

8.11.1988

Applicant through Shri K.N.R.Pillay, counsel.

Respondents through Shri M.L. Verma, counsel.

Judgment pronounced.

The relevant files including ACRs of the applicant have been returned to the counsel for the respondents, Shri M.L. Verma.

*B.C. Mathur*  
(B.C. MATHUR)  
Vice-Chairman.

8.11.1988.

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI

Regn. No. OA 1201 of 1988

Date of decision: 8.11.1988.

Shri Nirmal Kumar

Applicant

Vs.

Union of India and Others

Respondents

PRESENT

Shri K.N.R. Pillai

Counsel for the applicant.

Shri M.L. Verma

Counsel for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Nirmal Kumar, Assistant Engineer (Electrical), C.P.W.D., against impugned orders No. 27/7(N)-ECIII dated 17.12.82, 4.10.1983 and 29.10.1983 (Annexures A-1, A-III and A-IV to the application) passed by the Director General Works, CPWD, declaring the applicant unfit to cross the Efficiency Bar on 1.7.1979, 1.7.1980, 1.7.1981, 1.7.1982 and 1.7.1983.

2. Brief facts of the case, as stated by the applicant, are that the applicant was promoted to the Assistant Engineer's scale of Rs. 650-1200 in July 1973 and was to cross the Efficiency Bar at the stage of Rs. 810.00 on 1.7.1979. He had not passed the required Departmental Accounts Examination on that date but passed the same in August, 1980 to become eligible to cross the Efficiency Bar. The case of the applicant is that immediately on passing the Departmental Accounts Examination, his case for crossing the Efficiency Bar should have been considered, but the matter was delayed by over two years and it was only after getting a reminder from the Superintending Engineer, Bombay Central Electrical Circle, on 4.9.1982 that the respondents took up the applicant's case for review. The Department issued the impugned orders dated 17.12.1982 (Annexure A-1 to the application) declaring

the applicant unfit to cross the E.B. from 1.7.1979 upto 1.7.1982. The applicant filed a representation on 10.1.1983 asking for the grounds on which the adverse decision was taken, but there has been no reply to his representation. On 4.10.1983 the respondents issued the second impugned order at Annexure A-II declaring that on 1.7.83 also the applicant was unfit to cross the E.B. Ultimately on 29.10.84 the respondents issued the orders at Annexure A-IV declaring that the applicant had been found fit to cross the E.B. with effect from 1.7.1984 and his pay was raised from Rs. 810.00 to Rs. 845.00. Thus, the applicant lost five increments due in the years 1979 to 1983 which is a total recurring loss of Rs. 175.00 in basic pay alone. The applicant submitted a representation on 15.11.1984 protesting against the denial of increments during the five years without informing him of the reasons for finding him unfit to cross the EB or communicating any shortcomings found in his work.

3. Aggrieved by the decision of the respondents, the applicant filed an application in the Ahmedabad High Court which was transferred to the Ahmedabad Bench of the Tribunal. The Ahmedabad Bench directed the applicant to file an appeal against the impugned orders directing the respondent to entertain the appeal without applying the bar of limitation. The applicant filed an appeal on 27.1.1988, but the same has been rejected with a non-speaking order. (Annexure A-8). The order of rejection is a non-speaking order and the grounds made out in the appeal have not been referred to in the order.

4. The applicant has cited the C.P.W.D. Manual prescribing the criteria for allowing an officer to cross the Efficiency Bar. The Manual states that "No officer is allowed to cross the 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 Manual also makes it mandatory that adverse entries in the ACRs are communicated to the officer.

In the C.P.W.D. there is an additional provision that falls in standards of performance should also be communicated so that an officer does not suffer in his service prospects without knowing about the deterioration in his work. No adverse remarks have ever been communicated to the applicant. The applicant states that the grading in his ACRs during the five years before the due date of crossing of the EB could not be less than 'Fair' or 'Average' and an 'average' entry means satisfactory work without serious shortcomings. Apparently, the respondent has been acting on some criteria which has been kept secret and not made known to the officers.

5. On the above grounds, the applicant appeals for quashing the impugned order declaring him unfit to cross the E.B. from 1.7.1979 to 1.7.1983 and to direct the respondents to allow the applicant to cross the E.B. from 1.7.1979 and restoring future increment on that basis, granting arrears due from time to time.

6. The respondents in their reply have stated that no cause of action arose in favour of the applicant as he had not passed the departmental examination and that crossing of the efficiency bar depends on the satisfaction of the competent authority. The respondents have cited two cases Jaswant Singh Brar Vs. State of Punjab 1975 SLJ 7 (S.N) and Bhawani Shankar Sharma Vs. Union of India 1973 SLJ (S.C.) 20 where it has been held that courts cannot exercise appellate powers over the decisions of the competent authority. The applicant passed the departmental examination on 8.8.1980 and on receipt of the proposal on 7.11.81 for crossing the efficiency bar, the same was processed but since the applicant was charge-sheeted on 11.6.1981, his case could not be processed further. The vigilance case was decided on 25.8.1982 with a "recordable" warning. The case of the applicant was put up before the EB Committee who did not find him fit to cross the EB at Rs. 810/- from 1.7.1979 upto 1.7.1982 on the basis of service records for five years ending 1981-82. The applicant was allowed to cross E.B. on 1.7.1984 on the basis of records of service

raising his pay from Rs. 810.00 to Rs. 845.00.

7. The main points to decide are whether the case of the efficiency bar should have been taken up soonafter the applicant passed the departmental accounts examination and if this was not done, what would be the effect of the same? It has also to be seen whether there were adverse entries which were communicated to him and whether the crossing of the efficiency bar has in any way been affected by the "recordable" warning issued to the applicant on the basis of a chargesheet issued on 11.6.1981. The appeal against this warning has also not been disposed of so far, although the file of the applicant shows that he had been allowed to appeal within 40 days of the receipt of the orders which he failed to do.

8. It is clear that on the day when the applicant was to cross the efficiency bar, there was no chargesheet against him and even if some proceedings were contemplated, no orders of the competent authority were recorded to this effect. Contemplation of an enquiry cannot be a ground for withholding of the crossing of the efficiency bar. This can be done only when specific charges are framed and an enquiry is initiated.

9. The learned counsel for the respondents is of the view that as the case had already been taken up by the Ahmedabad and decided, it cannot be decided once again, specially as this is a belated case. He has cited the case of B.S. Sharma Vs. Union of India - AIR 1972 SC 295. But I find that that case is slightly different. We have to see on what basis the applicant had been found unfit to cross the efficiency bar.

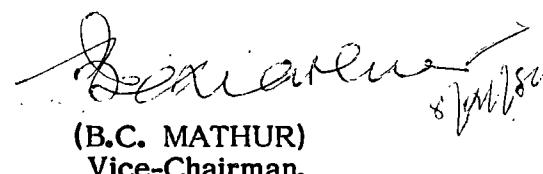
10. Clearly, the applicant was not eligible to cross the efficiency bar until he passed the departmental accounts examination. He passed this examination in August 1980 and, therefore, his case should have been considered on merit at that time. It appears, however, that his case was considered on 17.12.1982 and he was found unfit to cross the efficiency bar. This delay of

over two years cannot be explained or accepted. The Government instructions are very clear about the time when cases of efficiency bar should be considered every year. The efficiency bar is decided on the basis of character rolls. The reports of only two years are relevant as earlier he was in a lower post. In any case, since he was promoted two years earlier, his earlier record should be considered satisfactory. No adverse entries were communicated to him.

11. I have gone through the annual reports of the applicant. The reports are not 'good', but 'satisfactory'/'average' which are not considered adverse. It is quite obvious that the authorities would have been influenced by the fact that the applicant had been charge-sheeted on 11.6.1981 when they decided the case of the applicant for crossing the efficiency bar on 17.1.1982. Taking into consideration all the aspects, I feel that the orders declaring the applicant unfit to cross the efficiency bar should be quashed. Normally, the case should be remanded to the respondents for placing it before the appropriate committee for re-consideration in the light of the observations made by the Tribunal. But in <sup>view of the</sup> facts of the case, the applicant should be allowed to cross efficiency bar when he passed the departmental examination. It is also noted that the applicant belongs to Scheduled Caste and if the case is remanded, he would unnecessarily suffer for a long time as he was due to cross efficiency bar several years back. It is, therefore, directed that the applicant should be deemed to have crossed efficiency bar in August, 1980, when he had passed the departmental accounts examination, and his salary should be increased to Rs. 845.00 after crossing efficiency bar with effect from August, 1980 or exactly on the date on which he passed the accounts examination and given the next increment on the usual date of increment, i.e. 1.7.1981. The respondents are directed to calculate and <sup>fix</sup> his salary accordingly, giving him the benefit of all the arrears on the basis of these orders within a period of three months from the date of receipt of these orders. The applicant will not be entitled to get the efficiency bar crossed

*(Signature)*

with effect from 1.7.1979 to 1.7.1980, as prayed for and he will not get any advantage of higher salary as if his efficiency bar was crossed on 1.7.1979 to 1.7.1980. He would be deemed to get his salary at the rate of Rs. 845 in August, 1980 and Rs. 880.00 with effect from 1.7.1981. In the circumstances, the application is allowed partly. There will be no order as to costs.



8/11/80

(B.C. MATHUR)  
Vice-Chairman.