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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 217/87 198 7
T.A. No.

DATE OF DECISION 10.11.1987

Shri P.S. Varshny **Petitioner**

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

Versus

Union of India **Respondent**

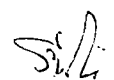
Shri M.L. Verma **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

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 ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*


(S.P. Mukerji)
Administrative Member

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Central Administrative Tribunal
Principal Bench, Delhi

Regn. No. OA-217/87

Date: 10.11.1987

Shri P.S. Varshny

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Applicant

Versus

Union of India

....

Respondents

For the Applicant

.... Shri Umesh Misra, Advocate

For the Respondents

.... Shri M.L. Verma, Advocate

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.

JUDGEMENT

The applicant, who is an Assistant Engineer in the Posts & Telegraphs Department, has prayed in this application under Section 19 of the Administrative Tribunals Act that the impugned order, dated 18.7.1986 rejecting his representations of 21.6.1982 and 18.6.1983 against adverse entries should be set aside and he should be allowed to cross the efficiency bar w.e.f. 1.11.1984. This application is a sequel to our judgement, dated 25.8.1986 in OA-224/86 which the applicant had filed earlier. The directions given to the respondents in the judgement are as follows:-

"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 21.6.1982 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 no order as to costs.

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

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2. The respondents, in compliance with the aforesaid judgement, considered the two representations dated 21.6.1982 and 18.6.1983 and rejected the same by the impugned order, dated 18.7.1986. Thereafter, the D.P.C. reviewed the case of the applicant for crossing of the Efficiency Bar and the respondents allowed him to cross the Efficiency Bar w.e.f. 1.11.1985 instead of the scheduled date of 1.11.1984.

3. The applicant's main contention in the instant application is that since the respondents disposed of the two pending representations on 18.7.1986, i.e., one month and 21 days after our judgement was delivered in the open court in the presence of the counsel for both the parties on 28.5.1986 whereas they were directed to dispose of these representations within a month from that date, The impugned order of rejection of the representations should be considered as non est. Arguing on this, the applicant has prayed that in accordance with our judgement, it should be presumed that his two representations against the adverse remarks had been accepted. He has also argued that for crossing the Efficiency Bar on 1.11.1984 only one year's remarks had to be seen and since there were no adverse remarks for 1983-84, he should have been allowed to cross the Efficiency Bar. On the merits of his representations the applicant in the rejoinder has argued that his representations were rejected arbitrarily.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is true that the respondents have delayed in disposing of the two representations in spite of our specific orders, dated 28.5.1986. In that judgement, we had taken exception to the delay in the disposal of the two representations dated 21.6.82 and 18.6.1983 against the adverse remarks which should have been disposed of in accordance with the instructions of DGP&T

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within three months from the dates of submission. We were inclined to allow the petition in that judgement but gave another opportunity to the respondents to dispose of the representations within a month of the passing of the order. The respondents have again defaulted.

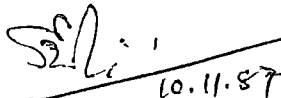
5. Insofar as the merits of the case are concerned, the impugned order, dated 18.7.1986 is a well-considered order and the applicant cannot take the plea that his representations had been rejected arbitrarily or summarily. The argument of the learned counsel that no specific instances of the lapses had been brought out in the adverse remarks, is not valid because the annual reports are based generally on the total performance of the employee and individual cases of lapse need not be mentioned in the adverse remarks. The impugned order in detail mentions the various memoranda dated 17.11.81, 9.11.81, 8.12.81, 8.1.1982 and 25.2.1982, according to which the various lapses were brought to the notice of the applicant and he was warned to improve his performance. The argument of the learned counsel for the applicant that he had responded to these memoranda but no decision had been given on his replies, cannot be accepted because the memos were informative and administrative and not punitive in nature. The learned counsel has also tried to indicate that his immediate superior officer, i.e., the Executive Engineer, Shri Gulshan Rai, was prejudiced against him and he entered the adverse remarks out of malice.

Apart from the fact that Shri Rai had not been impleaded as a party, the applicant has not taken this plea in his written pleadings. Accordingly, this plea cannot be accepted especially when the Reviewing Officer, i.e., the Superintending Engineer, had ~~had~~ accepted the reports of the Reporting Officer, Shri Gulshan Rai.

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6. The other argument of the learned counsel that the Reporting Officer should have maintained a memorandum of service cannot be accepted because in accordance with paragraph 174 of P & T Manual Vol.III, such memorandum of services is to be maintained only where the Reporting Officer is not the immediate superior officer. The learned counsel admits that in the instant case the applicant's immediate superior officer was also the Reporting Officer. As such, it was not necessary to maintain a memorandum of services.

7. In the facts and circumstances discussed above, though on merits the petitioner does not have a good case, considering the fact that the impugned order was delayed beyond one month reckoned from the date of our judgement, the applicant cannot be denied some benefit flowing from the aforesaid judgement. Accordingly, we allow the application in part only to the extent of directing that whereas the adverse remarks will be allowed to stand, the applicant should be allowed to cross the Efficiency Bar w.e.f. 1.5.1985 instead of 1.11.1985. There will be no order as to costs.


(S.P. Mukerji)
Administrative Member