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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 573/92.

Date of decision 4-3-93

Shri JEET SINGH ... Applicant

v/s

Union of India ... Respondents
and Others.

CORAM:

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

For the Applicant ... Shri K.L. Bhatia with
Shri O.P. Khakha, counsel.

For the Respts. ... Shri P.P. Khurana, 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 applicant was appointed as Lab. Attendant
in the National Museum on 11.1.1971. He was promoted
to the post of Lab. Assistant in October, 1981. He was
later appointed as preservation Assistant (Operator) later
re-designated as Jr. Technician on 25/29.7.1985. He is
holding this permanent post on regular basis. The appli-
cant further avers that his annual increment of crossing
the efficiency bar in the payscale of Rs. 950-20-1500
became due on 1.11.1990, but the same has not been released.

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He was not informed about the reasons for its with-holding. The applicant avers that he made representations on 27.2.1991, 3.4.1991 and 21.6.1991 but no reply has been received by him. Another increment became due to the applicamt on 1.11.1991 which has also not been allowed to him so far. The applicant further avers that he received the impugned order No. 2/1 (114)/38-NHHM/27685 dated 6.7.1991 communicating extracts of his confidential report for the year 1988 as under :-

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MEMORANDUM

Sub:- Adverse remarks in Confidential Report for the year 1988 - Communication of

Extracts from the Confidential Report of

Sh.Jeet Singh, Junier Technician for the year

ended 1988 are reproduced:-

<u>Period</u>	<u>Col.No.</u>	<u>Remarks</u>
1.1.88 to 31.12.88	16. Amenability to discipline	Indisciplined involved in a fight with a colleague.
	18. Relation ship with fellow employees	Bad relationship with fellow staff members,quarrels and fights.
	20. Has the Officer been reprimanded for indifferent work.	After he beat up Sh.Kalyan Singh he was warned to improve, but no improvement in attitude.

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2. In other respect Sh.Jeet Singh had been found to be average.

3. Sh.Jeet Singh, Junior Technician, is advised to improve his performance in his own interest, he may, if so desired, make a representation to the competent authority, i.e. DC(H) against the said adverse remarks within one month from the date of communication of these remarks.

These issues as per orders of Sr.D(M). His efficiency bar case is kept pending due adverse remarks in his ACR."

4. The applicant further avers that these remarks are totally casual and vague. The details of the incidents of fight with his colleague nor his name and concerned date and time have been mentioned. Other details of quarrel and fight are also not given and he denied that he was ever warned.

5. These adverse remarks were also communicated to him by respondent No. 2 on 1.8.1991 after a long delay of 2½ years which has denied him a reasonable opportunity to refute the so-called allegation. So he thinks that the ACR of 1988 has been revised in 1990-91 to by the biased officer particularly in reprisal and vindictive action to an application filed by the applicant (OA 2335/88) against the respondents for denial of promotion to the post of Technician. He further

asserts that the said appeal has been rejected vide impugned order in Memo. No. HC-3(3)/87-Vig/82, dated 25.11.1991 (Annexure II). It is a non-speaking order. He denies any quarrel with any staff member from 1.1.1988 to 31.12.1988 and nothing was pointed out to him about his performance. Hence, he filed the application under Section 19 of the Administrative Tribunals Act, 1985 praying the following reliefs :-

(i) That the respondents may be directed

to expunge the adverse remarks in CR

for the year 1988 contained in the im-

pugned memo. dated 6.7.1991 with all the

consequential benefits (Annexure I);

(ii) that the Memo. dated 25.11.1991 issued

by Respondent Nos. 2 as Appellate Authority

may be set aside;

(iii) that the applicant may be granted annual

increment w.e.f. 1.11.1990 and 1.11.1991

with arrears as may accrue after crossing

E.B.

6. He also narrates the procedure for maintenance of the ACRs, adverse remarks and that stoppage of his

increment without any disciplinary proceedings and not

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allowing him to cross his efficiency bar is not

proper on the part of the respondents. Hence,

this application.

7. The respondents filed a counter stating that

the annual increment of the applicant at the stage of

efficiency bar was due on 1.10.1990. The DPC did not

recommend the crossing of EB as the applicant's per-

formance was not found satisfactory based on adverse

ACR for 1988. They admit that he was informed on

6.7.1991 by a memo no. 2/1(114)/88-NHMM/27685 dated

6.7.1991. They denied that no reply was given to

the applicant's representation dt. 27.2.1991 and 3.4.91.

As a matter of fact, he was duly informed with reasons

for not crossing efficiency bar vide Memo. dated 6.7.91.

In the counter the respondents further alleges that

innumerable complaints against the indecent behaviour

and quarrelsome nature of the applicant both in his

official and personal relations with colleague in the

office premises as reported by the victim Shri Kalyan

Singh. He indulged in man-handling of Kalyan Singh vide

his complaint dated 12.11.1987. In spite of warnings,

the applicant showed no improvement and behaved in the

same manner. He even threatened his colleagues, supervisor,

head of the department with dire consequences which were

reported to the police.

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3. The respondents further state that the ACR for the year 1988 was duly reported on 16.2.1989 and reviewed on 18.2.1989 but the communication of adverse entries was delayed owing to the sudden demise of Shri P.K. Vashra, Administrative Officer under whose custody confidential records were lying and other administrative reasons. They denied that the ACR of 1988 of the applicant was revised in 1990-91. It was properly initiated by the Reporting Officer on 16.2.1989 and reviewed by the Reviewing Officer on 18.2.1989. They denied the allegation that the applicant was found to be indulging in indecent and quarrelsome behaviour with his colleagues and even seniors. The applicant's performance was duly assessed and reflected in the ACR for 1988 which are more or less of average type. The reporting officer had given various chances to the applicant to improve his indecent and quarrelsome nature. The applicant's performance was duly assessed and reflected in the ACRs of 1987-88 and 1989-90 which was found to be average in nature. The payment of honorarium has been made for specific type of duties the applicant was asked to perform. Hence, they averred that the applicant has

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been informed of the reasons of non-release of increment at the efficiency bar stage due to non-recommendation of his case by DPC. The applicant has been informed vide Memo, dated 6.7.1991. The case for grant of annual increment at the efficiency bar stage w.e.f. 1.10.1990 was duly considered by the DPC and was rejected but, however, they say that it can be reconsidered if the applicant improve his efficiency/work performance in future, as crossing of EB is based on the performance/good record of service. Grant of subsequent increment which fell due on 1.11.1991 will automatically be released once he was found suitable for crossing efficiency bar stage.

10. I have heard the Learned Counsel for the applicant, Shri K.L. Bhatia with Shri O.P. Khakha and the Learned Counsel for the respondents Shri P.P. Khurana and perused the adverse remark's file but not the ACRs of the applicant. The respondents have given only the Adverse Remarks File but not the ACRs of the applicant.

11. Under Section VI of Personal Matters Chapter 42 Efficiency Bar in Establishment and Administration Manual of Swamy's Compilation it is stated that it is ordinarily through efficiency bars that a practical discrimination between satisfactory and unsatisfactory workers can be made.

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12. Where an efficiency bar is prescribed in a time-scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increments under Rule 24 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may, by general or special order, authorise in this behalf. The crossing of efficiency bar is not a routine matter and that those who do not pull their weight are denied further increments. The above recommendations of the Third Pay Commission were accepted by the Government. In para 4 of the said Section it is also stated that at regular intervals, which may be prescribed by the administrative Ministry/Department concerned, each administrative Ministry/Department should review the position obtaining in that Ministry/Department regarding sanction of increments above the Efficiency Bar stage in order to see whether the authorities concerned are being objective and not either too lenient or too strict in enforcing the E.B. The denial of it is to be informed to the applicant. The cases of all officers, whose cases are held up at efficiency bar, should be reviewed annually. A right of

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appeal is also allowed on the efficiency bar. In the same Compilation in Chapter 43 - Confidential Reports it is stated that the CRs should be written by the officers who have actually seen the work for three months and the remarks should be communicated in time. This is necessary in order to make the applicant to improve himself. The warnings, reprimand, if recorded in ACRs affect the promotional aspects and form part of a stigma on the officer concerned.

13. The respondents have admitted that the applicant was not allowed to cross the efficiency bar because DPC did not find him fit for crossing the EB and a direction was given to produce the record. The respondents have only produced the adverse remarks file but not the ACRs of the applicant. I have perused the applicant's case as reflected in this file. The adverse remarks of the applicant are supposed to be with reference to the year 1.1.1988 to 31.12.1988.

14. On 12.11.1987 it is stated that a complaint was received from Shri Kalyan Singh, Lab. Assistant saying that he was beaten up by the applicant. It is signed by one Strijayatindra Jain but there is no complaint of Kalyan Singh enclosed herewith. The complaint though

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not enclosed speaks of Kalyan Singh beaten up by the applicant and the subsequent noting belonged to the year 1987, 2.1.1988, 21.1.1988 and 3.3.88. There are notings found that he has not improved despite warnings. There are some records belonging to 6.10.89, 18.12.89, 22.2.90 and November 25, 1991 but these remarks do not pertain to the concerned year i.e. 1988.

15. In the application Annexure A-I is the adverse remarks communicated to the applicant on 6th July, 1991. They are supposed to be communicated in time but due to the sudden demise of Shri P.K. Vohra, Administrative Officer and also due to administrative reasons, it could not be sent in time and it was sent 2½ years later and the applicant preferred an appeal and the appeal was also dismissed. In these remarks it is found that he was indulged in bad relationship with the fellow members after he had beaten up Shri Kalyan Singh and there was no improvement in his behaviour. Annexure A-II is the rejection letter of the appeal of the applicant by Deputy Director which is reproduced below :-

" Shri Jeet Singh, Technician is informed that

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his representation dated 1.3.1991 against

the adverse remarks communicated to him

from his ACR for the year 1988 was considered

by the Development Commissioner (Handicrafts)

and the same has been rejected."

16. Now The respondents have made available the character roll file ^{in this case} and the vigilance file. I have gone through

the same. There is no complaint filed by Shri Kalyan

Singh available on the file nor any details in this

regard have been given, nor any inquiry was held in

the character roll of 1988. It has been suddenly

found that these remarks have come up. The remarks

that are made in the ACR unless they are supported by

corroborative evidence it cannot be taken that how

these entries could have been made the basis on which

it is made. They have already observed that there is

only one remark in the vigilance file about Kalyan Singh

with reference to 14.11.1987 which does not pertain to

1.1.1988 to 31.12.1988

17. Besides it is also found in the counter that if

the behaviour of the applicant is improved releasing of

the efficiency bar w.e.f. 1.11.1991 will be considered.

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18. The awards received by the applicant as stated above have no concern with the main case nor the subsequent reports given by the respondents to the Police Department fearing danger from the applicant have no bearing on the case of the relevant period. The subsequent report to the police dated 14th June 1961 and subsequent letters to the police by the respondents also do not give me any indication that they belong to the concerned year.

19. Under the circumstances, I feel that the respondents have not made out any case to satisfy that the adverse remarks are made with a view to warn the applicant so that he can improve his performance in future.

20. Under the circumstances, I direct the respondents to constitute a fresh DPC and consider the case of the applicant for crossing the efficiency bar ~~and~~ in the light of the above observations ^{and} ~~and~~ pass orders as per the rules. This exercise may be completed within three months of the date of ^{the receipt of} ~~of~~ this judgement. There will be no order as to costs.

Letby
(C.J. Ray)
Member (Judicial)