

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 535 of 1998.

Dated this Thursday the 25th day of July, 2002.

Krishna Kumar Saini, Applicant.

Shri G. K. Masand, Advocate for the Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

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

- (i) To be referred to the Reporter or not ? No
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library. No

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(B. N. BAHADUR)
MEMBER (A).

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

Dated this Thursday the 25th day of July 2002

Coram: Hon'ble Mr. B.N. Bahadur - Member (A)
Hon'ble Mr. S.L. Jain - Member (J)

O.A. 535 OF 1998

Krishna Kumar Saini,
r/o 18-A, 2nd Floor,
House No.2, Ashiana Society,
Amol Nagar, Naigaon (West)
District Thane.
(By Advocate Shri G.K. Masand)

- Applicant

Versus

1. Union of India,
through the General Manager,
Western Railways, Churchgate,
Mumbai.
2. Financial Advisor &
Chief Accounts Officer,
Western Railways, Churchgate,
Mumbai.
3. Deputy Chief Accounts Officer (G),
Western Railways, Churchgate,
Mumbai.
4. Assistant Accounts Officer
(Pension), Western Railways,
Churchgate, Mumbai.
(By Advocate Shri V.S. Masurkar)

- Respondents

ORDER

By Hon'ble Mr. B.N. Bahadur - Member (A)-

The applicant in this case comes up to the Tribunal in grievance of his non-promotion, seeking the relief for a direction to the respondents to promote him to the post of Senior Section Officer (in short, SSO) in the Accounts Department of Western Railways w.e.f. 27.6.1996, when his juniors were promoted to the said post, vide impugned order dated 27.6.1996. He pleads that this relief should be provided notwithstanding the fact of imposition of minor punishment of stoppage of Privilege Passes or the communication of adverse remarks for the year ending 31.3.1996.

2. The facts of the case, in brief are as follows. The applicant was promoted as Section Officer (in short SO) in

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Western Railways on 4.6.1993 (after his initial appointment in the Organisation on 1.11.1988.) He became eligible for further promotion to the post of SSO after completion of three years on 4.6.1996. The applicant avers that the post of SSO is a non-selection post, and promotion to it is made on the basis of seniority subject to rejection of unfit. It is further averred by the applicant that one Shri G.R.Patnekar, who was applicant's supervisory officer has been harrassing the applicant, and had spoilt his confidential record. Further details of the alleged harrassment despite the sincerity of the applicant has been described in Paras 4 and 5 of the OA. Further, the incident leading to stoppage of Privilege Passes as a minor penalty are also described at some length. Other officers (Assistant Accounts officer) under whom the applicant has worked, have given him "Good" or "Very Good" remarks, according to the applicant's averment. The applicant represented against the adverse remarks communicated to him and further alleges that his representations were disposed of (Exhibit - F) in a mechanical manner without application of mind.

3. The applicant is aggrieved in that, in the meanwhile, promotion orders were issued dated 27.6.1996 and officials junior to the applicant ^{Patnekar} who were promoted to the post of SSO (Copy, at Exhibit - A). The applicant protested through his representation dated 15.7.1996 (Exhibit G) and since no reply was forthcoming he wrote another letter addressed to the Financial Advisor and Chief Accounts Officer, Mumbai - respondent no.2. However, he has not been provided for promotion till date. The applicant comes up to the Tribunal with the above grievance. He has taken certain

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Patnekar

grounds in his OA which, amongst others, were argued on his behalf by learned counsel Shri G.K.Masand, who represented him.

4. The respondents have filed a detailed written statement in reply, resisting the claims of the applicant, and first taking the stand that the Application is bad in law for non joinder of necessary parties. Also, that the application suffers from delay and laches since the representations of applicant were replied to. It is argued that the cause of action arose on 18.7.1996 whereas the OA was filed on 5.6.1998. The OA is thus alleged to be barred by the law of limitation.

5. Denying that the record of performance of applicant were deliberately spoilt by Shri Patnekar, certain details are provided in Written Statement, attempting to meet the averments made in this regard by the applicant, parawise. It is stated that applicant did not improve even after "notes" were issued to him on several occasions. The fact of departmental enquiry and the penalty of withholding of two sets of Privilege Passes are then described. It is stated that the applicant's representation against adverse remarks in the confidential report of 1995 -96 were considered by the proper authority and decision communicated vide letter dated 18.7.1996. They were considered properly and not in a mechanical manner, it is contended.

6. It is further stated that the applicant's case for promotion was considered with his juniors and he was not found suitable on the basis of his reports for the last three years. For selection post two "Good" CRs including the last one is necessary for promotion (out of last three years CRs).



7. The Counsel for the Applicant first took us in detail over the facts of the case, reiterating that representations against adverse remarks were cryptic, even as it he argued that the adverse remarks themselves were vague. Since no adverse remarks for the third year in question were ever communicated, it could be concluded that the last confidential report also did not find the applicant as unfit. The learned counsel for the applicant cited the cases of two officials, by name viz. Shri R.K.Verma and Shri C.P.Nirvan, making the point that these two persons had been similarly communicated adverse entries and inspite of that had been promoted, after their representation. This amounts to hostile discrimination it was argued. The learned counsel further depended on the grounds taken in Para V and reiterated them.

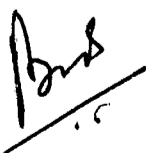
8. On the point of limitation and delay and laches, it was stated that the applicant's representation is dated 15.7.1996 (Page 27). At best, the delay was only of a few months. In a grave matter like this, the need for justice would demand that the delay be condoned and matter decided on merits. Important contentions as raised in the rejoinder regarding limitation were also reiterated on behalf of Applicant. On non-joinder of parties, the point was made that the applicant was not seeking seniority over anybody and was only challenging his being overlooked for promotion, and hence it was not necessary to array anybody as a party.

9. Arguing the case on behalf of respondents, their learned counsel Shri V.S. Masurkar first made the point that the prayer in the application was vague, and in fact there was no prayer for

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a review DPC for expunging of adverse remarks. The applicant was punished as per the facts detailed in the written statement and imposed the penalty as described. Regular process of consideration of applicant/others for promotion was followed and after considering the applicant as per this procedure, he was found 'Unfit'. The learned counsel produced some original record, which we have seen. Shri Masurkar further argued the point regarding delay and laches, stating that at best, some 18 months would be available to the applicant from the crucial date of 18.7.1996. Section 21 of the Administrative Tribunals Act, 1985 was very specific, he argued, and the applicant would have to meet the point regarding this delay of about six months. The infirmity regarding non-joinder was also argued and learned counsel relied on Para 15 at page 8 in his written statement. He provided the information that Shri Verma's adverse remarks in the confidential report was expunged by the higher authorities. Malafide cannot be attributed without arraying anybody in the party line up.

10. We have considered all papers in the case and have also seen the relevant Confidential Reports provided to us in Original. The file on which promotions have been considered have also been seen. We have carefully considered the argument made before us by Learned Counsel on both sides. We are clear, in the first place, that the relief sought is only against the grievance of non-promotion. Although a point has been made about adverse entries in C.R., this point will be taken into consideration only in so far as it relates to the relief sought in the O.A. We will not per se go into the grievance in regard to adverse entries, etc. since these are not under challenge.



11. It is clear from a total consideration of the case that it will be vital to go through the Confidential Reports of applicant. We, therefore, go directly into perusing these. The rejection of the case for promotion has been made on 26.07.1996. The Confidential Report for the year 1996-97 does contain adverse entries. The Reviewing Officer says that he agrees with the assessment on adverse remarks and grades the Applicant as 'Average'. The 'Average' grading is confirmed upward right upto F.A. & C.A.O. Communications of the adverse remarks have been made and representations rejected. The Confidential Reports for 1995-96 has also been seen by us. In the report for the year 1995-96 it is true that there are certain adverse entries made by the Reporting Officer. The grading has been made as 'Average' which grading is confirmed by Reviewing Officer. It is also agreed to at higher levels. It has to be noted that the C.R. for the year 1994-95 strikes a completely different tone where the initiating officer and all seniors consider the Applicant as fit to be graded as "Very Good". The grading for 1993-94 is 'Good'. Now once it is clearly settled under the Rules that two out of the last three C.Rs. had to be graded as 'Good', we find it difficult to intervene. We are constrained by the law settled at the highest level that Tribunals like ours will not go into making reassessment and that, even if a different view is possible by us after going through the C.Rs. in depth, we are constrained from substituting our view as decision in judicial review. Once the above is the position on the facts of the record of C.Rs. and once we do not find any glaring defect in the consideration of the case, we do not find any relevance in the other arguments made. Therefore, no case exists to provide the relief sought on merit; hence, we are not going into the other arguments raised about non-joinder of necessary parties or of limitation.

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12. In view of the above discussions, we cannot provide the reliefs, as sought by the Applicant, in this O.A. The O.A. is, therefore, dismissed with no order as to costs.

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

B. N. Bahadur
(B.N. BAHADUR)
MEMBER (A).

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