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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (O.A.) No. 496 of 1987

R.K. Dubey ..... Applicant

Versus

Development Commissioner, & others .. Respondents.

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Hon'ble Ajay Johri, A.M.

By this application filed under Section 19 of the Administrative Tribunals Act XIII of 1985 the applicant R.K. Dubey, has challenged the order dated 5.9.1986 passed by the Assistant Director (A&C) in the Office of the Development Commissioner (Handicrafts), Varanasi informing him that he was not found fit to cross the Efficiency Bar (EB), as conveyed by the Headquarters (HQ) Office letter of 25.8.1986 (enclosure '8' to the application).

2. The applicant's case is that his EB was due in February, 1983 and that his work all along has been satisfactory and that is why he was made incharge of the Centre since 15.2.1984 and now he is working as Centre Incharge of the Carpet Weaving Training Centre, Deoria. He had made written request for letting him ~~to~~ cross EB from the due date. By the impugned order he was advised that his EB was stopped. According to the applicant he was never charged nor any irregularity, slackness in duty etc. ~~8 & nothing was~~ reported against him and he was never asked to give any explanation. Therefore he was at a loss to know why he has been stopped at EB. Further inspite of having been

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put as Incharge of the Training Centre he has not been given the due salary and, therefore, he has been punished twice unnecessarily. He has, therefore, prayed for setting aside of the impugned order dated 5.9.1986 and also prayed for a direction to be issued to the respondents to allow him to cross EB and for payment of his arrears due to him as a result thereof, as also the pay differences in the salary of the Incharge for the Centre since 15.2.84.

4. I have heard the learned counsel for the parties. The submissions made by the learned counsel for the applicant were that though the applicant has not been advised of any adverse reports ~~or any~~ <sup>w and w no w</sup> other adverse comment regarding his working <sup>w has been made</sup> he has been intimated that his EB which was due in 1983 has not yet been released and this intimation was sent to him only in 1986. According to the learned counsel for the respondents the ~~pass~~ crossing of EB depends on the performance of an individual and since he has not been found suitable he was not

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allowed to cross EB. Nothing else was pressed before me.

5. I had sent for the Confidential Report Dossier of the applicant and the deliberations of the Departmental Promotion Committee (DPC) in which he was considered for crossing EB. From the deliberations of DPC it appears that large number of employees of the Carpet Weaving Training Centres in U.P. & Bihar were considered for crossing EB from various dates starting from 1982 to 1985, <sup>3/</sup> by a DPC which met on 6th & 8th November, 1985. <sup>3/</sup> All these cases were considered for cross ~~EB~~ at the stage of Rs.290/- in earstwhile scale of Rs.260-400. DPC had examined the service record, annual confidential reports and vigilance clearance of the employees who were considered by it. Against the applicant who was not considered suitable it was said that it was due to vigilance clearance/adverse remarks in their ACR/recommendations of their Controlling Officer, i.e. Deputy Director, Varanasi. Evidently, therefore, DPC had considered the relevant documents and the most important of things were the Confidential Report Dossier of the applicant.

6. In regard to stoppage at EB the question of eligibility has to be considered on the basis of records existing at the relevant time, i.e. when the occasion arose which in the case of the applicant was in 1983. It is also a laid down law that if any adverse entries had been made in CR and <sup>3/</sup> they are <sup>3/</sup> not ~~not~~ ~~not~~ conveyed or if <sup>3/</sup> they are ~~not~~ ~~not~~ conveyed and the employee has represented against it the representation has not been finally disposed of such CRs cannot be considered by DPC to

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arrive at an adverse decision against the employee. If there are adverse entries and the remarks are expunged the employee also comes to possess the right for reconsideration of his case for crossing of EB when it was actually due. F.R. 25 further lays down that unless there is a specific satisfaction of the authority EB cannot be removed and in such cases no right will stand violated.

Since the conclusion of the work ~~is~~ <sup>or being</sup> unsatisfactory has to be based on records as well as ~~of~~ <sup>or</sup> opinion of the superiors and since inefficiency is something that cannot be concretized what has to be seen is ~~of~~ <sup>or whether</sup> the relevant records <sup>or that</sup> have guided the deliberations of a particular DPC in arriving at the conclusion. From the deliberation of DPC it is evident that CRs of the applicant formed a major part of the documents on which DPC had relied as there is nothing else ~~as~~ <sup>or that</sup> has been brought to my notice or is available in the file dealing with the deliberations of DPC. CRs of the applicant for the periods 1980, 1981, 1982 and 1983 do not speak very happily about his performance but at the sametime there is no indication in the file that the adverse remarks made against column 11, i.e. 'proficiency in work', against column 12 <sup>or in</sup> ~~as~~ 'industry and keenness' and against columns 14 and 15, i.e. 'amenability to discipline' and 'punctuality in attendance' have been conveyed to the applicant and his representations against the same were considered.

In the absence of any such indication it is evident that these reports could not have been taken into consideration by DPC and, therefore, the deliberations, as far as the applicant is concerned, are liable to ~~be~~

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be quashed.

7. In conclusion, therefore, I quash the impugned order dated 5.9.1986. The respondents are directed to take suitable action to convey the adverse remarks <sup>3/5/86</sup> against the reports of 1980, 1981 and 1982 which will necessarily have to be considered while considering his case for crossing EB ~~de novo~~ by a Review DPC, after his representations against the same, if he makes them, have been considered, and assess him again and issue final orders regarding his fitness to cross EB. This exercise should be completed within a period of six months from the date of receipt of these orders.

8. The application is disposed of in the above terms. I make no order as to costs.

*3/5/86/OTC*

MEMBER (A).

Dated: September 30<sup>th</sup>, 1988.

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