

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 224 198 6
T.A. No.

DATE OF DECISION 28.5.86

P.S. Varshnay **Petitioner**

Shri Umesh Mishra **Advocate for the Petitioner(s)**

Versus

Union of India & Others **Respondent**

Shri M.L. Verma **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGEMENT

The petitioner has come up under section 19 of the Administrative Tribunals Act, praying that the respondents should be directed to allow him to cross the Efficiency Bar and to give him the consequential benefits of releasing the

increments alongwith arrears and interest. The counter affidavit has not been filed despite directions. The learned counsel for respondents indicates that para-wise comments of the department have not been received by him. We have heard the arguments of the learned counsel for the petitioner and for the respondents with the following results.

2. It is admitted by the learned counsel for the petitioner that adverse remarks for the reporting year 1981-82 and 1982-83 were communicated to him on 11.5.82 and 12.5.83 respectively. He represented against the adverse remarks on 21.6.82 for the former year and on 18.6.83 against adverse entries for the year 1982-83. In spite of several reminders no decision has yet been taken on his representations. The Efficiency Bar fell due on 1.11.1984 and because of two adverse entries the petitioner suspects that he has not been allowed to cross the Efficiency Bar. He has thus lost two increments accruing on 1.11.84 and 1.11.85, whereas his representations have been pending since 1982 and 1983.

3. The learned counsel for the petitioner argues that even though the adverse remarks have been communicated to the petitioner, in view of the fact that he had represented against them and the representations are still pending, the adverse remarks cannot be operative in imposing the Efficiency Bar. If the argument of the learned counsel for petitioner is followed, it will mean that the petitioner will be allowed to cross the Efficiency Bar on 1.11.84 and if at a later stage, his representations now pending are rejected, he cannot be put under the Efficiency Bar again. The clearance of the Efficiency Bar being irreversible, allowing him to crosss Efficiency Bar on the basis of his ^{in effect} pending representation will render the Efficiency Bar infructuous.

4. Having said that, we must record our unhappiness about the manner in which the representations against adverse entries

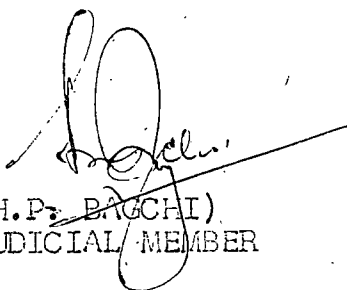
have been kept pending by the respondents. In accordance with the DG P & T's own instructions issued by his letter No 27478 DISC-I dated 19.4.78 " all representations against adverse remarks should be decided expeditiously by the competent authority, in any case, within three months from the date of submission of the representation " If these instructions had been followed in letter and spirit, the representations filed by the petitioner should have been disposed of by September, 1982 and September 1983 respectively and a clear decision could have been taken on the crossing of the Efficiency Bar on 1.11.84. Because of the unconscionable delay in the disposal of the representations, there has been avoidable and considerable distress and hardship caused to the petitioner.

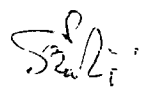
5. We were in these circumstances, inclined to allow the petition straightaway on this score alone, but keeping a balance between private right of the civil servant with the public interest in the running of the administration we hesitate to take that extreme step at this stage.

6. From the records, it is not clear whether the respondents have taken into account the confidential reports for the year 1983-84 for which period no adverse remarks seem to have been communicated to the petitioner. If there is no adverse remarks for that year, the petitioner's case merits sympathetic consideration. Further, in accordance with Government of India's decisions No. 2 below F.R. 25 in Choudhary's compilation of the Fundamental Rules and the Supplementary Rules (corrected upto Aug. 1985), 'the cases of all officers held up at an efficiency bar should be reviewed annually, with a view to determine whether quality of their work has improved and generally whether the defect for which they were stopped at the bar have been ^{remedied} ~~reduced~~ to an extent sufficient to warrant the removal of the bar'.

7. In the aforesaid facts and circumstances, we direct the respondents to decide on the two pending representations of the petitioner on adverse entries filed on 21.6.82 and 18.6.83 within one month of the passing of this order, failing which it should be presumed that the representations have been accepted. The question of the petitioner's crossing the Efficiency Bar with effect from 1.11.84 or any subsequent date as the respondent may decide on merits should be decided within two months from the passing of the order. The application is disposed of on these lines with liberty to the petitioner to come up again to the Tribunal or any other appropriate forum available in accordance with law if his grievance remains unheeded. There will be on order as to costs.

Judgement has been pronounced in the open court in the presence of learned counsel of both the parties. A copy of this order may be sent to Respondent (1) at the earliest.


(H.P. BAGCHI)
JUDICIAL MEMBER


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER