

(54)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A.No.1143/91.

Date of Judgement : 31-10-94

M.Peter Paul

.. Applicant

Vs.

1. Union of India, Rep. by the  
Secretary(Estt),  
Railway Board, Rail Bhavan,  
New Delhi.

2. General Manager,  
S.C.Rly., Rail Nilayam,  
Secunderabad.

3. Chief Operating Supdt.,  
S.C.Rly., Rail Nilayam,  
Secunderabad.

4. Divl. Rly. Manager,  
S.C.Rly.,  
Hyderabad (MG) Division,  
Secunderabad.

.. Respondents

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Counsel for the Applicant :: Shri G.V.Subba Rao

Counsel for the Respondents :: Shri N.R.Devaraj,  
SC for Railways.

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C O R A M

Hon'ble Shri Justice V.Neeladri Rao ; Vice-Chairman

Hon'ble Shri A.B.Gorthi : Member(Admn)

J u d g e m e n t

I As per Hon'ble Shri A.B.Gorthi : Member(Admn)

The Applicant, while working as an Assistant Officer (Group 'B') S.C.Rly., was considered for promotion to Senior Scale in 1987, 1989 and 1990 but was not found fit for inclusion in the select panel of any of the three years. His prayer is that the relevant records be called for and scrutinised, that the adverse remarks in his ACR for 1989-90 be expunged and that the Respondents be directed to promote him to Senior Scale from the date when his immediate junior was so promoted, with all consequential benefits.

2. The Applicant's case is that he had, throughout his career, earned good reports due to his diligent and hard work. He was, therefore, shocked to receive adverse remarks in his Confidential Report for the year ending 31.3.1990. The said remarks read as under:-

"He is not quite effective as a Field Officer and will not be able to guide and direct other officers which he would be required to do".

The remarks were communicated to him on 5.9.1990. It is thus contended for the Applicant that the Selection Committee that met on 3.7.1990 took into consideration the uncommunicated adverse remarks in respect of the Applicant's C.R. for 1989-90. It is further asserted that the Chief Operating Supdt., (Respondent No.3) delayed communication of the adverse remarks to the Applicant deliberately and with a view to deny him selection to Senior Scale. He made representations against the adverse remarks as also against his non-selection to Senior Scale but the same were rejected.

3. The Respondents refuted the various contentions raised by the Applicant. In their counter affidavit, it has been clarified that promotion to Senior Scale is by selection after scrutiny of the Confidential Reports for the preceding 5 years. The C.Rs earned by the Applicant during the relevant period were mediocre, in that, they graded him as 'Average' on two occasions and assessed him as not fit for promotion in 1985, 1988 and 1989. Prior to 1.3.1990, the C.R. assessment used to be quantified by allotting marks. The Applicant could not secure the minimum of 17 points and as such was not found fit for promotion by the Selection Committee which met in 1987 and 1989.

4. In terms of Railway Board's letter No.E(GP)85/1/6 dt. 1.3.1990, the Selection Committee is required to assess the suitability of candidates for promotion to Senior Scale on the basis of overall assessment of the Confidential Reports of the preceding 5 years. The bench mark for fitness for promotion should not be less than 'Good'. The Selection Committees which met in July and September, 1990 found the Applicant as 'Average' and hence did not recommend him for promotion. The Applicant was, however, found suitable for promotion to Senior Scale in 1992 and was since promoted accordingly.

5. Heard learned counsel for both the parties. The record containing the Selection Committee proceedings for the relevant period was also seen.

6. The Selection Committee that met on 3.7.1990 noted the fact that the Applicant was already twice overlooked for promotion and that "even for the year ending 31.3.1990 the reading of his C.R. indicates that he is only 'Average' officer and not fit for promotion". Apparently the assessment of the C.R. for the year ending 31.3.1990 was based on the uncommunicated adverse remarks contained therein. The next Selection Committee that met on 8.9.1990 repeated the same observations as were made by the earlier Selection Committee, as there was no fresh material before it which would warrant a different view being taken. Moreover, the said Selection Committee met in September, 1990, only a few days after the adverse remarks were communicated to the Applicant and before his representation against the same could be considered by the competent authority.

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7. It is a well settled principle that adverse remarks in a Confidential Report cannot be acted upon to deny promotion unless these are communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances justifying expunction of the remarks. In *State of Madhya Pradesh Vs. Bani Singh & Another*, AIR 1990 SC 1308, it was explicitly held that adverse remarks against which representation is pending are not final so as to enable the Selection Committee to take them into consideration. From this point of view, there can be no doubt that the findings of the Selection Committees which met in July and September, 1990, so far as they pertain to the Applicant cannot be sustained.

8. There is also substance in the plea advanced by the Applicant, that his representation against the adverse remarks was rejected by the 3rd Respondent by a cryptic order without assigning any reasons, vide his order dt. 25.3.1991. The same, therefore, deserves to be set aside.

9. In the result, we deem it just and proper to set aside the order of the Chief Operating Supdt., dt. 25.3.1991 rejecting the representation of the Applicant, and direct the General Manager (Respondent No.2) to constitute a Review Selection Committee to reconsider the case of the Applicant ignoring the adverse remarks reflected in the Confidential Report for the year ending 31.3.1990. In case he is found suitable for promotion, the same shall be given to him from the date when his junior, who was selected in July, 1990, was so promoted. Consequential monetary benefits shall be fixed on a notional basis but the Applicant will be entitled to payment of arrears with effect from December, 1992, when he was actually promoted to Senior Scale.

10. Respondents are directed to comply with the above directions within a period of three months from the date of communication of this order.

11. The O.A. is ordered accordingly without any order as to costs.]

*thansays*  
( A.B.Gorthi )

Member(Admn).

*V.Neeladri Rao*  
( V.Neeladri Rao )  
Vice-Chairman.

Dated: 31 Oct 94

br.

*Amulya*  
Deputy Registrar (J)CC 7-11-94

To

1. The Secretary(Estt.) Railway Board, Railbhavan, Union of India, New Delhi.
2. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
3. The Chief Operating Superintendent, S.C.Rly, Railnilayam, Secunderabad.
4. The Divisional Railway Manager, S.C.Rly, Hyderabad(MG) Division, Secunderabad.
5. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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*15 Dec 1994*