

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 543/89
XXXXXX

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DATE OF DECISION 13.8.1990

NP Kunhikrishnan

Applicant (s)

Mr P Ramakrishnan

Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)
Secretary to Govt. of India
Ministry of Agriculture, New Delhi
and 2 others.

Mr P Jacob Varghese

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Shri NV Krishnan, Administrative Member.

The applicant is a Senior Technical Assistant in the Central Marine Fisheries Research Institute, CMFRI for short, Cochin. His grievance is that though he is due to cross the Efficiency Bar at the stage of Rs 500/- in the pay scale of Rs 425-700 w.e.f. 1.10.80, he was not permitted to do so by the respondents.

2 The brief facts of the case are as follows:

2.1 The applicant was informed by the Senior Administrative Officer in the Establishment of Respondent-3 by the Office Order dated 16.4.81 (Annexure-I) that he has not been permitted to cross the Efficiency Bar by the DPC.

2.2 His representation dated 1.5.81 and 16.7.81

against Annexure-I order were respectively rejected by the Annexure II and III orders.

2.3 He then approached the High Court of Kerala and he was directed to file a representation to the Secretary, Ministry of Agriculture which he did on 10.9.86. The applicant was informed by the Annexure-IV and Annexure VA memoranda that his representation dt.10.9.86 had been forwarded to the Respondent-2 and that they have rejected the same on the ground that no injustice has been caused or irregularity done in not allowing him to cross the efficiency bar from 1st October, 1980.

2.4 The applicant has, therefore, prayed to quash and VA Annexures I to IV and to direct the respondents to permit him to cross the efficiency bar w.e.f. 1.10.80.

3 The respondents have submitted a reply stating that the applicant is not entitled to any relief. His case for crossing the efficiency bar on the due date i.e., 1.10.80 was considered by a properly constituted DPC on 29.1.81. The DPC decided to ~~re~~consider the case at its next meeting when the Annual Confidential Character Report of the applicant for the year 1980 would also have become available. Accordingly, the DPC met again on 7.4.81 when the ACRs for 1980 became available and considered his case taking into account the records of his performance upto-date as per the prescribed procedure and recommended that he should

not be allowed to cross the efficiency bar from 1.10.80.

4 The applicant has filed a rejoinder pointing out that according to the instructions then prevailing, the DPC should have met in July, 80 to consider the cases of all employees who were due to cross the efficiency bar in the months of August to October and that for this purpose they need have considered his CR upto 31.12.79. Instead, the Committee met later in April, 81. The learned counsel submitted that in that event^u the Committee should consider only those CRs which it would have considered had the DPC been held as per the prescribed schedule".

His, therefore, contended that the consideration of the CR for the year 1980 was totally irregular and for this reason~~s~~ the impugned orders should be quashed.

5 Even though~~s~~ the applicant came to know about these matters from the counter affidavit of the respondents, he did not, however ~~not~~^u amend his application to impugne the DPC proceedings of 7.4.81, which was vital in the circumstance of the case.

6 After hearing the arguments we felt that the respondents were entitled to reject the representations against the Annexure-I order on the ground that that order was passed on the recommendations of the DPC which was not assailed by the applicant on any particular ground. But, from the reply of the respondents a question arises whether the DPC was correct in taking into account

the CR of 1980, though according to the applicant this ought not have been done. In other words, the applicant alleges that the DPC has contravened a mandatory rule and has done injustice to him and that therefore, this question should be examined by us even though he has not impugned the DPC proceedings.

7. We are satisfied that this contention of the learned counsel for the applicant deserves consideration. We are of the view that where a mandatory rule of procedure is violated, the interests of justice requires that the matter should be got reconsidered. Therefore, we proceed to examine the validity of this contention.

8. The counsel of respondents submitted that the DPC had only followed the procedure laid down by the standing instructions of the Government as has been stated in the counter affidavit. It is stated in para-3 of the counter that the crossing of efficiency bar in the time scales of pay by the government servants is not a routine matter and should be considered in accordance with the procedure prescribed by the Deptt. of Personnel and Administrative Reforms OM dated 15.11.75 and 4.9.84. Accordingly, the case of the applicant was considered in accordance with these procedures. Obviously, the respondents had committed a mistake in following a procedure laid down by the OM dt.4.9.84, because that procedure, whatever it be, could not have been applied to a case where the crossing of efficiency bar w.e.f. 1.10.80 was being considered on 7.4.81.

9 The learned counsel for the respondents drew our attention to the instructions re-produced in Swamy's Manual on Establishment and Administration for Central Government Service, a 1987 publication. Chapter-42 of the compilation deals with efficiency bar. There is an OM dt. 18.10.76 of the Department of Personnel ^{Complete} which lays down a time schedule for considering the case of efficiency bar. Such cases are to be considered in the months of January, April, July and October and the cases to be considered are those where the efficiency bar is to be crossed respectively in the months of January to March, April to July, August to October and November and December. It is laid down therein that in respect of cases where efficiency bar becomes due during the months of August to December, it would not be necessary to obtain special reports as a matter of course for the incomplete portion of the year for which regular CRs are not yet due. In other words, if the case relates to crossing of efficiency bar in October, 80 the meeting should be held in the month of July and only the CRs pertaining upto 1979 should be considered as the reports for the year 1980 was still not due.

10 Swamy's compilation also gives extracts of the instructions contained in the Department of Personnel at page 412 OM dt. 15.11.75 and the OM dt. 4.9.84. ^{U combined} It is not clear which instructions were issued on 15.11.75 and on 4.9.84.

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This was not also clarified by the respondents.

Nevertheless, it is seen that there is an instruction which states that in the event of the DPC being convened after a gap of time following the date on which the government servant became due to cross the efficiency bar, the Committee should consider only those CRs which it would have considered had the DPC meeting been held as per the prescribed schedule.

This is the situation in the present case. The contentions of the learned counsel for the applicant is fully substantiated by this provision.

11 However, the learned counsel for the respondents submitted that there were a number of complaints against the applicant in the beginning of 1980 and these formed the basis the recommendations of the DPC. He also contended that the DPC is entitled to consider this record because the instructions dt. 15.11.75 and 4.9.84 stated that efficiency bar cases should be considered on the basis of " records of performance upto-date" available at the time of such considerations. We are unable to agree with this contention that in the context in which the expression " records ^{of} performance" is used, it refers to any record other than the ACRs. That this is the only meaning that can be conveyed by the expression is evident from the fact that the instructions further state that if such reports (i.e. ACRs) are not prescribed for any category of government servants on account of the nature of their work, the department may

consider the introduction of written test and or trade test for this purpose. These tests are in lieu of the ACRs. It is thus clear that the ACR, if prescribed to be maintained, is alone to be considered when examining whether an official should be allowed to cross the efficiency bar.

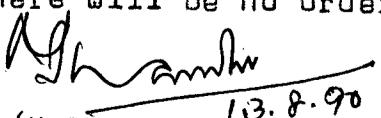
12 In this view of the matter we are satisfied that the DPC had adopted a procedure which is totally against the provisions of the relevant departmental instructions and was pre-judicial to the interests of the applicant. Hence, this application deserves to be allowed and we do so with the following directions:

(i) The impugned orders Annexure -I, II, III, IV and VA are quashed.

(ii) The respondent-3 is directed to convene a DPC meeting to consider the eligibility of the applicant to cross the efficiency bar w.e.f. the due date (1.10.80) and direct the DPC to undertake this task in accordance with the provisions of law, keeping in view of the observations made by us in the preceding paragraphs.

(iii) In case the DPC finds that the applicant is not fit to cross the efficiency bar w.e.f. the date i.e., 1.10.80, they may also be directed by the 3rd respondent to conduct the further periodical review in accordance with law, to examine whether the applicant was fit to cross the efficiency bar on any succeeding anniversary of the due date.

13 With these observations, the application is disposed of and there will be no order as to costs.


(N Dharmadan)
13.8.90
Judicial Member


(NV Krishnan)
13/8/90
Administrative Member
13-8-1990