

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 106 1986
~~EX-106~~

DATE OF DECISION 8.7.86

Shri V.K. Adlakha Petitioner

Shri K.N.R. Pillai, 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 applicant who is working as Assistant Engineer (Electrical) in C.P.W.D. has come up to the Tribunal with this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order dated

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9.9.1981 declaring him unfit to cross the Efficiency Bar falling due on 1.2.1981, as also the order dated 9.2.1983 declaring him unfit to cross the same Bar with effect from 1.2.1982 may be quashed and the respondents directed to allow him to cross the Efficiency Bar from 1.2.1981.

2. The brief facts of the case which are not in dispute can be summarised as follows. The applicant was promoted as Assistant Engineer (Electrical) in the CPWD on 1.2.1975 and admittedly there has been no adverse remarks entered in his CR ever since then. He passed the departmental examination in 1977 but was not allowed to cross the Efficiency Bar falling due on 1.2.1981, by the impugned order of 9.9.1981. Even less than 1 1/2 months from that impugned order he was however on 19.10.1981 declared to have satisfactorily completed his probation as Assistant Engineer. Next year again his case was reviewed but he was not found fit for crossing the Efficiency Bar even on 1.2.1982. On 24.12.1982 he was warned to be more careful in future (Annexure R 1 to the counter affidavit) but within less than 3 months from that day on 9.2.1983 he was found fit for crossing the Efficiency Bar with effect from 1.2.1983. The main contention of the applicant is that since there was never any adverse remark communicated to him and since he has been doing commendably well as Assistant Engineer and was actually declared to have completed the probation period satisfactorily on 19.10.1981, the question of his being unfit for crossing Efficiency Bar on 1.2.1981 does

net arise. The respondents however aver that absence of adverse remarks in the CR is not relevant for allowing the petitioner to cross the Efficiency Bar and that he was warned by the Superintending Engineer on 24.12.1982.

3. We have heard the arguments of the learned counsel for both the parties and gone through the pleadings and documents very carefully. The preliminary objection raised by the learned counsel for the respondents that the Union of India has been wrongly impleaded through the Director General, CPWD instead of Secretary, Ministry of Urban Development is too technical to carry much weight as the applicant has impleaded the Union of India all the same. The other objection that the applicant has not exhausted all remedies is also not very convincing as the learned counsel for the respondents has conceded that the applicant had represented on 30.1.1982 and 7.5.1984 through the Superintending Engineer and further has not denied the letter (appended as Annexure XII to the application) from the Deputy Director of Administration of the CPWD in which the applicant was informed that his representation would not lie to the Secretary.

4. Coming now to the merits of the case, it is admitted by the respondents that there were no adverse remarks entered against the applicant since his promotion as Assistant Engineer on 1.2.1975 till date except that a warning to be more careful in future had been communicated to him on 24.12.1982. There is, therefore, no

ground whatsoever before us to accept that declaring the applicant as unfit for crossing the Efficiency Bar on 1.2.1981 was justified. If there had been any shortfall in his performance the respondents would have either entered this fact in his Character Roll or would have asked the applicant either orally or in writing to improve his performance indicating also the shortcomings. Since the respondents did not take either of these two measures it can reasonably presumed that no shortcoming in the work had been detected in the performance of the applicant.

5. On the other hand, admittedly the applicant was declared to have completed the probation period satisfactorily on 19.10.1981 i.e. within less than 1 1/2 months from the date he was found unfit to cross the Efficiency Bar. We cannot accept this position whereby an officer having been found unfit to cross the Efficiency Bar is still declared shortly thereafter to have completed the probation period successfully and inducted into the permanent service in the same grade in which he was not allowed to cross the Efficiency Bar. The criteria for permanent absorption on completion of probation period to our mind are as rigorous if not more, as those for allowing the official to cross the Efficiency Bar. In the circumstances we feel that completion of probationary period satisfactorily on 19.10.1981 is a proof positive that the applicant was good enough to cross the Efficiency Bar on 1.2.1981.

6. We are reassured in our approach about the applicant's case by the fact that his immediate superior officer i.e. the Supdt. Engineer while forwarding his representations of 8.5. 1984 and 5.12.84 observed as follows:-

"During his stint with me, his performance has been excellent and nothing adverse has come to my notice which may militate his chances of crossing the Efficiency Bar.

His case is strongly recommended for crossing the Efficiency Bar on the basis of length of service."

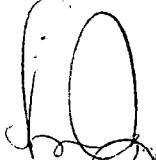
(Annexure X to the application)

"I have found the performance of Shri Adlakha as excellent in all respects.

His case regarding restoring the original date of Efficiency Bar is strongly recommended for favourable consideration by the competent authority."

(Annexure XI to the application)

7. In the facts and circumstances discussed above, we allow the application and quash the impugned orders dated 9.9.1981 and 9.2.1983 and direct that the applicant should be allowed to cross the Efficiency Bar with effect from 1.2.1981 with all consequential benefits. There will be no order as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER

8.7.86


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER