

**HIGH COURT OF GUJARAT****RAJYAGURU K H***Versus***SECRETARY, GUJARAT ELECTRICITY BOARD****Date of Decision:** 08 April 2002**Citation:** 2002 LawSuit(Guj) 283**Hon'ble Judges:** [H K Rathod](#)**Eq. Citations:** **2002 2 LLJ 531****Case Type:** Special Civil Application**Case No:** 3012 of 1988**Final Decision:** Petition disposed**Advocates:** [D S Vasavada](#), [R C Jani](#)

**[1]** Heard Mr.D.S. Vasavada, learned advocate appearing on behalf of the petitioner and Mr. R.C.Jani, learned advocate on behalf of the respondent Board. According to the petitioner, he was working as Junior Engineer from October 24, 1979 and no adverse remarks in the Confidential Report of the petitioner No. 1. It is also case of the petitioner that as such, no disciplinary action has been taken against the petitioner No. 1, therefore, it is presumed that service record of the petitioner No. 1 is clean and satisfactory. There is neither any adverse remarks in Confidential Report nor any disciplinary action has been taken against the petitioner No. 1. However, the real grievance of the petitioner is that inspite of the fact that the petitioner is entitled to promotion to the next post of Deputy Engineer because his record is clear and no adverse remarks against him by respondent No. 1. But the respondent No. 1 issued promotion order on April 26, 1988 and June 6, 1988 in favour of the respondents but at that time, seniority of the petitioner No. 1 has been ignored and promotion has been denied to the petitioner. Therefore, this action of the respondents is contrary to the Rules as per the case of the petitioner.

**[2]** So far this contention is concerned, affidavit-in-reply has been filed by the respondent Board, wherein from para-2 onwards, it is contended by the Board that the petitioner joined as Junior Engineer on April 24, 1980 and not on October 24, 1979. The case of the petitioner was submitted to the competent selection committee

consisting of a full time Member (Tech.), concerned Chief Engineer and Secretary of the Board when the names of other Junior Engineers were also submitted for consideration in the year 1988. It is also pointed out that the petitioner was not selected as per the panel report dated April 15, 1988 for the obvious reason that there were remarks regarding his doubtful integrity in the year 1985 as well as 1986. It is further contended that in the report for the year 1985, the Reporting Officer reported that the, petitioner's integrity was poor and he should be given job in transmission department where there is no public relation and that he should not be kept in distribution department any longer and the reviewing authority endorsed this report. It is also pointed out that in the report for the year 1986, the Reporting Officer had reported that the petitioner's integrity was doubtful and he should be posted in transmission or generation side where he may not have contact with the public and this report has been endorsed by the reviewing authority also with further endorsement that "Adverse remarks regarding doubtful integrity are not to be conveyed." However, it is pertinent to note that as per the stand taken by the respondent Board, the adverse remarks containing references to the employee's deficiency are to be communicated in order that the concerned employee may rectify the deficiency. So, adverse remarks regarding integrity are not to be communicated and in the present case, aforesaid remarks were not communicated.

**[3]** Thus, in the present case, promotion has been denied and the petitioner No. 1 was not selected by the selection committee as per panel report only on the ground that adverse remarks about doubtful integrity in the year 1985 and 1986 but admittedly, the adverse remarks were undisputedly not communicated to the petitioner. Learned advocate Mr. Vasavada relied upon a decision of Calcutta High Court in case of Tarun Kumar Chowdhury v. Union of India, reported in 1992-I-LLJ-30 (Cal), wherein it is held that any adverse remark regarding the performance or integrity reflected in the confidential report must have to be communicated. Such uncommunicated adverse remarks cannot be relied on. In the instant case, the employee was not given an opportunity to know as to how the concerned authority came to the finding that there is prima facie evidence in regard to lack of integrity or doubt in reputation of the employees. Therefore, in view of this decision and the undisputed facts of this case before this Court that adverse remarks about doubtful integrity for the year 1985-86 has not been communicated to the petitioner. However, subsequently the petitioner has been promoted on August 4, 1989 by the respondent Board in the post of Deputy Engineer but the grievance still survive in respect of deemed date and consequential benefits with effect from April 6, 1988.

**[4]** Therefore, in view of these facts, it is directed to the petitioner to make a detailed representation to the respondent in respect of deemed date and consequential benefits

in the post of Deputy Engineer to the respondent Board within period of one month from the date of receipt of the copy of this order. It is directed to the respondent Board to consider the case of the petitioner for deemed date and consequential benefits in the post of Deputy Engineer while ignoring the adverse remarks about doubtful integrity for the year 1985-86 and pass appropriate orders in accordance with Rules and Regulations within period of two months from the date of receipt of such representation from the petitioner.

**[5]** In view of above observations and directions, present petition stands disposed of accordingly. Rule discharged with no order as to costs.

