

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.192/89

Date of decision: 30-3-1990

S.L. GOEL

.... APPLICANT

VERSUS

UNION OF INDIA

.... RESPONDENTS

ADVOCATES:

Shri K.N.R. Pillai

.. For the applicant.

Shri M.L. Verma

.. For the respondents.

CORAM:

Hon'ble Shri P.K. Kartha, Vice-Chairman.

Hon'ble Shri D.K. Chakravorty, Administrative Member.

JUDGEMENT

(Judgement delivered by Hon'ble Shri D.K.Chakravorty, Administrative Member).

The applicant, who is an Assistant Surveyor of Works in C.P.W.D., has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing of the impugned order dated 22-12-1987 and the appellate order dated 14-12-1988 and directing the respondents to treat the applicant as having crossed the Efficiency Bar on 1-12-1980 and have his pay from that day onwards refixed with consequential benefits of arrears of pay and allowances.

2: The facts of the case, in brief, as given in the application, are that the applicant was promoted as Assistant Engineer (now designated as Assistant Surveyor of Works) in the scale of ^{pay of} Rs.650-30-740-35-810-35-880-40-1000-EB-40-1200 in August, 1976. The Efficiency Bar (E.B. for short) at the stage of Rs.810 fell due on 1-4-1981 but the competent authority, under its order dated 16-7-1982, did not permit him to cross the same. Subsequently, by order dated

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5

4-10-1982, he was permitted to cross the E.B. from 1-4-1982 but the notional benefit of service from the due date of 1-4-1981, which is permissible under F.R. 25, was not given. Since he had never been communicated any adverse remarks, except one which was expunged, and he was also never informed about any fall in the standard of his performance, he submitted a representation on 16-10-1982 which was rejected by a non-speaking order. His representation to the Secretary, Ministry of Works and Housing was also rejected. Another representation made in August, 1983 pointing out that he was a graduate engineer with good record of service as evidenced by his being sponsored for deputation as Executive Engineer and, therefore, he should be given the notional benefit of increment, was also rejected. His next representation of May, 1985 addressed to the Hon'ble Minister, which was followed by two reminders remains undisposed of. Much later on 2-3-1988, his pay was refixed with retrospective effect from 1-12-1977 onwards as a result of which the dates of increment got shifted backward and the due date for E.B. was moved from 1-4-1981 to 1-12-1980. Thereafter the respondents issued the impugned order dated 22-12-1987 stating that he was not found fit to cross the E.B. on 1-12-1980 but only from 1-12-1981. The appeal dated 29-1-1988 against this order was also rejected by a non-speaking appellate order dated 14-12-1988.

3. The applicant contends that in accordance with the criteria prescribed in the C.P.W.D. manual for crossing the E.B. and the mandatory provisions that all the adverse remarks in A.C.Rs. as also any fall in the standard of performance, he could not have been stopped at the E.B. stage because his work and conduct had never been unsatisfactory.

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While in view of the non-speaking rejection orders, he was left guessing as to the reasons for his not being allowed to cross the E.B., it came to his knowledge during the hearing of O.A. 783/86 - L.D. Khandpal vs. U.O.I. and few other similar cases before the Principal Bench that instead of following the published criteria, the respondents were following some "confidential guidelines" issued by the Director General Works. According to these guidelines, officers with less than 3 good reports out of preceding 5 years' A.C.Rs. should be declared unfit and those who have a grading less than good in the last year's report should also be declared unfit.

4. Though the competent authority found the applicant unfit to cross the E.B. from 1-12-1980, just a month later, on 25-1-1981, the same authority declared that he had satisfactorily completed his probation as Assistant Engineer. The standard applied for judging whether probation is satisfactorily completed and for regularisation and confirmation in the post should, if at all, be higher than that for crossing the E.B. The applicant has cited a decision of the Tribunal in OA 106/86 in V.K. Adlakha Vs. U.O.I. in support of his contention.

5. In the reply to the application submitted on behalf of the respondents, two preliminary objections have been taken, namely, it is belated and that "The findings of the Competent Authority cannot be challenged in this Hon'ble Tribunal as the Tribunal cannot sit in an Appeal over the decision of the Competent Authority - as crossing of the E.B. depends upon the satisfaction of the Competent Authority". The respondents have admitted that the applicant was allowed to cross the E.B. w.e.f. 1-4-1982 with no benefit of past service but "the relevant records

pertaining to the applicant's case of crossing E.B. w.e.f. 1-4-1981 are not traceable in this office". The applicant was not allowed the benefit of past service because the performance reports of the officers were not upto the mark. In support of not indicating to the applicant, the reasons for his being held up at the E.B. stage, the counter states that since the applicant had fulfilled the other requirements of having passed the departmental examination in accounts and of being free from vigilance angle, he should have known that he "definitely did not have good record of performance". According to the respondents, "for crossing Efficiency Bar, it is not necessary that the officer should not have earned any adverse reports" but there must be some positive signs of his being efficient as per the Government decisions below F.R. 25 and the accepted recommendations of the Third Pay Commission. The various representations submitted by the applicant were duly considered by the competent authority on merits but were rejected. The applicant was also told that no further representation will be entertained and, therefore, no action was taken on his subsequent representations.

6. It is averred that two different set of criteria are applied for considering an Assistant Engineer to cross E.B. in his time scale of pay and to clear his probation in the grade of Assistant Engineer. For satisfactory completion of probation and, therefore, consequential confirmation, the officer should have satisfactory record of service for the preceding two years only while for crossing the E.B., he should have "good record of service i.e, out of his Confidential reports for 5 years preceding the date of his crossing E.B., he should have at least 3 'good' C.Rs. and two average C.Rs".

7. In the rejoinder submitted by the applicant reliance has been placed on the decision of the seven Judge Bench of the Supreme Court reported in J.T. 1989(3) SC-530 (S.S. Rathore vs. State of Madhya Pradesh) in support of the contention that the application filed on 24-1-1989 was well within limitation because the orders challenged were passed on 22-12-1987 and 14-12-1988 which superseded the earlier orders.

8. The applicant contends that since the respondents admit that they have no records whatsoever as to why the applicant was stopped at the E.B. on 1-4-1981, the appellate order was obviously passed in a routine way without application of mind or even the verification of the records. He also challenges the application of secret guidelines issued by the Director General Works which are not in consonance with the published provisions of the C.P.W.D. manual and the instructions of the Department of Personnel. As regards the respondents' decision to allow him to satisfactorily complete the probation but not let him cross the E.B., he reiterated the applicability of the Tribunal's decision in the case of V.K. Adlakha.

9. We have heard the learned counsel for the applicant, Shri K.N.R. Pillai and the learned counsel for the respondents, Shri M.L. Verma. We have also carefully gone through the records of the case.

10. In the arguments advanced at the bar, the learned counsel for the applicant stated that with the ante-dating of the E.B. to 1-12-1980, the earlier impugned orders no longer survive as these / have been replaced by the revised order dated 22-12-1987 and the Appellate order dated 14-12-1988. These orders did not suffer from limitation and being bald and routine in nature, are bad in law. He also placed reliance on two other factors, namely, the applicant

99

was on deputation with NABARD on a scale of pay higher than that of the Executive Engineer, which establishes that his performance was good and that the earlier records relating to the E.B. not being available, the respondents could not have given proper consideration to his representations. The use of secret guidelines also vitiates the decision to hold up the applicant at the E.B. stage. He also questioned the rationale of evaluating the ACRs for the preceding five years which, for the applicant, goes back to a period when he was working in a lower scale of pay.

11. The learned counsel for the respondents reiterated the contention that it is not for the courts to go into the decision of the duly constituted D.P.C. in the matter of crossing of E.B. and that there is nothing irrational in taking into account the 5 years' record of service for E.B. clearance as against only 2 years for considering confirmation in the grade. He also argued that even if any benefit is to be given, in view of the specific provisions of Section 21 of the Administrative Tribunals Act, 1985, the relief should not extend beyond 3 years from the date of filing of the original application.

12. Since the respondents had considered the eligibility of the applicant for crossing of the E.B. from a date which got shifted backward due to retrospective refixation of his pay from 1977 onwards, for reasons unconnected with the applicant's earlier representation, Office Memorandum dated 22-12-1987 is a fresh order. It is in response to para 2 of this Office Memorandum that the applicant preferred the appeal dated 29.1.1988 which was rejected on 14-12-1988. Accordingly, the plea of limitation taken by the respondents cannot be sustained. On the merits of the case, it is relevant to note that although initially the respondents found the applicant unfit

to cross the E.B. before 1-4-1982, when the date of E.B. got shifted to 1-12-1980, on the basis of the same records of service, they found him fit to cross the E.B. from 1-12-1981. As stated earlier, the relevant papers in which the decision to stop the applicant at the E.B. from 1-4-1981 was taken, are no longer available for scrutiny. On these grounds alone, the order is liable to be set aside. As regards the ACRs to be considered for E.B., we hold that the reports for the period when the applicant was working in a lower pay scale are irrelevant. Further, it has not been denied that the respondents have applied the secret departmental guidelines for determining the eligibility to cross the E.B. in preference to the published instructions contained in the C.P.W.D. manual and the circulars issued by the Department of Personnel. In the judgement of the Principal Bench of the Tribunal in OA 783/86(Shri L.D. Khandpal Vs. U.O.I), it was held that confidential guidelines should not overrule the guidelines prescribed in the C.P.W.D. manual or the instructions issued by the Department of Personnel in these matters.

We are also not impressed by the submission of the learned counsel for the respondents that there need be no relationship between the criteria to be followed for considering satisfactory completion of probation/confirmation of an officer and that to be applied for allowing him to cross the E.B. in the same scale of pay. As has already been held by this Tribunal in the case of Shri V.K. Adlakha Vs. U.O.I, it is not possible to accept the position "whereby an officer having been found unfit to cross the Efficiency Bar is still declared shortly thereafter to have completed the probation period sucessfully and inducted into the permanent service in the same grade in which he was not allowed to cross the Efficiency Bar". We are of the view that satisfactory completion of probationary period is a positive proof that the standard of

performance of the applicant was good enough to cross the E.B. on 1-12-1980. We also repel the argument that it was not necessary to inform the applicant of the reasons for his being held up at the E.B. on the plea that it should have been obvious to him and the contention that the Tribunal cannot sit in an appeal over the decision of the Competent Authority- as crossing of the E.B. depends upon the satisfaction of the Competent Authority.

13. In the conspectus of the facts and circumstances of the case, the application is allowed and the impugned order dated 22-12-1987 and the Appellate Order dated 14-12-1988 are set aside and quashed. The respondents are directed to treat the applicant as having crossed the E.B. on 1-12-1980 and grant him all the consequential benefits of refixation and arrears of pay and allowances. This order shall be complied with within a period of three months from the date of its communication. There will be no order as to costs.

D.K.Chakravorty
(D.K.CHAKRAVORTY)

MEMBER

30th March, 1990

Partha
(P.K.KARTHA)
30/3/90
VICE CHAIRMAN