

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.121/94.

Dated this the 5th of January, 1995.

Shri P.T. Thiruvengadam, Hon. Member(A).

Shri Sukh Lal,
S/o Shri Ghisaram,
Working as Head Warden Central Jail,
Tihar,
R/o House No.B-12,
Double Storey,
Central Jail, New Delhi 110 064. ...Applicant
By Advocate: Shri S.C. Luthra.
versus

1. The Government of N.C.T. Delhi through
Secretary, Home Department,
5, Sham Nath Marg,
Delhi-54.
2. Inspector General of Prisons,
Central Jail Tihar,
New Delhi-64. ...Respondents

By Advocate: Anoop Bagai.

O R D E R (Oral)

By Shri P.T. Thiruvengadam.

The applicant is aggrieved by the order dated 9.12.93 (Annexure A-1), by which, it has been indicated that the applicant is not fit to cross the efficiency bar due to adverse entry in his ACRs for the year 1992-92 and 'Below Average' entry in the ACR for the year 1988-89. This OA has been filed with a prayer for declaring that the applicant is deemed to have crossed the EB w.e.f. 1.5.90, as the uncommunicated remarks in the ACRs for the year 1988-89 and 1991-92 should have been taken into consideration by the DPC. Consequential benefits have also been prayed for.

2. From the reply, it is noted that the respondents have conceded that the applicant was to have been considered for crossing the EB w.e.f. 1.5.90 and

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such crossing of EB was not allowed due to adverse entries in the ACRs for the years 1988-89 and 1991-92.

3. The learned counsel for the applicant assails the impugned order dated 9.12.93 on the following grounds:-

(i) If for any reasons, consideration of crossing of EB by the DPC gets delayed, the committee should still consider only those ACRs which it would have considered had the DPC been held as per the schedule. This flows out of the Government of India's order No.5, dated 18.10.1976 (listed below FR-25, Swamy's Compilation of FRSR-1988 edition).

(ii) The DPC has erred in taking into account the ACRs for the year 1991-92 and possibly even ACRs of 1990-91 which are not relevant to the issue.

(iii) Adverse remarks for the years 1988-89 and 1991-92 had not been communicated to the applicant at any stage. This could also be seen from para-6 of the reply filed by the respondents, which reads as under:-

"It is submitted that the applicant is not entitled to any reliefs for the reasons that the petitioner has not made any representation against the order dated 9.12.93 which is as good as communication

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of adverse remarks according to ACRs of the official for the years 1988-89 and 1991-92."

4. The learned counsel for the applicant argued that the above remark could only confirm that adverse remarks have not been communicated.

5. In view of the clear provisions in the Government of India's orders quoted above, I have to hold that the decision arrived at, by the relevant DPC, after taking into account the ACRs for the period 1991-92, is against the provisions of the Rules. The order of 9.12.93 clearly brings out that ACR of 1991-92 was taken into account.

6. With regard to the alleged adverse remarks for the year 1988-89, the learned counsel for the applicant argued that such adverse remarks should not have been taken into account by the DPC without giving an opportunity to the applicant to represent against the adverse remarks. The issue of representation has so far not arisen, since the adverse remarks have not been communicated. There is force in this argument. It is a settled position that ^{procedural} benefits cannot be denied based on adverse remarks, which are not communicated to the affected person. It is admitted in this case, that the adverse remarks relating to 1988-89 have not been communicated to the applicant.

7. In the circumstances, the portion of the order dated 9.12.93 relating to the applicant, by which it has been held that the applicant is not fit to

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cross the EB is set aside. Respondents are directed to reconvene the DPC and take into account only the relevant ACRs. Respondents should also note that uncommunicated adverse entry in the ACR should not be taken into account.

8. OA is disposed of, on the above lines. No costs.

P.T.Thiruvengadam
Member(A)
5.1.95

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