

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 19-2-1990

Present

Hon'ble Shri S.P.Mukerji, Vice Chairman
&
Hon'ble Shri A.V.Haridasan, Judicial Member

Original Application No.237/89

K Krishnan Nair - Applicant

Versus

1. Assistant Administrative
Officer, Estt. Section,
VSSC, Trivandrum-22.
2. Head PGA, VSSC,
Trivandrum-22.
3. Chairman,
Department of Space,
F Block, Kaveri Bhavan,
Dist. Office Road,
Bangalore-9. -

Respondents

M/s GP Mohanachandran,
KR Haridas,
Lal C Aruvickel & -
SK Vijayasankar

Counsel for the
applicant

Mr K Prabhakaran, ACGSC -

Counsel for the
respondents

O_R_D_E_R

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 20.4.1989, the applicant
Vikram Sarabhai Space Centre
who has been working as Tradesman F in the (V.S.S.C.) at
Trivandrum has prayed that the impugned orders not
permitting him to cross the Efficiency Bar should be
set aside and the respondents may be directed to permit
him to cross the Efficiency Bar with effect from 1.1.1987
and allow him the incremental arrears. He has also prayed
that the respondents be directed to grant him confirmation

in any of the cadres in which he has been working, taking into account his continuous regular service with effect from 12.7.1968. The brief facts of the case are as follows.

2. The applicant entered service in the V.S.S.C. on 12.7.1968 as a Tradesman B and has^{been} holding the present post of Tradesman F with effect from 31.3.1979. It is admitted that the Efficiency Bar in the scale/^{of} Tradesman F fell due on 1.1.1987. He has not^{been} allowed to cross the Efficiency Bar till now. His representations have borne no fruit. The applicant was informed on 26.9.1988 that his representation dated 1.8.1988 addressed to the Chairman was rejected. His grievance is that his case has not received fair consideration at the hands of the Departmental Committee. He had not been awarded any punishment or charge sheet when his case was considered for crossing the E.B. on 1.1.1987. He has also made a grievance that in spite of putting in 20 years of continuous service, he has not yet been confirmed. According to the respondents, his case was considered for crossing the E.B. as on 1.1.1987 but he was not found fit for crossing the E.B.,^{and} as he was informed on 7.5.1987. His case was considered by the duly constituted D.P.C. and on the basis of the recommendations of that Committee he was stopped at the Efficiency Bar. His

representation was rejected after taking into account all relevant factors. The respondents have denied any discrimination. His case of confirmation according to them, was also considered by the D.P.C. in 5 consecutive years from 1975 to 1979 but he was not found fit for confirmation. A Special Committee reviewed his case in 1977 but the Special Committee did not find ^{him} suitable for confirmation. They have rebutted the argument of the applicant that he had not been given an opportunity before the E.B. was imposed on him, by stating that stopping of increments at the E.B. does not amount to a penalty in accordance with the Classification, Control and Appeal Rules applicable to the employees of the Centre.

3. We have heard the arguments of the learned counsel on either side and have also perused the documents produced carefully.

4. The learned counsel for the respondents was good enough to place before us the Confidential Report dossiers of the applicant as also the minutes of the D.P.C.'s right from 1.4.1975 which considered applicant's case of confirmation as also minutes of the D.P.C.'s from 6.2.1987 which considered his case of crossing of the E.B. We have also gone through the Confidential Reports ^{on} of the applicant. We find that right from 1974 onwards there have been recorded a number of quite damaging adverse

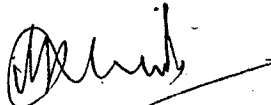
remarks by the Reporting Officers which have not been communicated to the applicant. The first communication of adverse remarks was in respect of the year 1987 which was communicated to him on 1.3.1988. The learned counsel for the respondents indicated that some disciplinary proceedings were initiated against the applicant and charge sheet were served on him on 25.10.1988. He further conceded that as on 1.1.1987 when the applicant has crossed the E.B. as also on 6.2.1987 when the D.P.C. met to consider the applicant's case of crossing the E.B., no disciplinary proceedings or charge sheet was pending against the applicant.

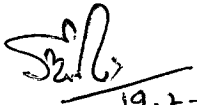
5. It is now established law that uncommunicated adverse remarks cannot be taken into account for crossing of E.B.^{or} for promotion or premature retirement. The latest celebrated decision^{to this effect} of Supreme Court is available in Brijmohan Singh Chopra V. State of Punjab reported in 1987(2) SLR 55. This Tribunal also in J.P.Kumawat V. Union of India and others reported in SLJ 1987(1), page 1 observed that the D.P.C. finding is vitiated, if uncommunicated adverse remarks are considered. Since it is clear to us that a number of damaging adverse remarks have been allowed to stand and considered by the D.P.C. either for confirmation^{were} or crossing of E.B. when these remarks have^{not} not been communicated to the applicant and no opportunity was given to him to

represent against adverse remarks, we find that the recommendations of the D.P.C. rejecting him for confirmation or crossing the E.B. as on 1.1.1987 are vitiated.

6. In the conspectus of facts and circumstances we allow the application to the extent of directing the respondents that a Special Review D.P.C. should be constituted excluding those who had recorded any adverse remarks against the applicant and as far as possible excluding those who participated in the D.P.C. meetings which had rejected him for crossing of Efficiency Bar or for confirmation. The Special Review D.P.C. should consider the applicant for confirmation and crossing of Efficiency Bar for consecutive years for 1975 onwards for confirmation and as on 1.1.87 and 1.1.88 for crossing of Efficiency Bar. While considering the confidential reports the uncommunicated adverse reports should be totally excluded by the D.P.C. In case the D.P.C. does not find him fit for crossing the Efficiency Bar on 1.1.87 and 1.1.88 they should consider him for crossing of Efficiency Bar on 1.1.89 and 1.1.90^{and} to keep the recommendations in a sealed cover to be opened after the disciplinary proceedings which were initiated on 25.10.88 are completed. The question of confirmation or crossing of Efficiency Bar in a subsequent year will

arise only if he is not found fit during the preceding relevant year. Action on the above lines should be completed within a period of three months from the date of communication of this order as the applicant is retiring in February, 1991. The application is disposed of as above without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


19.2.90
(S.P. MUKERJI)
VICE CHAIRMAN

19-2-90

trs