

(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

O.A.No.1390/89.

Date of decision: 22.10.1991.

Shri Balwant Rai Paruthi

...Applicant

Versus

Union of India & Others

...Respondents

CORAM:

Hon'ble Mr. S.P.Mukerji, Vice Chairman

Shri Sant Lal with Shri Pradeep Kumar, Counsel ...For the applicant

Shri N.D.Amra, Asstt. Director (Telecom), Haryana Circle, Ambala ...For the respondents

J U D G E M E N T

In this application dated 13.7.1989, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who has been working as Technical Supervisor under the Director of Telecommunications, Haryana Circle, has challenged the impugned orders dated 25.11.85 at Annexure A-I by which he was informed that he had not been considered fit to cross the Efficiency Bar (E.B.) by the DPC held on 9.9.85. He has also challenged the impugned orders dated 19.1.88 and 5.5.89 by which his representations were rejected. He has prayed that the respondents be directed to allow him to cross the Efficiency Bar at the stage of Rs.560-580 with effect from the due date of 1-6-84 with all consequential benefits. The case based on the undisputed facts are as follows:

The applicant has been working as Technical Supervisor in the grade of Rs.425-640 w.e.f.1-6-74. He was allowed a special allowance of Rs.35/- per month for holding supervisory post w.e.f.30-11-83 under the Time-bound-I Promotion Scheme.

...2...

He was to cross the E.B. at the stage of Rs.560-580 w.e.f. 1-6-84. The Departmental Promotion Committee (DPC) which met on 22-6-84 found him not fit to cross the E.B. w.e.f.1-6-84 but no order was communicated to the applicant. The DPC met again on 15-10-84 and again considered him unfit to cross the E.B. The DPC met for the third time on 9-9-85 and found him unfit to cross the E.B. due to the adverse entry for the year 1982-83. This finding of the DPC was communicated to the applicant by the impugned order dated 25-11-85 at annexure A-I. Finally, the DPC which met on 18-6-86 found him fit to cross the E.B. w.e.f.1-6-86. The applicant retired on 31-7-89. His representation and appeal dated 26-12-85 was rejected on 19-1-88 and his further petition dated 4-5-88 was rejected by the impugned order dated 5-5-89 at annexure A-III. The applicant has argued that in accordance with the Govt. of India's order 5 below FR 25, his case for processing the E.B. on 1-6-84 should have been taken ^{up with} on April, 1984, but the first communication about his being considered unfit for crossing the E.B. was communicated to him 17 months after the due date by the impugned order dated 25-11-85. His contention that his case was not reviewed annually, however, is not correct as the aforesaid facts indicate that his case was considered with a gap of less than one year between 22-6-84 and 15-10-84. The applicant's further contention is that he had a good record of service and had never been punished and was, as a matter of fact, given a special allowance of Rs.35/- w.e.f.30-11-83 for holding supervisory post. By withholding E.B. with cumulative effect, he has been penalised in pension and gratuity also. He has also suffered in the fixation of the revised pay scales w.e.f.1-1-86. He has challenged the impugned orders at annexure A-II and A-III as being non-speaking.

2. The respondents have stated in the counter affidavit

that the work and conduct of the applicant was not upto the mark in accordance with the adverse entries in the A.C.R. for the year 1981-82 and 1982-83, and accordingly the action for not considering him fit to cross E.B. w.e.f. 1-6-84 was just and within the framework and rules....'. They have stated that in accordance with FR 25(5)(3), it is not obligatory to release the earlier increments. They have also produced the copies of the proceedings of the DPCs held on 22-6-84, 15-10-84, 9-9-85 and 18-6-86.

3. In the rejoinder, the applicant has stated that no decision of the competent authority was communicated on the recommendations of the DPC held on 22-6-84 and 15-10-84. The DPC of 22-6-84 recommended that the applicant should be kept under observation and will be reviewed after six months. Therefore, the next DPC should not have ~~been~~ met on 15-10-84 to declare the applicant as unfit without mentioning the result of observation. The check list enclosed with the proceedings of the DPC held on 9-9-85 at annexure R-5 also showed that the case of the applicant had been recommended in spite of the adverse entry in the ACR for the year 1982-83. His further contention is that the DPCs had given their recommendations on the basis of the adverse entry in the ACR of 1981-82 which had not been communicated to him in violation of the principle of natural justice and well-settled law laid down by the Hon'ble Supreme Court. The impugned order dated 25-11-85 merely indicated the recommendations of the DPC which shows that the competent authority had not applied its ~~judicial~~ mind.

4. I have heard the arguments of Shri Sant Lal, the learned counsel for the applicant as also of Shri N.D. Arora, Asstt. Director (Telecom), Haryana Circle, Ambala, and gone through the documents carefully. The respondents produced the ACR dossier of the applicant also for our perusal. The appli-

cant had earned adverse entries during 1981-82 and 1982-83 which, from the proceedings of the DPC produced by the respondents along with counter affidavit, showed, had been taken into account by the DPC. The check list enclosed with the ^{of the DPC} proceedings/held on 22-6-84 indicated that in case of the applicant, the confidential reports for 1981-82, 1982-82 and 1983-84 were taken into account. The check list also clearly indicated that ~~whereas~~ ^{the} the adverse entry of 1981-82 had not been conveyed to the applicant. The respondents' case is ^{been} that he had not/ found fit for crossing the E.B. because of the entries of 1981-82 and 1982-83. Of these two years, it is admitted that the adverse entries of the 1981-82 had not been conveyed to the applicant. These adverse entries which ^{must have} ~~might have~~ ^{been} ~~conveyed~~ played a crucial role with the DPC are as follows. Under the heading 'Promptness in disposal of work', it was recorded that the applicant "always tends to delay". In another column, it was indicated that he had "no initiative". In another column, it was indicated that he "lacks devotion to duty". It was also mentioned that he was "not dependable". I feel that these are very damaging ^{uncommunicated} entries and by taking them into account, the DPC has violated the rules of natural justice. From the ACR dossier, it further transpires that even though for the year 1982-83, the adverse entries recorded by the Reporting Officer, were ~~not~~ ^{not} communicated to him, the following entry recorded by the Reviewing Officer was not communicated to the applicant:

"I agree only partly. The official's work is not satisfactory. He tries to create problems in the deptt. " (emphasis added)

The above will show that even the adverse entries of 1982-83 were not fully communicated to the applicant so that he could have an opportunity to represent against them

and get them expunged or modified. By letting the DPC take into account the aforesaid damaging adverse entries without communicating the same to the applicant and without giving him an opportunity to represent against them, in the applicant's case, the rules of natural justice have been clearly violated. In R.L. Butail Vs. Union of India (1970) 2 SCC 876, a Constitution Bench of the Supreme Court held that ^{in case of} uncommunicated adverse remarks or when representations against the same ^{not} adverse remarks ~~had been~~ decided, they cannot be made the foundation for compulsory retirement. Similar views have been held by the Supreme Court in Brij Mohan Singh Chopra Vs. State of Punjab, AIR 1987 (1) SC 513. In that case, relying upon another decision of the Supreme Court in Gurdial Singh Fiji Vs. State of Punjab and others, 1973(3) SCR 518 AND Amar Kant Chaudhary Vs. State of Bihar, 1984(2) SCR 297, it was held as follows :

"Decision in Gurdial Singh Fiji V. State of Punjab and others 1973(3) S.C.R. 518 and Amar Kant Choudhry v. State of Bihar, 1984 (2) 297 lay down the principle that unless an adverse report is communicated and representation, if any, made by the employee is considered, it cannot be acted upon to deny promotion. We are of the opinion that the same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service. It would be unjust and unfair and contrary to principles of natural justice to retire prematurely a Government employee on the basis of adverse entries which are either not communicated to him or if communicated representations made against those entries are not considered and disposed of. "

I feel that just as uncommunicated adverse remarks cannot be taken into account for purposes of denial of promotion or compulsory retirement, the same cannot be taken into account for the purpose of crossing of Efficiency Bar.

5. In the facts and circumstances, I allow the application, set aside the impugned orders at annexure A-I, dated 25-11-85, annexure A-II dated 19-1-88 and annexure A-III dated 5-5-89 and direct the respondents to deem the applicant to

have crossed the Efficiency Bar w.e.f. the date on 1-6-84
with all consequential benefits of arrears of pay and
allowances.

There will be no order as to costs.

S.P. Mukerji
22.X.91.
(S.P. MUKERJI)
VICE CHAIRMAN.

/PKK/