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ORIGINAL APPLICATION No.226 of 1990.

Date of decision:- 2nd.September,1991.

Sarat Ch.Tripathy Applicant.

Versus,

Union of India & Ors. Respondents.

For the Applicant: M/s. P.V.Ramdas, & Co.
B.K.Panda, Advocates.

For the Respondents: Mr. Ganeswar Rath,
Addl. Standing Counsel (Central).

C O R A M :

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the Judgment ? *Yes*

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J U D G M E N T.

N. SENGUPTA: MEMBER (J).

The reliefs that the applicant has sought ^{are} for [^]expunction of adverse entries in his C.C.R. and for considering his case for crossing the Efficiency Bar with effect from 1.5.36.

2. The applicant has averred that he was an Accountant in the office of the Accountant General, (A & E), Bhubaneswar till upto 31.12.35. His normal date of annual increment was on 1.5.36. As an Accountant he was drawing his salary in the pay scale of Rs.425-15-500-EB-15-560-20-~~700~~-EB-22-300. Before his promotion to the grade of Senior Accountant he was drawing his pay of Rs.500/- in that scale of Rs.425 to 800/-, that was the scale of pay prescribed prior to the revision on the recommendation of the 4th Central Pay Commission. He was promoted as Senior Accountant on 1.1.36 and after the 4th Pay Commission report was accepted, he ^{opted} ~~obtained~~ to come over ^{to} ~~with~~ the revised pay ~~of~~ [^] scale with effect from 1.5.36. The authorities fixed his pay at Rs.1520/- on 1.5.36 and the date of next increment was on 1.5.37. This fixation was ~~done~~ on the ground that he (applicant) was not allowed to cross-
Efficiency Bar at the state of Rs.500/- in the pre-revised scale prescribed for Accountants and this was ~~shown~~ [^] because of some adverse entries in his Character Roll. The adverse remark for the period 1.4.35 to 31.3.36 was communicated to him on 1.5.37. Thereafter he made representation to the Deputy Accountant General (Funds)

M. E. 25.51.

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vide Annexure-2 on 8.6.37 which was rejected and the fact of this rejection was communicated to him by the Asst.Accountant General(Administration) by his letter dtd.16.11.37. After that, he made a further representation on 30.12.37 to the Accountant General and this was rejected, the order of rejection was communicated by a letter dtd.9.2.88(vide Annexure-4 to the application). Thereafter the applicant preferred an appeal to the ~~Comptroller~~ and Accountant General of India on 7.4.88, this appeal was also rejected and the fact ~~and~~ ^{of} rejection was communicated to the applicant on 12.6.89, vide Annexure-6 to the application. These are the main averments on which the applicant has prayed for the reliefs mentioned above.

3. The respondents in their reply have stated after the that/applicant made his representation dtd.8.6.37, ~~two~~ ^{of} ~~all~~ the adverse remarks were expunged and the rest four were allowed to remain, against those four remaining entries, the applicant made a further representation to the Accountant General(A & E) but the Accountant General found no reason insupport of the expunction of the remaining four adverse entreis. This representation was rejected so also his appeal against this order of rejection to the ~~Comptroller~~ and Accountant General of India. In their reply the respondents have stated that the applicant was due to cross his Efficiency Bar on 1.5.36, the confidential

*See Encl
2.9.91*

^{report}
~~of the court~~ for the year ending ^{on} 31.5.36 have to be considered for judging whether the applicant should be allowed to cross the Efficiency Bar. The D.P.C. ~~Further~~ considering the entry in the CCR for ~~that~~ period did not recommend the crossing of Efficiency Bar by the applicant. Even in the subsequent DPC the applicant was not found fit to cross the Efficiency Bar in view of the adverse entries made in his CCR. However, the applicant was promoted by an order dtd. 24.4.36 retrospectively with effect from 1.1.1936, vide Annexure-R/1. The Respondents have further averred that the entries in the CCR of the applicant for the year 1935-36 ~~stared~~ at his ~~face~~ and ~~show~~ so he could not be recommended by DPC for crossing ^{of} Efficiency Bar. The rest of the averments in the reply of the respondents need not be set out, in substance, the case of the respondents is that the applicant cannot be granted the reliefs that he has claimed.

See Encl 2.991.

4. Mr. Ramdas, learned counsel for the applicant has drawn my attention to the enclosure ~~to~~ Annexure-1. Annexure-1 bears the dt. 1.5.37 and the enclosure ~~is~~ to it is a part of the confidential report of the applicant for the period from 1st. April, 1935 to 31st. March, 1936. There is no dispute that in ordinary course the applicant ~~will~~ ^{would} have crossed the efficiency Bar on 1.5.36, admittedly when the crossing of Efficiency Bar fell due, the adverse remark was not communicated

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to the applicant. Mr. Ganeswar Rath appearing for the Respondents has ^{sought} ~~got~~ reliance on FR-25 to contend that Efficiency Bar cannot be crossed as a matter of course and a specific order of sanction of the Competent Authority is necessary. There cannot be any quarrel over the proposition that at the stage of Efficiency Bar, sanction of the authority empowered to hold increment ^{with} under the preceding rule or ~~the relevant~~ disciplinary rules, to be necessary. But the question remains, whether in the fact and circumstances of the present case can be respondents take the aid of F.R.-25. It has now been an accepted principle that whether ~~be it~~ for crossing Efficiency Bar or for promotion, neither of the two can be with-held when it falls due on the ground of adverse entry in the Character Roll unless the remark was communicated to the person concerned. In this regard a decision of Gujrat High Court in 1983(3) S.L.R.-9, in the case of P.C. Varsab-Versus- State of Gujrat may be referred to. The Bombay High Court went ~~still~~ further by saying that so long as the representation against the adverse ~~xxxx~~ remark was pending, efficiency Bar could not be held ^{up} on the basis of such adverse entries. These decisions of the Gujrat and Bombay High Courts have been impliedly ^{approved} ~~ratified~~ by the decision of the Supreme Court in AIR 1987 S.C., Page-1353. This being a position of law, I have no hesitation in saying ~~that~~

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as the crossing of efficiency Bar fell ~~due~~ due on a date ~~and the~~ anterior to the date of communication of the adverse entry, the adverse entry could not ~~have been acted upon~~ ^{- to withhold crossing of E.B. -} Mr. Ramdas's further argument is that after the applicant was promoted to the next higher rank, the adverse entry ~~was~~ lost ~~at~~ its value. Mr. Rath, has replied to this argument of Mr. Ramdas by saying that the applicant got the promotion not by any decision about his competence but under the scheme of one time bound promotion on completion of a Particular number of the years of services, therefore, the ordinary rule of promotion wiping out adverse entry will not apply. The order of promotion of the applicant and 14 ~~others~~ others issued on 24.4.86 is Annexure-R/1 to the reply of the respondents. On ~~reading~~ ^{- Deputy -} Annexure-R/1 it will appear that the senior ^{- Deputy -} Accountant General (Administration), Orissa promoted the fifteen Accountants in that Annexure to officiate as Senior Accountants with effect from 1.1.86 untill further orders but, however, the promotion was on ad-hoc basis and was subject to final decision of the cases subjudice ^{- the courts -} ~~in accordance~~ of law as well as those pending with the ~~comptroller~~ and Accountant General, India. ~~That~~ There is no case that there was any case against the applicant which was subjudice ^{- A -} on the court of law ^{- nor -} ~~none~~ its there any case that ^{- any -} ~~nothing~~ was pending before the ^{- Comptroller -} ~~Controller~~ and Accountant General, India

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29.11.

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with regard to the applicant on the date the promotion order was issued. Therefore, ~~the~~ reply of Mr. Rath ~~can~~ *ket*, the applicant was promoted solely on the ground of one time bound promotion ~~cannot~~ be accepted.

5. With regard to the prayer of the applicant concerning the adverse entry, all that Mr. Rama Das has been able to show ^{as} that on his representation, out of six adverse entries, two were expunged and four remained but the applicant has not ^{- placed -} ~~while~~ any material to show that the ^{- Substanting -} ~~substanting~~ four entries were without any basis. This question of the direction of expunging of adverse remark has become academic in view of what has been stated in the earlier part of this Judgment with regard to the crossing of the efficiency Bar.

6. The applicant succeeds so far as relief no.1 i.e. allowing him to cross the efficiency bar with effect from due date is concerned and as a consequence thereof, he is entitled to have his pay as senior Accountant re-fixed on that basis i.e. he must be deemed to have crossed the efficiency bar in the grade of Accountant with effect from the due date. The case is disposed of accordingly. There is no order as to costs.



Central Administrative Tribunal
Cuttack Bench, Cuttack.
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Member (Judicial) 2.9.91.