

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 319 of 1989
T.A. No.

DATE OF DECISION 16.8.89

B.S. GARG _____ Applicant (s)

K.N.R. Pillai _____ Advocate for the Applicant (s)

Versus

Union of India _____ Respondent (s)

M.L. Verma _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. MATHUR, VICE-CHAIRMAN.

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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri B.S. Garg, Assistant Surveyor of Works, C.P.W.D., against O.M. No. 32/2293/79-EC III dated 5.1.87 issued by the Deputy Director of Administration, C.P.W.D., declaring the applicant unfit to cross the E.B. on 1.1.1985 and 1.1.1986 and O.M. dated 20.1.89 rejecting his appeal against the first impugned order.

2. The applicant has been working as Assistant Engineer in the scale of Rs. 650-1200 with Efficiency Bars at Rs. 810/- and Rs. 1000/-. On promotion his pay was fixed above the first Efficiency Bar and the second E.B. at the stage of Rs. 1,000/- fell due on 1.1.1985. For crossing the E.B., a pre-requisite condition is to pass a Departmental Examination in Accounts which can be condoned if an officer crosses the age of 50 years. The applicant managed to pass two out of three papers in Accounts Examination and in the meanwhile had reached the age of 51 years.

3. According to the C.P.W.D. Manual, no officer is allowed to cross the Efficiency Bar when his work and conduct have been adjudged unsatisfactory. As no adverse entries have been communicated to the applicant, he claims that he could not be stopped at the E.B. and that he should have been exempted from passing the Departmental Examination.

4. The case of the applicant is that the respondents have followed some confidential guidelines issued by the Director General of Works that (a) those who have a grading less than 'Good' in three out of five ACRs should be declared unfit and (b) those who have the grading less than 'Good' in the last year's report should also be declared unfit. A copy of the confidential guidelines, as disclosed by the respondents in another case before the Tribunal has been ^{in closed} fixed at Annexure A-6 to the Application. In the earlier case - OA 783/86 - the Tribunal has held that it would be illegal to follow secret guidelines which are contrary to the criteria published in the CPWD Manual and which was not known to the officers.

5. The respondents in their reply have stated that the C.P.W.D. Manual is only a compilation of Government orders issued from time to time and not in itself an authority to be quoted. The matters relating to consideration of crossing of E.B. by Government servants in time scale of pay are governed by FR.25 and the instructions issued by the Ministry of Home Affairs from time to time. It has also been stated that an officer must pass the Departmental Examination in Accounts and that he must have a good record of service. An Assistant Engineer can be allowed exemption from passing the Departmental Examination provided he has a good record of service. The respondents quoted the recommendation of the Third Pay Commission wherein it has been stated that crossing of E.B. is no longer a routine matter and those who do not pull their weight may be denied further increments. It has been stated that on the basis of record, he was not found fit for crossing E.B. on 1.1.85 or 1.1.86.

b/w

6. The learned counsel for the applicant said that in this case the order rejecting the applicant's representation is a non-speaking order and that the C.P.W.D. have followed the confidential guidelines not known to the officers. He cited two cases where it has been held that non-speaking orders are not valid. These cases are: ATR 1986(2) SC 252 Ramchander Vs. U.O.I. - and 1989(3) SLR 597 - Ajit Singh Bhatia Vs. U.O.I.

7. I have gone through the file dealing with the crossing of E.B. of the the/applicant as well as his CRs. A perusal of the noting in the File No. 32/2293/79-ECII, which is the personal file of the applicant, it is seen that at page 13, it is clearly written that the case of the applicant was examined with reference to the guidelines followed by the E.B. Committee which indicates that out of five reports preceding the date on which the officer is to cross the EB at least three reports, including the report of the last year should be good and that the remaining two reports are not less than average. As held earlier, guidelines must be known to all the officers and as such, any decision based on confidential guidelines will not be valid. It is, therefore, directed that the respondents may reexamine the case of the applicant strictly according to rules and on the basis of his performance reflected in the CRs upto the relevant period. The question of grant of exemption from passing the Departmental Examination may also be decided according to rules. With these observations the case is returned to the respondents for reconsideration of the representation of the applicant without raising any question of limitation. The application is disposed of accordingly.

B.C. Mathur
16.8.89
(B.C. Mathur)
Vice-Chairman