

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1743/ 1988.
~~E.A. No.~~

DATE OF DECISION October 17, 1989.

Shri S.P. YADAV Applicant (s)

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

Union of India Versus
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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant who has been working as Assistant Engineer in the scale of Rs.650 - 1200 has not been allowed to cross the Efficiency Bar at the stage of Rs.810/- from 1.12.85 and even from 1.12.86.

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 "guidelines" issued by the Director General of Works, as arbitrary;
 - (b) direct the respondent to follow strictly the provision in the CPWD Manual and the open instructions issued by the Department of Personnel and the Ministry of Works & Housing regarding crossing of Efficiency Bars;
 - (c) quash the impugned orders dated 17.2.87, 27.10.87 and 25.1.88 declaring the applicant unfit to cross the EB and rejecting his appeal;
 - (d) direct the respondent to allow the applicant to cross the EB from 1.12.85.
- (ii) Any other relief which the Hon'ble Tribunal may consider just and proper in the circumstances of the case. "

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2. The facts of the case, in brief, are as under: -

The applicant was recruited as Junior Engineer (Electrical) in the CPWD on 17.2.1973. In 1979, on the basis of the Limited Departmental Examination held by the UPSC, he was promoted as Assistant Engineer (Electrical) on 31.12.79. His case for crossing the Efficiency Bar with effect from 1.12.85 at the stage of Rs.810 in the pay scale of Rs.650-30-710-35-810-EB-35-880-40-1000-EB-40-1200 was considered by the competent authority, who did not consider him fit to cross the Efficiency Bar with effect from 1.12.85. The decision of the competent authority was conveyed to the applicant vide Office Memorandum dated 17.2.87 (Annexure A-I to the application). He filed an appeal dated 22.4.87 (Annexure A-II to the application), followed by a reminder dated 19.8.1987 (Annexure A-III to the application) addressed to the President of India, which was considered by the competent authority, but was rejected vide Memorandum dated 27.10.87 (Annexure A-IV to the application). He was not allowed to cross the E.B. even with effect from 1.12.86 as the competent authority did not find him fit and the decision was conveyed to the applicant vide Office Memorandum dated 25.1.1988 (Annexure A-V to the application). He filed another appeal dated 7.3.1988 (Annexure A-VI to the application) which is stated to be pending.

3. The case of the applicant is that he has never been communicated any adverse remarks, nor any vigilance or disciplinary proceedings ^{were on} ~~are~~ pending against him. It is further stated that his appeal has been rejected by a non-speaking order and the competent authority, while deciding his appeal, did not apply his mind. As per para 1 in Section 6 of the C.P.W.D. Manual Volume I, no officer is allowed to cross efficiency bar ^{“or”} when his work and conduct has been adjudged to be not satisfactory. According to him, his work has never been adjudged to be not satisfactory, as he has never been communicated any adverse remarks or oral

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or written warning. It is further stated that as per para 9 in Section 5 of the Manual *ibid*, where an adverse entry is made in the report, whether it relates to remediable or an irreparable defect, it should be communicated to the person concerned by the Countersigning Officer. Again, as per para 13 in the same Section, it is provided that in case it is noticed at any time that there is a fall in the standards of an officer in relation to his past performance as revealed through the assessment, his attention should be drawn to this fact so that he can be alerted for improving his performance and does not suffer in his service prospects without knowing about the deterioration in his performance. According to him, no such fall in the standards of his performance has ever been communicated to him. It is further pleaded that his case for crossing the efficiency bar appears to have been rejected on the basis of some confidential guidelines for E.B. Committee, a copy of which has been filed by him as Annexure I to his rejoinder and according to which of the five reports, at least three should be 'good' with other two reports being not less than 'average', and the last report should at least be 'good'. He has challenged these guidelines as they are confidential and have not been circulated to the officers.

4. The case of the respondents, in brief, is that efficiency bar is allowed to be crossed on the basis of good service record and no cause of action has accrued in favour of the applicant as the removal of the efficiency bar depends on the satisfaction of the competent authority. No right of the employee is said to have been violated. It is also pleaded that when the applicant was due to cross the efficiency bar, with effect from 1.12.1985, he had not passed the departmental examination as it was held from 6th to 10th January, 1986 and the applicant thus became eligible for consideration with effect from 1.1.1986 i.e., the date following the date on which he passed the departmental examination. It has also been stated that the appeal

dated 7.3.88 of the applicant had been rejected vide Memorandum dated 22.8.1988 addressed to the Executive Engineer (HQ), Nagpur Central Elect. Circle, CPWD, Nagpur. The respondents have also raised some preliminary objections in which it is pleaded that the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 and they have also relied on three judgements.*

5. I have gone through the pleadings of the parties and heard their learned counsel. The minutes of the Committee which considered the case of the applicant for crossing of the E.B. and the A.C.R. dossier of the applicant have not been produced by the respondents. The provisions in the C.P.W.D. Manual, referred to above, have not been disputed by the respondents. They have also admitted that no adverse remarks have ever been communicated to the applicant. They have, however, not said anything about the confidential guidelines referred to by the applicant. In other words, the respondents have not denied either the existence of these guidelines or that the Committee which considered the case and/or the competent authority which passed the order and the appellate authority which rejected the appeal had not decided the case of the applicant on the basis of these guidelines. These guidelines came up for discussion three out of in the following four judgements cited by the applicant: -

- (1) Shri V.K. Adlakha Vs. Union of India & Others in O.A. No.106/1986 decided by a Division Bench of the Central Administrative Tribunal (Principal Bench).
- (2) Shri L.D. Kandpal Vs. Union of India in O.A. No.783/1986 decided by a Single Member of the Principal Bench of the Central Administrative Tribunal.

* (1) Ram Manoharlal Shrivastava Vs. Chief Conservator of Forests, M.P. and Others (1978 SLJ p. 191)- M.P. High Court
(2) Bhawani Shankar Sharma Vs. Union of India (AIR 1972 S.C. 2595).
(3) Jaswant Singh Brar Vs. State of Punjab and others (1975 SLJ (SN 7) - Punjab and Haryana High Court.

(3) Shri N.P. Aggarwal Vs. Union of India
in O.A. No.1054/1986 decided by a Single Member
of the Principal Bench of the Central Administra-
tive Tribunal.

(4) Shri K.K. Sarna Vs. Union of India
in C.A. No.103/1987 decided by a Single Member
of the Principal Bench of the Central Administra-
tive Tribunal.

In the cases at (2) to (4) above, confidential guidelines were not accepted as valid basis for not allowing the officers concerned to cross the efficiency bar. In the case of Shri K.K. Sarna, it has been stated that "It would not be correct to have confidential instructions on a policy matter when there are open instructions provided in the C.P.W.D. Manual." In the case of Shri N.P. Aggarwal, it has been stated that "Normally, guidelines prescribed for considering the cases of E.B. should be known to the officers and confidential guidelines should not over-rule the guidelines published in the Manual." In the case of Shri L.D. Kandpal, the observation was 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." In the case of Shri V.K. Adlakha, the guidelines did not come up for adjudication, but it was observed "that completion of probationary period satisfactorily on 19.10.1981 is a proof positive that the applicant was good enough to cross the Efficiency Bar on 1.2.1981." The applicant in his rejoinder has also cited two judgements^{*} in support of his contention that rejection of appeal / representation by a non-speaking order is bad in law. In both these cases, the matter under consideration was rejection of representation against adverse remarks without giving any reason and the rejection was held to be bad in law.

* (1) E.G. Nambudiri Vs. Union of India and Another
(A.T.R. 1987 (2) C.A.T. 360).
(2) Dr. Hari Dev Goyal Vs. Union of India & Ors.
(A.T.R. 1988 (1) C.A.T. 145).

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6. As regards the preliminary objections raised by the respondents, there is no substance in the objection that the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 as no argument has been advanced in support of this contention. Section 20 of the Act *ibid* provides for availment of departmental remedies before filing of the application. In this case, it is not in dispute that the applicant preferred his appeal against his grievance. The other objection is that no right of the employee is violated if he is not allowed to cross the efficiency bar. The three judgements (*supra*) have been mentioned in support of this plea. In the case of Jaswant Singh Brar, the case related to non-promotion after the petitioner had been allowed to cross the efficiency bar; therefore, this case is not relevant. In the case of Bbawani Shankar Sharma, the appellant-plaintiff was served with an order intimating him that he neither showed interest in the work nor applied himself sufficiently. By another subsequent order, he was informed that his work was found to be unsatisfactory, ^{and} it was proposed to withhold the grant of annual increment which fell due to him on a certain date. The appellant was called upon to make representation against the proposed order. He made a representation and pleaded that his performance was not below normal and that he was unable to make a proper representation as he was not informed of the basis on which the Chief Engineer came to the conclusion that he was inefficient in his work. The Government after considering the representation ordered stopping him crossing the efficiency bar. His representation against that order was not accepted. Rule 16 of the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952 came up for adjudication in this case. The court did not find any contravention of Rule 16. On the plea of the appellant that he was not informed of the reasons for coming to the conclusion that his work was inefficient, it was held that the conclusion

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that an officer's work is inefficient is based on his records as well as by the opinion formed by his superiors and that the inefficiency is something which cannot be concretised. In the case before me, the facts are totally different. In the case cited, the applicant had been given notice to show cause against the proposed action, while in the case before me, no such notice was given before the order not allowing the applicant to cross the efficiency bar was passed. In the case of Ram Manoharlal Shrivastava v. Chief Conservator of Forests, M.P. and others, it was held that Rule 10 of Madhya Pradesh Civil Service (Classification, Control and Appeal) Rules, 1966 read with Fundamental Rule 25, showed that specific satisfaction of the authority is necessary for allowing the efficiency bar to be crossed and it was held that it cannot be said that any right of the petitioner is violated. In the case before me, it is not the case of the respondents that the work of the applicant was 'bad' or 'unsatisfactory'. Confidential Report assessment in the C.P.W.D. is categorised in six categories, viz., Outstanding, Very Good, Good, Fair, Not Quite Good and Unsatisfactory and the last two alone are considered as adverse. (para 3 of the judgement in the case of Shri K.K. Sarna Vs. Union of India - O.A. 103/1987). O.M. dated 30.2.1976 issued by the Department of Personnel & A.R. (referred to in Annexure A-VII to the application) clarified that "average" reports are not treated as adverse.

7. From the above discussion, it is established that no adverse report has been communicated to the applicant in his entire service record, nor it is shown that any vigilance or disciplinary proceedings were pending or contemplated against him at the time his case for allowing him to cross the efficiency bar with effect from 1.12.1985 or when it was reviewed for allowing him to cross the efficiency bar with effect from 1.12.1986 was considered. No fall in standards of his performance is shown to have been communicated to him. The criteria for refusing to allow him to cross the efficiency bar as laid down in the C.P.W.D. Manual is not

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fulfilled as his service has never been adjudged to be not satisfactory and no adverse remarks have ever been communicated to him. Confidential guidelines cannot be allowed to become the basis for consideration of cases of crossing of efficiency bar and I accept the ratio of the three judgements cited on behalf of the applicant in this connection. The orders rejecting the appeal of the applicant are also non-speaking orders. It also strengthens the case of the applicant. There are, however, some facts which cannot be ignored. Admittedly, the applicant had not passed the departmental examination before 1.12.1985 when he was due to cross the efficiency bar at the stage of Rs.810 in the then prevailing scale of Rs.650 - 1200 and as such, he could not have been allowed to cross the efficiency bar with effect from 1.12.1985. However, this argument is not applicable for not allowing him to cross the efficiency bar even with effect from 1.12.1986. Secondly, as mentioned above, the respondents have not produced either the minutes of the Committee which examined the case of the applicant on both the occasions nor did they produce the A.C.R. dossier. In the absence of these documents, it may not be fair to pass any order to allow the applicant to cross the efficiency bar either with effect from 1.12.1985 or from 1.12.1986. The following directions are accordingly issued: -

(1) The impugned Office Memorandum dated 17.2.87

(Annexure A-I to the application) by which the applicant was directed to be informed that the competent authority had not found him fit to cross the E.B. with effect from 1.12.85; the impugned Memorandum dated 27.10.87 (Annexure A-IV to the application) by which the applicant was directed to be informed that his appeal dated 19.8.87 had been rejected by the competent authority; the impugned Office Memorandum dated 25.1.88 (Annexure A-V to the application) by which the applicant was directed to

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be informed that he was not found fit by the competent authority to cross the E.B. even with effect from 1.12.86; and Memorandum dated 22.8.88 (Annexure R-1 to the written statement) by which the applicant was directed to be informed that his appeal dated 7.3.88 had been rejected, are quashed and set aside.

- (2) Respondents are directed to refer the case of the applicant for crossing the efficiency bar at the stage of Rs.810 in the old scale of Rs.650 - 1200 with effect from 1.12.85 to the Departmental Promotion Committee which considers such cases and the Committee should consider the case of the applicant without taking into account the confidential guidelines and make its recommendation as to the date from which the applicant should be allowed to cross the efficiency bar keeping in view the fact that on 1.12.1985, he had not passed the prescribed departmental examination. It may be mentioned here that para 16 (e) in Section 4 of the C.P.W.D. Manual ibid clearly provides that Assistant Engineers promoted from Junior Engineers' grade are required to pass the departmental examination in Simple Accounts prescribed for the Junior Engineer before they are allowed to draw the first increment in the post of Assistant Engineer, unless they have already passed the examination while employed as Junior Engineer or pass the departmental examination in Accounts(3 papers) prescribed for Assistant Engineers before completing one year's service as Asstt. Engineer, but in any case before they are allowed to cross the efficiency bar stage in the post of Assistant Engineer. Para 20 of the same Section, which is applicable to Junior Engineers, provides that on passing the examination at a later date, the increments will be restored from the normal date of

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increment, but arrears on account of enhanced pay due to the restoration of increments from the date of stoppage to the date of restoration, will not be allowed.

- (3) Action as in (2) above should be completed by the respondents and orders passed within six weeks of the date of this order.
- (4) In view of the above directions, it is not necessary to adjudicate on the arbitrariness or otherwise of the confidential guidelines as prayed for by the applicant.

8. The application is disposed of in terms of the above directions. Parties will bear their own costs.

(P.C. JAIN) 17/4/89
MEMBER(A)