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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 671/ 1989.
~~PA-No.~~

DATE OF DECISION November 10, 1989.

M. L. Chandna Applicant (s)

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

Versus

Union of India Respondent (s)

Shri M.L. Verma Advocat 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 ?
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 ?

yes.
yes.
No.
No.

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is working as Assistant Engineer (Civil) in the C.P.W.D., has challenged order dated 30.5.85 by which he was declared unfit to cross the Efficiency Bar on 1.8.84 (Annexure A-I to the application), and Memorandum dated 16.2.87 by which he was declared unfit to cross the E.B. on 1.8.84, 1.8.85 and 1.8.86 also (Annexure A-III to the application), and has prayed that order dated 30.5.85 be quashed and the order dated 16.2.87 in so far as it relates to crossing of the E.B. on 1.8.84 and 1.885 be quashed and the respondents be directed to treat him as having crossed the E.B. on 1.8.84, refix his pay with effect from that date with all consequential benefits, including arrears of pay and allowances.

2. The admitted facts are that the applicant was promoted as Assistant Engineer on 28.8.73 on an ad-hoc basis. He was regularly promoted as A.E. in 1986, but with effect

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from 21.12.1973. In the pre-revised scale of Rs.650-1200 applicable to the applicant, there were two Efficiency Bars - one at the stage of Rs.810/- and the other at the stage of Rs.1,000/-. He was allowed to cross the first E.B. on 1.8.79, but he had not been allowed to cross the second E.B. at the stage of Rs.1,000/-, which fell due on 1.8.84 or from 1.8.85. As against the first impugned order, he made a representation on 11.6.85 (Annexure A-II to the application), but he did not receive any reply. He filed an appeal against the ~~said~~ ^{Second} impugned order on 13.4.87, but this was not considered and vide letter dated....6.87 (Annexure A-V to the application) he was informed through proper channel on 1.7.87 that as no representation lay to the Director General (W), he should prefer an appeal to the President of India. He submitted an appeal dated 23.5.88 addressed to the President, which was rejected on the ground that it was time barred and could not be considered. The impugned order dated 16.2.87 also stated that the applicant had not been found fit to cross the E.B. at the stage of Rs.1,000/- even on 1.8.86. As the applicant opted for the revised pay scale with effect from 1.1.1986 and there was no E.B. in the revised scale, he was allowed normal increment with effect from 1.8.1986 as a result of his representation dated 13.4.87.

3. The case of the applicant is that as prescribed in the C.P.W.D. Manual, his increment at the stage of E.B. could be withheld only if his work was adjudged to be not satisfactory. Attention was also drawn to the provision in the Manual *ibid* that all adverse entries are required to be communicated and if there is any fall in the standard of performance, that should also be brought to the notice of the employee concerned. It has been pleaded that he has never been communicated any adverse entries, nor was he ever communicated any fall in his standard of performance. No vigilance or disciplinary proceedings were also stated to be pending against him. He has, therefore, alleged that he had

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not been allowed to cross the E.B. at the stage of Rs.1,000/- in the pre-revised scale of Rs.650 - 1200 because of confidential guidelines (Annexure A-IX to the application). He has relied on the judgements of the Central Administrative Tribunal in four cases^{*}, according to which the applicability of the confidential guidelines was not upheld.

4. The respondents have raised a preliminary objection according to which the application is stated to be barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985. On merits, their case primarily rests on the plea that an employee can be allowed to cross the E.B. only when the competent authority is satisfied with his performance based on service record and that the mere fact that no adverse entry has been communicated is not enough. They have pleaded that as per the recommendations of the Third Central Pay Commission, those who do not pull their weight, have to be denied further increments.

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

6. The preliminary objection of the respondents is devoid of any merit. The applicant made representations/appeal against the impugned orders and, therefore, it cannot be said that he has not availed of the departmental remedies. The limitation would count in this case from 8.9.88 when he was informed that his representation cannot be considered as it was time barred.

7. Admittedly no adverse remarks have been communicated to the applicant. Also no fall in standard of his performance was communicated. It has also not been shown that the work of the applicant was adjudged as not satisfactory. These are the requirements as per the provisions in the CPWD Manual.

* (1) L.D. Kandpal v. U.O.I. (O.A. No.783/86).
(2) Shri N.P. Aggarwal v. U.O.I. (C.A. No.1054/86).
(3) Shri K.K. Sarnav v. U.C.I. (O.A. No.103/87).
(4) Shri P.R. Dawara v. U.O.I. (O.A. No.793/88).

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The contention of the respondents that the Manual cannot be taken as an authority as indicated in the Manual itself, is technically correct, but the respondents have not shown that the provisions of the Manual which have been relied upon by the applicant either do not exist or these have been deleted or modified. It was contended at the bar by the learned counsel for the respondents that the case of the applicant has been decided on the basis of the guidelines referred to in Annexure A-IX to the application. It was further asserted that these have not only been circulated but have also been published in Swamy's compilation. However, the contention about circulation or publication could not be substantiated either by producing any document or showing any publication in Swamy's compilation. The guidelines in Annexure A-IX to the application are stated to be confidential guidelines (as disclosed by the respondents in another case). The issue of the applicability of these confidential guidelines in the matter of crossing of Efficiency Bar has been examined in the four cases cited by the applicant (supra). In all these four cases, the applicability of these confidential guidelines was held to be improper in view of the specific provisions in the CPWD Manual as also because confidential guidelines, unless circulated to the employees concerned, cannot be fairly used against them.

8. The respondents made available for my perusal the decision of the D.P.C. by which the applicant was not found fit to cross the E.B. at the stage of Rs.1,000/- first with effect from 1.8.84 and later on even from 1.8.85 and 1.8.86. These were considered by the Members of the Committee on the file by circulation and no reasons are given in the relevant notes for arriving at the decision.

9. The A.C.R.s for the years 1979-80 to 1983-84, which are relevant for the issue under consideration, have been perused by me. The report for 1979-80 is 'Very Good'. The report for the year 1980-81 has also been graded as 'Very Good'.

There are two reports for the year 1981-82 - one for the period 6.4.81 to 31.10.81 and the other from 1-11-81 to 31-3-82. In the first report, the Reporting Officer's report can be said to be 'Very Good', and the Reviewing Officer assessed him as 'Good'. The counter-signing authority, however, assessed the applicant as of fair calibre only. Same is the position for the second report. For 1982-83, the Reporting Officer rated the performance of the applicant as satisfactory and it was agreed to by the Reviewing Officer. The countersigning authority assessed the officer as of fair calibre, capacity and performance. In the report for the year 1983-84, the Reporting Officer gave him 'Good' report and the Reviewing Officer assessed his performance as 'mediocre'. The counter-signing authority agreed with the Reviewing Officer. This would show that during these relevant five years, the performance of the applicant was not adjudged to be unsatisfactory, and even though it can be said that there was a fall in the performance standards in the last two years, yet no communication is shown to have been sent to the applicant. Overall assessment of these five years can be said to be such which would enable him to cross the Efficiency Bar in accordance with the provisions of the CPWD Manual.

10. In view of the above discussion, I hold that the applicant could not be considered unfit for being allowed to cross the Efficiency Bar at the stage of Rs.1,000/- with effect from 1.8.84 and as such he will be deemed to have been allowed to cross the E.B. at this stage with effect from the said date. He will also be allowed consequential benefits in respect of the revised pay and allowances admissible thereon with effect from 1.8.84. The application is allowed in these terms.

11. The parties shall bear their own costs.

Cecilia 10/11/89
(P.C. JAIN)
MEMBER (A)