

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1315/97
T.A. No.

199

(X)

DATE OF DECISION 12.12.97Rethu Lal

Petitioner

S.C. Luthra

Advocate for the Petitioner(s)

Versus

UDI & Ors.

Respondent

R.V. Sinha

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P. Biswas, Member (A)

The Hon'ble Mr.

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

JUDGEMENT


 (S.P. Biswas)
 Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1315/97

New Delhi, this 12th day of December, 1997

Hon'ble Shri S.P.Biswas, Member(A)

Shri Rethu Lal
D-1/132, Lodi Colony
New Delhi

.. Applicant

(By Advocate Shri S.C. Luthra)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
New Delhi
2. Director
Intelligence Bureau
North Block, New Delhi

.. Respondents

(By Advocate Shri R.V. Sinha)

ORDER

The applicant, a [redacted] section officer of the Intelligence Bureau (Hqrs.), is aggrieved by Annexure A-1, A-2 and A-3 orders issued on 18.4.95, 4.10.96 and 13.3.97 respectively. By A-1 order he has been communicated the decision of the IB Hqrs. that he was not fit to cross the Efficiency Bar (EB for short) due on 1.1.95; by A-2 order, respondents have conveyed that on review the applicant was not found fit to cross the EB with effect from 1.1.96 and by A-3 order, a similar decision was taken in respect of applicant's claim for crossing of EB w.e.f. 1.1.97.

2. Shri Luthra, learned counsel for the applicant sought to justify illegality of aforesaid orders on the basis that the applicant could not have been denied the right of crossing the EB since he has not been conveyed any adverse remarks in respect of the Annual Confidential Reports (ACRs for short). Quoting from the

counter of the respondents, the learned counsel brought the following to my attention to add strength to his contention:

(a)

"Anyone with nothing adverse against him in his ACR may be allowed to cross EB and old adverse entries should be ignored"

3. The applicant also alleges malafide on the part of Respondent No.2 in denying crossing of EB in his favour in an attempt to deprive enhanced pensionary benefits that would have been otherwise due to him.

4. In the counter, respondents have submitted that the applicant was considered by a Departmental Promotion Committee (DPC for short) for the purpose of considering EB cases. However the DPC did not find the applicant "fit" to cross the EB due on 1.1.95, that the recommendations of the DPC were duly approved by the competent authority, i.e. Director, IB and the decision was also duly communicated to the applicant; that the case of the applicant was again reviewed and submitted before the DPCs for adjudging his suitability to cross EB w.e.f. 1.1.96 and 1.1.97 respectively but he was again not found fit to cross the EB by the DPC whose recommendations were accepted by the competent authority on 24.3.96 and 15.2.97 respectively.

5. The short question for determination is whether the action of the respondents in declaring the applicant "Unfit to cross EB" due on 1.1.95 and 1.1.96 are sustainable in the eyes of law.

(b)

6. The rules that would decide the fate of such cases are available under FR-25 and also *in* *10* procedures/guidelines contained in Government of India's OM No.29014/2/75-Estt. dated 15.11.75. Part of the relevant portion touching upon the subject is reproduced below:

"In the event of DPC being convened after a gap of time following the date on which the Government servant became due to cross the EB, the Committee should consider only those CRs which it would have considered had the DPC been held as per the prescribed schedule. If the Government servant is found unfit to cross the bar from original due date, the same DPC can consider the report for subsequent year also, if available, to assess his suitability in the subsequent year".

Cases of Government servants for crossing of EB in a time-scale of pay shall be considered by a Committee which shall be the same as the DPC constituted for the purpose of considering cases of confirmation of the Government servants concerned. The Committee shall make its recommendations to the authority competent to pass an order under FR 25 and the decision will be that of the competent authority. The decision to enforce EB should be formally communicated to the Government servant concerned in all cases. If a Government servant is not allowed to cross EB on due date, his case may be reviewed again next year. Such reviews should be done annually in accordance with the **time schedule provided**. DPCs are to assess the suitability to cross the EB on the basis of ACRs.

7. The Rules do not contemplate any hearing be granted to an employee before the decision is taken with regard to permitting or not permitting the employee to cross EB. The stoppage of an employee at the efficiency bar is not by way of punishment and does not cause any stigma on an employee. When an EB is inserted in a time-scale it only means that at that stage annual increment is not as of right but the bar will be removed and an employee be allowed further increments, if the authority concerned comes to the conclusion that such an employee is not inefficient. An opinion to this effect

has necessarily to be a subjective one though it must be based on relevant facts. An order stopping an employee at EB should be by a speaking order and sufficient details should be given so that an employee can, if he so desires, make a representation against the same. In other words, any decision in respect of crossing of EB is an appealable one. Sub-rule (14) of FR 25 mentions that "Stoppage at EB does not amount to penalty but can be appealed against". Passing of speaking order, however, does not mean that before the authority concerned comes to the conclusion of stopping a person at the EB stage, an opportunity of hearing must be given to him. **Consideration of** all materials before taking the decision is sufficient compliance of the requirement. Stoppage of EB on the basis of any "adverse entry" does not suffer from non-compliance of the principles of natural justice. If any authority is required for the above proposition, it is available in the judgement of the Apex Court in the case of **Haryana Warehousing Corporation Vs. Ram Avtar 1996(2) SCC 98.**

9. The present case has, therefore, to be decided in the light of the rules and regulations on EB as aforesaid. Since the DPC has to base its decision on EB by taking into consideration of ACRs, I called for the relevant records from the respondents and perused them thoroughly. With regard to the crossing of EB of the applicant due on 1.1.95 and 1.1.96, DPCs concluded that it did not find the applicant "fit" to cross. DPCs did not in either case record speaking orders detailing the reasons for which decisions denying the benefit to the applicant was taken for both the years. I find that ACRs of the applicant from 1990 to 31.3.1995 do not

contain any adverse remarks that could form the basis of applicant being declared unfit for crossing the EB due on 1.1.95. Out of the preceding five years, applicant's ACR for a period of 163 days in 1993-94 was not written because of the period being very short. Apart from this, there are no "adverse entries" whatsoever **in** details before us that would warrant denial of the benefit in respect of EB due on 1.1.95.

10. The position as regards applicant's claim for 1.1.96 is completely different. Available records do support DPC's decision for the year 1996. There are "adverse entries" in ACR of the applicant for the period 1.4.95 to 31.8.95 and the applicant was communicated of the position on 30.4.96.

11. I have carefully considered the pleadings and submissions and I am of the opinion that the DPC committed an error in respect of the applicant's claim of EB as on 1.1.95. Not only the requirement of keeping a speaking order is lacking but also there are no materials to support the decision. Unlike 1995, DPC's stand in respect of EB due on 1.1.96 is atleast backed by materials available on record, though as aforementioned, there are no speaking orders for both the years.

12. I also find that under the principle enunciated by the Hon'ble Supreme Court in the case of Administrator of Dadra, Nagar Haveli Vs. H.P.Vora 1993 Supp (1) SCC 551, it is for the authorities empowered under the Fundamental Rules to consider cases for crossing EB in accordance with Rules and make appropriate orders.

13. For the reasons herein above, the OA is partly allowed with the following orders:

(13)

(i) Only Annexure A-1 dated 18.4.95 is quashed;

(ii) Respondents shall consider conducting a review DPC to assess applicant's suitability for EB as on 1.1.95 and pass necessary orders in terms of aforesaid rules/regulations on the subject. In case the DPC finds the applicant "Fit" for crossing the EB as on 1.1.95, the applicant would be entitled to all consequential benefits flowing from that;

(iii) Respondents' stand in respect of applicant's claim for crossing the EB due on 1.1.96 shall hold good;

(iii) There shall be no order as to costs.


(S.P. Biswas)
Member(A)

/gtv/