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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3338/92

New Delhi this the 11th Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)

V.K. Wadhwa
S/o Sh. Hans Raj,
R/o C-1A/43C,
Janakpuri, New Delhi.

...Applicant

(By Advocate Sh. Mahesh Srivastava)

Versus

1. Union of India through
its Secretary, Ministry
of Urban Development,
Nirman Bhawan, New Delhi.
 2. The Director,
Directorate of Printing
Nirman Bhawan, New Delhi.
 3. Dy. Director (Admn.)
Directorate of Printing (B-Wing)
Nirman Bhawan, New Delhi.
- ...Respondents.

(By Advocate Shri M.L. Verma)

ORDER(ORAL)

The applicant is aggrieved by the Annexure A-6 office memorandum dated 28.11.91 which informs him that a DPC has considered his case for crossing the efficiency bar from 1.12.89 and that he was not found fit for it. He was also informed that, simultaneously, the DPC also examined the question of allowing him to cross the efficiency bar from 1.12.90 and 1.12.91, but, again the DPC has ruled that he was not fit to cross the efficiency bar. In this connection the applicant states that adverse remarks for the year 1987 were communicated to him by the Annexure 'B' memorandum dated 19.3.90 and on a representation made by him he was informed by the Annexure 'G' letter dated 12.2.91 that these remarks

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have been given with a view to develop him and are not adverse in nature. He was also informed that a copy of this letter would be kept in his C.R.

2. Adverse remarks for the year 1988 were communicated by the memorandum dated 4.9.91 (Annexure 'H'). He filed a representation on 17.10.91 (Annexure-I) but was informed by the OM dated 14.1.92 (Annexure J) that he could file the fresh representation within 30 days. Accordingly, the representation dated 13.2.92 was filed. It is stated that this has not been disposed of.

3. It is in these circumstances that the applicant has filed this OA, seeking the following reliefs:-

"Under the circumstances, it is, therefore, respectfully prayed that this Hon'ble Tribunal may kindly be pleased to set-aside the impugned order dated 28.11.91 filed herewith and marked as Annexure-Q with all its effects and further effects.

b) to set-aside the impugned order dated 19.3.90 & 4.9.91. Copy of which is filed herewith and marked as Annexure R&S.

c) Command the respondent to rectify the illegal debit of the earned leave of 39 & 35 days respectively."

4. The respondents have filed a reply, stating that in so far as the efficiency bar is concerned, the applicant ought to have filed an appeal, as provided in Rule 23 (v) of the CCS (CCA) Rules, 1965. He filed a representation on 1.12.92 to the

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Director of Printing in respect of Annexure 'A' OM dated 28.11.91. It was forwarded to the Secretary, Ministry of Urban Development, who is the appellate authority. That authority felt that the representation not addressed to him cannot be considered as an appeal. Accordingly, the applicant was informed by the Annexure R-1 OM dated 5.4.93. In para-2 thereof the applicant was advised that if he still wanted to prefer an appeal to the appellate authority he should address it to the Secretary, Ministry of Urban Development and such an appeal should be preferred under Rule 25 of the CCS (CCA) Rules, 1965 with full justification for not preferring the appeal within the time limit as required under the Rules.

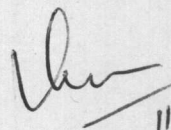
5. The learned counsel for the applicant submitted that the Annexure 'A' is not an order of the competent authority as the authority competent to declare him unfit to cross the efficiency bar is the Director of Printing. In this regard the respondents have admitted that in the order dated 28.11.91 it was not mentioned inadvertently that the Director of Printing had approved the recommendations of the DPC. However, if the applicant has any grievance on this account he could have filed an appeal to the appellate authority. The learned counsel for the respondents submitted that as the applicant has not exhausted the remedy open to him this OA is not maintainable.

6. I have heard the parties and perused the records. In so far as the relief in sub para (c) of para 8 is concerned, it is totally disconnected with the main prayers and, therefore, that relief cannot be considered in this OA.

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7. In so far as the relief sought against the order stopping him at the efficiency bar stage is concerned, it is clear that the departmental remedy was provided for, which has not been exhausted. The applicant was advised by the Annexure R-1 memorandum that he could file an appeal in accordance with law, giving full justification for not preferring the appeal in time. In the circumstances, I am of the view that this OA can be disposed of by stating that at present this OA is not maintainable, as the applicant has not exhausted his remedies under the CCS (CCA) Rules, 1965. It is open to him to file an appeal, as mentioned in para 2 of the Annexure R-1 memorandum and in case such an appeal is filed within one month from the date of receipt of this order the appellate authority shall dispose it of ^{in accordance with law} within a period of three months from the date of receipt. In such appeal, it is open to him to take all grounds which he has taken in this OA for quashing the order, stopping him from crossing the efficiency bar.

8. The O.A. is disposed of as above. No costs.


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(N.V. KRISHNAN)
Vice-Chairman(A)

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