

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No. OA 2587/1992

Date of decision: 05.10.1993

Shri Krishanram Hariram

...Petitioner

Vs.

Union of India & Others

...Respondents

For the Petitioner

...Shri B.B. Raval, Counsel

For the Respondents

...Shri J.C. Madan, proxy counsel
for Shri P.H. Ramchandani, Sr. Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUDIYAL, ADMINISTRATIVE MEMBER

JUDGMENT

This O.A. was originally presented in the Ahmedabad Bench of this Tribunal on 03.12.1987. Under the orders dated 28.08.1992 passed by the Hon'ble Chairman it has been transferred to the Principal Bench.

2. The petitioner, an Officer Surveyor in the Directorate of Survey (Surveyor of India) is really aggrieved by certain adverse entries made in his Confidential Reports for the years 1970, 1972, 1973, 1974, 1975 and 1977. He is also aggrieved by the decision of the respondents that he should not be allowed to cross the Efficiency Bar. Initially, he sought the following reliefs:-

(i) To erase out adverse entries made in the Confidential Reports.

(ii) To permit him (the petitioner) to cross Efficiency Bar and to release yearly increments that have fallen due thereafter.

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26

(iii) To convene Departmental Promotion Committee to consider his case for promotion and if he is found fit, to give effect to the same from the date from which his juniors were promoted.

(iv) To assign meaningful work to him befitting the post held by him.

3. By an order dated 04.10.1991, the petitioner was permitted to amend relief (i) aforementioned. Accordingly, on 14.10.1991, the learned counsel appearing for the petitioner cut out the contents of relief (i) aforementioned and substituted the same : " to quash and set aside adverse entries made in Confidential Reports for years 1970, 1972, 1973, 1974, 1975 and 1977".

4. The averments, as material in this O.A. are these:

The petitioner was promoted as Officer Surveyor in 1970. He is a Scheduled Caste. He was appointed as Inquiry Officer to inquire into allegations against certain subordinates who were caste Hindus. He gave a report in 1972 which displeased his superiors. On 30.06.1978, disciplinary proceedings were instituted against him, the charge being that he made a false claim of House Rent Allowance (H.R.A.). Inadvertantly, a sum of Rs.45/- was drawn by the office towards the payment of HRA by the petitioner. The petitioner credited the said amount to the Government account. He was awarded a penalty of reduction of one stage in time scale of pay for a period of one year. On 1.6.1978 he was suspended. On 13.03.1979, a second departmental enquiry was instituted against him, on a charge of embezzlement. A penalty was inflicted upon him as a consequence of the said enquiry. He challenged the legality

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27

of the said order imposing the penalty by means of Special Civil Application No.5526 of 1984 in the High Court of Gujarat. The court quashed the order imposing the penalty and set aside the enquiry proceedings. The respondents have remained unsuccessful with the Letters-Patent appeal preferred by them in the High Court. On 19.08.1985, the Surveyor General reinstated him in service and on 16.11.1985 the same officer passed an order that the period of suspension and/or removal from service shall be treated as period spent on duty. The petitioner's attention was not drawn to the so-called inadequacies or defects on the basis of which adverse entries have been made in the Confidential Reports. Even the adverse entries were not communicated to the petitioner within the time prescribed. The representations made by the petitioner were not considered. On 21.06.1987 the petitioner made a representation in the form of appeal against the adverse entries. He also claimed therein annual increments which have not been released since 1.7.1976. This representation/appeal was addressed to the Secretary, Ministry of Science and Technology. On 1.9.1987, a letter was received from the Surveyor General of India informing the petitioner that for the first time his case for permitting him to cross the E.B. reached by him on 1.7.1976 at the stage of Rs.810/- was considered on 1.7.78, 1.7.79, 1.7.80, 1.7.81, 1.7.82, 1.7.83, 1.7.84 and 1.7.85 and on each occasion decision was taken that the petitioner shall not be allowed to cross the Efficiency Bar. The petitioner was not given a personal hearing before the said decision was taken. He thereafter made another representation which was rejected as per letter dated 30.11.1987 received by him.

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The adverse entries given to him were without any foundation. He was not considered for promotion to higher post by the DPC on account of the fact that he had not been allowed to cross the Efficiency Bar. Persons junior to him such as S/Shri Sevasingh Ramchandra, P.N. Sawney and many others were promoted on 25.05.1992. He had been illegally superseded. He made representations against his supersession beginning from 21.4.1986 and ending on 21.05.1987. Since his reinstatement on 19.08.1985, he has not been given any meaningful work befitting his post. In this connection, he made representations dated 24.10.1985 and 17.08.1987. Those representations have not been considered.

5. A reply has been filed on behalf of the respondents by Lt. Col. K.S. Khatri, Superintending Surveyor. The material averments are these:

The petitioner was not appointed as Inquiry Officer to enquire into the allegations against certain subordinates who were caste Hindus. It is denied that the petitioner's attention was not drawn on the so-called inadequacies or defects on the basis of which adverse entries have been made in the C.R. of the years 1970, 1972, 1973, 1974, 1975 and 1977. In each and every year he was informed regarding the adverse entries in the C.R. It is denied that while making adverse entries the superiors of the petitioner did not follow the prescribed procedure. It is denied that the representations made by the petitioner were not considered. The same were duly considered by the authority. It is incorrect to state that the representation dated 21.05.1987 of the petitioner

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appropriate authority. It is incorrect to state that the representation dated 23.01.1987 of the petitioner against the adverse remarks and claiming annual increments with effect from 1976 has remained undisposed of. The petitioner's case for crossing of Efficiency Bar on 1.7.76, 1.7.77, 1.7.78, 1.7.79, 1.7.80, 1.7.81, 1.7.82, 1.7.83, 1.7.84 and 1.7.85 was placed before the DPC but he was not found fit to cross the same on each of the occasion. He was accordingly informed that in September, 1987 and November, 1987 thereby disposing of his representation dated 14.10.1987, it is true that he made a representation on 14.10.1987 but the same was under consideration of the appropriate authority when this O.A. was presented. The petitioner's case for promotion to the higher grade of Superintending Surveyor was also considered by the DPC which was held on 18.1.1988 under the aegis of the Union Public Service Commission. However, the Committee did not find the petitioner fit for promotion. In the earlier meeting of the DPC held on 14-15 January, 1982, he was not found fit. It is denied that the adverse entries were entirely unfounded. "It is also denied that the petitioner not being permitted to cross the Efficiency Bar resulted in denial of the petitioner's case for promotion to higher post by the DPC, as alleged."

6. A rejoinder-affidavit has been filed on behalf of the petitioner. In it, substantially the averments made in the counter-affidavit have been denied and those made in the O.A. have been reiterated.

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7. Annexure A-3 to the O.A. is a communication dated 30.11.1987 of the Superintending Surveyor to the petitioner. In it, it is recited that the DPC had considered the case of the petitioner for crossing the E.B. with effect from 1.7.76 to 1.7.1977 but he was not found fit. For the period between 1.7.78 to 1.7.85 too, the DPC had considered the case for crossing of the E.B. but had not found the petitioner fit. The petitioner is informed that from 1.7.76 to 1.7.85 the DPC had found the petitioner unfit for crossing the E.B./ in the pay scale of Rs.810/-. The other annexures to the O.A. are, in main, true copies of the representations made by the petitioner from time to time to various authorities.

8. The first annexure to the counter-affidavit is a true copy of the communication dated 17.02.1988 of the Director (Admn. and Finance) for Surveyor General of India to the petitioner. This is with reference to the representation dated 21.05.1987 of the petitioner. It is stated therein that "your case for promotion to the post of Superintending Surveyor was reviewed but it is regretted that you were not found fit for the same."

9. Annexure-A to counter-affidavit is a communication dated 9.7.1991 of the Director Survey to the petitioner with respect to the Annual Confidential Report for the year 1970. In this communication, the adverse remarks given in the ACR for the year 1970 are mentioned as:

"He is poor in technical knowledge and ability. Should try hard to improve in these and also to develop a better sense of responsibility. A below average technical hand".

The petitioner is informed that if he so desires, he can

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21

make a representation against the adverse remarks.

10. Annexure-B to the counter-affidavit is a true copy of the representation dated 17.8.1971 of the petitioner to the Surveyor General of India against the adverse remarks for the year 1970.

11. Annexure-C to the counter-affidavit is a true copy of the communication dated 24.5.1972 of the Surveyor General of India to the petitioner informing him that his representation against the adverse remarks for the year 1970 has been considered and the same has been rejected.

12. Annexure-D to the counter-affidavit is another communication dated 10.12.1974 of the Surveyor General of India to the petitioner informing him that the remarks in his ACR for the year 1970 cannot be expunged.

13. Annexure-E to the counter-affidavit is a communication dated 14.05.1973 of the Director Survey to the petitioner informing him of the remarks contained in the ACR for the year 1972. The opening paragraph of the communication states that the adverse remarks for the year 1972 are:

"This officer has a very poor sense of discipline. He is in the habit of twisting facts and making allegations against officers placed above him and thus, his integrity is very poor. He openly defied written orders given to him by O.C. Party, by not proceeding to the field for field control work. His expression, written as well as verbal, is very poor. He is not fit for confirmation and not fit for promotion with his present attitude. His usefulness as a Class-II officer is doubtful".

The petitioner is informed that he can make a representation against the aforequoted remarks.

14. Annexure-F to the counter-affidavit is a communication dated 01.10.1974 of the Director Survey informing the petitioner of the Annual

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32

Confidential Report for the year 1973. The remarks are: " you do not move to the field inspite of the orders to do so and did very little work during most of the field season."

You have sent direct representation to the higher authorities. Your attitude was very illegal and not constructive."

The petitioner is advised that he can make a representation against the adverse remarks.

15. Annexure-G to the counter-affidavit is a true copy of the communication dated 19.04.1974 of the Director Survey with respect to the ACR for the year 1974. The remarks are:

" He expresses strong prejudices against the Administration. He should have more balanced, logical and constructive approach in his official dealings. Temperamental improvement as a Government servant is still necessary. He did not proceed for field duties inspite of issue of movement order. His tones in the writing of his applications should be better oriented."

The petitioner is advised to make a representation if he so likes.

16. Annexure-H to the counter-affidavit is a true copy of the representation of the petitioner to the Director General, Survey of General of India praying for the expunction of the adverse remarks for the years 1970, 1972, 1973 and 1974. This representation was made on 14.05.75.

17. Annexure-I to the counter-affidavit is a true copy of the communication dated 17.09.1975 of the Surveyor General of India. This communication is with reference to the representation made by the petitioner on 14.05.75. In substance, it is stated in the said communication that the representation made by the petitioner on 14.05.75 against the adverse remarks given to him for the year 1974 has been rejected.

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33

18. Annexure-J to the counter-affidavit is a true copy of the communication dated 17.02.1976 of the Director Survey to the petitioner informing him of the adverse remarks contained in the year 1975. The remarks are:

" He has failed to develop logical and constructive thinking to make effective contribution, as a Gazetted Officer; in conduct of Govt. work. He should learn to take criticism in correct perspective, instead of misconstruing the intentions. He would do better professionally, if he is careful in development of personnel with a view to get maximum out-turn consistent with accuracy and he ensures strict control of Govt. expenditure.

He suffers with a peculiar phobia; though well propriety in writing, in his petitions."

19. Annexure-K to the counter-affidavit is a true copy of the representation of the petitioner against the adverse remarks for the year 1975.

20. Annexure-L to the counter-affidavit is a true copy of the communication dated 09.07.1976 of the Surveyor General of India to Director Survey informing him that the representation of the petitioner against the ACR for the year 1975 has been rejected.

21. Annexure-M to the counter-affidavit is a true copy of the communication dated 24.10.1977 of the Director, North Western Circle to the petitioner informing him of the adverse remarks in the Annual Confidential Report for the year 1976. The remarks are:

"You continued to flout orders communicated many a times indicating poor sense of discipline. Your sense of responsibility is poor. Your capabilities for carrying out jobs allotted to you are below expectation. You do not take interest in your work and your behaviour with seniors and subordinates is not upto the mark".

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22. Annexure-N to the counter-affidavit is a true copy of the communication dated 01.06.1978 of the Director, North Western Circle to the petitioner informing him of the adverse remarks contained in the Annual Confidential Report for the year 1977. The remarks are:

" As Camp Officer your work was found deficient. You have tendency to flout orders, indulge in loose talks and instigate others. You are in the habit of alleging harassment, humiliation and torture and try to exploit your belonging to Scheduled Caste community to your advantage to brow beat and pressurise seniors and side track the real issues. Language in your communications is not in keeping with official propriety expected. You spend most of the time in religious sermons at the cost of Govt. work."

23. Another Annexure to the counter-affidavit is a true copy of the communication dated 17.02.1988 of the Surveyor General of India to the petitioner with respect to his representation regarding review of promotion to the grade of Superintending Surveyor also. This communication is in reply to the petitioner's representation dated 31.5.1987. It is stated in the communication that the case of the petitioner for promotion to the post of Superintending Surveyor was reviewed but it is regretted that he was not found fit for the same.

24. On 24.04.1988 the O.A. was admitted subject to limitation. Notice was issued to the respondents to file reply within 45 days on merit. On 28.02.1991, the said Bench observed:-

"In the circumstances of the case while the respondents have averred that the case of the petitioner for crossing E.B. was considered by several D.P.Cs. in several years and turned down, it becomes necessary to call for the DPC proceedings and C.Rs. of the petitioner pertaining to the years relied upon by the respondents. So direct, to be kept available for perusal. The case is adjourned until 25th March, 1991 for hearing".

On 4.10.1991, the said Bench allowed the application made by the petitioner for amending the relief (i) as initially

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claimed. The following order which is material was also passed:

" Heard shri S.V. Parmar, learned advocate for the applicant. During the course of arguments, it is found out that in order to decide all controversies between the parties, it is necessary for the respondents to produce the DPC minutes regarding the applicant for 1984 and subsequent to 1984. The decision by the DPC met in 1984, not allowing the applicant to cross the E.B. was based on the departmental inquiry findings against the applicant. But it is not in dispute that the said enquiry was quashed subsequently by the High Court of Gujarat on technical ground in the SCA/5526/84 and it is also not in dispute that the L.P.A. filed by the respondents against the judgment in S.C.A./5526/84 was rejected and subsequently the applicant is reinstated in service with full back wages. The matter is treated as part heard. The respondents seek 4 weeks time to produce the DPC minutes mentioned above. The matter than be listed for further hearing treating it as part heard before this Bench"

25. Under our directions, the respondents have placed before us the following:-

- (i) ACR folder containing CRs from 1958 to 1992.
- (ii) Folder containing original DPC proceedings for crossing of Efficiency Bar.
- (iii) Folder containing original DPC proceedings for promotion to the grade of Superintending Surveyor (Group 'A').

We shall examine the aforesaid documents in seriatim.

Regarding Item(i):

Since we are concerned with the remarks given in relation to the year 1970 onwards, we have not examined the ACRs from 1958 to 1969. We have examined the Annual Confidential Reports of the petitioner for the years 1970, 1972, 1973, 1974, 1975, 1976 and 1977 and we are satisfied that the remarks are based upon the opinion expressed by the officer concerned. We have not thought it necessary to examine the ACRs for the year subsequent to 1977 as they are not relevant for the purpose of deciding this O.A. This is so because the relief claimed is that the adverse remarks given in the year 1970, 1972, 1973, 1974, 1975, 1976 and 1977 may be quashed.

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36

Regarding Item (ii):

The file produced before us contains the D.P.C. proceedings. A review D.P.C. had found him ineligible to cross the Efficiency Bar during the period 1.7.1988 to 1.7.1985. An earlier D.P.C. found him unfit to cross the Efficiency Bar from 1.7.1976 to 1.7.1977. Another review D.P.C. was held in 1992 which again found him unfit to cross the Efficiency Bar from 1976 to 1985.

Regarding Item (iii):

The name of Shri Krishanram Hariram was not included in the panel for 1978, 1979 and 1982, for promotion to the vacancy of Superintending Surveyor, due to the reason that he was removed from service with effect from 6th January, 1981. On reinstatement, a review DPC was held on 8th January, 1988. This D.P.C. was presided over by Shri Jagdish Rajan, Member, Union Public Service Commission with four other members, including the Surveyor General of India. The following observations have been made in respect of the petitioner:

"Shri Krishanram Hariram was first considered for promotion to 20 vacancies of 1978 and on the basis of relevant records for the years 1973-77, the Committee assessed him 'not yet fit'.

Shri Krishanram Hariram was then considered for promotion against the 23 vacancies of 1979. Again on the basis of the relevant records for the years 1974-78, the officer was graded 'not yet fit'."

The case of Shri Krishanram Hariram for promotion to the grade of Superintending Surveyor was considered for the subsequent DPC meeting held on 27.09.1982. In that meeting, a panel of 8 officers for 1981 vacancies and another panel of 16 officers for 1982 vacancies, Krishanram Hariram was not recommended for promotion. Moreover, on the basis of records for the relevant years 1976-80

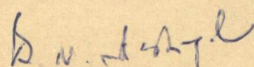
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
for the 1981 vacancies and 1977-81 for the 1982 vacancies, Shri Krishanram Hariram was again assessed 'not yet fit'. The Committee recommended that the name of Shri Krishanram Hariram cannot be included in any of the above panels recommended for promotion. The DPC meetings were again held on 13th to 15th of November, 1990 presided over by A. Padamnaban, Member, Union Public Service Commission as Chairman for 24 vacancies of the year 1986. The Committee assessed Shri Krishanram Hariram as 'not yet fit' for promotion. Another meeting of DPC was held on 11-12 of December, 1991 for considering 13 vacancies for 1990 and 18 vacancies for the year 1991. Under the heading 'assessment' it is shown that for both the years, the recommendations in respect of Shri Krishanram Hariram were kept in a sealed cover.

26. Having heard the arguments of the learned counsel for the parties and having gone through the records including the service-book and DPC proceedings, we find that duly constituted DPC had considered the case of the petitioner for promotion as well as crossing of the Efficiency Bar and had recorded their findings that he was not fit. This Tribunal would not like to interfere with the decisions of the duly constituted DPC that the petitioner is not fit to cross the Efficiency Bar. The adverse remarks were recorded by the competent authorities and the petitioner was given opportunity to represent against them.

27. As a result of the foregoing discussion, we hold that the petitioner is not entitled to the first three reliefs, as claimed by him. As regards the 4th relief, we understand that the petitioner has been superannuated in October, 1992. Therefore, the question of the respondents being directed to allocate him a meaningful work does not arise.

28. This O.A. fails and is dismissed but without any order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)
05.10.1993


(S.K. DHAON)
VICE CHAIRMAN
05.10.1993