

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.550 of 1993

New Delhi this the 1st day of November, 1993.

Hon'ble Mr B.N.Dhoundiyal, Member(A)

B.K.Sharma,
P/TR Gr.II, No.64,
AHS Party, Survey of India,
Pushpa Bhawan - New Delhi. Applicant.

By Advocate Shri A.K.Bhardwaj.

vs.

1. Union of India,
through: The Secretary,
Ministry of Science & Techonology,
Near Qutab Hotel, New Mehrauli Road,
New Delhi.
2. The Director Survey(Air),
R.K.Puram,
New Delhi.
3. The Surveyor General,
Survey of India,
Post Box No.37,
Dehradun(U.P.), India.
4. The officer surveyor,
O.C.No.64(AHS) Party,
A Block, Pushpa Bhawan,
New Delhi 110062. Respondents.

By Advocate Mr M.L.Verma, though none appeared.

ORDER (oral)

This O.A. has been filed by
Shri B.K.Sharma, P/TR Gr.II working in Survey
of India, New Delhi against the impugned order
dated 31st August, 1992, finally rejecting
his request for allowing him to cross the
Efficiency Bar w.e.f.1.1.1983. The impugned
order also refers to the decision of the
appellate authority intimated vide letter
dated 29.6.1992. I have gone through the
records and heard the learned counsel for the
applicant. Mr M.L.Verma, learned counsel/ for the respondent though
present in the pre-lunch session was not found

available in the premises when the case was called twice in the post-lunch session.

2. Basing himself on the reply given by the respondents, the learned counsel for the applicant argued that the D.P.C. should have considered the service record of the petitioner upto September, 1982 but they have taken into account a warning issued to him on 6.11.1982. He has also cited the judgment of Ernakulam Bench of this Tribunal in case of N.P.K. Unhikrishnan vs. Union of India and others, (1991)15 AT Cases 379 wherein it was held that even where the D.P.C. met later than the scheduled time, it could not take into account the A.C.Rs for the period beyond the period for which ACRs would have been considered had the D.P.C. met in time. He has also drawn the Court's attention to Swami's hand book which refers to the guide-line that:

"Cases of Government servants who are due to cross efficiency bar stage in a time-scale of pay are to be considered well in advance of the due dates, as per the time schedule prescribed, by a Departmental Promotion Committee on the basis of records of performance of the Government servants concerned upto the date available at the time of such consideration..."

On this basis, he argues that the D.P.C. should have met on 1-10-1982 and his report only upto that period should have been considered.

3. A counter has been filed by the respondents in which the main averments are these. The applicant was issued a warning on 6.11.1982 and the adverse remark was recorded in the A.C.Rs in the year 1982 and was communicated to him on 28.12.1982. He did not prefer any representation against the adverse remarks conveyed to him. They have claimed that the D.P.C. went through the

totality of his service records upto 31st December, 1982 and also adverse remarks in his A.C.Rs of 1982 and on this basis found him "unfit" to cross Efficiency Bar w.e.f.1.1.1983. Shri Sharma was not found fit to cross the Efficiency Bar from 1.1.1983 to 1.1.1986 by the D.P.C. keeping in view the upto-date totality of service records. A review D.P.C. was held on 6.7.1992 to consider all the cases, including that of the applicant, who were held up on their pre-revised scale of pay prior to 1.1.1986. This D.P.C. also did not find the applicant fit to cross the efficiency bar w.e.f.1.1.1983 to 1.1.1986.

4. Having gone through the records of the case and having heard the learned counsel for the applicant, I hold that the position taken by the respondents themselves in para(h) of their counter that only A.C.Rs upto September, 1982 were to be kept in view for consideration as on 1.1.1983 represents the correct view. However, from paras 1 and 2 of the counter, it appears that the D.P.C. had taken into account the warning issued to the applicant on 6.11.1982 also. The applicant also claims that the benefit of the provisions of the letter dated 7.1.1992 issued by the Ministry of Science and Technology may also be extended to him. The said provisions reads:

'in cases where the increment was due at efficiency bar stage on 1.1.1986, the increment may be released, without any review in the pre-revised scale and then the pay fixed in the revised scale under Central Civil Services(Revised Pay) Rules, 1989.'

5. In view of the aforesaid considerations, the application is accepted in part and is disposed of with the following directions:

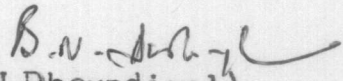
(i) a review D.P.C. shall be constituted

to examine whether the A.C.Rs of the applicant were correctly taken into account while taking a decision that he is not fit to cross the Efficiency Bar. If any adverse remarks subsequent to September, 1982 have been taken into account, the proceedings of the earlier D.P.C. shall stand vitiated and the review D.P.C. shall consider the decision again, ignoring any remarks entered in the A.C.Rs of the applicant after September, 1982; and

(ii) the benefit of the provisions of Department of Science and Technology letter dated 27.2.1992 shall be extended to the applicant if this has not already been done.

6. There will be no order as to costs.

1st Nov., 1993.
(sds)


(B.N.Dhoundiyal)
Member(A).