

(2000) 03 MAD CK 0035

In the Madras High Court

Case No : C.R.P. No. 1267 of 1999 and C.M.P. No. 7120 of 1999

N. Muthu

APPELLANT

Vs

The Executive Director, Bharat Heavy Electricals Ltd.,
Tiruchirapalli-14 and 9 others

RESPONDENT

Date of Decision : 20-03-2000

Acts Referred:

Evidence Act, 1872 — Section 123, 124, 125

Citation : (2000) 3 CTC 529 : (2001) 1 LLJ 250

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr. T.L. Ram Mohan, for Mr. K. Muthuramalingam, for the Appellant;
Mr. B.T. Seshadri, for the Respondent

Judgement

1. Plaintiff in O.S.No.247 of 1996 on the file of Sub Court, Tiruchirapalli, is the revision petitioner.

2. Suit filed by him was one for declaration that the domestic enquiry proceedings against him and the penalty advice are all ab initio void, illegal,

unjust, mala fide and biased; and for the further declaration that the delay and failures in the consideration of the plaintiff for promotion from the

post of Deputy Manager to Manager, Senior Manager and Senior Manager to Deputy General Manager, were illegal, mala fide, unjust, biased and

unequal; and consequently for a decree of mandatory injunction, directing the defendants 1 to 10 to consider retro- actively and prospectively as

the case may be, the plaintiff for promotion as Deputy Manager to Manager, from Manager to Senior Manager and from Senior Manager to

Deputy General Manager in the Corporate Executive Eschalons of the 10th defendant; and to declare that the defendants 2 to 9 have been

decimately and designedly spoiling the fortunes and promotional avenues of the plaintiff and causing strain and stress on the ground of bias and mala fides; and for other reliefs.

3. Detailed written statement was filed by the defendants, explaining the reasons as to why the plaintiff could not be given promotion.

4. Defendant produced the files concerning me plaintiff and also claimed privilege from the same being disclosed. File was produced in a sealed

cover. When application was filed, claiming privilege, plaintiff moved an application I.A.No.185 of 1999, seeking permission to inspect the

documents, which were produced by respondent before Court. In the affidavit in support of the application, he said that the confidential report has

been manipulated so as to affect his promotional chances. He further alleged that the confidential report and the departmental committee minutes

would establish about his achievement and the same was darkened and screened, thereby chances of promotion were negated. He. wanted the

annual confidential report pertaining to him for the period 1985 to 1998 and the departmental promotion committee minutes relating to him, to be

allowed to peruse. For the said application, the respondent herein filed a detailed counter. In the counter affidavit, it was said that the documents

are maintained for the purpose of providing an appraisal of the merit of the employee by the respective superiors from time to time. They are in the

nature of confidential communications by one official to another and are meant to serve and form part of the material designed to maintain the

efficiency of public service and disclosure of such documents would certainly affect the freedom of expression of opinion of those Officers, whose

duty is to make entry therein for carrying out the administration in a proper manner, secrecy will have to be maintained and the contents should not

be disclosed and the same will be prejudiced to the public interest and will affect the functioning of the organisation.

5. After hearing counsel on both sides, the lower court perused the entire file and held that the adverse remarks made against the petitioner alone,

should be made available to him and the petitioner is not entitled to peruse the file. The same is challenged in this revision.

6. Heard learned counsel on both sides.

7. Sections 123 and 124 of the Indian Evidence Act, deal with the privilege

communications. In *The State of Punjab Vs. Sodhi Sukhdev Singh*, of the judgment, their Lordships held thus:

If under Sec. 123 a dispute arises as to whether the evidence in question is derived from unpublished official records that can be easily resolved;

but what presents considerable difficulty is a dispute as to whether the evidence in question relates to any affairs of State. What are the affairs of

State under Sec. 123 In the latter half of the Nineteenth Century affairs of State may have had a comparatively narrow content. Having regard to

the notion about governmental functions and duties which then obtained, affairs of State would have meant matters of political or administrative

character relating, for instance, to national defence, public peace and security and good neighbourly relations. Thus, if the contents of the

documents were such that their disclosure would affect either the national defence or public security or good neighbourly relations they could claim

a character of a document relating to affairs of State. There may be another class of documents which could claim the said privilege not by reason

of their contents as such but by reason of the fact that if the said documents were disclosed, they would materially affect the freedom and candour

of expression of opinion in the determination and execution of public policies. In this class may legitimately be included notes and minutes made by

the respective officers on the relevant files, opinions expressed, or reports made, and gist of official decisions reached in the course of the

determination of the said questions of policy. In the efficient administration of public affairs government may reasonably treat such a class of

documents as confidential and urge that its disclosure should be prevented on the ground of possible injury to public interest. In other words, if the

proper functioning of the public service would be impaired by the disclosure of any document or class of documents such document or such class

of documents may also claim the status of documents relating to public affairs." (Italics supplied)

8. The above decision was relied on by the Delhi High Court in the decision reported in *H.L. Rodhey and Others Vs. Delhi Administration* and

Others, That is the case, where reversion of an employee was questioned before the High Court. The petitioner therein wanted the files to be

produced before Court. The Authorities after production of the documents,

claimed privilege as in this case. While considering the said question, the High Court held thus:

The application was resisted by Delhi Administration on the ground of privilege both under Sections 125 and 124 of the Evidence Act. It is clear

that the documents belong to a class, the non-disclosure of which was necessary for the proper functioning of the public service and the disclosure

of which would affect the freedom and candour of expression of public servants and would, thus, cause injury to public interest. (Italics supplied)

9. In *Yogendra Nath Tewari Vs. State*, , in para 16 of the judgment, it was held thus:

16. It cannot rightly be disputed that correspondence with regard to confirmation or non-confirmation of a Government servant is of a confidential

nature about which the State Government can claim privilege. It will also not be desirable in the public interest to make such confidential document

an open secret. The State Government can thus claim privilege with regard to such documents though it must give material facts in the affidavit and

make the documents available for the inspection of the Court, so that only the confidential part of the correspondence is not brought on the record

and the remaining material is utilised for the decision of the case, and at the same time judgment is based on true facts," (Italics supplied)

Taking into consideration the law declared by the Hon"ble supreme Court and also various decisions of the High Courts, I do not think the order

of the lower court require any interference.

10. The petitioner wanted to peruse the entire file produced by the respondents. It is not disputed that the file contains various communications

between superior officers under whom the petitioner is working. The remarks made by superior officers itself is known as ""confidential report"".

That itself shows that it is written in confidence and it is not liable to be published. If there is any adverse entry in the confidential report, that alone

is to be intimated to the employee, so that, he may give an explanation as to why that remark is not correct. It is also intended to give notice to the

employee that he has to improve himself. Except in the case of adverse remark, all other remarks will have to be retained in confidence and the

same is not to be made an open secret. In this case, Department Promotional Committee has taken into consideration the various facts and it is the

case of the defendant that the petitioner was not given not promotion since he was not found eligible.

11. The petitioner had a grievance that the Department Promotional Committee has taken only adverse remarks and not his achievements. Lower

court has perused the entire file and held that while making the report, the Department Promotional Committee has also taken note of the

achievements made by the petitioner and, that is also given due importance. If the documents are made an open secret, the Officer by whom it is

written will not have the freedom of expression hereafter and the very administration in the office is likely to be affected.

12. The lower court was therefore justified in directing the defendants to communicate the adverse remarks alone to the petitioner and refusing

permission to peruse the entire file.

13. In the result, C.R.P, is without and consequently, the same is dismissed. No costs. C.M.P.No.7120 of 1999 is also dismissed.