

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 18.1.2001

OA 3/95

Ravindra Kumar Sharma, Head Clerk O/o Chief Works Manager,
Western Railway, Kota.

... Applicant

Versus

1. Union of India through General Manager, Western
Railway, Churchgate, Mumbai.
2. Chief Works Manager, Wagon Repair Shop, Western
Railway, Kota.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.P.P.Mathur, proxy counsel
for Mr.R.N.Mathur

For the Respondents

... Mr.Anupam Agarwal, proxy counsel
for Mr.Manish Bhandari

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

The applicant in this application has prayed for the
following reliefs :-

- "i) That the respondents may be directed to give
promotion to the applicant on the post of Chief
Clerk in accordance with the restructuring/
upgradation scheme with effect from the date
promotion has been given to the persons junior
to him . The respondents may be directed to

give all consequential benefits of pay, seniority etc. to the applicant from the aforesaid date. The respondents may be directed that average CR of the applicant in preceding 3 years service record may not be treated as average and on the ground of the average remark in ACR promotion may not be denied to the applicant.

- ii) That the respondents may be directed to consider the case of the applicant for promotion on the post of Chief Clerk in pursuance of the notification Annexure A/5 and while considering the name of the applicant 'Average' ACR may not be treated as adverse."

2. Facts, as per the applicant, are that he was holding the post of Head Clerk in the office of respondent No.2, to which post he was promoted in the year 1982. The Railway Board had decided to give the benefit of restructuring to its employees. Consequent to this scheme, promotion of the applicant was to be ordered to the grade of Chief Clerk. However, the applicant was not granted this promotion on the ground that one of the ACRs of the applicant is 'Average'. Persons junior to the applicant were promoted vide order dated 6.5.93 (Ann.A/2). He has submitted that the average ACR cannot form the basis for denial of promotion. Mere average remark in the Appraisal Report cannot be treated as adverse as different qualities/attributes of the employees have to be assessed by the selection committee. It has been further submitted that the General Manager, Western Railway, vide letter dated 13.3.91 (Ann.A/4) clarified that average

remarks in the Confidential Report should not be treated as adverse. Despite this direction, the applicant has not been given his due promotion and it has caused prejudice to his career adversely. Average ACR was never communicated to the applicant and the remarks not communicated cannot be taken as adverse. Action of the department in denying promotion to the applicant is stated to be against the circular dated 13.3.91.

3. The respondents in their reply have stated that it is not correct to say that the applicant was not considered fit for promotion only because of average CR but he had also undergone punishments earlier and his record has not been satisfactory. Overall assessment has been made based on his record of service and the gradings in the ACRs. Punishments had been awarded to the applicant vide orders dated 29.12.90 and 27.5.91. He has again been punished vide order dated 7.10.93.

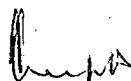
4. Heard the learned counsel for the parties and also perused the service record of the applicant, as presented on the date of hearing.

5. Learned counsel for the applicant basically placed reliance on General Manager, Western Railway's letter dated 1.3.93, wherein it has been clarified that the average grading given in the CR itself does not draw the inference that the individual is unfit for promotion. It is for the DPC to categorise the officers as 'fit' or 'Not yet fit' for promotion on the basis of an overall assessment of records of service. However, he argued that on the basis of overall assessment of the applicant including his ACRs and

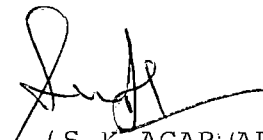
service record, the applicant was not considered fit for promotion. We have gone through the contents of General Manager, Western Railway's letter dated 13.3.91, on which reliance has been placed by the learned counsel for the applicant. It has been clarified therein that the remark 'Average' in the CR is not to be treated as adverse while considering the case of the employees in non-selection post (emphasis supplied). His overall performance should be judged for the last three years. It is clear from this letter that this direction from the General Manager is in the case of promotion to non-selection post. The applicant is seeking promotion to the grade of Chief Clerk which, as has been admitted on either side, is a selection post. Thus, this letter of General Manager will not come in support to the applicant. The learned counsel for the applicant submitted that even though it was a selection post but in restructuring, as per Railway Board's orders, the selection was to be based only on scrutiny of service record and Confidential Reports without holding any written test or viva-voce test. In this view of the matter, if selection was to be based only on scrutiny of service record and Confidential Reports, obviously these assume greater importance in reckoning the suitability.

6. In this view of the matter, considering service record of the applicant and his gradings in the Confidential Reports, we do not find any infirmity in the decision of the respondents refusing promotion to the applicant.

7. We, therefore, dismiss this application as having no merit. No order as to costs.


(A.P.NAGRATH)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)