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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

DATE OF DECISION: 20.1.1989.

Regn. No. O.A. 793/88.

Shri P.R. Dawara ... Applicant

Vs.

Union of India ... Respondents.

CORAM:

Hon'ble Shri S.P. Mukerji, Vice-Chairman.

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

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

JUDGMENT.

The applicant, who is working as an Assistant Engineer in the Central Public Works Department (CPWD), has in this application dated 25.4.1988 under Section 19 of the Administrative Tribunals Act, 1985, prayed that the guidelines issued by the Director-General of Works for the Efficiency Bar Committee should be set aside and the respondents directed to follow the provisions of CPWD Manual and open instructions in the matter of crossing of Efficiency Bar. He has also prayed that the impugned orders dated 18.8.1983, 6.6.1984, 22.11.1985, 16.1.1986 and 1.7.1987 declaring him unfit to cross the Efficiency Bar should be set aside and the respondents directed to allow him to cross the E.B. notionally from 1.9.1981 and pay him arrears from 25.12.1982 when he passed the departmental examination.

2. The brief facts of the case are as follows.
The applicant was due to cross the E.B. at the stage of Rs. 810/- on 1.9.1982 in the pay scale of

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Rs. 650-810-EB-1000-EB-1200 as Assistant Engineer. One of the conditions of crossing the E.B. was that he should have passed the necessary Accounts examination. The applicant admittedly passed this examination on 25.12.1982 and in his representation dated 5.4.1983, he claimed it. He was informed vide the memo. dated 18.8.1983 (Annex. A-3) that the competent authority found him unfit to cross the E.B. at the stage of Rs. 810/- with effect from 25.12.1982. Similarly, he was declared unfit for crossing the E.B. in 1983, 1984 and 1985. As the orders were non-speaking, he could not file an effective appeal. In the meantime on 25.1.1985, he was given selection grade of Junior Engineer with effect from 1.8.1986 and the stage of his E.B. was changed from 1.9.1982 to 1.9.1981. On 1.7.1987, he was informed that his case of crossing the E.B. from 1.9.1981 was considered by the competent authority who found him unfit to cross the E.B. on 1.9.1981 also. His appeal dated 17.8.1987 had remained un-responded. Hence, the application before the Tribunal.

3. I have heard the arguments of learned counsel for both the parties and gone through the documents carefully. The criterion for crossing of Efficiency Bar has been laid down in para. 1 Section 6 chapter V Volume 1 of CPWD Manual which reads as follows:-

"Efficiency Bar:

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

The contention of the learned counsel for the applicant is that unless his performance is adjudged by a specific finding as being not satisfactory, the applicant has a right to cross efficiency bar. He has further stated that since no adverse remarks were communicated to him till 1984, when a censure was communicated, there is

no reason why he should not have been allowed to cross the E.B. in 1982. He has challenged the secret guidelines which the Director-General, CPWD had issued for the guidance of the Committee as violative of the open instructions contained in the CPWD Manual. According to the secret guidelines, the DPC could declare a person unfit for crossing the E.B., who during the previous five years, has not been graded at least 'good' in three years and at least 'fair' in the other two years. These guidelines also indicate that the last year's entry must be 'good'.

4. The respondents have argued that crossing of the efficiency bar is subject to the satisfaction of the competent authority. They have admitted that the applicant had not been communicated any adverse remarks but that, by itself, would not entitle him to cross the E.B. unless he has at least three 'good' reports during the previous five years and the last report ^{is} ~~being~~ 'good'. The validity of the secret guidelines was considered by another Single Member Bench of this Tribunal comprising the Hon'ble Vice-Chairman ^{of} ~~the~~ the Principal Bench in ^{dated 18.1.88} his judgments in O.A. No. 783/86 (L.D. Kandpal Vs. UOI), in O.A. No. 1054/86 (Shri N.P. Aggarwal Vs. UOI) and in O.A. No. 103/87 (Shri K.K. Sarna Vs. UOI). Learned counsel Shri Pillai and Shri Verma, who are appearing before me, had appeared before that Bench also in all the aforesaid three cases. The learned Vice-Chairman held that "it would not be correct to deny crossing of efficiency bar to an officer on the basis of one year's report" and 'that confidential guidelines should not over-rule the guidelines prescribed in the CPWD Manual or the instructions issued by the Department of Personnel in these matters'. The learned Vice-Chairman indicated that 'normally, guidelines prescribed for considering the cases of efficiency bar should

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be known to the officers and confidential guidelines should not overrule the guidelines published in the Manual'. Since in the instant case before me, the respondents have admittedly been swayed by the recommendations of the DPC which was guided by the secret guidelines which, according to the aforesaid rulings with which I respectfully agree, cannot overrule the criterion laid down in the CPWD Manual, I find that the applicant's case merits reconsideration. So far as the question of the applicant's crossing the E.B. before he passed the Accounts examination on 24.12.1982 is concerned, ~~this~~^{at} is wholly unacceptable.

5. In the circumstances, I allow the application to the extent of quashing the impugned orders dated 18.8.1983, 6.8.1984, 22.11.1985 and 16.1.1986 which declare the applicant as unfit for crossing the Efficiency Bar^{on 25.12.1982} and direct that the question of his crossing the Efficiency Bar with effect from 25.12.1982 onwards should be reviewed by a D.P.C. strictly in accordance with the instructions contained in the CPWD Manual and those issued by the Department of Personnel and without reference to the secret guidelines, referred to above. The respondents are also directed that it should be ensured that the adverse remarks not communicated to the applicant or having been communicated if a representation^{thereon} is pending, should not be taken into account. It should also be ensured that for crossing of Efficiency Bar in a particular year, the A.C.R. of the applicant upto that year^{only} and not later^{AS} should be taken into account. If the application is allowed to cross the Efficiency Bar in a particular year, all consequential benefits of pay and allowances should be paid to him accordingly. The respondents should complete the review of the case of the applicant and also payment of arrears, if any, within a period of two months from the date of communication of

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this order. The application is allowed on the above lines. There will be no order as to costs.

S.P. Mukerji

(S.P. Mukerji)
Vice-Chairman.
20.1.1939.