the DPC and the subsequent orders to the extent that the applicant has not been promoted w.e.f. the date of promotion of his immediate junior are not in accordance with law. It is accordingly set aside. The respondents are directed to hold a review DPC. As it is an old matter they should take a decision within two months of the

...7/-

receipt of a copy of this order. The Review DPC shall take into account, only the ACRs as per the direction given last time in O.A. No. 581/94 and only in accordance with law as stated above. With this direction, the O.A. stands allowed. No order as to costs.


(Shankar Prasad)
Member (A)


(Justice R.R.K. Trivedi)
Vice Chairman

sj*