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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 103 of 1987 198
T.A. No.

DATE OF DECISION 18.1.1988

Shri K.K. Sarna **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 ? *JS*
2. To be referred to the Reporter or not ? *JS*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *seen*

Banerjee
18.1.88

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Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. O.A. 103 of 1987 Date of decision 18.1.1988

Shri K.K. Sarna 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 the impugned orders No. 27/72(S)/79-ECIII dated 22.1.1986 declaring the applicant as unfit to cross the Efficiency Bar on 1.10.1985.

2. The brief facts of the case are that the applicant is an Assistant Engineer (Electrical) in the C.P.W.D. He was recruited as Junior Engineer on 1.2.1973 and was promoted as Assistant Engineer on 22.10.1979. During ^{his service} this period no adverse remarks were ever communicated to him. On the other hand, he was always given important assignments and since 1980 was looking after the running and maintenance of air-conditioners in prestigious Government buildings - work normally assigned to those Assistant Engineers in whom the Department has full confidence. In January, 1984, the Department passed an order declaring that he had completed the probationary period satisfactorily, but he was denied crossing of the Efficiency Bar due on 1.10.85. ^{As} The order was a non-speaking order giving no reasons, it became impossible to file an effective appeal.

3. According to Government of India's instructions issued by the Department of Personnel on 15.11.1975 (Annexure P-3) those who do not pull their weight are to be denied further increments. The instructions in the C.P.W.D. on crossing of Efficiency Bar

incorporated in Chapter V Section 6 of the CPWD Manual Vol.1 read as follows:

"No officer is allowed to cross 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 case of the applicant is that an officer whose work and conduct has been adjudged as satisfactory based on CRs cannot be held up at the Efficiency Bar unless it is found that he has not been pulling his weight. The Confidential Report Form of the CPWD (Annexure P-VI) categorises assessment in 6 categories, namely, Outstanding, Very Good, Good, Fair, Not Quite Good and Unsatisfactory. Of these the last two alone are considered as adverse. The CPWD Manual in Chapter V Section V para 13 contains an additional provision that not only are adverse remarks to be communicated, but fall in standards or performance should also be communicated so that an officer does not suffer in his service prospects without knowing about the deterioration. As the instructions of the Department of Personnel are that those who do not pull their weight should be denied further increments, the report of fall in the standard of performance as prescribed in the CPWD Manual will give an indication to the Departmental Promotion Committee as to who are to be held up at the Efficiency Bar stage. The applicant has stated that he came to know through a counter affidavit filed by Government in another case that the Director General of Works, C.P.W.D., had issued secret guidelines to the DPC laying down much higher standards than prescribed in the open instructions quoted in the CPWD Manual and the instructions given by the Department of Personnel. The Director General has issued guidelines according to which 5 years' Confidential Reports are to be taken into account and in at least three years, including the last year, the assessment should be "good". Such guidelines are usually applied in cases of

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promotion, but it would be irrational and arbitrary to apply these guidelines which are secret in nature and which are in conflict with the criteria prescribed by the Central Government through the Department of Personnel as well as through the C.P.W.D. Manual.

4. The respondents in their reply have stated that the petition is misconceived as the petitioner has not come with clean hands in seeking relief in as much as he has concealed the facts. According to the respondents, the petition is barred under Section 20 of the Administrative Tribunals Act as the petitioner has not exhausted all the remedies. The respondents, however, do not deny the factual position stated by the applicant. They also accept that no adverse remarks have ever been communicated to the applicant and that an average report is not treated as adverse report. They, however, maintain that the benefit of crossing of Efficiency Bar is not allowed in the case of persons who have average reports. There is a difference in the normal increment which is allowed on year to year basis and the increment which is allowed after crossing of Efficiency Bar under F.R. 25. Since the record of the applicant was not considered good enough, he was not allowed to cross the Efficiency Bar. According to the respondents, officers with fair/average reports are not allowed to cross the E.B. In that case the very purpose of E.B. would be defeated. They confirmed the guidelines that an officer should have three good reports and two ^{average} reports and the last report also should not be less than good. It has been stated that the guidelines adopted by the Department for the purpose of Efficiency Bar Committee are not arbitrary or violative of Articles 14 and 16 of the Constitution as these have been framed to have uniformity and to avoid any arbitrariness by the E.B. Committee.

5. The advocates on both sides have referred to the case of **Shri V.K. Adlakha Vs. Union of India - OA 106 of 1986** - decided by this Tribunal on 8.7.1986. In that case the orders denying Efficiency Bar to the applicant have been quashed and the applicant

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was allowed to cross Efficiency Bar on the due date with all consequential benefits. In that case, the Tribunal took the view that since the applicant had completed the probation period satisfactorily and within less than 1-1/2 months from the date he was found unfit to cross the Efficiency Bar, it was proof positive that he was good enough to cross the Efficiency Bar. In that case, the Tribunal had also mentioned that if there had been any shortfall in his performance, this should have been recorded in his CR or the applicant should have been asked in writing or orally to improve his performance.

6. I have gone through the file dealing with the report of the Efficiency Bar Committee as well as the annual assessment reports of the applicant. The DPC has not found the applicant fit to cross the Efficiency Bar but no reasons have been recorded. Prima facie, they have gone by the guidelines which require at least three out of 5 reports to be good, including the last entry. I find that the entries by the immediate superior of the applicant, namely, the Executive Engineer, are generally 'good' or even 'very good'. These have been toned down by the Reviewing Officer. The entries for the last five years ^{by the Reporting and Reviewing Officer} are as follows:

1. Very Good/Satisfactory.
2. Very hard working/Good.
3. Very Good/Fair.
4. Fair/Average.
5. Fair.

The last entry being 'fair' instead of 'good', the applicant would not qualify under the guidelines. ^{By issued by the DG, works} On the whole, the annual remarks in the character roll of the applicant are ^{not} satisfactory. The CPWD Manual definitely prescribed that Efficiency Bar should be stopped only if the work and conduct is adjudged unsatisfactory. The Manual also speaks about communication to the officer in case there is a fall in the standard so that the officer does not suffer in his service prospects without knowing the deterioration in his

work. Apparently, there has been some fall in his standards as from the satisfactory and good reports in the previous 4th and 5th years it had fallen to 'Fair'/'Average' and 'Fair' in the last two years and these should have been reported to the officer as prescribed in the Manual. It would not be correct to have confidential instructions on a policy matter when there are open instructions provided in the C.P.W.D. Manual.

7. While it is true that officers should not be allowed to cross Efficiency Bar in a routine way and they must be efficient, it is necessary to have clear instructions in the matter and these should be known to the officers concerned. I also accept that the criteria for judging suitability for promotion of an officer and completion of probation would not be the same as in the Efficiency Bar. However, the criteria should be known to the officers concerned. The overall performance of an officer must be seen to judge suitability of a person for allowing him to cross the Efficiency Bar.

8. As for Shri V.K. Adlekha who was given relief by this Tribunal in O.A. No. 106 of 1986, he had at least been given a warning to be more careful in future, but there has been no warning in the case of the applicant. On the other hand, there are some very good reports about him. Based on this assessment, I feel that the applicant deserves to be allowed to cross the Efficiency Bar on the due date. As such the impugned orders dated 22.1.1986 are quashed and the applicant is allowed to cross the Efficiency Bar with effect from 1.10.1985. He should also get all consequential benefits. There will be no orders as to costs.

B.C. Mathur
(B.C. Mathur) 13/1/88

Vice-Chairman