

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 2229/90.

Date of decision 16-3-93

Shri S.P. Yadav ... Applicant

v/s

Union of India ... Respondents
and Others.

CORAM:

The Hon'ble Shri C.J. Roy, Member (Judicial)

For the applicant ... Shri D.S. Choudhary, counsel

For the respondents ... Shri M.L. Verma, counsel

(1) Whether Reporters of local papers may be allowed
to see the judgement ?

(2) To be referred to the Reporter or not ?

JUDGEMENT

Delivered by Hon'ble Shri C.J. Roy, Member (Judicial) 7

The application is filed by the applicant under Section
19 of the Administrative Tribunals Act, 1985 claiming the
following reliefs :-

(1) That the application be allowed and the criteria
laid down by the respondents that only those officers
be allowed to cross efficiency bar who are graded
at least "good" for five consecutive years be quashed
or in alternative the same be modified to the extent

that all the officers who are graded at least "fair" for five consecutive years be allowed to cross EB;

- (2) That C.R, folder of the applicant be called and perused by this Tribunal;
- (3) that the orders dated 3.1.1990 passed by the respondents be quashed and the applicant be allowed to cross EB w.e.f. 1.12.1985 and the arrears of his salary w.e.f. 10.1.1986 be paid to him.

This applicant was first appointed as Junior Engineer in 1973 and subsequently promoted to the post of Assistant Engineer in C.P.W.D. in the pre-revised scale of pay of Rs.650-30-710-35-810-EB-35-880-40-1000-EB-40-1200.

2. The applicant had qualified in the Accounts examination on 11.1.1986. The annual increment of the applicant fell due on 1st December every year. He received all the annual increment upto the stage of Rs. 810/- at which he had to cross EB. He has ^{not} got the efficiency bar and arrears after the annual increment w.e.f. 1.12.1985 to 10.1.1986. The applicant's case was considered by DPC for crossing the EB w.e.f. 1.12.1985. By letter dated 17.2.1987 he was informed that he was not found fit to cross the EB. But he preferred an appeal

on 22.4.1987 against the respondents and the appeal was rejected on 27.10.1987. The applicant was informed by letter dated 25.1.1988 that he was found unfit to cross EB at the stage of Rs. 810/- w.e.f. 1.12.1986. The applicant challenged this order by way of an appeal dated 7.3.1988.

3. The applicant filed O.A. 1743/88 in this Tribunal on 9.9.1988 and the same was allowed, as per his claim dated 17.10.1989. The respondents were directed to consider the case of the applicant afresh for crossing EB at the stage of Rs. 810/- w.e.f. 1.12.1985 without taking into account the departmental confidential guidelines. But he was informed by the respondents after the judgement by their letter dated 3.1.1990 that his overall CR entries for five consecutive years were fair. It is equivalent to only average and those officers whose entries for five consecutive years graded good, they are allowed to cross EB. The case of the applicant was rejected as the entries were below good. He also filed a contempt application and he claimed that he had a fresh cause of action on 3.1.1990 as he received departmental instructions. Hence, the fixation of norms for crossing the EB is questioned by him as stated in the proforma of ACR which is quoted below :-

" Because the proforma of C.R. enclosed herewith

provides explanation of the entries made in the

C.R. The entries are graded as A, B, C,D, E and

and F and are defined as follows :

A: Outstanding i.e. exceptionally effective;

B: Very good i.e. very effective but not positively outstanding;

C: Good i.e. quite effective;

D: Fair i.e. performs duty moderately well and without serious shortcomings;

E: Not quite adequate i.e. suffers from certain weaknesses which prevent his performances achieving the "fair" level; and

F: Unsatisfactory i.e. definitely not being able to perform his duties satisfactorily.

It is self evident from the definition of entries

that the entry "D" i.e. "Fair" cannot be treated

as a bar on crossing efficiency bar. The entry

"E" qualifies the entry "D". Entry "E" stipulates

that the individuals suffers from certain weaknesses which

prevent his performances achieving the "Fair"

level. Copy of the CR proforma is annexed."

Since the applicant got the grading as "Fair", according to

Third Pay Commission's recommendations, he should have been

allowed to cross the E.B. w.e.f. 1.12.1985. The applicant

claimed that he had not received any adverse remarks and cites

a case that if adverse remarks are not received, he should be allowed to cross the E.B. V.K. Adlakha V/s Union of India (O.A. No. 106/86) vide orders dated 8.7.1986. The applicant questioned the criteria and avers that it is too strict, harsh and contrary to the principles of natural justice, good conscience and equity, contrary to the judicial pronouncements and violative of Article 14 & 16 of the Constitution.

4. The respondents filed a counter stating that the applicant has no cause of action and that crossing of E.B. depends on the satisfaction of the competent authority; records have been fairly considered. The matter was seen by this Tribunal. They also say that it is barred by Section 20 and 21 of the Administrative Tribunals Act. They further state that CPWD Manual is intended to be used only for General Guidance and should not be based as an authority. The respondents state that the applicant has only right for consideration and not for promotion and the Tribunal cannot exercise the power of Appellate Powers over the decisions of the Competent Authority relating to the decisions of the Public Servant for promotion. The criteria fixed by the E.B. Committee is in line with the instructions/guidelines issued by the Government of India from time to time. The Government have accepted the following recommendations of the 3rd Pay Commission :-

" There should be a more effective application of Efficiency Bar than has been done hitherto. Measures should be taken to ensure that crossing of Efficiency Bar no longer a routine matter and that those who do not pull their weight are denied further increments".

5. The order dated 3.1.1990 of the Government does not give rise to the fresh cause of action as alleged by the respondents in their counter. They state that the E.B. can be allowed to be crossed only as under :-

- " (i) The officer should have passed the Departmental Examination in accounts prescribed for the purpose or;
- (ii) the officer should have crossed the age of 50 years and thus become eligible to be considered for exemption from passing the Departmental Exam in Accounts; and
- (iii) He should have good records of service i.e. at least he must have got 3 'Good' and 2 'average' reports during the preceding five years.

6. The respondents state that the case cited by the applicant in O.A. No. 108/86 was decided on different grounds and has no relevance in this case.

7. The applicant has also not exhausted all the remedies available to him. They further alleged that E.B. cases are not allowed on the basis of 'Fair' gradation of all the five years

CRs. The overall performance should be 'good' and two years as 'average'. If the officers with all along 'fair' grading are allowed to cross the EB, the sanctity of fixing a bar is lost. Hence they prefer dismissal of the petition.

8. I have heard the ^{Ld.} counsel for the applicant, Shri U.S. Choudhary and the Learned Counsel for the respondents, Shri M.L. Verma and perused the ACR records.

9. CCS CCA Rule 23 (v) says that stopping him at the efficiency bar is the time-scale of pay on the ground of his unfitness to cross the bar is one of the ground for preferring an appeal. These are subject to the provisions of rule 22 where a Government servant may prefer an appeal against all or any of the order i.e. stopping him at the EB in the time-scale of pay on the ground of his unfitness to cross the bar.

10. Here the applicant once filed an OA 1743/33 and the direction was given to consider and the respondents have considered the matter and rejected the case. The applicant had not preferred any appeal against the order passed by the officers rejecting his claim. Section 20 says that the Tribunal shall not ordinarily admit any case unless departmental remedies are exhausted. The applicant should have preferred an appeal but he has not preferred any appeal.

11. The other point now for consideration is whether criteria fixed for crossing E.B. is against natural justice and violates

Articles 14 and 16 of the Constitution. The criteria fixed by the Department is in consonance with the rules laid down for crossing the C.B.. The ACRs are written in the interest of efficiency of the service and to improve the performance of the officer and also to assess the potentialities for his future prospects and guidance for correcting any deficiency. Allowing the C.B. to be crossed is not a matter of routine but one should pull his weight. The crossing of C.B. is no longer a routine matter and those who do not pull their weight are denied future increments. The grading fixed 'outstanding', 'very good', 'good' are considered well for crossing the C.B. and 'fair' and 'satisfactory' are not considered to cross the C.B. The C.B. cases are not allowed on the basis of fair gradation of all the five years but overall performance should be good two years as average that means by fixing 3 years good and two years average. They are not exactly strict nor lenient. They are actually moderate. If the officer is all round getting the grading of 'fair' are allowed to cross the C.B. the fixing of norm for crossing CB has no meaning. It cannot be said that it is discriminatory because if this is done only for this applicant it could be discriminatory but basing on the same gradation of officers crossing the C.B. are considered. Hence, it is not discriminatory.

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The applicant has not established any malafides or arbitrariness against the respondents.

12. The applicant has filed an application with the same reliefs and he claims against the same reliefs on different grounds here by claiming that fixation of three years 'good' and two years 'fair' is arbitrary and discriminatory. This is neither strict nor lenient. It is not fixed for the applicant only. When it is applied to all the applicants, he cannot claim that it is discriminatory.

13. I have seen the ACRs of the applicant. Guidelines fixed for permitting an officer to cross E.B. are that there must be atleast three 'good' and two 'average' reports with cumulative effect with good performance during the last five years.

For ~~1.45~~ (70%) years the applicant got 'fair' and during the last year he earned 'good' report.

14. This Tribunal cannot take the role of Appellate Authority.

Besides, unless malafides are alleged or proved and proper application is not made out by the DPC in assessing the position, not

this Tribunal can interfere. ~~But~~ in the case of Shri P.N. Gandhi

vs. Union of India & Ors. A.T.R. 1989(2) CAT 32 it is held

that to cross the E.B. the entries in the CRs cannot be expunged

by the Tribunal unless malafides are established and it is well

settled that whenever the case of a public servant is considered

for clearing the E.B. it is for the competent authority to take

the entire record of service of the public servant into consideration. Further, if the records have been fairly considered by the Government, the Tribunal will not interfere with the decision of the Government. Allegations, malafides and arbitrariness are also to be established in order to interfere with the decision of the Government.

15. It is further held in the case of the Administrator of Dadra and Nagar Haveli versus H.P. Vohra 1 (1993)CSJ SG) 1137 by their Lordship that the Tribunal should not assume the role of the authorities empowered to decide the matter under the fundamental rules. It is for the authorities to decide and it is not for the Tribunal to take domain of the authority.

16. Following the above principles, guidelines laid down by the Government and seeing the facts and circumstances of this case and seeing that there are no grounds to interfere that the gradation fixed is arbitrary, malafide and violative of Articles 14 and 16 of the Constitution, it is seen that the application is bereft of merit and, therefore, dismissed with no order as to costs.

urby
(C.J. Roy)
Member (Judicial)