

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 460/92

31.3.2000  
Date of Decision :

V.P.Singh Applicant.

Shri G.K.Masand

Advocate for the  
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri S.C.Dhawan

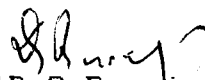
Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

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

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other ✓  
Benches of the Tribunal ?
- (iii) Library ✓

  
(D.S.Baweja)  
Member (A)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.460/92

Dated this the 31<sup>st</sup> day of March 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)  
Hon'ble Shri S.L.Jain, Member (J)

Vijay Prakash Singh,  
Sr.TSRT, Bandra,  
Mumbai.

...Applicant

By Advocate Shri G.K.Masand

V/S.

1. Union of India  
through the General Manager,  
Central Railway,  
Bombay V.T., Bombay.
2. Senior Divisional Electrical  
Engineer (TRD), Central Railway,  
Bhopal.
3. Shri V.R.Hubliy,  
Sr.Divisional Electrical Engineer  
(Operating), Central Railway,  
Bombay V.T., Bombay.
4. Shri A.P.Kulshreshta,  
Asstt. Electrical Engineer,  
MTP, Mankhurd, Bombay.
5. Asstt. Divisional Railway Manager,  
Central Railway, Bhopal.
6. Chief Personnel Officer,  
Central Railway,  
Bombay V.T., Bombay.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

(Per : Shri D.S.Baweja, Member (A))

This OA. has been filed by the applicant seeking expunging of the adverse remarks conveyed to him in the annual Confidential report for the period ending March,1990 and also challenging his non inclusion in the panel notified on 9/11.12.1991 for promotion to the post of Foreman 'B'.

2. The applicant joined in service as Apprentice Mechanic on 16.5.1979 on Central Railway. After training, he was posted as Chargeman 'B'. While posted in Jhansi Division, he applied for absorption in Traction Distribution Department. He was selected and posted at Bina. On 23.2.1989, he was transferred to Vidisha as Depot Incharge. He was promoted as Traction Foreman in the scale of Rs. 2000-3200 on adhoc basis as per order dated 9.8.1989. Subsequently, on the request of the applicant, he was transferred to Kurla Carshed in April,1990. For the Annual Confidential Report ending March,1990, the applicant was conveyed adverse remarks as per the letter dated 2.8.1990. The applicant represented against the same and his representation has been rejected as per the letter dated 18.2.1991 and 21.8.1991 stating that items 4,9,10 are modified while all other remarks will stand. Senior Divisional Electric Engineer (TRS) Kurla Carshed issued a notification dated 17.1.1991 for selection to the post of Foreman 'B'/Head Train Examiner Scale Rs.2000-3200. Written



4. The applicant has apprehended his non placement of his name in the panel dated 9/11.12.1991 for promotion to the post of Foreman 'B' on account of the following two grounds and has prayed for the reliefs accordingly :-

- (a) Adverse remarks in the annual confidential report of the period ending March, 1990, conveyed as per letter dated 2.8.1990 deserve to be set aside and expunged as they are as a result of whims, prejudice and personal vendetta of the reporting officer, i.e. Shri A.O.Kulshreshta, Respondent No. 4 in view of the instances brought out in the OA. These adverse remarks were made with a view to ruin the career of the applicant. The Additional Divisional Railway Manager to whom the appeal against the adverse remarks was made has rejected the same without indicating any reasons and proper application of the mind.
- (b) Shri V.R.Hubli, Senior Divisional Electrical Engineer who presided over the Selection Committee was biased against the applicant as he had issued the applicant a chargesheet and was

therefore aware of the pendency of the disciplinary proceedings and may have influenced the other members of the Committee. In view of this, Shri Hublly could not preside over the Selection Committee proceedings in which the applicant appeared.

5. The official respondents have filed written statement contesting the submissions of the applicant. The respondents submit that for the adverse remarks conveyed as per letter dated 2.8.1990 for the report ending March, 1990, the applicant submitted appeal dated 6.10.1990 followed by another representation dated 27.11.1990. The same were considered by the Additional Divisional Railway Manager and were rejected as per letter dated 18.2.1991. However, the applicant made representation again on 10.5.1991 and on recommendation of the matter, entries at Serial numbers 4, 9 & 10 have been expunged and the balance entries have been maintained and the same was advised to the applicant as per order dated 21.8.1991. It is denied that representations have been rejected in cryptic manner without application of mind. It is also submitted that the adverse remarks in the annual confidential report under reference reflect the objective assessment of the working of the applicant. He was made aware of these short comings before reporting in the confidential report. Adverse remarks therefore have not been

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made by the reporting officer with any bias, prejudice and malafide intention. All allegations of bias or prejudice against Mr.Kulashresta are denied as untrue and unsubstantiated. As regards allegations of bias against Shri V.R.Hubllly and influencing the other members of the selection Committee, respondents strongly refute the same. It is submitted that Shri V.R.Hubllly was one of the 4 members of the Committee and each member had made his own objective assessment and could not have been influenced by Shri V.R.Hubllly as alleged. The applicant was not found suitable in viva-voce test by the selection committee.

6. The applicant has filed rejoinder reply rebutting the submissions of the respondents. While elaborating on the grounds taken in the OA., the applicant has taken additional grounds in the rejoinder reply. The applicant submits that Shri A.P.Kulshreshta was the controlling officer for 5 months period only (October, 1989 to March, 1990) and he could not write report covering for the entire period. Nothing adverse was conveyed for the earlier 7 months period. He has also taken additional grounds for alleging bias by Shri V.R.Hubllly, Respondent No. 3. The applicant has also advances additional grounds to make out a case that the selection under reference is vitiated. It is the case of the applicant that the representation against the adverse remarks was still pending at the time of selection and therefore the adverse remarks could not be taken into account as per the extant rules.



7. We have heard the arguments of Shri G.K.Masand and Shri S.C.Dhawan, learned counsel for the applicant and the respondents respectively.

8. The applicant has made allegation of bias and malafides against the Respondent No. 3 Shri V.R.Hubli (due to issue of chargesheet) and Respondent No. 4, Shri A.P.Kulshrestha (for giving adverse remarks in the confidential report of March, 1990). Both of them though made party by name have not filed any written statement. In the written statement filed by the official respondents, the allegations of bias and malafides have been strongly refuted. The applicant has contended that since the Respondents No. 3 & 4 have not filed affidavit to refute the allegations, an inference is to be drawn is that the same are established. Before we go into merits of the reliefs prayed for, it will be appropriate to review the law laid down by the Hon'ble Supreme Court when challenge is made on the allegations of bias and malafides. Some of the judgements are reviewed as under :-

- (i) Express Newspapers Pvt.Ltd. & Ors. vs.Union of India  
& Ors. AIR 1986, SCC 872.

In para 115, their Lordships have observed  
as under :-

" Where mala fides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain un rebutted and the Court would in such a case be constrained to accept the allegations so remaining un rebutted and unanswered on the test of probability."

..8/-

(ii) S.Pratap Singh vs. State of Punjab

AIR 1964 SC 733.

In this judgement, it is held that even if the authority concerned denies the charge of malafide or asserts the absence of oblique motives does not preclude the court from inquiring into the truth of the allegations made against the authority.

From the above, it is clear that if the allegations of bias and malafide remain uncontested, then such unanswered allegations are to be subjected to "test of probability". The burden of proof lies heavily on the party who makes the allegations. Mere assertion and vague allegations are not adequate. There must be demonstrable material placed before the Court to sustain the allegation. We will now hereafter look at the merits of the two grounds which as per the applicant are responsible for non placement of the applicant.

9. The applicant has been advised of the adverse remarks for his confidential report for the period ending March, 1990 as per letter dated 2.8.1990. The applicant made representation against the same. However, his representation was rejected as per order dated 18.2.1991. He made another representation and on reconsideration of the matter, the items 4, 9, 10 have been expunged as advised to the applicant as per order dated

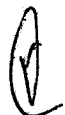


21.8.1991. The applicant has challenged the same on two counts (a) the adverse remarks are as a result of bias, prejudice and personal vendetta of Shri A.S.Kulshreshta, Respondent No. 4 (b) his representations have been rejected without application of mind as no reasons have been advised to the applicant. As regards the first ground, the applicant has laid down the foundation in support of allegation of bias and prejudice stating that Shri A.S.Kulshreshta has been bearing grudge against the applicant since the time they were posted together in Kalwa Carshed in Group 'C' due to some technical differences. The applicant had brought the matter to the notice of the superior officer and the Respondent No. 4 was reprimanded for the same. Shri Kulshreshta was subsequently promoted in Group 'B' as Assistant Electrical Engineer and posted at Bina in October 1989. Ever since posting of the Respondent No. 4 as the Controlling officer of the applicant, Respondent No. 4 has been causing undue harm, prejudice and harrasment to the applicant. Respondent No. 4 incited labour of the Bina Depot and took help of known 'Dada' of Vidisha Depot one Shri Kamal Singh. Applicant had to lodge a police complaint for the same. However, Shri Kamal Singh terrorised the workers and also lodge a false counter complaint against the applicant. However, Respondent No. 4 pressurised the applicant to withdraw the police complaint lodged against Shri kamal Singh. In another instance, the applicant was not released by the Respondent No. 4 for appearing in examination held in December, 1989 for promotion to Group 'B' inspite of clear

instructions from Headquarter and Senior Divisional Electrical Engineer. The applicant had to take his leave to appear in the examination. However, on returning after appearing in the examination, the applicant came to know that as per the instructions of Respondent No. 4, the period for appearing in the examination is to be treated as absence. However, on taking the matter with the Senior Divisional Electrical Engineer, the Respondent No. 4 was directed to treat the period as spent on duty. This action of the Respondent No. 4 was motivated by bias and to prevent the applicant from appearing in the examination. As a consequence to this incident, the Respondent No. 4 issued a letter dated 21.12.1989 alleging several incidents of indiscipline, irregularities and inefficiency in day to day working and calling for applicant's explanation. The applicant submitted his explanation as per letter dated 3.1.1990 for the letter dated 21.12.1989. However, the Respondent No. 4 as per letter dated 15.1.1990 rejected the explanation of the applicant with a closed and biased mind. The applicant alleges that these letters were written with a view to hamper the chance of applicant in the selection to the post of Foreman 'B' by reporting adverse remarks in the Confidential report for the period ending March, 1990. We have carefully considered the above submissions made by the applicant in support of his allegations of bias and malafides. We do not find that the same stand the "test of probability". The contention of the applicant that Respondent No. 4 had been carrying grudge against the applicant

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dating back to 1982 when both were working in Group 'C' in Kalwa Carshed is far fetched. If the applicant was apprehensive of this, then when Respondent No. 4 was posted as officer incharge of the applicant on promotion in Group 'B' should have either made aware of the same to his superior officers or asked for transfer. Even when the Respondent No. 4 issued letter dated 21.12.1989 to the applicant bringing out short comings in his day to day working and rejected the explanation of the applicant for the same, the applicant did not bring the matter to the notice of higher authority. The applicant should have been aware that there is likely-hood of adverse entries in his report when his explanation was rejected by the reporting officer. If the applicant felt that Respondent No. 4 was biased and prejudiced and the letter dated 21.12.1989 was motivated then he should have guarded his position by bringing the matter to the notice of his superiors at the appropriate time. The applicant cannot take the plea of prejudice and bias at a later date when the adverse remarks were conveyed to him. The defence based on the allegations of bias and malafide cannot be taken at any time as an after thought. On going through the letter dated 21.12.1989 (Annexure-'C'), we note that the reporting officer has brought to the notice of the applicant the specific instances reflecting on his performance after careful observation of the working and the personal inspection of the depot. The reply to this letter is dated 30.1.1990. In fact, there is an acknowledgement of the lapses pointed out explaining the reasons for the same. The



explanation has not been accepted by the reporting officer and this has been elaborated in the letter dated 15.1.1990. Thus the Respondent No. 4 has made adverse entries in the report after making aware of his differences and in the working and giving him chance to improve his performance. With these observations, we are persuaded to take a view that adverse entries are not the result of bias, prejudice and personal vendetta of the Respondent No. 4 against the applicant.

10. The applicant has made the second ground that his representations against the adverse remarks have been disposed of in a cryptic manner without giving any reasons. The respondents, however, have contested this and have stated that the Additional Divisional Railway Manager has considered the representations of the applicant with due application of mind. With regard to disposal of representation concerning adverse remarks in the Confidential Report, we refer to the judgement of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. E.G.Nambudiri, 1991 SCC (L&S) 813. Extracts from para 9 & 10 which are pertinent to this case are as under :-

"9. There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the government servant. The decision, rejecting the representation does not adversely affect any vested right of the government servant nor does it visit him with any civil consequences."

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"10. There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons."

In the present case, the respondents have made available the file containing the order passed by the Divisional Railway Manager on the representation of the applicant. We note that the reviewing officer had put up a detailed note to the Additional Divisional Railway Manager with his remarks on the various points raised in the representation. The Additional Divisional Railway Manager accepted the recommendations of the reviewing officer for expunging the remarks in the items 4, 9 and 10 as conveyed to the applicant as per letter dated 2.8.1990. Though the remarks of the reviewing officer are not available in the file, but from the Note put up with his remarks to the Additional Divisional Railway Manager based on which he has passed the order on the representation of the applicant, it is

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clear that the Additional Divisional Railway Manager has given his decision only after considering the detailed remarks on the points raised by the applicant furnished by the reviewing officer. It is the reviewing officer who has the close knowledge about the working of the official and therefore his remarks against the various points made for expunging the adverse remarks in the representation are <sup>imperative</sup> ~~impartial~~ to enable the competent authority, i.e. accepting authority to go into the merits of the representation. With this position emerging from the record, we are of the view that competent authority has considered the representation with due application of the mind. Therefore, in view of the law laid down by the Hon'ble Supreme Court, non communication of the reasons for rejecting the representation does not vitiate the decision of the competent authority. We are therefore unable to find any substance in this contention of the applicant.

11. Now, we come to the second main ground of the applicant that the applicant has been over-looked for being placed on the panel on account of the bias of Shri V.R.Hubli, Senior Divisional Electrical Engineer who presided over the selection committee. The applicant has laid down the foundation for bias stating that he was issued a major penalty charge-sheet for some irregularities by Shri V.R.Hubli who was working as Senior Divisional Electrical Engineer. This chargesheet was cancelled as per order dated 15.12.1990 since the demand of the applicant

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with regard to furnishing of copies of some the documents could not be met with. However, after withdrawing the major penalty chargesheet, minor penalty chargesheet was issued on 5.12.1991. Based on this chargesheet, the penalty of reduction to a lower stage in the pay scale for a period of three years was imposed. In view of this disciplinary action taken by Shri V.R.Hubli against the applicant, Shri Hubli was biased against the applicant and since he had presided over the selection committee, he influenced the other members of the selection committee and the applicant was failed in the viva voce test. It is further contention of the applicant that since Shri V.R.Hubli was biased against the applicant, he should have not participated in the selection committee meeting as the members of the selection committee are required to be impartial and without any bias or prejudice against any of the candidates. As stated earlier, Shri V.R.Hubli has been made party respondent by name and he has not filed any written statement to controvert the allegations made by the applicant against him. However, as brought out earlier in para 8 above, in the absence of any rebuttal of the allegations made against a party, such un-answered allegations are to be subjected to "test of probability". Keeping in view this law laid down by the Hon'ble Supreme Court, we have carefully considered the foundation laid down by the applicant with regard to allegation of bias by Shri Hubli against the applicant. We find that the foundation is too flimsy to substantiate the allegations of bias and to stand the

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"test of probability". From the facts, we note that the viva voce test was held on 28/29.10.1991. The minor penalty chargesheet was issued on 5.12.1991. The earlier major penalty chargesheet was withdrawn on 15.12.1990. Thus, for a period of one year, there was no chargesheet pending against the applicant and it is during this period the selection process was completed. Since viva voce test was held on 28/29.10.1991 much before the issue of chargesheet on 5.12.1991, we fail to appreciate as to how the allegation of bias can be made against Shri V.R.Hubli on account of disciplinary action taken by him based on the chargesheet dated 5.12.1991 against the applicant after the panel was notified on 9.12.1999. In case Shri Hubli was biased then perhaps he would see that the minor penalty chargesheet was issued much before the viva voce test. We, therefore, find it hard to find substance in the allegations of bias due to disciplinary proceedings. Further, the contention of the applicant that since Shri Hubli was biased against the applicant, he had no authority to be a member of the selection committee is far-fetched. It is not the case of the applicant that Shri Hubli had nominated himself as the member of the selection committee. It is obvious that Shri Hubli was nominated as member of the committee by the competent authority. Shri Hubli could have asked for not being member of the selection committee only if he had any bias against the applicant. It is not expected of the member who is nominated on the selection committee to state that he has a bias against any

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of candidate, on his own just because of taking disciplinary action against him as such action is a normal part of executive powers of the controlling officer. It is for the employee if he apprehends unfair treatment on account of bias from any member of selection committee to represent against nomination of such a member on the selection committee to the competent authority. In the present case, we do not find any averment by the applicant that he made any representation at any time before appearing in viva voce test that Shri Hublly should not be a member of the selection committee in respect of the applicant as he is biased against him. The applicant instead, after appearing in viva voce test kept quiet and waited for the final result. After the result was declared and not finding his name on the panel, the applicant represented on 14.12.1991 (Annexure-'U'). On going through this representation, we find that there is no allegation of bias against Shri V.R.Hublly which resulted in his non-placement in the panel. Even in his subsequent reminders dated 6.1.1992 and 22.1.1992, no such plea has been taken. If the applicant was apprehensive of his non selection in viva voce test due to bias of Shri V.R.Hublly, then he should have represented to the competent authority at the appropriate time before appearing in the viva-voce test or atleast after appearing in the test but before the result was declared. But this has not been done. Not only this, the applicant has <sup>not</sup> taken a plea of bias in any of his representations against Shri V.R.Hublly as stated earlier. The plea of bias appears to have been taken in the OA.

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as an after thought to strengthen his case. Further, the applicant having appeared in the selection cannot question the composition of the selection committee on account of one member being biased against him on finding that he has not been selected. In this connection, we refer to the judgements of the Hon'ble Supreme Court in the case of Union of India & Anr. vs. N.Chandrasekharan & Ors., 1998(1) SLR 612 and University of Cochin vs. N.S.Kanjoonjamma & Ors., 1997(2) S.C. SLJ 157.

In the light of the law laid down by the Hon'ble Supreme Court and the observations made earlier, we are unable to find any merit in the contention of the applicant with regard to bias of Shri V.R.Hubilly.

12. As indicated earlier, the applicant has taken some additional grounds in the rejoinder reply as well as during the oral arguments. The first being that the representation against the adverse remarks was still pending at the time of viva voce test and therefore the adverse remarks could not be taken into account for the selection under reference. From the facts brought out earlier, we find that this contention of the applicant is not tenable. The first representation of the applicant was disposed of as per letter dated 2.8.1991. His second representation was also disposed of as per letter dated 21.8.1991. It is noted that the applicant has made thereafter another representation and perhaps with reference to this

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representation, he has taken a plea that it was pending at the time when viva-voce test was held. This argument cannot stand as it is the first representation which is permissible as per rule which has to be taken as a reference and not any subsequent representations made to higher authority. The second contention of the counsel for the applicant during the hearing after perusal of the confidential report for the year ending March, 1990 is that the adverse remarks at Sr.Nos.4,9 and 10 which were expunged<sup>though</sup> had<sup>but</sup> not been pasted and therefore these remarks were before the selection committee. On careful consideration<sup>substance in the</sup> of the confidential report, we do not find any apprehension of the applicant. As advised to the applicant, the remarks at Sr.Nos.4,9 and 10 had been changed,<sup>he</sup> note that necessary changes had been incorporated for upgrading these adverse remarks to positive remarks and the same have been initialed by the reviewing authority. Thus, the report which was put up to the selection committee had been<sup>with</sup> the modified remarks against Sr.Nos.4,9 and 10.

13. As per the order dated 4.4.1995, the respondents were directed to produce the documents as prayed for in the M.P.No.202/93. Among the various documents, one of the documents was the selection proceedings with regard to notification of the panel dated 9/11.12.1999. The respondents filed an affidavit stating that the relevant selection proceedings are not available as the same have been misplaced somewhere during the transit.

The counsel for the applicant strongly pleaded that non-furnishing of the selection proceedings should call for adverse inference and applicant should be declined to be placed on the panel. In view of our findings earlier on the grounds taken by the applicant in assailing his non selection, we are of the considered opinion that non production of the selection proceedings in no way prejudices the case of the applicant. Therefore, due to non production of the selection proceedings, no adverse inference need to be drawn.

14. In the result of the above, we do not find any merit in the OA. and the same is dismissed accordingly. No order as to costs.

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

MEMBER (J)

*D.S. Baweja*  
(D.S.BAWEJA)

MEMBER (A)

mrj.