

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT : HYDERABAD

(78)

O.A.No. 256 of 1987

Between:

Date of Order: 12-2-1990

Vundamatla Kondala Trinadha Rao

.. Applicant

And

1. Union of India rep.by General Manager,
South Eastern Railway, Calcutta.
2. Chief Personnel Officer, South Eastern
Railway, Calcutta.
3. Divisional Railway Manager, South
Eastern Railway, Visakhapatnam.
4. Sr.Divisional Engineer (Coordination),
South Eastern Railway, Visakhaapatnam.
5. G.Mohan Rao (No.1)
6. G.Mohan Rao (No.2)
7. D.V.P.Raju
8. C.H.Appa Rao
9. N.Narasimha Rao
- 10.J.K.Rao Patnaik
- 11.D.Satyanarayana
- 12.S.B.Naikulu
- 13.A.Subramaniam
- 14.K.M.Mathew
- 15.K.M.Joseph
- 16.S.S.R.Sarma
- 17.G.Nageswara Rao
- 18.K.R.Soorappa

APPEARANCE

For the Applicant : Shri A.Srinivasa Rao, Advocate.

For the Respondents : Shri P.Venkatarama Reddy, Standing
1 to 4 Counsel for Railways.

For the Respondents : Neither they in person nor their
5 to 18 Counsel were present.

CORAM

Hon'ble Shri D.Surya Rao, Member (Judicial)

Hon'ble Shri D.K.Chakravorty, Member (Admn.)

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(Judgment of the Bench delivered by Hon'ble Shri D.Surya Rao,
Member (Judicial))

1. The applicant herein is now working as permanent Way Inspector Gr.III in South Eastern Railway. In his application he complained that his juniors were promoted on adhoc basis as permanent Way Inspectors(Gr.II) in May 1983. The applicant submitted a representation on 1-1-1984. He was informed vide letter No.WPY/179(170), dated 26-4-1985 by the third respondent that his case for promotion cannot be considered. The applicant alleged that he was orally advised that regular promotions are in the offing and he was sure to get his promotion. It is further alleged that in terms of Railway Board's Establishment Serial No.81/84/PC.III/83/UPG/3, dated 1-5-1984 the Railway Board permitted Cadre Review and re-structuring of posts. Such a cadre review entails promotion retrospectively with effect from 1-1-1984. It is stated that pursuant to the orders of the Railway Board dated 1-4-1984, a Selection Committee was constituted and the 3rd respondent issued office order No.Estt/Engg 163/85, dated 19-11-1985 promoting several juniors to the applicant as permanent Way Inspectors Grade-I and II. The second respondent on 13-3-1986 directed the various heads of departments to review the cases of those employees, whose promotions were withheld due to bad Confidential Reports. The applicant submitted a representation on 29-4-1986 to the Chief Engineer, South Eastern Railway, Calcutta, requesting for a review of his case also. In the meanwhile the 3rd respondent issued an office order No.Estt/Engg 94/86, dated 2-6-1986 promoting the second set of P.W.Is., who are also junior to the applicant and thereby by-passed the applicant. This was followed by another order No.Estt/Engg.No.194/86, dated 23-10-1986 by the 3rd respondent promoting 8 more P.W.Is.

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to Grade-II, once again superseding the applicant. These orders are sought to be impugned in the present application. He contends that he is senior and there are no grounds for having superseded him. He further stated that ^{previously R} ~~once~~ there was a false or baseless charge against him for unauthorised absence resulting in punishment of stoppage of an increment for 6 months by an order of the Divisional Engineer-I, Waltair, by order No.WEZ/1/13/VKTR, dt.26-6-1981. The applicant submitted an appeal dated 12-8-1981 to the 4th respondent through proper channel. The appeal is still pending. The applicant alleges that he was never informed as to why he has been superseded. The applicant stated ^R that he made several representations ~~for~~ not being considered, the last of which was on 18-12-1986, but he has not received any reply. He, therefore, seeks a direction that he should be ~~permitted~~ promoted as P.W.I. Grade-II with effect from 1-1-1984 alongwith his juniors pursuant to the office order No.Esst/Engg.163/85, dated 19-11-1985.

2. On behalf of the ^{official} ~~respondents~~ ^{1/14}, a counter has been filed denying the claim of the applicant for promotion from 1-1-1984. In so far as adhoc promotions were made in 1983, it is stated that the applicant was considered, but was overlooked due to adverse Confidential Reports for the years 1981-82, 1982-83, and 1983-84. It is stated that the applicant ~~was~~ ~~xxxxxxx~~ told on 26-4-1985 that he could not be promoted even on adhoc basis. With regard to promotions to the upgraded posts as a result of cadre restructuring as directed in Railway Board's letter dated 1-5-1984, it is stated that the promotions were made on the basis of scrutiny of Confidential Reports. In the course of such a scrutiny, the competent authority viz., the Deputy Chief Engineer (Track) and the Deputy Chief Engineer(G)

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decided that the applicant is not fit to be absorbed against the upgraded post in view of his bad Confidential Reports. While admitting that the applicant submitted ^a representation on 24-4-1986 for review, it is stated that the matter was considered by the principal head of the department i.e. the Chief Engineer, who after scrutiny of the Confidential Reports, did not find the applicant fit for promotion. ^{He} ~~He~~ further admitted that the applicant was overlooked on 16-10-1985 and again on 2-6-1986. ^{bnt} ~~He~~ stated that the applicant could not be promoted since it is necessary that his case should have been free from adverse report. It is further stated that the applicant's case was considered at every stage and his case was reviewed by the Chief Engineer at the Headquarters level, but the applicant was not found fit.

3. The applicant filed a reply to the counter stating that in so far as his appeal against the order of stoppage of increment is concerned, he had made it within time since the punishment order was served on 30-6-1981 and he submitted his appeal on 13-8-1981. He; states that his appeal is still pending. It is, further averred that no adverse Confidential Report was communicated to him and, therefore, his right to promotion could not have been withheld on the ground of adverse Confidential Reports. It is stated that for implementing Cadre Restructuring w.e.f. 1-1-1984, the 3 years Confidential Reports i.e. for the years 1981-82, 1982-83 and 1983-84 are to be reckoned.

4. Heard Shri A.Srinivasa Rao, learned counsel for the applicant, and Shri Venkatarama Reddy, ^{for Railways} Standing Counsel, for the official respondents (i.e. Respondents 1 to 4). The other respondents, namely the juniors to the applicant, who have been impleaded as parties, have neither appeared in person nor through their counsel.

5. The applicant relies upon Rules 1608 and 1619 of the Railway Establishment Code Vol. I, which read as under:

" Rule 1608: A gazetted railway servant shall not ordinarily be given an unfavourable confidential report before an opportunity has been taken, preferably at a personal interview or, if that is not practicable, by means of a personal letter pointing out to him, the direction in which his work has been unsatisfactory or the faults of character or temperament, etc., which require to be remedied. The manner and method of conveying to the gazetted railway servant that his work needs improvement in certain directions must be such that the advice given and the warning or censure administered, whether orally or in writing, shall, having regard to the temperament of the gazetted railway servant, be most beneficial to him. If, in spite of this, there is no appreciable improvement and an adverse confidential report has to be made, the facts on which the remarks are based should be clearly brought out. "

" Rule 1619: (1) Non-gazetted railway servants:-

In general conformity with the principles laid down in the preceding rules, a General Manager may frame detailed rules for the preparation, submission and disposal of confidential reports on non-gazetted railway servants and may define the classes to which such rules shall apply. Annual confidential reports in the prescribed form on all class-III railway servants, in two grades below the selection grade, shall, however, be maintained regularly. The document in which the substance of an adverse report is communicated to a railway servant shall be prepared in duplicate, one copy being signed by the railway servant concerned, and returned with his explanation, if any, and the other copy being retained by him for further reference.

(2) x x x x "

He also relies upon item 44 of the pro forma prescribed for writing confidential reports for PWI Class III staff (PWIs and APWIs, Signal Inspectors and Assistant Signal Inspectors).

Item 44 of the C.R. pro forma requires the reporting officer to state whether any adverse remarks including penalties imposed or warnings/displeasures were communicated and if so, whether provisions of rule 1608-R1 read with rule 1619-R.1 were complied with. It is contended that no adverse confidential reports were ever communicated to the applicant, and as such, it is not open to the respondents to rely upon such uncommunicated adverse remarks and deny him the promotion. Reliance is placed on Gurdayal Singh's case (AIR 1979 S.C.1622) wherein it was held in para 17 that an adverse confidential report cannot be used to deny promotion unless communicated. In so far as the punishment of stoppage of increment with no cumulative effect for six months, ^{it is contended that} he has submitted an appeal on 12.8.1981, which is yet to be disposed of, by the appellate authority. Hence, even this punishment cannot be looked into for purpose of denying him the promotion.

6. The applicant has mentioned in his application that the punishment was imposed upon him by stoppage of increment for six months in the year 1981 and he assumes that the said punishment was one of the causes of his not being promoted. The respondents have stated in the counter that this was not a fact which was taken into consideration for denying him promotion. Hence it is ^{not} necessary ^{to} going into the question whether an appeal had been preferred ^{or} against the punishment, or whether it is still pending or whether it is one of the reasons for his non-promotion.

7. Now the first question is whether the applicant is entitled to claim adhoc promotion from 1983. It is to be noted that the applicant has not claimed this relief, though he has averred in his application that he ought to have been promoted on adhoc basis in the year 1983 when his juniors were promoted. Obviously it is not open to the applicant to do so since he was informed

on 26-4-1985 itself that he cannot be given adhoc promotion. We would, therefore, reject this contention.

8. The next question is whether the applicant was eligible to be promoted retrospectively from 1-1-1984 and whether the order bearing No.Estt/Engg.163/85, dated 19-11-1985 denying ^{the} ~~promotion~~ ^{to} the Petitioner ~~for promotion~~ is illegal. The counter states that the applicant's C.Rs. were considered by the competent authority, namely, the Deputy Chief Engineer (Track) and the Deputy Chief Engineer (G) and they decided that the applicant is not fit to be absorbed against ^{the} ~~upgraded~~ post in view of his bad confidential reports. We have called for the said C.Rs. Obviously these promotions are to be based upon the Confidential Reports for the years 1981-82, 1982-83, 1983-84 and 1984-85. The respondents have produced the C.Rs.. The report for the period 1-4-1981 to 31-3-1982, while stating that the applicant is not fit for promotion, has left column 44, namely whether adverse remarks or warnings were communicated, blank. Again in the C.R. for the period 1-4-1982 to 31-3-1983, the applicant's work the officer has described ~~as~~ average, but not fit for promotion. In so far as the column relating to communication of any adverse remarks i.e. column 44, states "yes", but it is not clear what is the adverse remark which was communicated. The entire C.R. mainly describes his work as average. It is further stated that he is ^a severe diabetic patient. Hence there is nothing adverse against him in this C.R. Coming to the C.R. for the period 1-4-1983 to 31-3-1984, the column relating to fitness for promotion has been left "blank". Similarly, the column relating to communication of adverse remarks was also left "blank". Here again other entries were made i.e. either average or satisfactory and that he is a severe diabetic patient. Thus, even this report does not disclose any adverse entry. In so far as the report for the year 1.4.1984 to

To:

1. The General Manager, (Union of India), south Eastern Railway, Calcutta.
2. The Chief personnel officer, south Eastern railway, Calcutta.
3. The Divisional Railway Manager, south eastern railway, Visakhapatnam.
4. The Sr. Divisional Engineer (Coordination) south ~~East~~ Eastern Railway, Visakhapatnam.
5. One copy to Mr. A. Srinivasa Rao, Advocate, 12-11-163, Brahminbasti, Seethalphalmandi, Sec'bad-500 361.
6. One copy to Mr. P. Venkatarama Reddy, SC for Rlys., CAT, Hyd.
7. One spare copy.

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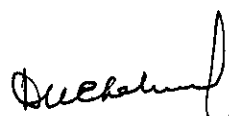
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is concerned,
31.3.1985/ it is reported that the applicant is not yet fit for promotion. It is, further stated that he shirks responsibility and whenever posted to look after any post, he reports sick. However, the column No.44 relating to communication of adverse remarks was left "blank". Thus, it is not mentioned that any such adverse remarks were communicated to the applicant. Coming to the C.R., for the period 1-4-1985 to 31-3-1986, the report is good and it is certified that he is fit for promotion. It is mentioned that there are no adverse remarks to be communicated.

9. Thus, a fair reading of these C.Rs. would disclose that either there were no adverse remarks or even if there were any, as in the case of the adverse C.R. for the year 1984-85, they were never communicated to the applicant. The matter is thus directly covered by the decision cited by the learned counsel for the applicant viz., A.Srinivasa Rao--Gurdayal Singh Vs. State of Punjab (AIR 1979 Supreme Court 1622). Applying the afore said decision, we hold that overlooking the applicant pursuant to the impugned orders dated 19-11-1985, 2-6-1986 ^{on the ground that he had adverse C.Rs. for} and 23-10-1986 is illegal.

10. The respondents are directed to once again reconsider the case of the applicant for promotion on these occasions on the basis that there are no adverse C.Rs. for these years. If on such reconsideration the applicant is found fit for promotion either in 1985 or in 1986, he should be given due promotion from the date on which his juniors were promoted. This reconsideration should be completed within 3 months from the date of receipt of this order. We accordingly dispose of the O.A. There will be no orders as to costs.


(D.SURYA RAO)
MEMBER (JUDICIAL)


(D.K.CHAKRAVORTY)
MEMBER (ADMN.)

DATE: 12 February 1990.


DEPUTY REGISTRAR (J)

NSR

Hyd. and Bench
Hyderabad.