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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 1953/1990

DATE OF DECISION : 14.2.92

SHRI B.S. SHAMI

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI RAJEEV SHARMA

FOR THE RESPONDENTS

...SHRI J.H. CHHABRA,
EXECUTIVE ENGINEER,
DEPARTMENTAL REPRESENTATIVE

1. Whether Reporters of local papers may
be allowed to see the Judgement? *Ys*

2. To be referred to the Reporter or not? *Ys*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, UDC in CPWD is aggrieved by the adverse remarks in his ACR for the period from 7.5.1983 to 11.12.1983 dt. 8.5.1984, the representation against which was rejected by the order dt. 18.3.1987 (Annexure IV) and the appeal against the same was rejected by the Memo dt. 18.3.1987 and 11.9.1989 (Annexures- IV and VI respectively). The applicant has claimed the relief for expunging these adverse remarks and for a direction to the respondents to allow the applicant to cross the Efficiency Bar w.e.f. 1985 with all consequential benefits.

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2. The facts of the case are that the applicant belongs to reserved class and has joined as LDC in CPWD in February, 1956. He was promoted to the post of UDC in September, 1978 in the pay scale of Rs.330-10-380-EB-12-500-EM-15-560. The scale shows that there are two Efficiency Bars at the stage of Rs.380 and the second at the stage of Rs.500. The applicant duly crossed the EB at the stage of Rs.380. From 1.1.1986, the revised pay scales were introduced for UDC, i.e. Rs.1200-30-1560-EB-40-2040. There is only one EB in the revised scale of pay at Rs.1560. The applicant was given an adverse remark for the period from 7.5.1983 to 31.12.1983 (Annexure II), which was communicated to him by the D.O. letter dt. 8.5.1984. The adverse remarks read, "Frequently proceeded on leave and left work in arrears." The applicant made representation and the same was rejected by the Memo dt. 18.8.1987 informing the applicant that his representation was considered and that it was not possible to expunge the remarks. This representation was decided by the Superintending Engineer, CPWD. The Director General of Works rejected the appeal by the Memo dt. 11.9.1989 informing the applicant that his representation was considered by

the Directorate and his representation dt. 29.5.1989 cannot be acceded to. It appears that in the meantime, a DPC was held on 9.12.1985, i.e., before the new pay scales were introduced by the 4th Central Pay Commission and since there was an adverse remark against the applicant, he was not allowed to cross the EB. There is noting by the DPC vide Annexure-VI, filed by the respondents that in view of the ACR for the year 1982-83, Shri Shami is not considered fit to cross the EB at this stage. However, the subsequent DPC allowed the crossing of the EB w.e.f. 1.9.1986, i.e., after one year when it fell due. The applicant has challenged the adverse remark as well as the non crossing of the EB on the ground that his representation was not considered carefully and non speaking orders were passed, both on the representation by the Superintending Engineer and subsequently on appeal by the Directorate General of Works, CPWD.

3. The respondents contested the application and pointed out that the applicant proceeded on leave a number of times from May, 1983 to December, 1983 and he availed of 11 CL out of 12 within this period, as a result of which there was arrears falling due on the

desk of the applicant. It is said that the DPC, which met on 9.12.1985, on the basis of the ACR did not allow the EB to be crossed and so the pay of the applicant was fixed at the stage of Rs.500 and not at Rs.515 which would have been the natural consequence of crossing of EB on the due date. It is said that the remarks given to the applicant are based on the assessment of the work of the applicant by the reporting and reviewing officer and the representation of the applicant has been duly considered and also the appeal against the order rejecting the representation. After filing of the counter, by the respondents on 17.12.1990, none appeared for the respondents on the subsequent sitting of the Bench on 2.1.1991, 12.2.1991, 13.3.1991 and 1.5.1991. On 15.5.1991, Shri J.H. Chhabra, Executive Engineer, departmental representative appeared for the respondents, but subsequently none appeared for the parties on the date of hearing, i.e., 6.2.1992 and the matter was adjourned to 7.2.1992. On 7.2.1992, finally the matter came up for hearing and none appeared for either of the parties. The matter has been considered in the light of the pleadings of the parties. The nature of the adverse remarks given to the applicant shows that the applicant frequently proceeded on leave and left his work in arrears. The applicant has made a detailed

representation in which he stated that the leave applied for was duly sanctioned and that he was never told that the work was lying in arrears. The representation has been rejected in a very mechanical manner only with the words that, "It is not possible to expunge the remarks." Again the applicant appealed. He again asserted in the representation that he has only availed of the leave due and since the same was sanctioned, that cannot be made a part of the adverse remark.

Regarding the arrear falling due, it has been pointed out in the representation that the staff deputed for the clearance of arrears did not perform their duties and the applicant cannot be made to suffer on their account. The remarks to be given to an employee should be adjudged on the performance of work. When the applicant has already been sanctioned leave due to him, then that cannot be made a part of the adverse remark that the applicant frequently proceeded on leave. Even the Earned Leave from June, 1983 to December, 1983 of 15 days was sanctioned to him.

The respondents have also filed an extract showing the ground on which the leave was applied for and it does not show that the applicant has deliberately avoided work, but there was something which prevented him to attend the office and applied for leave. Even the

administrative orders should assign some reasons.

In the case of S.N. Mukerjee Vs. UOI, 1991 SCC (L&S) 242, it has been held that except in cases where the requirement has been dispensed with expressly or impliedly, the administrative authority exercising judicial or quasi judicial function is required to record diligence for its decision. Thus neither the Superintending Engineer nor the Directorate General of Public Works considered the representation in the right perspective and any order passed without any reasons, therefore, cannot be sustained in law.

4. Secondly, the DPC which met in December, 1985 should have considered the case of the applicant and since the representation of the applicant against the adverse remark was not decided by that time, the matter should have been kept in a sealed cover because it were the respondents who were at fault and the representation of the applicant was decided in 1987. Thus the consideration of adverse remarks by DPC of the relevant year 1982-83 is against the prescribed norms and the matter should have been kept in sealed cover to be opened when the representation of the applicant was disposed of. The DPC which met subsequently, considered the applicant fit to cross the EB w.e.f. 1.9.1986 when he had already earned three good remarks and since the remark was not expunged, so that remark was in the way

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of allowing the EB to be crossed at the stage of Rs.500 in the pre-revised scale.

5. When the adverse remark itself is vague and not supported by any evidence, whatsoever and when the leave which was due to the applicant had already been sanctioned and the applicant was never told during the relevant period that he has to clear off the arrears, so subsequently he cannot be condemned twice.

6. Thus there is no justified reason to given adverse remark to the applicant for the year 1982-83 and the adverse remark for the same year is ordered to be expunged, as a consequence thereof that the applicant is entitled to the crossing of the EB on the due date, i.e. 1.9.1985.

7. The application is allowed and the respondents are directed to expunge the adverse remark for the year 1982-83 and to allow the crossing of the EB in the prerevised scale at the stage of Rs.500 w.e.f. 1.9.1985 and fix the pay of the applicant in the revised pay scale. The respondents are directed to comply with the order within a period of three months from the date

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of receipt of this order. In the circumstances, the parties are left to bear their own costs.

AKS

J. P. Sharma
(J.P. SHARMA) 14.2.92
MEMBER (J)