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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1779/88.

Date of decision: April 12, 1989.

Shri P.N. Gandhi

Applicant.

vs.

Union of India & Others

Respondents.

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

For the applicant ... Shri P.T.S. Murthy, counsel.

For the respondents ... Shri M.L. Verma, counsel.

JUDGMENT:

A short question in this Original Application is whether the refusal to the removal of the Efficiency Bar by the respondents was justified in the facts of the case. The applicant's contention was that the removal of the Efficiency Bar was not granted due to mala fide reasons as there was nothing adverse found against the applicant. The respondents, however, denied any mala fides on their part and urged that there were successive adverse entries in the C.Rs of the applicant and he was not entitled to cross the Efficiency Bar as of right. The question whether the refusal of the removal of the Efficiency Bar depends on the satisfaction of the competent authority and that having not been satisfied, there was ample justification for not allowing the applicant to cross the Efficiency Bar. The matter being one of the

satisfaction of the Executive, the relief prayed for by the applicant was not maintainable.

Learned counsel for the applicant, Shri P.T.S. Murthy and Shri M.L. Verma, for the respondents were heard. The relevant facts are as follows:-

The applicant entered the service of the respondents on 11.10.1965 as Technical Assistant Grade I (Pump Operator). He got his annual increments regularly and crossed the first Efficiency Bar in 1974. The second Efficiency Bar came in the scale of Rs.260-6-290-EB-6-326-8-366-EB-8-390-10-400. He was not allowed to cross the Efficiency Bar at the stage of Rs.366 raising his pay to Rs.374 w.e.f. 1.10.1983. His case was not referred to the DFC for want of vigilance clearance report (Annexure I). Subsequently, a chargesheet was issued on 16.8.1983 which was replaced by a fresh chargesheet on 3.9.1983 and an inquiry was held. There were two Articles of charge against him. That on 2.8.1982, while functioning as Pump Operator, C&P Branch, he was found negligent on duty, as during his duty hours the motor of tube-well pump of C&P Branch got burnt. Again, on 3.8.1982, he was found negligent during his duty hours and the motor of booster pump installed at log-pond was also got burnt and he was charged with gross dereliction of duty.

The Enquiry proceeded on written statements of six persons

and on 10.10.1985, the Officer-in Charge, Cellulose and Paper Branch, Forest Research Institute informed the applicant vide confidential letter No.1510(A)/85-C&P/19(3) (Annexure-III) as under:

"While going through the enquiry report submitted by Shri R.Tandon, it is found that you were negligent. Due to your negligency the tube well motor as well as log motor got burnt which could have been saved. You are advised in your own interest, to be more attentive in your work in future."

On 15.3.1988, the applicant was informed that the D.P.C. has intimated vide letter No.VIII/1/88-DPC(G) dated 10.3.1988 that he was not found fit to cross E.B. till 1.1.1986.

The applicant claimed that he was the General Secretary of the F.R.I. Mazdoor Union, I.N.T.U.C. which was a registered Trade Union. In his capacity as General Secretary of the Union of workers, he had to take up a number of cases of injustice with the respondents. Consequently, the general attitude of the respondents towards the applicant was strained and far from satisfactory. The respondents were, therefore, waiting and watching for an opportunity to wreak vengeance on him and to victimize him. He claimed that he was a sincere, conscientious, efficient and hard worker. The applicant was directly under the Officer Incharge C & P Branch and his C.Rs. should have been written by himself. He was continuously

given adverse remarks until Shri Man Mohan Singh and his Deputy, Shri Y.K.Sharma retired in 1982 and 1986. Shri Y.K.Sharma ordered the infructuous inquiry and instituted disciplinary action against the applicant. He stated that the charges framed against the applicant could not be proved. Lastly, on 15.3.1988, the applicant was informed that the DRC did not find him fit to cross the Efficiency Bar. It is against that order, he has come up before the Tribunal praying for to declare the applicant having crossed the E.B. with retrospective effect from 1.10.1983, refix the applicant's pay from the above date and further as revised under the recommendations of the Fourth Pay Commission and lastly to direct the refund of the amount recovered as excess payment consequent on the replacement of lower scale of pay in place of higher scale of pay.

The respondents' case on the contrary is that the applicant reached the stage of Rs.366/- per month and he could only cross the Efficiency Bar provided the D.P.C. cleared him. An Enquiry was pending against him and in the enquiry report he was warned to be more attentive in his own interest. The enquiry was started because due to his negligence the tube well motor as well as log motor got burnt. He could have at least shut off the switches and that would have saved the motors from being burnt but he did not do so. It was admitted that on the basis of the enquiry report,

a lenient view was taken and no penalty was imposed on the applicant but he was advised to be more attentive/careful in his work in future. Apart from this matter, he was several times advised and warned by his superior Officers about his shortcomings. He got several adverse remarks in his C.Rs. The applicant was allowed to represent against the adverse remarks. His representations were duly considered by the competent authorities superior to the Officer In-charge and the same were rejected. It was also denied that there was any personal episode between the applicant and the Officer In-charge as alleged by the applicant. Lastly, it was stated that since the applicant's performance was not found satisfactory as per the remarks recorded in his relevant C.Rs., DPC did not allow him to cross the Efficiency Bar till 1.1.1986.

Learned counsel for the applicant apart from relying on the pleas raised in the O.A. urged that for some time, he was not assigned any work after the motors were burnt and yet he had been given adverse remarks for that period.

To this, the learned counsel for the respondents stated that although he was not given any work in the

Pump House, he was assigned to C & P Branch where he worked. Consequently, it is not correct to say that he had been given adverse entries without any basis.

There is no doubt that the applicant received adverse entries in his C.Rs, he made representations against them but they were rejected. The fact ~~remains~~ that there were adverse remarks in the C.Rs. The D.P.C. met and considered his case and did not consider him fit enough to be allowed to cross the Efficiency Bar. This conclusion of the D.P.C. cannot be challenged; nor can the Tribunal sit in an appeal over the said decision. The entries in the C.R. are the function of the Executive i.e. the Departmental Authorities. A representation is allowed ^{to be made ~~as~~} which is considered by the superior departmental authorities. Consequently, it cannot be said that the entries were wrongly given. The Tribunal has to accept the entries as they are unless it is shown that they are made mala fide.

In respect of mala fides, nothing more is stated than the applicant being the Secretary of an Union and that he represented the cause of the workers and that brought him ~~into~~ conflict with the officials. He has named two officers, one of whom retired in 1982 and the other in 1986. Neither of them have been made parties in this O.A. The above allegations do not make out a case for mala fides. The allegations are vague and incomplete.

There is a clear denial on the part of the respondents. I do not find the ground of mala fides being established in the present case and as such I am not prepared to hold that the adverse entries recorded in the C.Rs. were as a result of mala fides action on the part of the respondents. It is, therefore, evident that the entries in the C.Rs which were adverse to the applicant remain. It is well settled as laid down in Fundamental Rule 25 that unless there is specific satisfaction of the authority, the efficiency bar cannot be removed. The power is given to the authority empowered to withhold the increments under Fundamental Rule 24 or the relevant disciplinary Rules applicable to the government servants. It is also well settled that whenever the case of a public servant is considered for clearing the Efficiency Bar, it is for the competent authority to take the entire record of service of the public servant into consideration. Further, if the record has been fairly considered by the Government, the Tribunal will not interfere with the decision of the Government.

In this view of the matter, the applicant's prayer in the O.A. must fail. Before concluding finally, it will be relevant to draw attention to the letter dated 15.3.1988 (Annexure-VI) that the applicant was found not fit to cross the Efficiency Bar till 1.1.1986.

That period is now over. His case will again be considered for crossing the Efficiency Bar for the subsequent period. In the result, the O.A. fails and it is accordingly dismissed.

AB
(AMITAV BANERJI)
CHAIRMAN
12.4.1989.