

**(1982) 02 DEL CK 0001**

**In the Delhi High Court**

**Case No :** Letter Patent Appeal No. 109 of 1973

R.C. Malik

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision :** 19-02-1982

**Acts Referred:**

**Citation :** (1982) 21 DLT 61 : (1982) 3 DRJ 176 : (1982) 2 ILR Delhi 136 : (1982) LabIC 1604 : (1982) RLR 305 : (1982) 2 SLJ 545

**Hon'ble Judges :** Leila Seth, J;A.B. Rohtagi, J

**Bench :** Division Bench

**Advocate :** A.B. Saharia and C.L. Choudhry, for the Appellant;

## Judgement

Avadh Behari Rohtagi, J.

(1) The appellant, R.C. Malik, appeared in the Combined Engineering Service Examination held by the Union Public Service Commission in September 1964. On February 19, 1966, he joined the service as an Assistant Director. According to the rules framed under Article 309 of the Constitution by the President of India, there were three grades in the service, namely. Grades I, II and III.

(2) The posts of Assistant Directors are in Grade II, The candidates appointed to this service were, according to Rule 13 of the Indian Supply Service (Class 1) Rules 1961, to be on probation for a period of two years.

(3) On completion of the period of probation the officers of Grade II were, if considered fit for a permanent appointment, to be confirmed in their appointment subject to the availability of posts. The Government could extend the period of probation for two years. If on the expiry of the period of probation or of the extended period, if any, in the opinion of the Government an officer was not fit for permanent employment, the officer could be discharged.

(4) The appellant completed his probation on February 18, 1968. On June 12, 1968, the Director General of Supplies & Disposals extended the period of

probation by six months with effect from February 18, 1968. On November 16, 1968 the appellant was informed that he had satisfactorily completed the probationary period on August 18, 1968. The appellant officiated at Deputy Director from November 26, 1969 to December 24, 1970. He earned one increment as Deputy Director. In December 1970 he was reverted to the post of Assistant Director as the permanent incumbent to the post of Deputy Director, who wa

(5) The respondents 3 to 8 were appointed as Deputy Directors. The appellant challenged these promotions. He brought a writ petition on May 26, 1971 under Article 226 of the Constitution and claimed that he should be be deemed to have been confirmed much before his juniors were promoted. In other words his claim was that he should have been promoted on the ground of his seniority alone. His case is that no confidential remarks adverse to him were ever communicated to him. A learned single judge dismissed the writ petition by order dated February 6, 1973. From his order the appellant appeals to this Court under clause 10 of the Letters Patent.

(6) There are three important facts which have to be remembered in this case. Firstly, the appellants case for promotion went to the Departmental Promotion Committee (DPC) in November, 1970. As a vigilance inquiry against the appellant was pending at that time the Dpc recorded its opinion concerning his fitness for promotion to the post of Deputy Director and put it in a sealed cover. On July 12, 1971 the vigilance inquiry ended in favor of the appellant. He was absolved of the charges. Then the sealed cover was opened. It was found that the Dpc had formed the view that the appellant was "not yet fit for promotion as Deputy Director."

(7) The second important fact is that though the appellant denied that a vigilance inquiry was started against him the learned single judge called for the vigilance file and found as a fact that there was a vigilance case against the appellant, though he was ultimately exonerated by the vigilance department. So it is clear that the appellant could not be promoted to the higher post till his case was cleared by the vigilance department. The Dpc could not Therefore, adopt any other course except this, that they keep their remarks in a sealed cover for the time being, to be opened later on. The learned single judge found that the allegation of mala fides made by the appellant were not substantiated.

(8) The third important fact is that on June 14, 1972 the appellant was actually promoted as a Deputy Director.

(9) The only question that was against before us in the appeal is whether the remarks of the reviewing officer, Mr. Iyenger, recorded on March 17, 1970 are in truth and substance adverse. Apparently on the basis of the remarks of the reviewing officer the Dpc recorded the opinion that the appellant was "not yet fit" to be promoted as a Deputy Director

(10) The Director is the reviewing officer. He reviewed the remarks concerning

the appellant made by the reporting officer in January 1969. He agreed with him that the appellant was "fit in turn" for promotion. A similar remark was recorded in April 1970 also. On the basis of these remarks the Dpc seems to have formed the opinion that the appellant was ""not yet fit" for promotion. The learned single judge held that the words "not yet fit" are not an adverse remark and need not have been communicated to the appellant. He said :

" THIS Court is not a court of appeal against the judgment of Dpc concerning the fitness of the petitioner for promotion, which view was formed after perusing the confidential reports. The petitioner. is not entitled to have any portions of the confidential remarks quashed for want of communication to him "

(11) We are in agreement with the view of the learned judge. The remarks of the reviewing officer are not an indictment of the man and-much less a denying indictment. The words "not yet fit" are neither an adjudication nor a condemnation. The comments are not adverse because They have no tendency to stress faults and withhold praise where praise is due. The Ministry of Home Affairs has issued a long memorandum O.M. No.517/68- Estt. (A) dated September 19, 1969 on this subject. This says:

" ALL adverse entries in the confidential reports of the officer should be communicated by the reviewing officer after they have been seen by the countersigning authority, if any."

(12) The object of communication of the confidential remarks is set out in Office Memorandum No. 51/14/60-Estt. (A) dated October 31, 1961. It says:

"IT is necessary that every employee should know what his defects are and how he could remove them. Past experience suggests that it would make for better efficiency and contentment of the public services if every reporting officer realises that it is his duty not only to make an objective assessment of his subordinate"s work and qualities but also to give him at all times the necessary advice, guidance and assistance to correct his faults and deficiencies. If this part of the reporting officer"s duty is properly performed, there should be no difficulty about recording adverse entries which would only refer to detects which had persisted despite the reporting officer"s efforts to have them corrected."

(13) Various office memoranda show that the adverse entry is one which" relate to a remediable or to an irremediable defect." Illustrations of adverse comments of a general nature given are inefficiency, dilatoriness ,lack of initiative or judgment etc." These are "shortcomings". It is true that "there may be cases where though the remarks in the confidential reports are not adverse in a strict or narrow sense, the effect of these remarks cumulatively on the service prospects of the officer are adverse (e.g. fall in standards of the officer"s performance as compared to his past performance). In such cases, the attention of the officer should be specifically drawn to that fact, so that he could be alerted for improving his performance."

(14) It is not the case of the appellant that the remarks "not yet fit" for promotion were entered in his character roll and Therefore ought to have been communicated to him. The remarks "not yet fit" do not relate to a remediable or irreparable defect. There is nothing adverse to the appellant in these words. They do not refer to defects in his character. All that was suggested was that the appellant should acquire more experience before he can be considered for promotion. One becomes wise and skilful through experience Has not Shakespeare said. His years but young, but his experience old." (Two Gentlemen of Verona II iv 69).

(15) Very soon things improved. The report of the reviewing officer dated February 2, 1971 was that the appellant was "fit for promotion immediately" because "he has shown considerable improvement during the period under report." In the report dated March 15, 1972 the reviewing officer found him "fit" for promotion to higher grade. He said that the appellant "has gained more useful experience." In the light of the subsequent performance of the appellant we do not think that the reviewing officer intended to make any adverse remarks when he was saying that the appellant was "not yet fit as he lacks experience. He has yet to know the complexities of purchase and with some more years of experience he may prove his worth to hold higher post." The impression that the reviewing officer formed of the appellant was that he was "an officer who has yet to get experience of a base officer to discharge heavier responsibilities." There are the remarks of the Director Mr. Iyengar. As the reviewing officer he recorded them on April 17, 1970. They were countersigned by the Deputy Director General of Supply as the countersigning officer on April 23, 1973. At the end of the report in the performa in which these entries were made the following note appears:

" WHERE an adverse entry is made whether it relates to a remediable or irreparable defect it should be communicated; but while doing so the substance of the entire report including what may have been said in praise of the officer reported upon should be communicated."

(16) This shows that it was not an adverse entry. It did not relate to any defect, remediable or irreparable.

(17) In view of the fact that the appellant was promoted subsequently as a Deputy Director on June 14, 1972 it does not appear to us that the words complained of had any thing of adverseness. The Dpc thought fit to accept the assessment of the reviewing officer, countersigned as it was by the countersigned officer.

(18) The appellant cannot question their judgment. His complaint that the reviewing officer should have communicated the remarks "not yet fit" is without merit. We called for the file containing the reports of the appellant. On an examination of the various reports of the reviewing officer we have arrived at the conclusion that the remarks in question are not adverse.

(19) A distinguished judge once said, in another connection that while he might have difficulty in drawing a line, he had never had any difficulty in deciding on which side of it a particular case fell. That great judge said, that though he knew not when day ended and night began, he knew that middys was day and midnight was night (See Chapman v. Chapman 1954 A.C. 429. In this case we find no difficulty in holding that the remarks complained of were not adverse remarks. They do not fall on the other side of the dividing line where one can say that it is positively and adverse verdict having deleterious effect on a men"s carrel" It was, in our opinion, not necessary to communicate these remarks to the appellant.

(20) Finally we say this. This is not a case in which we ought to interfere. It is well to remember the words of Prof. De Smith :

" THE administrative process is not, and cannot be, a succession of justiciable controversies The public authorities are set up to govern and administer, and if their every act or decision were to be reviewable on unrestricted grounds by an independent judicial body the business of administration could be brought to a stand still."

(Judicial Review of Administrative Act 4th ed. p. 3).

(21) For these reasons we affirm the judgment of the learned judge and dismiss the appeal. Leaving the parties to bear their own costs.