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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A. 1820/88.

S.K.Dass ... Applicant.
versus
Union of India and others ... Respondents.

P R E S E N T :

The Hon'ble Shri B.C.Mathur, Vice Chairman(A)

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman(J).

For the applicant- Shri T.C.Aggarwal, Advocate.

For the respondents- Shrimati Raj Kumari Chopra, Advocate.

Date of hearing- 25.4.90

Date of Order - 2.5.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The applicant, a Senior Medical Officer, N.C.Joshi Hospital, New Delhi, has filed this application for a direction to the respondents to allow the crossing of the Efficiency Bar with effect from 1.1.1978. The grievance is that he was permitted to cross the Efficiency Bar only from 1.8.1982. It is stated that apparently it was in view of certain adverse remarks in his Confidential Reports for the years 1975-79 that he was not permitted to cross the Efficiency Bar with effect from 1.1.1978 and hence he has also prayed for a direction to the respondents to expunge the aforesaid entry.

2. It is urged that the then Welfare Commissioner Sri M.C.Sanyal was biased towards him since at the instance of the applicant, the Ministry of Health and Family Welfare permitted his stay at Barbil for some more time though there was an order of transfer issued on 8.9.1976. It is pointed out that the Welfare Commissioner had insisted that the applicant should be relieved immediately. The applicant

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also alleges that the Welfare Commissioner did not comply with the order of the Ministry and refused to pay the salary of the applicant for the months of November and December, 1976 and he had to approach the High Court of Orissa for the same and it was only after the judgment of the High Court that the salary was disbursed.

3. It is alleged that during the pendency of the writ petition in the High Court, Sri Sanyal by the letter dated 21.2.1978 communicated the adverse remarks in the confidential reports of the applicant for the period from 1.1.1975 to 31.12.1975 and from 1.1.1976 to 30.10.1976. It is urged that the communication was after more than two years in violation of the clear instructions by the O.M. dated 30.1.1978. According to the applicant, these entries were made simultaneously after the filing of the writ petition.

4. ^{Further (para)} It is stated by the Memorandum dated 18.9.80 ~~that~~ the adverse remarks for the periods 1977-79 were communicated. This too, according to the applicant, was in utter violation of the procedure laid down for writing and communication of the Confidential Reports.

5. The applicant submitted a representation on 12.4.1978 against the adverse entries relating to the period 1975-76. As regards the adverse entries for the period 1977-79, he made another representation, whereupon the Medical Superintendent himself endorsed ^{as} the remarks ~~all~~ are remediable. The officer is showing improvements in current year. This should not debar him for consideration for promotion or crossing the E.B." It is also alleged by the applicant that on 16.10.88,

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that on 16.10.83, the Medical Superintendent wrote to the Welfare Commissioner to expunge the remarks, and Shri L.D. Misra, the Director General in the Ministry of Labour, wrote to the Joint Secretary in the Ministry of Health and Family Welfare recommending the expunction of the remarks.

6. The applicant had filed a writ petition before the High Court of Patna since final orders were not passed on his request for expunction of ~~an~~ ^{the} adverse remarks. Since the writ petition was not admitted, the applicant filed Special Leave Petition before the Supreme Court, but it was permitted to be withdrawn with ~~the~~ liberty to move the High Court under Article 226 of the Constitution of India.

7. Since the representation of the applicant regarding withholding of the crossing of the Efficiency Bar was rejected he filed a Memorial before the President of India on 26.11.1987.

8. It is stated that by the letters dated 22.3.1988 and 20.6.1988, the applicant has been informed that the representations submitted by him have been rejected.

9. In the reply filed on behalf of the respondents, it is contended that the application is barred by ~~limitation~~ since the writ petition filed by him before the High Court of Patna for the identical relief was dismissed on 12.3.1984 and the SLP was dismissed by the Supreme Court on 30.7.1985. There is also the plea that the application is barred by limitation.

10. It is significant that in the reply filed on behalf of the respondents, there is no denial of the allegation of bias on the part of the Reporting Officer who recorded ~~all~~ the adverse entries in the Confidential Reports of the applicants for the period 1975-1977. Nor is there any dispute regarding the detailed averments made in the application about the non-compliance with the instructions relating to the recording of adverse remarks, and the communication thereof. Considering the circumstances stated in the application there is no reason not to accept the plea of the applicant that the Reporting Officer was biased. It is to be noted that the remarks were made after the applicant had approached the High Court with a Writ petition against the action of the Welfare Commissioner in denying him his salary. ^{Regarding the} Recording adverse remarks during the period 1978-79, it is on record that the Medical Superintendent himself has reported that "this should not debar him for consideration for promotion or crossing the E.B." (vide Annexure-A/11).

11. Counsel of the applicant invited our attention to the decision of the Calcutta Bench of this Tribunal in *Joginder Singh v. Union of India* [1989 (9) ATC 147] where it was held that clear possibility of bias on the part of the Reporting Officer, he having reasons to be annoyed with the officer concerned, vitiates the adverse remarks in the Confidential Reports.

12. Counsel of the applicant took us through the actual remarks themselves and submitted that in the nature of some of these remarks specific instances should have been recorded to support the same so that he could know the case against him that he has to meet while making representation against the remarks. In support of this submission, reliance was placed

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on the decision of the Bangalore Bench of this Tribunal in N.K.Narayankar vs. Member, Telecom Board / 1989(10) ATC 477/.

13. It was also urged that the representation submitted by the applicant against the adverse remarks has not been disposed of by a speaking order.

14. These submissions of the counsel of the applicant have to be accepted especially when the respondents have not chosen to controvert the averments in support thereof which have been categorically made in the original application.

15. We hold that the adverse remarks in the Confidential Reports of the applicant for the period 1975-79 have to be expunged. We direct the respondents to do so.


16. There is no merit in the contention of the respondents that the application is barred by limitation since it has been filed within one year of the final order dated 22.3.1988 under which the representation of the applicant for crossing the Efficiency Bar from 1.1.1978 was rejected. Nor can the contention regarding maintainability in view of the dismissal of the writ petition filed in the High Court of Patna ~~may be~~ sustained. As is clear from the reply itself that when the SLP was filed before the Supreme Court from the decision of the High Court at Patna, ~~which~~ ^{it} was allowed to be withdrawn with liberty to move the High Court under Article 226 of the Constitution of India.


17. Evidently, it was in view of the aforesaid adverse remarks that the applicant was not allowed to cross the

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Efficiency Bar with effect from 1.1.1978. It is seen that he was permitted to cross the Efficiency Bar only with effect from 1.8.1982. Since the representations submitted by the applicants against the adverse entries were pending, those entries should not have been relied upon for denial of permission to cross the Efficiency Bar. Moreover, in view of ~~our~~ our finding above that the adverse entries themselves deserve to be expunged, the applicant has to be deemed as having crossed the Efficiency Bar with effect from 1.1.1978. We direct the respondents to do so and to allow him all consequential benefits.

18. The application is disposed of as above.


 (G. Sreedharan Nair)
 Vice Chairman(J)


 (B.C. Mathur)
 Vice Chairman (A).

S.P. Singh/
 26.4.90.

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