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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Date of decision: 17.11.1988.

Regn. No. O.A. 479/88

Shri Ved Prakash Vijh ... Applicant

Vs.

Union of India & Ors. ... Respondents.
CORAM: Hon'ble Shri B.C. Mathur, Vice-Chairman.

For the applicant: Shri K.N.R. Pillay, counsel.

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

JUDGMENT.

This is a case under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Ved Prakash Vijh, Assistant Engineer, C.P.W.D., against impugned order No. 32/2394/81/EC.III dated 20.10.1986 passed by the Deputy Director of Administration, CPWD declaring the applicant unfit to cross the Efficiency Bar on 1.3.1984, 1.3.1985 and 1.3.1986.

2. The brief facts as stated in the application are that the applicant was promoted from the grade of Junior Engineer to Assistant Engineer on 16.3.1981 in the scale of Rs. 650-1200. In this scale, there are two stages of efficiency bar, the first one falls at Rs. 810/-. The efficiency bar in the case of the applicant fell due on 1.3.1984. The time schedule for screening of efficiency bar cases issued by the Department of Personnel prescribes that where efficiency bar falls due in March, the case should be considered by the DPC in January of the same year, i.e. two months earlier. In the case of the applicant, the matter was delayed for about two and a half years. The applicant has pointed out that the Supreme Court in SLR 1974(1) 594 SC has held that such delays are unfair to an officer and the order preventing the crossing of efficiency bar should be passed either before the appointed date or shortly thereafter.

3. According to the applicant, the possible reason for over-looking his case for crossing the efficiency bar could be that he had not passed the Departmental Accounts Examination. He had, however, crossed the age of 50 years on 1.7.1982 and according to instructions of the Ministry of Works and Housing vide their letter dated 23.1.1976 (Annex. 3 to the application), the CPWD is empowered to exempt officers above the age of 50 years from having to pass Departmental Accounts Examination. Such an exemption can be considered suo moto without the individual officer having to make any application. It was only after repeated representations from the applicant that the Department placed the matter before the DPC in the latter half of 1986, more than two and a half years after the due date. The impugned order dated 20.10.1986 (Annex. A1) states that the applicant was found unfit to cross the efficiency bar on 1.3.1984, 1.3.1985 and 1.3.1986. As such, the applicant had to suffer for no fault of his because of the delay on the part of the Department for granting exemption from the Departmental Examination and putting the case for crossing the efficiency bar to the DPC in January, 1984. The impugned order also did not indicate the reason for not finding him fit to cross the efficiency bar. As such, he was not in a position to file an effective appeal. The applicant submitted at least five representations, copies of which are filed at Annexures A-5, A-6, A-7, A-8 and A-9 to the Application. He received a reply on 15.1.1988 (Annex. A-10). The reply states that the DG(W) had not allowed him to cross the efficiency bar, without indicating reasons. The applicant states that he had made the representations precisely against the DG Works and the appellate authority apparently did not apply his mind.

4. The CPWD Manual Vol. I Chapter V Section 6 para. 1 prescribes the following criteria for allowing an officer to cross the efficiency bar:-

"No officer is allowed to cross the efficiency when his work and conduct has been adjudged to not satisfactory. For this purpose, his Confidential Reports should be reviewed at the time of consideration of the case of crossing efficiency

bar."

In Section 5 para. 9 of the same Manual, it is mandatory that adverse entries in the ACRs are communicated to the officer. There is an additional provision that not only are adverse remarks to be communicated but fall in standards of performance are also to be communicated so that an officer does not suffer in his service prospects without knowing about the deterioration, vide para. 13 of the same Section 5 of the Manual. No adverse remarks in the ACRs have been communicated to the applicant except in 1982-83 when he was posted at Mussoorie. The following adverse entries were communicated to the applicant:-

"Para 3.17:

Newly promoted officer. The official has to put in more efforts and tighten his supervision.

Para. 4.2(c):

Though well experienced but lacks self-confidence and control. His overall performance has been "Not Quite Adequate."

5. The applicant filed a detailed representation against these entries (Annex. A12). He had mentioned in his representation that the adverse remarks had been recorded in violation of the standing instructions as he had not been given previous admonition or guidance. This appeal was dismissed in a casual and cryptic manner by the Chief Engineer. The representation against adverse remarks in the character roll have to be disposed of by speaking orders as decided by the Tribunal and, as such, these adverse remarks cannot be relied upon to prevent the applicant from crossing the efficiency bar. The applicant has reason to believe that these adverse remarks were due to his having incurred the wrath of the Chief Engineer who was annoyed with the applicant for insisting that the contractors would get payments only as per the contract. The applicant also understands that one year C.R. is missing from the file as the Chief Engineer had not completed the report in spite of reminders from the office of the D.G. (W). Since the applicant had been

promoted in 1981 and only one adverse entry had been communicated for the year 1982-83, the applicant presumes that the other entries would be at least 'fair' or 'good'. Even average reports are not to be treated as adverse. The applicant has prayed that the impugned order denying him the benefit to cross the efficiency bar should be quashed and he should be allowed to cross the efficiency bar with effect from 1.3.1984 and to regulate his future increments on that basis as he has suffered a recurring loss of about Rs. 200/- per month which will also be reflected in his pension, without giving him a hearing.

6. The respondents in their reply have stated that the removal of efficiency bar depends upon the satisfaction of the competent authority and, therefore, no right of the employee has been violated and the case of the applicant was duly considered by the DPC, the court, therefore, cannot exercise appellate powers over the decision of the competent authority. The respondents admit delay in considering the efficiency bar case of the applicant. The delay was caused as the proposal with necessary details was received only in August, 1986 by the Central Office from the Office of the applicant. The delay was, therefore, purely administrative. There are two conditions to be fulfilled for considering an Assistant Engineer to cross the efficiency bar in his time scale, namely, (i) he should have passed the Departmental examination prescribed for Assistant Engineers and (ii) he should have good record of service. It is admitted that an officer can be allowed exemption from passing the Departmental Examination if he has attained the age of 50 years and has a good record of service. The applicant had not passed the Examination but had attained the age of 50 years on 1.7.1982. His case for grant of exemption from passing the Departmental Examination and to allow him to cross the efficiency bar at the stage of Rs. 810/- with effect from 1.3.1984 was considered by the E.B.

Committee in September, 1986 but on the basis of his record, the Committee did not find him fit to cross the efficiency bar with effect from 1.3.1984 or from the dates of the subsequent review i.e. 1.3.1985 or 1.3.1986. The respondents have denied that the case of the applicant was over-looked because he had not passed the Departmental Examination but the delay was due to administrative reasons only. It has been stated that it is not necessary that orders stopping the officer at E.B. stage should be communicated to the officer concerned and he should be informed why crossing of the efficiency bar was not allowed. This is related to efficiency of the Government servant concerned as reflected in his record of service. The applicant could have preferred an appeal to the appellate authority against the orders of the D.G. within 45 days of the receipt of the said orders but instead of that, the applicant submitted representations to the D.G. (W). No cognizance can be taken of these representations as the D.G. was not the appellate authority. The applicant did send three representations in 1987 to Secretary, Ministry of Urban Development, with a copy to DG(W) for releasing his annual increments but as the applicant was held up at the E.B. stage of Rs. 810/-, the question of release of annual increments did not arise and the applicant was informed accordingly on 15th January, 1988. The records of the officer should be good enough so that he can be allowed to be exempted from passing the Departmental Examination and cross the E.B. In this case, the record was not considered good enough.

7., The learned counsel for the applicant has stressed the fact that there was a delay of over two and a half years in putting up the case of the applicant to the DPC. So far as the injury caused to the applicant is concerned, it is immaterial whether the delay was caused by the Head Office or the subordinate office or who caused the delay.

8. It appears that some guidelines have been issued by the DG (Works) in the matter of crossing of efficiency bar. These guidelines have not been disclosed to the officers but came to light during the hearing of another such case where it was mentioned that if the grading in the last ACR is less than good or if the officer does not have the grading 'good' or above in 3 out of 5 years' ACRs, he is to be stopped at the E.B. These guidelines are contrary to the published criteria in the CPWD Manual and are arbitrary. According to the learned counsel for the applicant, an officer can be stopped at the EB only if his work and conduct has been adjudged to be not satisfactory. A specific finding that the work is unsatisfactory is required for stopping an officer at the E.B. stage. He further relied on three cases, namely, (i) O.A. 783/86 - L.D. Kandpal Vs. UOI, (ii) O.A. No. 103/87 - K.K. Sarna Vs. UOI and (iii) O.A. No. 1054/86 - N.P. Aggarwal Vs. UOI. All the three cases were decided by this Bench on 18.1.1988. In these cases, it has been held that the confidential guidelines should not over-rule the guidelines prescribed in the CPWD Manual and as no fall in standards in the working of the applicants had been intimated to them, the withholding of E.B. would be bad in law. The CPWD Manual which prescribes that efficiency bars should be stopped only if the work and conduct is adjudged to be unsatisfactory should be the rule and in the present case, since no fall in standards had been intimated to the applicant, he should be allowed to cross the efficiency bar on the due date.

9. Shri Pillay, counsel for the applicant has also pointed out that the applicant had to work at Mussoori under trying conditions and that the Chief Engineer Shri Shankaran had put pressure to pass the bills of the contractors. His appeal was rejected by the same Chief Engineer on 6.6.1984. He cited

the Allahabad High Court judgment in the case of Mahesh Kumar Vs. State of U.P., 1984(3) SLR 109, which lays down that where an officer whose action has been challenged in appeal as biased, he should not have dealt with the case and it should have been submitted to the next higher authority or the Minister. He said that adverse remarks should be recorded only after defects had been pointed out to the officer and after efforts are made to guide or admonish the officer so that he can get the defects removed. The representation of the applicant had not been disposed of and as later, it was disposed of by a non-speaking order, it could not be relied upon to come to an adverse decision. Shri Pillay cited the case of UDI Vs. Ranjit Singh Grewal, SLR 1980 (3) 257. In the case of the applicant, when he had been promoted only two years earlier, it is to be presumed that his record was good and just on the basis of one report, the efficiency bar could not have been stopped especially as the applicant had represented against these remarks and no speaking orders had been passed rejecting this representation.

10. Shri M.L.Verma, counsel for the respondents, on the other hand pointed out that the question of difficult posting at Mussoori had not been mentioned in the application. The applicant had also not pursued the appeal and in the matter of efficiency bar, there is no question of giving any opportunity to an officer to represent against the decision of the competent authority who decides these matters on the basis of their judgment. He cited the case of Braham Dutt Sethi Vs. UDI, 1973 SLJ (Delhi) 96 wherein the High Court held that no opportunity is to be given before crossing or stopping the efficiency bar. The question

of bias against the Chief Engineer does not arise as the adverse remarks communicated to the applicant were written by the Executive Engineer, Dehra Dun and reviewed by the Superintending Engineer, CPWD Allahabad.

11. The confidential report file of the applicant was produced in the court. Only two reports after his promotion as Assistant Engineer are relevant. The report for the previous year is satisfactory but the one under challenge is not satisfactory. The points to be considered are whether an Assistant Engineer who is supposed to pass the Departmental Accounts Examination to be eligible to cross the efficiency bar becomes automatically eligible for such exemption on attaining the age of 50 years or whether such an exemption has to be given specifically by the competent authority taking into consideration his record of service. The respondents in their reply have clarified that the applicant was not allowed to cross the efficiency bar not because of his having failed to pass the Examination but because his record was not considered satisfactory. The second consideration would be whether the delay in considering the case of the applicant for about two and a half years would cause great harm to the applicant and whether such delay would vitiate the orders stopping the efficiency bar as bad in law. It is also to be seen whether the orders of rejection against the adverse entries are non-speaking orders and whether the fall in standards in the work of the applicant had been communicated to the applicant so that he could improve.

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12. I have gone through the arguments on both sides and find that this case is slightly different than the cases cited by the learned counsel for the applicant. In the three cases decided by this Tribunal, the main point was that a secret circular had been issued by the D.G.(W) prescribing the criteria for considering the cases of crossing of efficiency bar but here, no such criterion appears to have been followed. The confidential report of the applicant for two relevant years before the due date have been seen and a decision taken by the competent authority on the basis of such reports. It is unfortunate that the consideration of the crossing of efficiency bar of the applicant was delayed by about two and a half years thereby causing harm to the applicant but whether this makes the orders illegal is a different matter. Administrative lapses are certainly to be discouraged but whether the entire proceedings can be quashed merely there has been delay may not also be fair. In this case, there are adverse remarks in the C.R. of the applicant for the year 1982-83 which are very relevant. The applicant has alleged bias by the Chief Engineer Shri Shakaran but the remarks have been written by the Executive Engineer and reviewed by the Superintending Engineer, Allahabad and it cannot be explained how these two officers posted at different places could have been pressurised by the Chief Engineer to write adverse remarks. The theory of malafide is not accepted. It is also not clear whether the exemption from passing the Departmental Accounts Examination is automatic on attaining the age of 50 years or whether it has to be given on the basis of the work of an officer. It has been clarified by the respondents that the case of the applicant has been decided on the basis of his annual confidential reports only.

13, Two points have to be examined, (i) whether the entry in the character roll of the applicant for the year 1982-83 could be taken into consideration or excluded on the ground

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that a representation was pending at the appropriate time and had not been disposed of and (ii) that the respondents have rejected the representation of the applicant by a non-speaking order. I find that the entries are of a general nature. Entry in para. 3.17 shows that the officer has to put in more efforts and tighten his supervision and the other one is that he lacks self-confidence and control and that his overall performance has been "not quite adequate". These are subjective findings of the superior officers and it may not always be possible to write the exact instances where the supervision needs to be tightened or where the performance has to be improved. It is not clear what further speaking orders could be given by the appellate authorities and since his representations have been rejected on the ground that there has been no valid reason for expunging the remarks already communicated, it does not indicate that the appellate authority had not applied his mind to the representations. I do not think that automatic exemption can be given to the passing of the Departmental Examination in Accounts which is a necessary condition for crossing the efficiency bar and since the E.B. depends on the overall performance, I would not like to interfere with the judgment of the DPC at this stage. In the circumstances, the application is rejected. There will be no order as to costs.

B.C. Mathur 17.11.88
(B.C. Mathur)
Vice-Chairman.
17.11.1988.