

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.712/89

Date of decision 30-3-1990

B. D. PANJWANI

.... 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. Chakraverty, Administrative Member.

JUDGEMENT

(Judgement delivered by Hon'ble Sh. D.K.Chakraverty, Administrative Member.)

This is an application from an Assistant Engineer (Civil) in the C.P.W.D. under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing of the order dated 7-6-1982 declaring him unfit to cross the Efficiency Bar on 1-11-1981 and the second order dated 9-12-1982 declaring him unfit to cross the Efficiency Bar on 1-11-1982 also. Further, he has prayed for issue of a direction to the respondents to treat him as having crossed the Efficiency Bar on 1-11-1981 and refix his pay from that date onwards with all consequential benefits including arrears of pay and allowances.

2. The facts of the case, in brief, are that the applicant was promoted as Assistant Engineer in November, 1972 and satisfactorily completed 2 year's probationary period as Assistant Engineer. No adverse remarks had been communicated to him throughout the period. He was allowed to cross the first Efficiency Bar (EB for short) at the stage of Rs.810/- in the scale of Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 on 29-6-1979. The second EB at the stage of Rs.1000/- fell due on 1-11-1981. Under the

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impugned order dated 7-6-1982 he was declared as unfit to cross the Efficiency Bar. He submitted a representation to the Director General, C.P.W.D. praying for review of the decision on the grounds that no adverse remarks in ACRs nor any information about the deterioration in his performance had been communicated to him and that the Executive Engineer had duly recommended his case for the crossing of the E.B. Under the impugned order dated 9-12-1982, the applicant was declared unfit to cross the E.B. on 1-11-1982 also. On 29-1-1983 he submitted a representation asking for the reasons for stoppage at E.B. and also citing the Govt. orders that "average" reports are not to be treated as adverse for the purpose of E.B. He also sought for a personal hearing and permission to appeal to higher authority under provisions of FR-25 but no reply to this representation was received by him. Thereafter, he was allowed to cross the E.B. on 1-11-1983 under the orders dated 16-1-1984. On 4-11-1988, he filed a statutory appeal requesting for condonation of delay on the grounds that-

- (i) the permission sought in 1983 for appealing to higher authority was not granted; and
- (ii) all the time applicant was trying to get the case reviewed through C.P.W.D. Engineer's Association.

3. The grounds taken in the appeal were that neither adverse reports nor fall in standard were communicated to him and the two ACRs, giving the assessment as "fair" or "average" which were in contrast to the earlier and subsequent "good" reports, should not stand in his way in view of the meaning given to "fair" in the ACR Form. Further, the orders issued by the Department of Personnel and the Ministry of Works and Housing clarified that "average" reports are not to be treated as adverse for the purpose of E.B.

His appeal was rejected by a non-speaking order dated 7-3-1989. He has challenged this order mainly on the ground that the D.P.C's decision based on secret guidelines shows that there has been no fair consideration.

4. In the reply to the application submitted on behalf of the respondents, preliminary objections have been taken to the effect that the application is not maintainable under law and is barred under Section 20 and 21 of the Administrative Tribunals Act, 1985. It has been pleaded that under the accepted recommendations of the 3rd Pay Commission, measures should be taken to ensure that "crossing of E.B. is no longer a routine matter and those who do not pull their weight are denied further increments." The case of the applicant was considered by the Competent Authority but on the basis of the applicant's record of service as reflected from his A.C.Rs. for the 5 years ending 1980-81, he was not found fit to cross the E.B. w.e.f. 1-11-1981. Under rule 24 of CCS(CCA) Rules, 1965, statutory appeal was to be filed to the President within 45 days of the receipt of the order but the applicant did not choose to do so. While it is admitted that the reply dated 7-6-1982 does not indicate the reasons for not finding the applicant fit to cross the E.B., it is contended that obviously it was only his record of service being not good which came in the way of crossing the E.B. and, therefore, no further elaboration was required to be given. At the annual review for 1982 also the applicant was not found fit to cross the E.B. from 1-12-1982 on the basis of ACRs for 5 years ending 1981-82. However, at the next review he was found fit to cross E.B. from 1-11-1983. Not allowing a Government servant to cross the E.B. does not amount to punishment and, therefore, the question of giving him any opportunity did not arise. There was thus ^{no} violation of principles of natural justice. As regards the permission for filing an appeal to the higher authority, it is contended

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that no such permission was necessary and the applicant was free to make such an appeal under Rule 24 of CCS(CCA) Rules 1965. Although the appeal dated 4-11-1988 against stoppages at E.B. was time barred, yet it was duly considered by the Appellate Authority on merits but was rejected. The respondents contend that the pleas of the applicant are not tenable and the application is liable to be dismissed.

5. In the rejoinder submitted by the applicant it has been contended that the respondents, instead of applying the criteria published in the C.P.W.D. Manual and circulated in the orders issued by the Department of Personnel, have gone by the secret guidelines issued by DG Works which compel the D.P.C. to apply a mechanical formula which is contrary to instructions the provisions of the D.C.P./and the C.P.W.D. manual. Since these instructions are kept secret and the reasons for adverse decision have not been communicated, the principles of natural justice had been violated.

6. We have heard the learned counsel for both sides and have also carefully gone through the relevant records of the case.

7. The basic facts in this case are not in dispute. The learned counsel for the respondents has relied strongly on two legal submissions. The main relief sought is for quashing of the orders dated 7-6-1982 and 9-12-1982, which are time barred in terms of Section 21 of the Central Administrative Tribunals Act, 1985. On the other hand, the applicant has not specifically prayed for quashing of the Appellate order dated 7-3-1989. The Tribunal has no jurisdiction to give the relief not asked for in view of the judgement of the Supreme Court in A.I.R. 1953(SC) p-234 (Trojan and Co. vs. R.N.N. Nagappa Chettiar). It was argued at the Bar that even on merits, there is no case since

two successive DPCs found him unfit to cross the E.B. on the basis of the review of the applicant's Confidential Reports for the periods upto 1980-81 and 1981-82.

8. These legal submissions were controverted by the learned counsel for the applicant. According to him, since the appeal was considered on merits by the statutory appellate authority and its rejection was communicated on 7-3-1989, the case is not barred by limitation. For this, he relied on the judgement of the Supreme Court in the case of S.S. Rathore vs. State of Madhya Pradesh (Judgement Today 1989(3) SC 530). On the merits of the case, the learned counsel submitted that except for "fair" or "average" reports for two years, the applicant had been having "good" record of service. No adverse remarks nor any communication about any fall in the standard of his performance were ever communicated to the applicant. Accordingly, in terms of the relevant and published Govt. instructions, the applicant could not have been held up at the E.B. stage either in November, 1981 or in November, 1982. He alleged that the respondents have wrongly relied on the secret departmental guidelines which lay down that "officer concerned should be permitted to cross E.B. if he has at least three good and two average or fair reports during 5 years immediately preceding the date on which the E.B. falls due". He drew attention to the judgement of the Principal Bench of the Tribunal in OA 783 of 1986 (Shri L.D. Khandpal vs. Union of India), in which it was held that "the 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."

9. Although the appeal preferred by the applicant in November, 1988 was belated, the respondents decided to treat it as a revision petition under Rule 29 of the CCS(CCA)

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Rules, 1965 for which no time limit has been prescribed. The respondents considered the petition on merits and disposed of the same under their order dated 7-3-1989. It is, therefore, obvious that the statutory remedy available was exhausted only on 7-3-1989 and, accordingly, this application is not barred by limitation in the light of the judgement in the case of S.S. Rathore. The submission that no relief can be granted because quashing of the appellate order has not been sought has also to be rejected in view of the pleadings in paragraphs 1(iii) and 8(ii) of the application and the decision on limitation.

10. For allowing the crossing of E.B. one has to see the overall performance as recorded in the Annual Confidential Reports. It will not be just and fair to deny the crossing of E.B. to an officer on the basis of merely one or two reports not being good. It is admitted by the respondents that there were no adverse remarks entered against the applicant. There is, therefore, no ground whatsoever to accept that declaring the applicant as unfit for crossing the E.B. on 1-11-1981 and 1-11-1982 was justified. If there had been any shortfall in the applicant's performance, the respondents were required to have either entered this fact in his Character Roll or have asked the applicant either orally or in writing to improve his performance indicating also the shortcomings. As the respondents did not take either of these two measures, it can reasonably be presumed that no shortcomings had been detected in the performance of the applicant.

11. In the facts and circumstances of the case, the application is allowed and the impugned orders dated 7-6-1982 and 9-12-1982 are quashed. The respondents are directed to treat the applicant as having crossed the E.B.

w.e.f. 1-11-1981 and to refix his pay from that day onwards with all consequential benefits including arrears of pay and allowances. These directions should be implemented within a period of three months from the date of receipt of this orders.

There will be no order as to costs.

Deekha
(D.K. CHAKRAVORTY)
MEMBER (A)

30th March, 1990

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