

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.170/2001.

Friday, this the 17th day of August, 2001.

The Hon'ble Shri Justice Ashok Agarwal, Chairman,
The Hon'ble Shri G.C.Srivastava, Member (A).

A.K.Verma,
Railway Officers' Rest House,
Churchgate,
Mumbai - 400 020.
(By Advocate Shri P.A.Prabhakaran)

...Applicant.

v.

1. Union of India, through
The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi - 110 001.
2. Shri V.D.Gupta,
The General Manager,
Western Railways,
Head Office,
Churchgate,
Mumbai - 400 020.
3. Shri M.S.Ekbote,
The Chief Engineer,
Western Railways,
Head Office,
Churchgate,
Mumbai - 400 020.
4. Shri Rajgrihi Singh SG/IRSE,
Dy. Chief Engineer (Constructions),
Gorakhpur,
NE Railways - U.P.
(By Advocate Shri V.S.Masurkar)

...Respondents.

: ORDER (ORAL) :

Shri G.C.Srivastava, Member (A).

In this OA, the applicant who is at present working as Deputy Chief Engineer with the Respondents is aggrieved on account of his non-promotion in the Senior Administrative Grade

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of the Indian Railway Engineering Services (for short, IRSE) (Rs.18,400-20,400). According to him, where the grading given by the Reporting Officer in the CR is altered by the Accepting Officer, reasons for differences could be really brought out otherwise such revised grading shall not be accepted. He also contends that where the Reporting Officer is not very familiar with the work of the Government servant reported upon on account of short period he should also give a hearing to the officer concerned before recording his remark. He contends that although he was not communicated with any adverse remarks in his CRs, he has not been given promotion to the Senior Administrative Grade while his juniors have been promoted. According to him, this is on account of mala fide action on the part of Respondent No.2 and 3 in writing, reviewing/accepting his ACRs.

2. The Respondents have resisted the OA and have stated that the case of the applicant for promotion to the Senior Administrative Grade was considered by the DPC on 21.11.2000 along with others in the light of the extant Rules and Regulations, as also the performance as reflected in the CRs. They contend that according to the departmental instructions for promotion to the Senior Administrative Grade of the IRSE, the bench mark has been prescribed and an officer who has secured the said bench mark is only recommended for promotion. After considering the CRs of the applicant the the DPC did not find him fit for promotion and accordingly did not recommend his name for being included in the select list.

3. We have considered the rival contentions advanced

by the learned counsels for the applicant, as well as, for the Respondents. We would like to refer to the Judgment of the Hon'ble Supreme Court in the case of U.P.Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Others {(1996) 33 ATC 217}. In the aforesaid case, the Hon'ble Supreme Court had observed as follows:

"We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any aduerseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of aduersenes must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

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It may be observed from the above that in cases where the overall grading of an officer is downgraded it is necessary that the same should be communicated to the officer concerned and in cases

where such a communication has not been made, such downgrading is taken into account for the purpose of consideration of promotion would vitiate the DPC proceedings. We find in the instant case that out of the five years CRs from 1995-96 upto 1999-2000 there is a downgrading of the overall assessment of 'Very Good' to 'Good' during the last two years and as per the observations made in the above cited case by the hon'ble Supreme Court it is necessary that communication of such an assessment should have been made to the applicant. However, this has not been done, and this omission has been conceded by the Respondents.

4. In view of this, we are of the considered view that the non-selection of the applicant for promotion to the Senior Administrative Grade of IRSE on the basis of 5 ACRs including the last two years, where communication of down-grading has not been made vitiates the proceedings.. Therefore, we direct the Respondents to convene a Review DPC and re-consider the case of the applicant ignoring the CRs for the last two years i.e. 1998-99 and 1999-2000 and if he is found suitable, give him promotion from the due date with consequential benefits w.e.f. the same date from which other officers who were promoted on the recommendations of the DPC held on 29.1.2000.

5. With the above directions, the OA stands disposed of. No order as to costs.

G.C.SRIVASTAVA
(G.C.SRIVASTAVA)
MEMBER(A)

A. Agarwal
(ASHOK AGARWAL)
CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.122/2001
in
Original Application No.170/2001

Dated this Friday the 3rd Day of May, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (Administrative).

Shri Ashok Kumar Verma
Resident of
6, Imperial Park,
Budhwar Park, Colaba,
Mumbai - 400 005.

Employed in the office of
The General Manager,
Western Railway,
2nd Floor, HQ Office,
Churchgate, Mumbai-400020.
As Deputy Chief Engineer/Planning WR. Applicant.

(By Advocate Shri P.A. Prabhakaran)

Versus

1. Shri R.N. Malhotra,
Chairman Railway Board,
Rail Bhavan,
New Delhi - 110 001.
2. Shri V.D. Gupta,
General Manager, Western Railways,
Churchgate, Mumbai-400020. Respondents

(By Learned Additional Solicitor General,
Shri C.K. Jaisinghani, assisted by Shri
V.S. Masurkar and Shri Suresh Kumar,
Counsel).

Order on Contempt Petition (Oral)
{ Per : Justice Birendra Dikshit, Vice Chairman }

A cerfied copy of order passed on 18.4.2002 in
Writ Petition (Lodging) 297/2002 has been produced by
Learned Additional Solicitor General which is placed on
record.

A. S. K.

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2. In this case the High Court of Judicature at Bombay in Writ Petition (Lodging) No.297/2002 Union of India Vs. Shri A.K. Verma by order dated 26.4.2002 in exercise of its powers under Article 226 of the Constitution of India has discharged present contempt proceedings pending before this Tribunal. A true copy of the order certified by Shri Suresh Kumar, Advocate has been produced before us. In view of the fact that the High Court has discharged the contempt proceedings nothing is left to be proceeded against. The contempt proceedings stands disposed of. The true copy produced by Counsel for Contemner-Respondent, Shri Suresh Kumar is placed on record.

Shanta Shastray

(Smt. Shanta Shastray)
Member (A)

B. Dikshit

(Birendra Dikshit)
Vice Chairman.

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dtd: 35.2002.
order/Judgement despatched
to Applicant/Respondent(s)
on 3.6.2002

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