

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

O.A.No.798/88

Dt. of order: 6-12-1993

K.L.Verma

: Applicant

Vs.

Union of India & Ors. : Respondents

Mr.R.N.Mathur : Counsel for applicant

Mr.G.S.Bafna : Counsel for Govt.respondents.

CORAM:

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant K.L.Verma, has filed this application under Sec.19 of the A.Ts Act, 1985, praying that the order dated 15.1.88 regarding placement of the officers in the selection grade of Rs.4500-5700 be quashed and that the respondent No.1 (Union of India) be directed to place the applicant in the selection grade from 1.1.86 or at least from the date ~~of~~ his juniors namely Ranjeet Shadap and others were placed in the selection grade. He has further prayed that he may be given senior administrative grade from the date from which it had been given to Shri Ranjeet Shadap and others.

2. The applicant, an officer of the Indian Railway Accounts Service is at present in the Junior Administrative Grade of the said Service. In 1987, a Selection Committee was convened for making recommendations for promotion to the Selection Grade in the said Service. Consequent on the recommendations of the Selection Committee, three orders were issued by the Ministry of Railways on 15.1.88, 20.1.88 and 25.2.88. As a result 45 officers of the Service have been placed on the Selection Grade w.e.f. 1.1.86. By orders dated 5.1.88, 5.4.88 and 23.9.88, Shri Ranjeet Shadap and certain others have been promoted to officiate in the

Senior Administrative Grade of the Service. The applicant, as per the seniority list Annx.A-5, is senior to Shri Ranjeet Shadap and others, who have been impleaded as private respondents in this application.

3. The applicant's case is that he has been overlooked for promotion to the post of Selection Grade. He submitted a detailed representation Annx.A-6, dated 28.6.88 against his being overlooked for promotion to the Selection Grade. He alleged that one Shri N.Radhakrishnan, respondent No.9, who was the Adviser Finance, Railway Board, was prejudiced against him and tried to cause harm to him in various ways including issuing a threat to the applicant that his confidential record may be spoiled. Mr.Radhakrishna must have therefore in fact spoiled his confidential record, although no adverse remarks in his confidential reports have been communicated to him. The applicant is entitled to being placed in the Selection Grade on completion of 14 years of service as per the communication Annx.A-8 dated 9.11.87, which is a copy of the Railway Board's letter dated 24.8.87 regarding recommendations of the Fourth Pay Commission, for placing officers in Selection Grade in Group-A Railway Services. The criteria for placing officers in different Administrative Grades in the Railway Services have been spelt out in Annx.A-9 dated 28.9.87, which is Railway Board's confidential letter dated 7.9.87. According to this criteria, the applicant should have been placed in the Selection Grade. However, in the ACR for the year ending 31.3.88, certain remarks have been made and communicated to the applicant which however have not been treated as adverse entries but have been communicated only to enable the applicant to improve his performance. The applicant submitted his representation dated 20.7.88 against the said remarks. The representation of the applicant was disposed of with the observation that the remarks have

not been treated as adverse and that the good points of the applicant's performance have been taken note of. According to the applicant since there are no adverse remarks in his ACRs, he is entitled to promotion to the Selection Grade as he otherwise fulfills all the requisite conditions for it.

4. During the arguments, the learned counsel for the applicant has stated that appointment to Selection Grade on completion of 14 years of service is by seniority cum fitness. If any instructions have been issued that the appointment to the Selection Grade is by seniority cum merit, these were not applicable in the case of the applicant because while the applicant was entitled to being placed in the Selection Grade w.e.f. 1.1.86, the instructions were issued in 1987 or thereafter. The learned counsel for the applicant also expressed the apprehension that the ACR for the year ending 31.3.88, in which certain remarks of advisory nature were made, might have been placed before the Selection Committee, causing prejudice in the minds of the members of the Selection Committee, as a result of which the applicant was overlooked for being placed in the Selection Grade. He requested us to ask the respondents to produce the record of the Selection Committee and the ACRs to satisfy ourselves that the applicant's name had not been unjustifiably excluded from ~~the~~ promotion to the Selection Grade.

5. The case of the respondents is that on the basis of the recommendations of the Fourth Pay Commission, Selection Grade was provided in the Junior Administrative Grade of the service of which the applicant is a member. This was provided by O.M. dated 14.8.87 but the orders were effective from 1.1.86. The officers who were eligible for promotion to Selection Grade were considered by a Departmental Promotion Committee, ^{and} the case of the

applicant was also considered by the said Committee but the applicant was not selected. Mere absence of adverse remarks in the confidential reports cannot provide a basis for promotion to the higher post as the post is to be filled-up on selection after consideration on merits. The applicant's case was also considered for promotion to Sr. Administrative Grade by a properly constituted Departmental Promotion Committee, but he was not found fit for promotion. There were no adverse remarks in the ACRs of the applicant which were relevant for consideration by the Departmental Promotion Committee but the applicant was not found fit for promotion and therefore he could not be selected for appointment to the higher post.

6. During arguments, the learned counsel for the ^{government} respondents reiterated the averments made in the reply to which a rejoinder has also been filed by the applicant. On our request the learned counsel for the government respondent produced before us the instructions regarding the criteria for appointment to the Selection Grade, the record of the proceedings of the DPC meeting held in 1987 to consider appointments to the posts of Selection Grade (Rs. 4500-5700) in various Railway Services and the ACR dossier of the applicant. The O.M. No. 19/1/86-PP dated 14.8.87, issued by the Department of Personnel & Training clearly states that appointments to Selection Grade in Group-A Central Services shall be made by selection on merit with due regard to seniority. We, therefore, hold that the respondents were justified in adopting the criterion of selection while making appointments to the Selection Grade.

7. A perusal of the list of Jr. Administrative Grade officers as on 1.1.86 eligible for consideration for appointment to Selection Grade shows that assessment for promotion of officers has been made on the basis of "points". The applicant was given 11.5 points. The

remarks against the name of the applicant read as follows:

"Latest ACR does not clear him for promotion"

We enquired from the learned counsel for the government respondents as to ACRs of which years were taken into consideration by the DPC for considering the name of the applicant and others for promotion to Selection Grade as ^{5.1.86} prior to on 1.1.86. He stated that the ACRs for the period/1.1.86 were taken into account for this purpose. The ACRs prior to 1.1.86 would be those for the financial year 1984-85 ^{applicant's} and earlier years. We have perused the ACR for the year 1984-85 which was recorded by Mr.N.Radhakrishna, Financial Adviser and Chief Accounts Officer, Western Railway, Bombay in April 1985. This also bears remarks by the General Manager who has agreed with the assessment made by Mr. Radhakrishna. A perusal of the ACR shows that some of the remarks are positively adverse in nature. For example against the column 'General Assessment' in Section II, the Reporting Officer has stated as follows:

"His professional ^{capabilities} ~~capabilities~~ fall short of expectations. His interpersonal relationship is quite glossy on the surface but is subject to severe constraints."

Further remarks by the Reporting Officer are that ~~xxxxx~~ as an officer incharge of his office the applicant has been avoiding recovery of certain amount which was ordered to be recovered from him in 1983 in respect of certain overpayments made to him. Further remarks by the same reporting officer acting as the Head of the Department are as follows:

"He is yet to develop a certain level of objectivity."


There may be two opinion about whether the last mentioned remarks above was adverse in nature, ^{but} there cannot be hardly any doubt in the mind of a person possessing even ordinary common-sense that the remarks regarding recovery professional capability and interpersonal relationship etc. are adverse in nature. These remarks have not been communicated to the applicant. It appears that it is

on the basis of these remarks that in the assessment of the officer it has been stated that the latest ACR does not ~~no~~ clear him for promotion. It is unfair and unjust to take into account adverse remarks which have not been communicated to the officer concerned and against which he has not been given an opportunity to make representation. To the extent that the DPC considered the ACR of the applicant for the year 1984-85 including the adverse remarks made in the ACR, the proceedings of the DPC are vitiated.

8. In the circumstances of the present case we direct the respondents to communicate all the remarks in the ACR for the year 1984-85 which can be considered to be adverse in nature, including those mentioned by us above, and give him one month's time to make representation against those remarks. The respondents shall send a communication to the applicant in this regard within a period of two months from the date of the receipt of a copy of this order. Thereafter, the government respondents shall consider the representation of the applicant if submitted by him during the aforesaid period, on merits within a period of two months. After consideration of the representation of the applicant and a decision thereon, the respondents shall place the case of the applicant before a Review Departmental Promotion Committee for his promotion to the post of Selection Grade as on 1.1.86. If after the Review ~~the~~ Departmental Promotion Committee has considered the case of the applicant, he is found fit for promotion, he should be granted promotion from the date from which his juniors were granted promotion bearing in mind that the promotions are to be considered from 1.1.86.

9. In the circumstances we do not consider it necessary to adjudicate on the other submissions of the applicant.

10. The O.A. is disposed of accordingly with no order as to costs.



(O.P.Sharma)
Member (A)



(D.L.Mehta)
Vice Chairman.