

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

35/

1989.

DATE OF DECISION November 24, 1989.

Bharat Bhushan _____ Applicant (s)

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

Union of India _____ Respondent (s)

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

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes.
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? No.
4. To be circulated to all Benches of the Tribunal? No.

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged Office Memorandum dated 11.5.1987 wherein he had been informed that the competent authority did not find him fit to cross the Efficiency Bar with effect from 1.7.85. He has prayed for the following reliefs: -

"(i) The Hon'ble Tribunal may be pleased to summon the records from the respondent and

- a) Quash the impugned order dated 11.5.87 by which the applicant was declared unfit to cross the E.B. on 1.7.85.
- b) Direct the respondent to treat the applicant as having crossed the EB on 1.7.85 by grant of exemption from the examination on attaining the age of 50, pay on that date being fixed at the higher stage taking into account the length of service from 1.4.82 the due date of crossing the EB as provided for in para 3 of Annexure A-IX.
- c) Direct the respondent to have the applicant's subsequent increments regulated as per the above

with all consequential benefits including arrears of pay and allowances.

"(ii) Grant any other relief which the Hon'ble Tribunal may consider just and proper in the circumstances of the case."

2. The relevant facts, in brief, are that the applicant was promoted to the post of Assistant Engineer in the C.P.W.D. on 14.4.1977. The post carried the pay scale of Rs.650 - 1200 and he was due to cross the E.B. at the stage of Rs.810/- on 1.4.82. As he had not passed the prescribed Departmental Examination, which was a condition for crossing the E.B., he was not allowed to cross the E.B. with effect from 1.4.82. Officers who cross the age of 50, are eligible for grant of exemption from passing the Departmental Examination. The applicant reached that age on 1.7.85. Vide impugned order dated 11.5.1987 (Annexure A-I to the Application), he was informed that his case for crossing the Efficiency Bar with effect from 1.7.85 was considered by the competent authority who had not found him fit to cross the E.B. with effect from the said date. He filed an appeal on 16.6.87 and it is stated that no reply to this appeal has been received by him.

3. The applicant's case is that as per the provisions in the C.P.W.D. Manual, he is entitled to cross the Efficiency Bar unless his work is adjudged to be not satisfactory. Respondents are also required under the rules to communicate to the officer concerned adverse remarks in his annual confidential reports or if there is any fall in the standard of his performance. The applicant's contention is that neither he has been informed that his work has been found to be not satisfactory, nor any fall in his standard of performance has been communicated to him. He accepts that an adverse entry in his performance report for the period 26.8.1981 to 31.3.1982 was communicated to him (Annexure A-VI to the Application) and his representation dated 6.12.1983 (Annexure A-VII to the Application) was rejected by letter dated 6.5.1984 (Annexure A-VIII to the Application). Delay in the consideration of his

case for crossing the E.B. with effect from 1.7.85; recording of the adverse remarks for the year 1981-82 in violation of the instructions on the subject and rejection of his representation and by a non-speaking order;/non-consideration of his case again after a year have also been pleaded. The impugned order has been challenged on the grounds of violation of principles of natural justice inasmuch as it has been passed without giving a proper and hearing,/following the secret guidelines instead of the published criteria in the C.P.W.D. Manual. Some judgements* have also been cited. The application is stated to be within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. However, a Misc. Petition for condonation of delay has also been filed.

4. The case of the respondents, in brief, is that the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 and that the order about crossing of Efficiency Bar depends on the satisfaction of the competent authority. It is also stated that exemption from the prescribed Departmental Examination on reaching the age of 50 is subject to the service record being good. The appeal is said to have not been addressed by the applicant to the competent authority. The adverse remarks in the applicant's C.R. for the year 1981-82 were communicated and his representation against those remarks was considered by the competent authority in accordance with the instructions on the subject. As the new scales came into effect from 1.1.1986 and as there is no E.B. stage in the new scale, there was no question of considering his case again with effect from 1.7.86.

5. I have carefully gone through the pleadings of the case and have heard the learned counsel for the parties.

6. It may be stated at the outset that the validity

- * (1) 1982 (1) SLJ 207 (Dr. Gopeshwar Datta Vs. U.O.I.);
- (2) 1978 (1) SLR 829 (Madan Mohan Khatwa Vs. State of Orissa); and
- (3) ATR 1987 (2) CAT 360 (E.G. Namboodiri Vs. U.O.I.);
- (4) ATR 1988 (1) CAT 145 (Dr. Hari Dev Goyal Vs. U.O.I.).

(Signature)

or otherwise of the adverse remarks recorded in the A.C.R. of the applicant for a period during 1981-82 and the averments of the applicant in this application on several points with regard to these remarks, cannot be considered in this application; firstly because there is no prayer to that effect in this application, and secondly because any relief in this regard is barred by limitation. In support of his contention that an order refusing to allow the applicant to cross the Efficiency Bar on the basis of the adverse remarks which had not been allegedly recorded in accordance with the instructions on the subject and rejection of his representation by a non-speaking order, he has cited a judgement of the Delhi High Court in the case of UNION OF INDIA Vs. MR. RANJIT SINGH GREWAL AND OTHERS (1980 (3) SLR 256). This judgement is not applicable in the facts and circumstances of this case. In the cited case, there were statutory rules (All India Services (Confidential Rolls) Rules, 1970) while in the case before me, there are no statutory rules on the subject. Further, in the cited case, the adverse remarks had been taken into consideration while deciding the case of pre-mature retirement without communicating these remarks to the officer concerned. This is not so in the case before me. As regards the preliminary objection raised by the respondents, it is on record that the applicant preferred an appeal against the impugned order. As such, he cannot be said to have not availed ^{of} the departmental remedies before approaching the Tribunal. As regards limitation, the appeal against the impugned order is dated 18.6.87. The applicant could wait for a decision of the appeal for a period of six months, i.e., upto 17.12.87. He was entitled to file the application within one year from 17.12.87. The application was filed on 2.1.89. In the Misc. Petition for condonation of delay, it is stated that he could not file this application prior to the closing of the Tribunal for the winter vacation on 23.12.88, in the circumstances mentioned in the M.P. Thus, there is delay of only less than a week and it is

(See)

condoned under Section 21(3) of the Administrative Tribunals Act, 1985 for the reasons given in the M.P.

7. Admittedly, there are adverse remarks for some of the period relevant for consideration of the case of E.B. with effect from 1.7.85 and these still stand. The applicant cannot, therefore, claim that his record for the relevant period has been good. There is nothing to show that the D.P.C. did not fairly consider the record of the applicant. In these circumstances, the Tribunal is not expected to interfere with the decision of the competent authority (P.N. GANDHI Vs. UNION OF INDIA - 1989 (2) ATR 32). The respondents have disputed the contention of the applicant that his case has been decided on the basis of the alleged secret guidelines. The applicant has also not shown anything to substantiate his contention in this regard. Therefore, the judgements of the Central Administrative Tribunal cited by the applicant on the point of adverse remarks and on the point of applicability of secret guidelines are not relevant.

8. In view of the above discussion, I see no merit in this application, which is accordingly rejected. Parties shall bear their own costs.

(L.C. 24/11/87
(P.C. JAIN)
MEMBER(A)