

06

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./~~XXX~~ No. . 172 of 1998

DATE OF DECISION 27.4.2001

Shri Pradip Kumar Acharjee

PETITIONER(S)

Mr G.K. Bhattacharyya, Mr G.N. Das and
Mrs B. Dutta Das

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr J.L. Sarkar, Railway Counsel

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes
4. Whether the judgment is to be circulated to the other Benches ? Yes

Judgment delivered by Hon'ble Vice-Chairman

h

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.172 of 1998

Date of decision: This the 27th day of April 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Pradip Kumar Acharjee,
Senior Section Engineer (Electrical),
Pandu Power House, N.F. Railway,
Guwahati.

.....Applicant

By Advocates Mr G.K. Bhattacharyya, Mr G.N. Das and
Mrs B. Dutta Das.

- versus -

1. The Union of India, represented by the
General Manager, N.F. Railway,
Maligaon, Guwahati.
2. The General Manager (Personnel),
N.F. Railway,
Maligaon, Guwahati.
3. The Chief Electrical Engineer,
N.F. Railway,
Maligaon, Guwahati.
4. The Divisional Electrical Engineer,
N.F. Railway,
Maligaon, Guwahati.
5. Shri K.K. Sen Laskar,
6. Shri B.B. Das
7. Shri S. Mazumdar
8. Shri S.B.P. Singh
9. Shri U.K. Biswas
10. Shri D. Kahali
11. Shri Arunangshu Roy
12. Shri A. Kundu
13. Shri S.K. Bhowmick

Applicant Nos.5 to 13 are working as Assistant Engineers under the
N.F. Railway.

.....Respondents

By Advocate Mr J.L. Sarkar, Railway Counsel.

.....



10

O R D E R

CHOWDHURY.J. (V.C.)

The application under Section 19 of the Administrative Tribunals Act, 1985 has arisen and is directed against the Office Order No.12/98 dated 24.6.1998 promoting nine officers including the respondent No.5, who is junior to the applicant, to the rank of Assistant Electrical Engineer superseding the claim of the applicant as well as the selection process including the Select List prepared by the Selection Committee for the post of Assistant Electrical Engineer Group 'B' against the 70% vacancies, in the following circumstances:

The applicant, on obtaining the B.E. degree (Electrical), joined the N.F. Railway as Electrical Foreman in the scale of pay of Rs.2000 to Rs.3200/-. He was posted at Dibrugarh and Guwahati. In November 1993 he was posted in the same capacity as Senior Technical Assistant in the Office of the Assistant Electrical Engineer, Maligaon. While the applicant was serving under the Assistant Electrical Engineer, Maligaon, he was served with a letter dated 22.2.1996 communicating adverse remarks in the Annual Confidential Report (ACR for short) for the year ending 31.3.1995. The relevant part of the adverse remarks communicated as above are reproduced below:

"3.(a) Initiative and direction - Needs further improvement.

(c) Keeness/promptness and efficiency. - He is not keen and prompt in discharging his duties efficiently.

15. Has his work been satisfactory - Almost satisfactory. But his attitude is reluctant."

The applicant wrote to the Chief Electrical Engineer, N.F. Railway requesting him to furnish the substance of the favourable remarks contained in the ACR for the year ending on 31.3.1995 to enable him to put up an appeal against the adverse remarks. Alongwith the representation the applicant also enclosed the Railway Board's letter No.E(NG)I/90/CR/4 dated 17.6.1991 indicating the requirement of furnishing the favourable remarks in the ACR. The applicant was, however, not favoured with the materials as sought for by him in his representation dated 30.4.1996.

The respondents, however, by their communication dated 12.6.1996 informed the applicant that on consideration of his appeal against the adverse remarks appearing in the ACR of 1994-95 the same was rejected. However it will be pertinent to mention that by his communication dated 30.4.1996 addressed to the Chief Engineer, he only sought for certain materials to enable him to submit an effective representation. The respondents by Office Order dated 7.8.1996 promoted seven officers including the applicant to officiate in the post of SS/CTA/Sr.EF in the scale of Rs.2375-3500. The respondent authority decided to hold the selection for forming a panel of 12 (11 Unreserved and 1 Scheduled Tribe) persons for the post of Assistant Engineer, Group 'B' against 70% of the vacancies. A communication to that effect was sent vide memo No.E/254/13 Pt.II(O) dated 20.2.1998 addressed to the General Manager (Construction)/Maligaon, General Manager (Personnel)/Metro Railway, Calcutta, CEE, Maligaon, etc. The communication also indicated that the selection would be based on the candidate's performance both in written test as well as viva-voce test and that the written test would consist one paper of 150 marks for which the qualifying marks was 90.5. Marks were also allotted for oral test, out of which 25 marks were given for 'five years' ACR and 25 marks for personality etc. The communication also mentioned that an employee was required to get a minimum of 15 marks in the ACR for five years in order to be qualified as fit for promotion. The communication contained a main list of forty employees in order of seniority. It also enclosed a standby list of nineteen persons. The name of the applicant figured at serial No.38 of the main list and the name of the respondent No.5 appeared at serial No.2 of the standby list. By a message dated 4.5.1998 the respondent No.2 forwarded a list of sixteen candidates who had qualified in the written test for Assistant Electrical Engineer (AEE for short) and the name of the applicant in that list appeared at serial No.1. The message instructed the applicant and the other successful candidates to obtain physical fitness certificates and to appear in the viva voce test on 28.5.1998. Due to the extension

O.....

12
of the age of retirement from 58 to 60 years the vacancy position was reviewed. As a result of the review, the number of vacancies against 70% quota came down to 10 (Unreserved - 9, SC - nil, ST - 1). As a result of the said exercise, six junior candidates were excluded and only 13 persons were called for the viva-voce test. The viva-voce test was finally held on 3.6.1998. The applicant appeared in the said viva-voce test.

2. By the impugned Office Order No.12/98, communicated vide memo No.E/283/128/Pt-VIII(O) dated 24.6.1998, nine persons including respondent No.5 were promoted to the rank of AEE. The applicant assailed the aforesaid exercise for not considering him for promotion as arbitrary and discriminatory. It was averred in the application that the reason for not empanelling the applicant was on the ground that the applicant failed to get the minimum 15 marks from 5 years ACR. According to the applicant the respondents acted upon the entries of the ACRs without giving him an opportunity to explain or represent against the entries of the said ACRs. It was alleged that against the adverse remarks in the ACR for the year 1994-95, the applicant since could not submit his representation, the same could not have been acted upon and the ACR of 1994-95 was not before the Selection Board and for which no marks could be provided to the applicant.

3. The respondents submitted their written statement and denied and disputed the applicant's claim. In the written statement it was stated inter alia, that the adverse entries contained in the ACR for the year ending 31.3.1995 was duly communicated to the applicant advising him to submit appeal against the adverse remarks, if he so desired, for due consideration of the accepting authority. According to the respondents the applicant chose not to submit any representation. Instead, the applicant requested the administration to furnish him with the substance of the favourable remarks appearing in the ACR. Non-communication of favourable entries did not nullify the communicated adverse remarks. As regards the promotion of the applicant to the non-gazetted cadre from the grade

o. Rs.2000-3200 to the grade o. Rs.2375-3500, it was stated that the said promotion had no bearing with the communication o. adverse remarks in the ACR for the period ending 31.3.1995. For promotion to non-gazetted cadre, the actual points earned in the ACR were added to the total marks obtained by the candidates. For Group 'B' selection, one has/had to acquire minimum 15 marks out o. 25 under the head 'Record o. Service'. There is/was no qualifying marks laid down for promotion within non-gazetted cadre under the head 'Record o. Service' and there is/was a specific minimum qualifying mark, i.e. 15 out o. 25 under the head 'Record o. Service'. For promotion to Group 'B' post, passing o. the prescribed medical examination was a necessary prerequisite. In the instant case, the other candidates were cleared on medical examination, but the applicant was given a conditional certificate and relaxation o. medical standard was not contemplated under the system. The respondents denied the allegation o. the applicant that the ACR for the year 1996-97 was not made available before the Selection Board. The Selection Committee on objective assessment, recommended the eligible persons for promotion. The case o. the applicant was fairly considered and the competent authority did not find him eligible for promotion. Therefore, the promotions were lawfully made. The respondents placed the relevant ACRs before us and asserted that the gradings were made on the basis o. record o. service. It was also asserted that the applicant did not qualify in the medical test and for that purpose referred to the records.

4. Mr G.K. Bhattacharyya, the learned Sr. counsel for the applicant, in course o. his arguments, urged that passing o. the visibility test for the post o. Assistant Engineer was not an essential condition. The learned counsel for that purpose invited our attention to the Indian Railway Medical Manual and referred to some o. the provisions, more particularly, the provisions contained in paras 529 and 530 o. the said Manual. The learned counsel submitted that since the post in question is not connected with train working and use o. trolley on open line, the question o. examination o. visual acuity was not a statutory requirement.

5. Mr J.L. Sarkar, learned Railway Counsel, countering the arguments o. Mr Bhattacharyya, also referred to the Indian Railway

Medical.....

Medical Manual and particularly referred to paras 530, 531 and 532 and submitted that all employees for promotion to the gazetted cadre from non-gazetted cadre are required to be examined for visual acuity and colour perception as per standard mentioned in respect of medical examination of non-gazetted cadre. On perusal of the provisions of the Manual, the examination for visual acuity and colour vision as per standard prescribed cannot be ruled out.

6. Mr Bhattacharyya next referred to the medical examination report and placed at our disposal reports of eight officers for the purpose of promotion. The learned counsel submitted that the report that was heavily relied upon by the respondents for excluding the applicant from consideration for promotion was a casual and perfunctory report. The learned counsel, particularly referred to the forms differently used for different purposes. Pointing to the report dated 25.5.1998, the learned counsel submitted that the concerned officer remarked that the applicant was not to be connected with train working or use of trolley. The learned counsel submitted that the report was not used in the written statement nor the full materials justifying the remark of the Medical Officer was placed, and therefore, it would not be just and fair to act upon ipse dixit. Mr Sarkar, however, submitted that the reports were submitted by the Medical Officer on proper assessment of the fact situation and this could not be lightly brushed aside.

7. We have perused the three medical examination reports dated 13.5.1998, 15.5.1998 and 25.5.1998. The first two reports were addressed to the General Manager(P), Maligaon and copies of the reports were endorsed to the concerned staff, besides sending a copy to the Deputy Chief Engineer/CON/Maligaon. The aforementioned two reports were furnished as per the requisition sent by the General Manager on 4.5.1998. The report dated 25.5.1998 was instead addressed to the DEE/Elect/MLG on the requisition of the DE dated 6.5.1998. Why separate procedures were adopted by the Railway Administration in this matter was not made known to us. The first two requisitions were sent by the General Manager,

but.....

but as to why a different requisition had to be sent by the DEE in the case of the applicant was, however, not made known to us. The report found the applicant fit for promotion to Group 'B' service, but qualified the said remark by stating that the post was not to be connected with train working or use of trolley. Why that remark had to be made by the communication dated 25.5.1998 was not discernible. The nature of the test applied for determining the visual acuity as well as the reasons made it difficult to accept the conclusion indicated in the report.

8. Admittedly, the ACRs were the inputs for the record of service and marks were awarded on the basis of the 'Record of Service'. As per their own showing marks for 'Record of Service' was to be given on the basis of confidential report for the last five years. For that purpose the weighted average of the five attributes of Section II of the ACRs of non-gazetted staff in grades of Rs.1600-2660 and above was to be taken. The ratings on the ACRs were already indicated by executive instructions/circulars. As per the ratings on the ACRs, 5 marks were to be allotted for 'Outstanding', 4 marks for 'Very Good', 3 marks for 'Good', 2.5 marks for those who were found 'not fit', 2 marks for 'Average' and 1 mark for 'Below Average'. Therefore, the ACRs play a vital role. A person who is/was shown as 'average' in the ACR is/was not found fit for promotion. Naturally, for the sake of fairness, the concerned person is to be intimated or made known ahead of time about the remarks 'average' entered in the ACR to enable him to improve his performance or otherwise to clarify his position. An adverse remark is not to be acted upon for denying the promotional benefit unless the same was communicated to the person concerned so that such person is provided with an opportunity to improve his quality of work and conduct and otherwise to explicate and/or demonstrate his quality. An ACR is the index of the performance of a Government servant. The object of such confidential report is basically with an object to improve the performance of the Government servant by making him aware of his area of weakness. The reason for communicating the adverse entries is to enable the Government servant either to have the opportunity to

explain.....

explain his conduct so that he may effectively explain the adverse entries as uncalled for or to provide him with an opportunity to ponder over the matter for his improvement.

9. From the records made available before us in the ACR of 1993-94 the applicant was shown as 'Average'. The Reporting Officer in his report dated 3.2.1996 against the columns 'Attendance', 'General Intelligence', 'Power to control others', 'Organising/Supervising ability', 'Capacity for hard work', 'Power of drafting' and 'Knowledge of Rules, Regulations and procedure' remarked as 'Good'. Against the columns 'Relations with others: (a) those above' it was remarked as 'Average' and '(b) those below' it was remarked as 'Good'. Against the column 'Integrity' it was shown as 'Beyond doubt'. However, against the columns 'Tact and Temper', 'Conduct', 'Initiative and direction' and 'Keeness/promptness and efficiency', the applicant was shown as 'Average'. Against the column 'Technical abilities', the applicant was shown as 'Good'. Against the column 'Has his/her work been satisfactory? If not, in what respect he/she has failed?', the Reporting Officer remarked as 'No so satisfactory. He does not take initiative in discharging his duties promptly and efficiently.' In the last column, 'Grading' the Reporting Officer remarked as 'Average'. It would be pertinent to mention that in the column for Self Appraisal of Part II, the applicant at serial No.2 made the following report at item 2 under the heading 'Award':

"(2) AWARD: Mr J. Upadhyay, Member Electrical, RLY. BOARD Inspected TL depot GHY on 1.10.93 and sanctioned Rs.5000/- as award to TL and AC staff vide Rly. Board's L/No.93/Elec(G)/145/1 dt. 2.10.93 New Delhi."

The Reporting Officer in column 1 against the entry: 'Does the Reporting Officer agree with the statement made in Part-II? If not the extent of disagreement and reasons therefor?', remarked as 'Yes, agreed to except Item No.2 since it is not his self-contribution.' In the self appraisal resume, the applicant clearly pointed out that the award was given to TL and AC staff. In the ACR of 1994-95 the applicant was graded as 'Good'. In the same report at column 17 it was remarked as 'One minor penalty chargesheet was issued and censured'. However in Section II of

the.....

the ACR, the applicant was reported as 'Average' except in column 2(e) 'Ability to enforce discipline, where he was shown as 'Good'. The aforesaid report showing the applicant 'Average' for the year 1994-95 was, admittedly, not furnished. Against the adverse entries in the ACR of 1993-94, the applicant was informed about the adverse remarks vide communication dated 22.2.1996. The applicant sought for more details for submitting the representation and/or appeal. In a most cavalier fashion the respondents turned down his application dated 30.4.1996 by their communication dated 12.6.1996. Despite the aforesaid adverse entries in the ACR of 1993-94 the applicant was promoted to a higher grade. Naturally, it can be inferred that despite the purported remarks in the ACR of 1993-94 the applicant was promoted.

10. We have already mentioned about the nature of the performance appraisal. The sanctity and importance of appraisal of performance cannot be gainsaid. The authority who is entrusted with the preparation of the ACR is to act with full responsibility and since those remarks are of crucial nature in determining the career of an officer, the authority must objectively judge the situation and only after due care and caution make such entries. Such remarks as mentioned earlier are necessary to be introduced to set at right the wrong committed by the officer and provide him with an opportunity for improvement. An ACR is not meant to be used only as a punitive measure. It may be pertinent to recall the following observations of the Supreme Court in P.K. Shastri vs. State of M.P. and others, reported in (1999) 7 SCC 329:

".....Be that as it may, we think that the CRs of an officer are basically the performance appraisal of the said officer and go to constitute vital service record in relation to his career advancement. Any adverse remark in the CRs could mar the entire career of that officer. Therefore, it is necessary that in the event of a remark being called for in the confidential records, the authority directing such remark must first come to the conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the CRs....."


1. The right guaranteed under Article 16 is not confined to mere consideration for promotion, but it also includes right to be considered


justly.....

justly, fairly and reasonably. Where the considerations fall far short of just and reasonable consideration it amounts to a breach of the constitutional imperatives guaranteed under Articles 14 and 16.

12. In the circumstances set out above, we are of the opinion that the applicant's case for promotion requires to be considered by the authority on the basis of the ACRs sans the ACRs for the years 1993-94 and 1995-96. We do not think it proper to issue a direction to the respondents to give an opportunity to the applicant to submit his reply against the adverse remarks made in the aforesaid two ACRs in view of the fact that the matter pertains to promotion of the year 1998 and also in view of our observation made relating to the nature of the performance appraisal. The respondents are accordingly directed to hold a review DPC towards selection against 70% vacancies drawn on 3.6.1998 on the basis of the available records mentioned therein. For the sake of fairness we feel that the respondents should also take steps to cause fresh medical examination of the applicant. The respondents are further directed to complete the above exercise as expeditiously as possible, preferably within a period of three months from the date of receipt of the order by holding a review DPC as well as fresh medical examination of the applicant.

13. The application is allowed to the extent indicated. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN