

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI..

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Date of Decision: 17.07.92

OA 1363/89

P.R. DEVARA

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... SHRI E.X. JOSEPH.

For the Respondents

... SHRI M.L. VERMA.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

The applicant has assailed the order dated 10.4.89 issued by the Directorate General of Works, CPWD, by which as per directions of the judgement in OA 793/88 the case of crossing of Efficiency Bar was reviewed by the Competant Authority and that he was not found fit to cross the EB u.e.f. the date i.e. 25.12.1982 or even from the subsequent dates namely 1.9.1983, 1.9.1984 & 1.9.1985.

2. The applicant in this case has prayed for the relief that the impugned order dated 10.4.1989 be set aside and

that order be granted directing the respondents to allow the applicant to cross EB w.e.f. 25.12.1982 with consequential benefits of arrears of pay alongwith interest.

3. The applicant is working as an Assistant Engineer in CPWD. He earlier filed an application OA 793/88 for the prayer that he should be allowed to cross the EB notionally w.e.f. 1.9.1981 and arrear for 25.12.1982 when he passed the departmental examination. That OA was disposed of by the Judgement dated 20.1.1989 with the direction to the respondents for reviewing the case of the applicant by the DPC strictly in accordance with the instructions contained in the CPWD Manual and those issued by the Department of Personnel & Training and without reference to the Secret Guidelines. Further, the adverse remarks not communicated to the applicant and should not be taken into account. Further, it was also to be ensured that for crossing of EB in a particular year, the ACR of the applicant upto that year only and not later should be taken into account. However, again the applicant was not allowed to cross the EB.

4. The applicant has averred in the application that there has been no effective, bonafide and genuine review by the Competant Authority in his case. The impugned order does not give any reason declaring the applicant unfit to cross the EB. The applicant has also referred to the

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instructions in CPWD Manual as well as instructions issued by the Department of Personnel & Training that those who do not pull their weight should be denied further increments. It is said that the impugned order is malafide, arbitrary and discriminatory. It is also said that the impugned order is violative of principles of fairness.

5. The respondents contested the application and stated that the applicant was due to cross of EB at the stage of Rs.810/- w.e.f. 1.9.1982. Further, the date of EB was ante dated from 1.9.1982 to 1.9.1981 because the appointment of the applicant in the selection grade of Junior Engineer from a retrospective date and in the grade of Assistant Engineer was refixed. However, the actual benefit to the applicant in the case he was allowed to cross the EB was to be w.e.f. 25.12.1982, the date following the date of his passing the departmental examination.

6. The respondents have also referred to the instructions issued by the Department of Personnel & Training in November, 1975 and September, 1984 where it is laid down that measures should be taken to ensure that crossing of EB is no longer a routine matter and that those who do not pull their weight are denied further increments. In fact, the 1986 Addition of CPWD Manual Vol.I which has been published in 1989 also lays down that no officer is allowed to cross EB unless his work and conduct has been adjudged to be good. The Ministry

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the relevant ACR are for the period from 1987 onwards. In 1977, he has been assessed as average performance and graded as fair. In 1978, he has been graded as Very Good. In 1979, it is reported that he requires more experience as Assistant Engineer and has been given a remark that he can work well under constraint of proper guidance. Though the Reviewing Officer has assessed him as a good Assistant Engineer. In 1980, his working and performance was alright and he has been adjudged as an officer of mediocre calibre. In 1981, it is adjudged that he is an officer only very ordinary attainments and graded as fair remark. In 1982, he was graded as an average officer. The contention of the learned counsel for the applicant is that the decision of non crossing of EB has been arrived at without due consideration of relevant facts and factors and is based on extreaneous and irrelevant consideration. Further, that no reasoned order has been passed to dis-allow the crossing of the EB. Further, that no adverse report has ever been communicated to the applicant as per mandatory provisions of CPWD Manual. Considering the reports of the officer of the periods from 1978 onwards the performance of the applicant given by different reportings of the Reviewing Officer except for two years, is average, mediocre and fair and that he can work under proper constraints. Though, in the year 1979 the applicant has been graded as 'Good' by the Reviewing Officer as indicated that the applicant needs more experience in

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the/charge of his duty as an Assistant Engineer. Now the recommendations of the Third Pay Commission do not restrict the crossing of the EB only on the basis of annual report. It is specifically mentioned that those who do not pull their weight are denied further increments. The Department of Personnel & Training in the various instructions of November, 1975 and September, 1984 further laid down that no officer is allowed to cross EB unless his work and conduct is adjudged to be good. The Ministry of Urban Developments has also issued a guidelines (not secret) where the person should have atleast not less than three Good. The respondents have clearly stated/<sup>so</sup> in their reply and in para 4 (viii),<sup>and</sup> the applicant in the rejoinder in reply to this para do not specifically deny and only statess that the respondents have considered the CPWD Manual guidelines framed by Ministry of Urban Developments which were specifically not to be considered in view of the direction given in the judgement of OA 793/88, decided on 20.1.1989. However, the operative portion in the judgement in para 5 lays down a direction to the respondents that a question of crossing of the EB w.e.f. 25.12.1982 onwards should be reviewed by DPC strictly in accordance with the instructions contained in the CPWD Manual and those issued by the Deptt. of Personnel and without reference to the Secret Guidelines referred to above. The instructions of the CPWD Manual are not Secret Guidelines on which the decision has been taken by the Tribunal earlier. Thus, on an objective analysis

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the decision arrived at by the DPC cannot be said to be in any way not based on the performance of the applicant within a period of 5 years from the date when EB was to be crossed. The applicant could not substantiate that there is any arbitrariness or that there is mechanical application of mind or that the necessary instructions and various Office Memoranda issued by the DOPT have not been strictly followed.

8. On another angle also the crossing of EB is an administrative decision to be arrived at after considering the performance of a particular individual by the DPC on the basis of reports given by Reporting and Reviewing Officer from time to time. This court cannot sit as an appellate court to screen and scrutinise the wisdom of the DPC.

In view of the above facts and circumstances, it find that there is no merit in this application and is dismissed leaving the parties to bear their own costs.

J. P. SHARMA  
( J. P. SHARMA )  
MEMBER (J)