

(8) 8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1054 of 1986 **198**
T.A. No.

DATE OF DECISION 18.1.1988

Shri N.P. Aggarwal _____ **Petitioner**

Shri K.N.R. Pillai _____ **Advocate for the Petitioner(s)**

Versus

Union of India _____ **Respondent**

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

CORAM :

The Hon'ble Mr. B.C. MATHUR, VICE-CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

[Signature]
18/1/88

87A

Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. OA 1054 of 1986 Date of decision 18.1.1988

Shri N.P. Aggarwal Applicant

Vs.

Union of India Respondents

PRESENT

Shri K.N.R. Pillai ... Advocate for the applicant.

Shri M.L. Verma ... Advocate for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against various orders passed by the respondents declaring the applicant unfit to cross the Efficiency Bar on 1.1.80, 1.1.81, 2.1.82 and allowing him to cross the Efficiency Bar on 1.1.1983.

2. The applicant was appointed Assistant Engineer in the C.P.W.D. on 6.1.67 on promotion from the post of Junior Engineer. He has completed about 20 years of service in that grade. He was found fit to cross the first Efficiency Bar which fell due on 1.1.1975. Since then no adverse remarks have been communicated to him. His second E.B. fell due on 1.1.1980, but no action was taken by the Department in time to refer his case to the D.P.C. A time schedule issued by the Department of Personnel in their O.M. dated 12.10.76 prescribes that where E.B. falls due in January to March, the case should be considered by the DPC in January. As such, his case should have been considered in January, 1980. It has also been laid by the Department of Personnel that where the DPC is convened after a gap of time, the Committee should consider only those confidential reports which it should have considered had the DPC been held as per the prescribed time schedule. The last annual confidential report which should have been considered would

be one for the year ending 31.3.1979. When the DPC considered his case on 7.4.1981, it took into consideration reports for the subsequent periods as well.

3. According to the C.P.W.D. Manual, it is mandatory that adverse remarks in Confidential Reports should be communicated to the officers concerned. There is an additional provision in the Manual that not only are the adverse remarks to be communicated but fall in standards of performance should also be communicated so that an officer does not suffer in his service prospects without knowing about the deterioration. The Department of Personnel has also issued instructions that those who do not pull their weight should be denied further increments. The respondents never communicated any fall in the standards of his performance or his not pulling the weight to him. As such, it was understood that his Performance Appraisal Reports were good or satisfactory. However, it appears that he has been adjudged according to the guidelines issued by the Director General of Works, C.P.W.D., which prescribe that out of 5 years assessment, three years reports, including the last, should at least be good. The case of the applicant is that his work was at least fair and that he should be allowed to cross the Efficiency Bar. By denying three increments, the applicant has been put to a recurring loss of about Rs. 300/- p.m.

4. The applicant has cited the case of Shri V.K. Adlakha Vs. Union of India decided by the Tribunal in O.A. No. 106 of 1986 where the Tribunal held that denying the Efficiency Bar without communicating adverse remarks would be arbitrary.

5. The respondents in their reply have admitted the factual position indicated in the application, but have denied that action was not taken in time when the second E.B. fell due on 1.1.1980. The time gap between the due date and the date of consideration of the case was due to administrative reasons. The D.P.C. in this followed the guidelines laid down by the Efficiency Bar Committee which prescribe that 5 years CRs immediately preceding the due date of crossing E.B. are to be considered by the D.P.C. Of these,

three reports should be good, the other two being not less than fair. These guidelines reflect the spirit of the Department of Personnel's clarifications that consideration of E.B. cases should no longer be a routine matter and officers who do not pull their weight are not allowed to cross the Efficiency Bar.

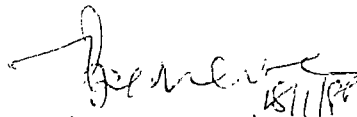
6. I have gone through the file where the case of the applicant for crossing the Efficiency Bar has been considered. No grounds have been given by the Members of the Committee for holding up the E.B. His representations have also been rejected without ^{that} giving any reasons. I find the reports of the officer for the years 1974-75 and 1975-76 were good. His report for the period 1976-77 was fair and for 1977-78 'Fairly good' and 'satisfactory'. His report for the period 29.5.78 to 31.3.79 was good and for the year 1979-80 average. Normally, guidelines prescribed for considering the cases of E.B. should be known to the officers and confidential guidelines should not overrule the guidelines published in the Manual. In the present case, however, I find that the confidential reports of the officer for the five years period preceding 1.1.1980, when the E.B. was due, have been good, except for the year 1976-77 for which there are two reports. Three reports are clearly good and one fairly good or satisfactory. These should also be treated as good. The only average report is for the period 1.4.79 to 31.3.80 which was signed by the Chief Engineer on 27.6.80. As such, this report should not have been considered by the Committee as it was not relevant to the period ending 1.1.80. The Committee obviously took this into consideration when it considered the case on 7.4.1981. Evidently, as the last report was not good, the applicant was not allowed to cross the Efficiency Bar according to the guidelines issued by the Director General, C.P.W.D. It is quite clear that the report for the year ending 31.3.1980 would not have been considered had the D.P.C. met on time. ^{Earlier reports are satisfactory} As such, the decision of the Efficiency Bar Committee rejecting the case of the applicant to cross the E.B. on 1.1.1980 is defective and liable to be

Ma

B2

11

quashed. Had the applicant crossed the Efficiency Bar on 1.1.1980, the question of subsequent consideration for crossing the Efficiency Bar on 1.1.81 or 2.1.82 would not have arisen. In view of the above, application is allowed. It is ordered that the applicant be allowed to cross the Efficiency Bar on the due date, namely, 1.1.1980 with all consequential benefits. There will be no order as to costs.


(B.C. Mathur)
Vice-Chairman