

XO

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Circuit Bench at Lucknow

Registration O.A. No.118 of 1988 (L)

Ashwani Kumar Applicant

Versus

Chief Engineer, Northern Zone,
C.P.W.D., East Block, R.K.Puram,
New Delhi & Another. Opposite Parties.

Hon.Justice Kamleshwar Nath, V.C.

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for issue of an order to quash an order dated 27.8.87, Annexure-6 where the applicant's representation against refusal to permit him to cross the Efficiency Bar with effect from 1.2.83 was rejected. There is also a prayer for a direction to the opposite parties to allow the applicant to cross the Efficiency Bar with effect from 1.2.83.

2. The applicant was a Junior Engineer in the scale of Rs. 425-15-500-EB-15-560...700 and was due to cross Efficiency Bar at the stage of Rs.500/- with effect from 1.2.83. A Departmental Promotion Committee met on 15.6.83 and did not find him fit to cross the Efficiency Bar and remarked that the applicant's case would be reconsidered on receipt of the Special Confidential Report for the year ending 31.12.83 (vide order dated 21.6.83, Annexure-CA.1).

3. On receipt of the Character Roll entries lateron upto period ending December, 1983, the Departmental Promotion Committee which met on 30.11.84 found the applicant fit to cross the Efficiency Bar with effect from 1.2.84, communicated to the applicant by letter dated 3.1.1985.

4. On 1.7.85 the applicant made a representation against the bar which had been imposed against him. The representation was forwarded by letter dated 19.8.85 (Annexure-CA.2) to the Chief Engineer. The representation was rejected by the competent authority and the rejection was communicated to the applicant by letter dated 27.8.87(Annexure-CA.3). This application was filed on 19.9.88. The case taken by the applicant is that his work and conduct has always been found satisfactory and no adverse entry was ever communicated to him. It is further said that by order dated 5.1.83, the applicant was confirmed on the post of Junior Engineer with effect from 1.4.81 and therefore he should also have been allowed to cross the Efficiency Bar with effect from 1.2.83. It is lastly said that the order dated 27.8.87, Annexure-6 (= Annexure-CA.3) by which the applicant's representation was rejected, is a non speaking order.

5. In the Counter Affidavit, it is mentioned that the case for crossing the Efficiency Bar was considered in accordance with the decisions of the Govt. of India set out under Fundamental Rule 25 and that the Departmental Promotion Committee had arrived at a bonafide decision that the applicant was not fit to cross the Efficiency Bar with effect from 1.2.83. It is further said that the order dated 5.1.83 confirming the applicant as Junior Engineer was effective from 1.4.81 and the relevant material for that purpose related to the period prior to 1.4.81. During the subsequent period, the applicant's performance was only average and therefore on a consideration of

the service record, the Departmental Promotion Committee was justified in coming to the conclusion that the applicant was not fit to cross the Efficiency Bar with effect from 1.2.83. It is lastly said that the order rejecting the representation is not in exercise of appellate jurisdiction nor by way of punishment and therefore the requirement of a speaking order did not apply.

6. I have been taken through the Affidavits exchanged between the parties as well as the Annexures.

7. At page 121 of Swamy's Compilation of F.R.S.R. Part-I General Rules, 9th Edn., a decision of the Govt. of India in O.M. No.29014/2/75 dated 15.11.75 and another dated 4.9.84 of the Personnel Department is set out which says that the cases of government servants for crossing Efficiency Bar should be considered on the basis of the records of performance upto date available at the time of such consideration. At page 120 of the same publication, the Govt. of India's acceptance of the recommendation No.37 of the Third Central Pay Commission is mentioned where it has been said that there should be a more effective application of Efficiency Bar than had been done earlier and that measures ought to be taken to ensure that crossing the Efficiency Bar is no longer a routine matter and that those who do not pull their weight are denied further increments. It stands to reason, therefore, that when the applicant's case for crossing the Efficiency Bar was considered by the Departmental Promotion Committee on 15.6.83, the applicant's performance till the period ending 1.2.83 had to be scrutinised. The abstract of the applicant's record

set out at the bottom of Annexure-CA.2 indicates that whereas during the period from 1.4.77 to 31.3.80, the applicant's performance was assessed to be either 'Good' or 'Very Good', the performance during the period from 1.4.80 to 31.12.82 was assessed to be Fair/Average/Just Average. The applicant seems to have rallied later on when the performance for the period from 1.1.83 to 31.3.84 was assessed as 'Very Good'. This material on the face of it indicates that there was a ~~decline~~ ^{detenor-} in the performance of the applicant during the period from 1.4.80 to 31.12.82. Since the date of crossing the Efficiency Bar fell on 1.2.83, the Departmental Promotion Committee was quite justified in coming to the conclusion that the applicant was not fit to cross the Efficiency Bar. Indeed, when it met again on 30.11.84 and had the record for the period ending December, 1983 before it, it allowed the applicant to cross the Efficiency Bar. The case of the applicant, therefore, that for reason of his having been confirmed with effect from 1.4.81 by an order dated 5.1.83, he should also have been allowed to cross the Efficiency Bar, is not valid.

8. It is true that no adverse entry was communicated to the applicant for the period in question; indeed, there was nothing adverse to be communicated. But it is not enough, for the purposes of crossing the Efficiency Bar, that the performance of an employee is found to be Fair/Average/Just Average, which the applicant has described as 'satisfactory'. There is a clear ^{distinction} ~~difference~~ between earning the routine annual increments in a scale of pay, and the crossing of Efficiency Bar at a specified stage in

the scale. The performance which is satisfactory is good enough to justify grant of annual increment, but is not enough in itself to allow the Efficiency Bar to be crossed.

9. The challenge to the order dated 27.8.87, rejecting the representation on the ground that it is a non-speaking order, is misconceived. The order is only a communication of the decision taken by the competent authority and it simply says that the matter had been examined by the competent authority. If the applicant was in any doubt about the application of mind of the competent authority, he might have required the record to be produced. What is more important is that the order is not by way of punishment as contemplated by the Central Civil Services(CC&A) Rules, 1965. Further, there is material on the record referred to above which could justify a bonafide assessment by the Departmental Promotion Committee that the applicant was not fit to cross the Efficiency Bar on the due date. On a cumulative effect of all these features of the case, it is not possible to hold that the impugned order suffers from any illegality ^{string} on the ground of not ~~set~~ ^{string} out the reasons therefor.

10. These are all the points in this case and therefore the case must fail.

11. The application is dismissed. Parties shall bear their costs.


Vice Chairman

Dated the 1st September, 1989.

RKM

ANNEXURE - A

CAT

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow
Opp. Residency, Gandhi Bhawan, Lucknow

INDEX SHEET

CAUSE TITLE 1971 of 1971

NAME OF THE PARTIES _____

Yashwant Singh Applicant

Versus

State of Uttar Pradesh Respondent

Part A, B & C

Sl. No.	Description of documents	PAGE
1	Memorandum	1 to 22
2	Order Book	23 to 26
3	Order Book	27 to 30
4	Order Book	31 to 34
5	Order Book	35 to 38
6	Order Book	39 to 42
7	Order Book	43 to 46
8	Order Book	47 to 50
9	Order Book	51 to 54
10	Order Book	55 to 58
11	Order Book	59 to 62
12	Order Book	63 to 66
13	Order Book	67 to 70
14	Order Book	71 to 74
15	Order Book	75 to 78
16	Order Book	79 to 82
17	Order Book	83 to 86
18	Order Book	87 to 90
19	Order Book	91 to 94
20	Order Book	95 to 98
21	Order Book	99 to 102
22	Order Book	103 to 106
23	Order Book	107 to 110
24	Order Book	111 to 114
25	Order Book	115 to 118
26	Order Book	119 to 122
27	Order Book	123 to 126
28	Order Book	127 to 130
29	Order Book	131 to 134
30	Order Book	135 to 138
31	Order Book	139 to 142
32	Order Book	143 to 146
33	Order Book	147 to 150
34	Order Book	151 to 154
35	Order Book	155 to 158
36	Order Book	159 to 162
37	Order Book	163 to 166
38	Order Book	167 to 170
39	Order Book	171 to 174
40	Order Book	175 to 178
41	Order Book	179 to 182
42	Order Book	183 to 186
43	Order Book	187 to 190
44	Order Book	191 to 194
45	Order Book	195 to 198
46	Order Book	199 to 202
47	Order Book	203 to 206
48	Order Book	207 to 210
49	Order Book	211 to 214
50	Order Book	215 to 218
51	Order Book	219 to 222
52	Order Book	223 to 226
53	Order Book	227 to 230
54	Order Book	231 to 234
55	Order Book	235 to 238
56	Order Book	239 to 242
57	Order Book	243 to 246
58	Order Book	247 to 250
59	Order Book	251 to 254
60	Order Book	255 to 258
61	Order Book	259 to 262
62	Order Book	263 to 266
63	Order Book	267 to 270
64	Order Book	271 to 274
65	Order Book	275 to 278
66	Order Book	279 to 282
67	Order Book	283 to 286
68	Order Book	287 to 290
69	Order Book	291 to 294
70	Order Book	295 to 298
71	Order Book	299 to 302
72	Order Book	303 to 306
73	Order Book	307 to 310
74	Order Book	311 to 314
75	Order Book	315 to 318
76	Order Book	319 to 322
77	Order Book	323 to 326
78	Order Book	327 to 330
79	Order Book	331 to 334
80	Order Book	335 to 338
81	Order Book	339 to 342
82	Order Book	343 to 346
83	Order Book	347 to 350
84	Order Book	351 to 354
85	Order Book	355 to 358
86	Order Book	359 to 362
87	Order Book	363 to 366
88	Order Book	367 to 370
89	Order Book	371 to 374
90	Order Book	375 to 378
91	Order Book	379 to 382
92	Order Book	383 to 386
93	Order Book	387 to 390
94	Order Book	391 to 394
95	Order Book	395 to 398
96	Order Book	399 to 402
97	Order Book	403 to 406
98	Order Book	407 to 410
99	Order Book	411 to 414
100	Order Book	415 to 418
101	Order Book	419 to 422
102	Order Book	423 to 426
103	Order Book	427 to 430
104	Order Book	431 to 434
105	Order Book	435 to 438
106	Order Book	439 to 442
107	Order Book	443 to 446
108	Order Book	447 to 450
109	Order Book	451 to 454
110	Order Book	455 to 458
111	Order Book	459 to 462
112	Order Book	463 to 466
113	Order Book	467 to 470
114	Order Book	471 to 474
115	Order Book	475 to 478
116	Order Book	479 to 482
117	Order Book	483 to 486
118	Order Book	487 to 490
119	Order Book	491 to 494
120	Order Book	495 to 498
121	Order Book	499 to 502
122	Order Book	503 to 506
123	Order Book	507 to 510
124	Order Book	511 to 514
125	Order Book	515 to 518
126	Order Book	519 to 522
127	Order Book	523 to 526
128	Order Book	527 to 530
129	Order Book	531 to 534
130	Order Book	535 to 538
131	Order Book	539 to 542
132	Order Book	543 to 546
133	Order Book	547 to 550
134	Order Book	551 to 554
135	Order Book	555 to 558
136	Order Book	559 to 562
137	Order Book	563 to 566
138	Order Book	567 to 570
139	Order Book	571 to 574
140	Order Book	575 to 578
141	Order Book	579 to 582
142	Order Book	583 to 586
143	Order Book	587 to 590
144	Order Book	591 to 594
145	Order Book	595 to 598
146	Order Book	599 to 602
147	Order Book	603 to 606
148	Order Book	607 to 610
149	Order Book	611 to 614
150	Order Book	615 to 618
151	Order Book	619 to 622
152	Order Book	623 to 626
153	Order Book	627 to 630
154	Order Book	631 to 634
155	Order Book	635 to 638
156	Order Book	639 to 642
157	Order Book	643 to 646
158	Order Book	647 to 650
159	Order Book	651 to 654
160	Order Book	655 to 658
161	Order Book	659 to 662
162	Order Book	663 to 666
163	Order Book	667 to 670
164	Order Book	671 to 674
165	Order Book	675 to 678
166	Order Book	679 to 682
167	Order Book	683 to 686
168	Order Book	687 to 690
169	Order Book	691 to 694
170	Order Book	695 to 698
171	Order Book	699 to 702
172	Order Book	703 to 706
173	Order Book	707 to 710
174	Order Book	711 to 714
175	Order Book	715 to 718
176	Order Book	719 to 722
177	Order Book	723 to 726
178	Order Book	727 to 730
179	Order Book	731 to 734
180	Order Book	735 to 738
181	Order Book	739 to 742
182	Order Book	743 to 746
183	Order Book	747 to 750
184	Order Book	751 to 754
185	Order Book	755 to 758
186	Order Book	759 to 762
187	Order Book	763 to 766
188	Order Book	767 to 770
189	Order Book	771 to 774
190	Order Book	775 to 778
191	Order Book	779 to 782
192	Order Book	783 to 786
193	Order Book	787 to 790
194	Order Book	791 to 794
195	Order Book	795 to 798
196	Order Book	799 to 802
197	Order Book	803 to 806
198	Order Book	807 to 810
199	Order Book	811 to 814
200	Order Book	815 to 818
201	Order Book	819 to 822
202	Order Book	823 to 826
203	Order Book	827 to 830
204	Order Book	831 to 834
205	Order Book	835 to 838
206	Order Book	839 to 842
207	Order Book	843 to 846
208	Order Book	847 to 850
209	Order Book	851 to 854
210	Order Book	855 to 858
211	Order Book	859 to 862
212	Order Book	863 to 866
213	Order Book	867 to 870
214	Order Book	871 to 874
215	Order Book	875 to 878
216	Order Book	879 to 882
217	Order Book	883 to 886
218	Order Book	887 to 890
219	Order Book	891 to 894
220	Order Book	895 to 898
221	Order Book	899 to 902
222	Order Book	903 to 906
223	Order Book	907 to 910
224	Order Book	911 to 914
225	Order Book	915 to 918
226	Order Book	919 to 922
227	Order Book	923 to 926
228	Order Book	927 to 930
229	Order Book	931 to 934
230	Order Book	935 to 938
231	Order Book	939 to 942
232	Order Book	943 to 946
233	Order Book	947 to 950
234	Order Book	951 to 954
235	Order Book	955 to 958
236	Order Book	959 to 962
237	Order Book	963 to 966
238	Order Book	967 to 970
239	Order Book	971 to 974
240	Order Book	975 to 978
241	Order Book	979 to 982
242	Order Book	983 to 986
243	Order Book	987 to 990
244	Order Book	991 to 994
245	Order Book	995 to 998
246	Order Book	999 to 1002
247	Order Book	1003 to 1006
248	Order Book	1007 to 1010
249	Order Book	1011 to 1014
250	Order Book	1015 to 1018
251	Order Book	1019 to 1022
252	Order Book	1023 to 1026
253	Order Book	1027 to 1030
254	Order Book	1031 to 1034
255	Order Book	1035 to 1038
256	Order Book	1039 to 1042
257	Order Book	1043 to 1046
258	Order Book	1047 to 1050
259	Order Book	1051 to 1054
260	Order Book	1055 to 1058
261	Order Book	1059 to 1062
262	Order Book	1063 to 1066
263	Order Book	1067 to 1070
264	Order Book	1071 to 1074
265	Order Book	1075 to 1078
266	Order Book	1079 to 1082
267	Order Book	1083 to 1086
268	Order Book	1087 to 1090
269	Order Book	1091 to 1094
270	Order Book	1095 to 1098
271	Order Book	1099 to 1102
272	Order Book	1103 to 1106
273	Order Book	1107 to 1110
274	Order Book	1111 to 1114
275	Order Book	1115 to 1118
276	Order Book	1119 to 1122
277	Order Book	1123 to 1126
278	Order Book	1127 to 1130
279	Order Book	1131 to 1134
280	Order Book	1135 to 1138
281	Order Book	1139 to 1142
282	Order Book	1143 to 1146
283	Order Book	1147 to 1150
284	Order Book	1151 to 1154
285	Order Book	1155 to 1158
286	Order Book	1159 to 1162
287	Order Book	1163 to 1166
288	Order Book	1167 to 1170
289	Order Book	1171 to 1174

S.M. Efficiency Bench

Filed today
19/12/1975

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001
Gandhi Bhawan, Lucknow

Registration No. 110 of 198 0 (L)

APPLICANT (s) Ashwani Kumar

RESPONDENT(s) Chief Engineer, N.Zone C.I.S.

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ? Yes
2. (a) Is the application in the prescribed form ? Yes
- (b) Is the application in paper book form ? Yes
- (c) Have six complete sets of the application been filed ? 2 sets filed
3. (a) Is the appeal in time ? Yes
- (b) If not, by how many days it is beyond time ? —
- (c) Has sufficient cause for not making the application in time, been filed ? —
4. Has the document of authorisation/Vakalat-nama been filed ? Yes
5. Is the application accompanied by B.D./Postal Order for Rs. 50/- Yes (i.p.o. No. 441405 D. 21/12/75) { Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ? Yes
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ? Yes
- (b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? Yes (By Advocate)

Order Sheet

O-A. 118/00(L)

①

5.10.88. Hon'ble K. S. Puttaswamy, V.C.
Hon'ble A. Johari, A.M.

On the request of Sri J. B. Singh
Counsel for applicant the case is adjourned
for tomorrow (6.10.88) for admission.

2
A.M.

1
V.C

②

6-X-00 Hon. K. S. Puttaswamy, V.C
Hon. A. Johari, A.M.

Applicant by Sri J. B. Singh
Admit.

Issue notices. One month for C.A
& 10 days for R.A.

Call this case for hearing on

25.11.00

sd/-
V.C

sd/-
A.M.

5R

Notices for Respondents Nos 1 4 &
received by Sri V.R. Choudhary, Govt. Counsel.
Fixing 25.11.00 for hearing.

frsh

③

25.11.88

Hon. D. S. Tuli, A.M
Hon. A. S. Sharma, J.M

None is present for my party. The case
is adjourned for hearing on 26.2.1989.

26.11.88

26.11.88
kunz

No sitting, Adjourned to 8-3-89
for hearing.

26.11.88

Am

④

20-2-89

kunz

26/2

7 4/4/89

Hon. Justice K. Nath, V.C.

Hon. D. V. Misra, A.M.

The learned counsel for the applicant files rejoinder affidavit. List for hearing on 10-5-89.

DR

AM

DR

DR
VC

OR
Case is ready for trial
hearing
Submitted for hearing

9/5

8 10.5.1989
J.M.

Hon. G.S. Sharma, T.M.
Hon. R.J. Raman, A.M.

On the request of learned Counsel to the Applicant, the case is adjourned to 11.8.1989 for hearing.

DR

J.M.

10.5.89

AM

}

OR
Case is ready for
hearing
Submitted for hearing
10/10

11.8.89

The applicant or his counsel is not present. Shri VK Chaudhry appears for respondent. Therefore, list from applicant's counsel. Date it on 1.9.89.

DR

OR
~~Applicant~~

Applicant learned
counsel already
informed.
Case is ready for
hearing

31/7

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

5/9/89

No. CAT/CB/LKO/

Dated : _____

OFFICE - MEMO

118

g(L)

Registration No. O.A. _____

of 193

Ashwani Kumar

Applicant's

Union of India

Versus

Respondent's

4/19/89
A copy of the Tribunal's Order/Judgement
dated _____ in the abovenoted case is forwarded
for necessary action.

119/89
For DEPUTY REGISTRAR (H)

6/8/89

Encl : Copy of Order/Judgement dated _____

To.

Shri J. B. Singh Adm C/4 1B89. Pr
Shri V.K. Chatterjee Adm C/R.

dimesh

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW.

CA 110 of 80(4)

Ashwani Kumar Applicant.

Versus

Chief Engineer, Northern Zone,
C.P.W.D., East Block,
R.K. Puram, New Delhi and another Opp. Parties-
Respondents.

I N D E X

Sl.No.	Particulars	Page No.
1.	Application U/s 19 of the Administrative Tribunals Act	1 to 8
2.	<u>ANNEXURES</u>	
	a) Copy of the Memorandum Appointment letter dt. 21.2.77	9
	b) Extract of the confirmation letter dated 5.1.1983	10 to 11
	c) Representation dated 11.4.85	12
	d) Representation dated 1.6.86 to Chief Engineer	13
	e) Representation dated 30.5.87 to Chief Engineer	14
	f) Final order dated 27.8.87	15

Lucknow :

Dated : 23 Aug. 1988.

[I.B. SINGH]
ADVOCATE,
COUNSEL FOR THE APPLICANT.

Copy of O.P. noted for
Filed on 3.11.88 21-9-80
K. K. Singh
For Sub I.B. Singh
Adm noted for
23.9.80
K. K. Singh

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT, 1985

DATE OF FILING - th August 1988

REGISTRATION NO.-

Signature

Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW.

BETWEEN

Ashwani Kumar, aged about 32 years,
son of Shri Indrajeet Pandit.

..... Applicant

AND

1. Chief Engineer, Northern Zone, C.P.W.D., East Block, R.K. Puram, New Delhi.
2. Superintending Engineer, Delhi Central Electrical Circle (V), East Block, R.K. Puram, New Delhi.

..... Respondents.

DETAILS OF APPLICATION

1. Particulars of the applicant :

- i) Name of the Applicant - Ashwani Kumar
- ii) Father's Name - Shri Indrajeet Pandit

Contd.....2/

Swami

iii) Designation and Office - Junior Engineer, Electrical
in which employed Central Electric Sub-
Division, C.P.W.D.,
G.S.I. Campus, Sector E,
Aliganj, Lucknow.

iv) Office address - Central Electric Sub-
Division, C.P.W.D.,
G.S.I. Campus, Sector E,
Aliganj, Lucknow.

v) Address - 70, Nehru Nagar,
Lucknow.

2. Particulars of the Respondents :

i) Name and designation - Shri Balbir Singh,
of the respondent No.1 Chief Engineer.

ii) Office address - Office of the Chief Engineer,
Northern Zone, C.P.W.D.
East Block-I, Level
III,
R.K. Puram, New Delhi.

iii) Address for service of - Office of the Chief Engineer,
all notices Northern Zone, C.P.W.D.,
East Block-I, Level III,
R.K. Puram, New Delhi.

iv) Name and designation - Shri J.B. Fadia,
of the respondent No.2 Superintending Engineer.

v) Office Address - Office of the Superintending
Engineer, Delhi Central
Electrical Circle V,
C.P.W.D., East Block-I,
Level V, R.K. Puram,
New Delhi.

vi) Address for service - Office of the Superintending
of the notices Engineer, Delhi Central
Electrical Circle V,
C.P.W.D., East Block-I,
Level V, R.K. Puram,
New Delhi.

3. Particulars of the Order against which
application is made :

i) Order Number : 2/7/85-Estt.

.ii) Date : 27.8.1987, endorsed on
23.9.1987.

iii) Passed by : Superintending Engineer,
Headquarter, Office of the
Chief Engineer, Northern
Zone, C.P.W.D., East Block-I,
Level-III, R.K. Puram,
New Delhi.

Swami

iii) Subject in brief - The applicant was appointed on the post of Junior Engineer (Electrical) in the Department of C.P.W.D. on 28.2.1977 by the Superintending Engineer, Coordination. The applicant was to cross his first Efficiency Bar immediately after the expiry of 5 years of the service but the applicant's Efficiency Bar was crossed after expiry of 6 years of his service. The applicant made representations which were ultimately decided on 27.8.1987 but was communicated through letter dated 23.9.1987.

4. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitations :

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the Case

- i) That the applicant qualified the diploma of Electrical Engineering in the year 1976 and immediately after obtaining the diploma, applied for a service in the Central Public Works Department.
- ii) That ~~after~~ the appointment the petitioner was made on the post of Junior Engineer (Electrical) on the 28.2.1977 by the appointing authority - Superintending Engineer, Coordination, Delhi Central Electrical Circle No.I, New Delhi.

Swal

the applicant was informed only when he received his salary for the month of April 1985 and then he came to know that the applicant's Efficiency Bar has been ordered to be crossed w.e.f. 1.2.1984. The said order was never communicated to the applicant in writing although it was passed in a most arbitrary and illegal manner.

ix) That immediately after getting information the applicant made a representation to the opposite party No.2 on 11.4.1985 but no action was taken by him in this respect. Subsequently, the applicant again moved a representation on 1.10.1986 to the Chief Engineer, the opposite party No.1, but no action was again taken, as such the applicant moved another application to the Chief Engineer, the opposite party No.1 on 30.5.1987.

x) That it appears that the said representation was forwarded by the Superintending Engineer, Delhi Central Electrical Circle (V) on 3.7.1987 and ultimately the final decision was taken only on 27.8.1987.

xi) That no reason, whatsoever may be, has been made in the said order dated 27.8.1987 and by an unspeaking order, in a most arbitrary manner, the petitioner's Efficiency Bar has been ordered to be crossed w.e.f. 1.2.1984.

xii) That the petitioner thereafter personally persuaded the opposite parties and pressed all

Swey

In verification :

I, Ashwani Kumar, son of Sri Indrajeet Pandit, aged about 32 years working as Junior Engineer (Electrical), Central Electrical Sub-Division, C.P.W.D., G.S.I. Campus, Sector E, Aliganj, Lucknow, do hereby verify that the contents from 1 to 13 above are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place :

Dated :

Ashwani
Signature of the Applicant.

To,

The Registrar,
Central Administrative Tribunal,
Lucknow Bench,
Lucknow.

Sudh

GOVERNMENT OF INDIA

CENTRAL PUBLIC WORKS DEPARTMENT

No 8(23)/77-ECI/Coord (b2)

Dated New Delhi, the 21/2/77

MEMORANDUM

On the basis of All India Competitive Examination held in 10/76 for recruitment to the grade of Junior Engineer (Elect) in the C. P. W. D Shri Ashwani Kumar (Roll No. 14569..) is hereby offered a purely temporary appointment as Junior Engineer (Elect) likely to continue indefinitely until further orders on the following terms and conditions :-

1. An initial pay of Rs. 425/- in the scale of Rs. 425-15-500-EB-15-560-20-700 plus usual allowances as admissible. No advance increments will be admissible to the Graduate.
2. The appointment will take effect from the date he actually joins duty.
3. No travelling allowance will be paid for joining this appointment.
4. No gratuity or pension will be admissible for officiating service, but he may be granted leave under the Central Service Revised Leave Rules 1972 as amended from time to time.
5. The appointment carries with it the liability to serve in any part of India or outside where the C. P. W. D. has an Organisation or any other Govt. Department where he is required to serve.
6. His/Her services are liable to be terminated by the Govt. at any time without assigning any reason but ordinarily one month's notice will be given. If, however, he wishes to resign he will have to submit his resignation and wait for its acceptance by the Govt. In case he goes away without its acceptance, he will be treated as having been dismissed from service with disqualification for future employment under the Central Government.
7. He is required to produce a certificate of good character from a 1st Class Magistrate or from two Gazetted officers who are known to him for the last three years but not related to him, before he is allowed to join the appointment.
8. Original certificate and testimonials in support of his qualification, age, cast, should be produced before joining duty.
9. If he has been employed anywhere previously, he will have to submit a discharge certificate from his last employer.
10. In case it is proved after the acceptance of offer and appointment that he is a dismissed employee of the Union or State Govt. disqualifying him for future employment under Govt. or that he has obtained employment by deceit, he will be dismissed from service without any remuneration.
11. He is an Indian National.
12. He will not keep two wives at any time throughout his service.
13. His services will be terminated if he is found to be an Alcholist.
14. He will have to take an Oath of allegiance to the Constitution of India at the time of taking up of the appointment.
15. His appointment will be provisional subject to his character and antecedents being verified by the Police authorities and he being declared medically fit.
16. On his assumption of duty, he must apply to the Estate Office for Govt. accommodation in the prescribed from (wherever it exists) within a week in order to be eligible to draw House Rent Allowance as admissible under the Rules (in the event of such accommodation being not available) failing which no House Rent Allowance will be paid to him.
17. He will have to fill in a declaration of temporary service on joining the Department.
18. He will be governed by the Subordinate Services Disciplinary/Control and Appeal Rules etc. as framed by the Govt. of India from time to time.
19. He will have to give details of his moveable and immovable properties within 4 weeks from the date of his appointment. Similar information will have to be furnished in respect of his family members also.
20. He will not leave the Department on an offer being received from any other Department where he might have applied before being nominated here. Also he will not apply direct for any post outside C.P.W.D.
21. He will have to give his Home Town declaration within 7 days.
22. Schedule Cast/Scheduled Tribe candidate will have to furnish a certificate in the prescribed form in support of candidates' claim to belong to a Sch. Caste/Tribe community.
23. His appointment will be governed by the relevant rules and orders of Govt. issued from time to time.
24. He will be on probation for a period of two years. The period of probation may be extended at the discretion of the appointing authority. During the period of probation he will be required to do such duty as Govt. may prescribe. Failure to complete the period of probation to the satisfaction of the authority will render him liable to discharge from service.

The prescribed form will be attested by a 1st class Magistrate before joining the Department.

Signed

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

Ashwani Kumar Applicant.

Versus

Chief Engineer, Northern Zone,
C.P.W.D., New Delhi & another.
..... Respondents.

ANNEXURE NO. 2

CENTRAL PUBLIC WORKS DEPARTMENT

No. 8(21.EI)82/DCECV/195 Dated, New Delhi the
5-1-83

MEMORANDUM

In accordance with orders issued by the Director General of Works, C.P.W.D., New Delhi vide No.12/4/81-ECIV/ dated 14.4.82 and 12/4/83 EC-VI dated 11/13/8/82 and on the approval accorded by the Departmental promotion committee held on 18.12.82, the following Junior Engineers (Elect.) whose particulars are given below are hereby confirmed in the grade of Junior Engineer (Elect) in the Scale of Rs.425-15-500-EB-560-20-700 with effect from 1.4.81.

S.No.	Name	Date of birth	Date of appointment	S.No. of confirmation as J.E.	Office which	Office attached.
-------	------	---------------	---------------------	-------------------------------	--------------	------------------

12. Ashwani Kumar 15.12.56 28.2.77 1379 1.4.81 Lucknow.

The under signed is satisfied that :-

1. There is no disciplinary case pending against the Junior Engineers (Elect.)
2. They have been medically examined and found fit by the competent authority.
3. Character and antecedents have been got verified and found satisfactory.

Sd/-
(H.K. Munjal)
Superintending Engineer,
Delhi Central Elect. Circle V,
C.P.W.D., R.K. Puram, New Delhi.

Copy forwarded for information and necessary action to :-

1. The Director General of Works, C.P.W.D., New Delhi for favour of information with reference to his No.12/4/81-ECVI dated 14.4.82 and 11/13-8-82,

1/Book file
TRUE COPY
J. B. Singh
Parasite

Contd.....2/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW.

Ashwani Kumar

~~Applicant~~

Versus

Chief Engineer, Northern Zone,
C.P.W.D., New Delhi & another.

.....

Respondents.

ANNEXURE NO. 3

No. JE(E)/P/85/

Dated 11.4.85

To,

The Superintending Engineer,
Delhi Central Elec. Circle-V,
CPWD, R.K. Puram, New Delhi-66

(THROUGH PROPER CHANNEL.)

Sub:- Petition against permitting to cross efficiency bar at later date than the actual due date.

.....

Sir,

Kindly permit to bring to your kind notice an omission which has been committed in your office while permitting me to cross efficiency bar w.e.f. 1.2.84 whereas the same was due to be crossed w.e.f. 1.2.83. In this connection, I want to add here that during my entire eight years of service in this department, I had performed my duty to the utmost satisfaction to my officers and have also received altogether praise and encouragement from my superiors and as such it is not understood as to why I was not allowed to cross my Efficiency Bar with due date i.e. w.e.f. 1.2.83.

I therefore, request you kindly take a personal interest and after re-examining my case kindly allow me to cross efficiency bar w.e.f. 1.2.83.

Thanking you,

Yours faithfully,

Sd/-

(ASHWANI KUMAR)

J.E.(E)

Central Elec. Sub-Division No.I,
CPWD, GSI Campus, Sector-E,
Aliaganj, Lucknow-226 020.

J. D. Singh
Advocate

Swt

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

Ashwani Kumar Applicant.

Versus

Chief Engineer, Northern Zone,
C.P.W.D., New Delhi & another.
..... Respondents.

ANNEXURE NO. 4

No. JE(E)/P/85/ Dated 1.10.86

To,

The Chief Engineer (NZ),
CPWD, R.K. Puram,
New Delhi-66

THROUGH PROPER CHANNEL

Sub:- Petition against permitting to cross efficiency bar at later date than the actual due date.

.....

Sir,

Kindly permit to bring to your kind notice an omission which has been committed in your office while permitting me to cross efficiency bar w.e.f. 1.2.84 whereas the same was due to be crossed w.e.f. 1.2.83. In this connection, I want to add here that during my entire eight years of service in this department, I had performed my duty to the utmost satisfaction to my officers and have also received altogether praise and encouragement from my superiors and as such it is not understood as to why I was not allowed to cross my Efficiency Bar with due date i.e. w.e.f. 1.2.83.

I therefore, request you kindly to kindly take a personal interest and after re-examining my case kindly allow me to cross efficiency bar w.e.f. 1.2.83.

Thanking you,

Yours faithfully,

Sd/-

(ASHWANI KUMAR)

J.E.(E)

Central Elec. Sub-Division No.I,
CPWD, GSI Campus, Sector-E,
Aliganj, Lucknow-226 020

Swd

TRUE COPY
J. B. Singh
Advocate

020

14
X
Y

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

Ashwani Kumar Applicant.

Versus

Chief Engineer, Northern Zone,
C.P.W.D., New Delhi & another.
..... Respondents.

ANNEXURE NO. 5

No. JE(E)/P/87/1

Dated 30.5.87

To,

The Chief Engineer (NZ),
CPWD, R.K. Puram,
New Delhi-66
(Through Proper Channel)

Sub:- Petition against permitting to cross efficiency bar at later date than the actual due date.

Sir,

Kindly refer my representation NO:JE(E)/P/85/3 dated 1.7.85. In which I had requested for re-examination/re-consideration of my efficiency bar case which was due to be cross w.e.f. 1/2/83, which infact had been allowed by SEDCEC V w.e.f. 1/2/84. In this connection I may again to request your goodself for reconsideration of my case to allow me the Efficiency Bar from 1/2/83 instead of 1/2/84, considering my 10 year service in the department to the utmost satisfaction of my superiors.

Early action in this matter is solicited please.

Yours faithfully,

Sd/-

(ASHWANI KUMAR)
JE(E)

Lucknow Electrical Sub Div. No.I
C.P.W.D., GSI Campus,
Aliganj Lucknow.

*Surendra Singh
Advocate*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

Ashwani Kumar Applicant.

Versus

Chief Engineer, Northern Zone,
C.P.W.D., New Delhi & another.

..... Respondents.

ANNEXURE NO. 6

Office of the Chief Engineer (NZ)
CPWD, East Block I, Level III
R.K. Puram, New Delhi-110 066.

No.2/7/85-Estt. Dated 27 Aug. 1987.

To,

The Suptdg. Engineer,
Delhi Central Elct. Circle V,
CPWD, New Delhi.

Sub:- Regarding E.B. case of Shri Ashwani Kumar, JE(E)

.....

With reference to your letter No.15(107-JE)/
DCECV/6556, dated 3.7.87 forwarding the representation
of Shri Ashwani Kumar, Junior Engineer (E)
against permitting him to cross the E.B. at a later
date than the due date. The matter has been examined
by the competent authority, but it is regretted
that his request cannot be acceded to.

Shri Ashwani Kumar, Junior Engineer(E) may
be informed accordingly.

Sd/-

(P.P. Popli)
Superintending Engineer(HQ)

CENTRAL PUBLIC WORKS DEPARTMENT

No.8()/87-LCED/3314-15

Dated. 23.9.87

Copy to :-

1. Sri Ashwani Kumar, JE(E) for information
and necessary action.
2. Personal File.

Sd/-

Executive Engineer (E)
Lucknow Central Elect. Division
CPWD, GSI Campus, Sector-E
Alignaj, Lucknow-226 020

1801/87
12/87
J. B. Singh
Advocate

Swd

समक्ष माननीय उच्च न्यायालय, खण्ड पीठ, लखनऊ।

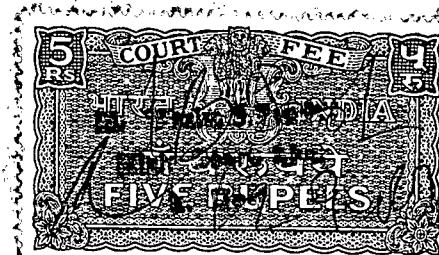
व अदालत श्रीमान् *In the Central Administrative Tribunal, Lucknow*
Bench Lucknow महोदय

वकालतनामा

वादी [अधीलाल्ट]

प्रतिवादी [रेस्पन्डेंट]

... *Prabhavati Kumar* (वादी मुहर्र)



बताम

Chief Engineer And Officer प्रतिवाद मुहाअलेह

न० मुक्त्वा सन् १९८ ... पेशी की तारीख १९८ ... ई०

झपर लिखे मुक्त्वा में अपनी ओर से श्री आई० बी० सिंह, एडवोकेट, १-केसरबाग संगीत विद्यालय के सामने लखनऊ, महोदय को अपना बकील नियुक्त करके प्रतिज्ञा (इच्छार) करता हूं और जिखे देता हूं इस मुक्त्वा में बकील महोदय स्वयं अधिकार अवृत्ति द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से छिपारी जारी करावें और इस्या बसूल करें या सुलहनामा या इकबाल दावा तथा अपोल व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तपशीक करें या मुक्त्वा उठावें या कोई रूपया जमी करें या हमारी या विपक्ष (फरीहताना) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें बकील महोदय द्वारा की गई वह सब कायंकाही हमको सर्वथा इशेक्षार है और होगी मैं यह सी स्थीकार करता हूं कि मैं हर पेशी पर हस्तिरा निरोपाते देंती हात की भेजता रहूंगा और मुक्त्वा अदम पैरवी में एक तरफा मेरे खिलाफ कै उठा हो जाता है तो उसकी जिम्मेदारी मेरे बकील पर नहीं होगी। इसलिए यह बहालहतामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

*Accepted
U.C. Singh* हस्ताक्षर *Swami*

साक्षी (गवाह) *Accepted
U.C. Singh* ... साक्षी (गवाह)

दिनांक महीना सन् १९८ ...

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
IN CIRCUIT BENCH, LUCKNOW

SA 11/1/89,

Ashwani Kumar

... Applicant

Versus

Chief Engineer, Northern Zone,
CPWD New Delhi and another .. Opp. parties.

COUNTER AFFIDAVIT ON BEHALF OF OPPOSITE PARTIES

I, P.K. Garg, aged about 31 years, son of
late Shri L.S. Garg, at present posted as
Executive Engineer, (Electrical), Lucknow
Central Electric Division, C.P.W.D., Lucknow
do hereby solemnly affirm and state as under:

1. That the deponent has been authorised
to file this counter affidavit on behalf of the
Opposite parties and has read and understood the
contents of application as well as the facts
given herein under in reply thereof. The deponent
is also well conversant with the facts of the
case.

2. That before giving parawise reply to the
application it would be pertinent to give brief
history of the case which is as follows:-

(a) That the applicant is a Junior Engineer(E)

was to cross his efficiency bar with effect from 1.2.1983 but the applicant's contention that he was due to cross his first efficiency bar immediately on expiry of 5 years of service, is not correct. The applicant was appointed on the post of Junior Engineer on 28.2.1977 in the pay scale of Rs. 425-15-500-EB-15-560-20-700. Thus the applicant was due to cross his first Efficiency Bar only on ~~28.2.1983~~ [✓] expiry of 6 years of service ie. ~~0~~ with effect from 1.2.1983 D.P.C. which took place on 15.6.1983, did not find the applicant suitable to cross the efficiency bar from the due date. Such decision of the D.P.C was duly conveyed to the deponent vide Opposite Party No.2 letter No.15(107-JEO/83/DCECV/1393 dated 21.6.83. A copy of the said communication is being filed herewith as Annexure No. A CA-1 to this counter affidavit.

(b) The D.P.C. again reviewed the case of efficiency bar of the applicant on 30.12.1984 and found him fit to cross the efficiency bar ~~on~~ with effect from 1.2.1984 on only. This decision was also communicated to the deponent vide Opposite party letter No.15(107)/JE/EI/ DCECV/43 dated 3.1.1985. ~~A copy of the above communication~~ 2 1
~~is being filed as Annexure CA 2 to this counter affidavit.~~ 2

Such decision was taken as per Government of India order as contained in FR-25 para 1 to 4 and Rule 11 of CCS(CCA) Rules 1965. As per this rule, stoppage of increment at Efficiency Bar on the ground of official's unfitness, shall not amount to penalty within the meaning of Rule 11 of CCS(CCA). Against a representation made by the said applicant, a detailed report was submitted to the Opposite Party No.1 vide letter No. 15(107)JE/DCECV/10025 dated 19.8.1985. A copy of the said letter is being annexed as Annexure No.CA-3 to this counter affidavit.

(c) The Opposite party no.1 after ~~gk~~ having examined the whole case, approved the action of the DFC vide his letter No.2/7/83-Estt. dated 27.8.1987. A copy of the said letter is being annexed as Annexure CA-3 to this counter affidavit.

3. That the contents of para 1 to 5 of the application are formal and need no reply in view of the brief facts as stated above in the preceding paragraph.

4. That the contents of para 6(i) to 6(vi) of the application need no comments.

DKM

5. That the contents of para 6(vii) of the application are incorrect as stated and in reply it is submitted that the efficiency bar of the applicant was not allowed illegally. ~~DPC~~ which was an authorised and competent body, as per procedures laid down by Government of India, had not found the said Junior Engineer suitable to cross efficiency bar with effect from 1.2.1983. The CR f of the applicant for the period were not found satisfactory by the DPC to allow him to cross efficiency bar. However, on the review after one year, the DPC found him suitable to ~~cross~~ cross efficiency bar. However, on the review after one year, the DPC found him suitable to cross the efficiency bar with effect from 1.2.84 only.

6. That in reply to the contents of para 6(viii) of the application it is submitted that the DPC's decision, allowing the applicant to cross Efficiency Bar with effect from 1.2.1984, was duly conveyed to his controlling officer vide letter No.15(107)/JE/EI/DCECV/43 dated 3.1.1985.

7. That the contents of para 6(ix) of the application need no comments.

8. That in reply to the contents of para 6(x) of the application it is submitted that the applicant admits that his representation was duly considered

33/3180
9/13/84

by the Competent authority and a final decision was taken on 27.8.1987. Thus his clamour that no action was taken on his representation, as alleged under para 6(viii) and (ix) of the petition are not correct.

9. That in reply to the contents of para 6(xi) of the application it is submitted that the DPC had arrived at the decision for not allowing the applicant to cross efficiency bar with effect from 1.2.1983 on the basis of records of his performance as derived from the confidential reports. There was no malafide intention to harm the interest of the applicant. The DPC took dispassionate views of his confidential reports in its first review and had not found him suitable. However, there was no obligation to communicate entries in the confidential reports to the concerned official.

It is pertinent to point out that Hon'ble Tribunal of Calcutta Bench in the case Registration No. O.A/58/1986 had decided on 25.6.1986 that in the absence of existence of malafide in the minds of the DPC, the Tribunal had no power to interfere with their findings. Rule 11 of CCS(CCA) ~~Rule~~ 1965 clearly states that competent authority can withhold increment if the performance of the Government servant has not been found satisfactory and such action is not

treated as a penalty.

10. That in reply to the contents of para 6(xii) of the application it is submitted that the applicant had submitted only three representations as below:-

- (a) Letter dated 11.4.85 addressed to the Superintending Engineer, DCECV, CPWD, New Delhi.
- (b) Letter dated 1.7.85 addressed to Chief Engineer (NZ).
- (c) Letter dated 30.5.87 addressed to Chief Engineer (NZ).

It is further stated that nothing on the record, if the applicant had persuaded the Department after the above representations as alleged by the applicant in this paragraph.

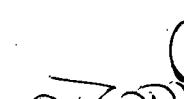
11. That in reply to the contents of para 6(xiii) of the application it is submitted that the decision of the DTC is final and Tribunal should have no jurisdiction to interfere in it as discussed in para 9 above.

12. That the grounds taken by the applicant under this paragraph are baseless and preposterous allegations as such these are not tenable in the eyes of Law.

13. That the conetents of para 8 of the application are wrong and hence denied and in reply it is submitted that the applicant has not indicated the rules under which decision of the DFC was arbitrary and illegal as alleged by the applicant in this paragraph.

14. That the contents of paras 9 to 13 need no reply in view of the facts and circumstances as discussed in the preceeding paragraphs.

15. That in view of the facts and circumstances stated above, the application filed by the applicant is laible to be dismissed with costs to the Opp. parties.


Deponent.

Lucknow,

Dated: 7-3-89


Verification.

I, the above named deponent do hereby verify that the contents of paragraphs 1 to 2 are true to my personal knowledge, and those of paragraphs 2 to 11 are believed to be true on the basis of perusal of office records as well as information gathered and those of paras 1 to 15 are believed to be true on the basis of legal advice.

Nothing material fact has been concealed and no part of it is false.


Deponent.

P.T.O.

REGD/CONFIDENTIAL

ANNEXURE -CA. I

76

GENERAL PUBLIC WORKS DEPARTMENT

No. 15(107-JE)83/DCECV/1393

Dated: 21-6-83

To

Shri Premnath
Executive Engineer(E)
Lucknow Central Elect. Division,
CPWD, Lucknow.

Sub: Crossing of Efficiency Bar of Shri Ashwani Kumar
Junior Engineer(E).

Ref: Your letter No. 15(30)83/LCED/353 dt. 3.2.83.

....

The above noted case of Shri Ashwani Kumar, Junior Engineer(E) has been considered by the DFC on 15.6.83 but has not been found fit to cross the efficiency bar with effect from 1.2.83. As decided by the DFC the case will be reviewed again after receipt of Special Confidential Report ending 31.12.83. The case may please be sent to this office alongwith the Special Confidential Report ending 31.12.83 in 1/84.

The Service Book of Shri Ashwani Kumar Junior Engineer(E) alongwith Leave Account is sent herewith for further necessary action.

Sd/- for Superintending Engineer,
Delhi Central Elect. Circle
CPWD, New Delhi.

Encl: S/Book & Leave Account.

/True copy/

0013700

38

of the DFC and was replied that being decision of DFC this office is not to take any action ~~as~~ on his representation.

Now Shri Ashwani Kumar Junior Engineer(E) has submitted his same representation to Chief Engineer(NZ) . The same is hereby sent for consideration with the recommendation to up-hold the decision of the DFC.

Encl: As stated.

1. An application of Shri Ashwani Kumar
2. One abstract of CRS
3. File No.15(107) JE/DCEC-V

Sd/- Superintending Engineer,
Delhi Central Elect. Circle-V
CEWD, P.K. Puram, New Delhi.

A B S T R A A C T.

1. 1.4.77 to 31.3.78	.. Very Good
2. 1.4.78 to 31.3.79	.. Good
3. 1.4.79 to 31.3.80	.. Very Good
4. 1.4.80 to 31.3.81	.. Fair
5. 1.4.81 to 30.6.81	.. Average
6. 1.7.81 to 31.12.81	.. Average
7. 1.4.82 to 31.12.82	.. Just Average
8. 1.1.83 to 16.5.83	.. Very Good
9. 1.4.83 to 31.1e.83	.. Very Good
10. 17.5.83 to 31.3.84	.. Very Good

/True Copy/

OMZP

BBK 109
13/3

F9
79

ANNEXURE - NO.CA-3

OFFICE OF THE CHIEF ENGINEER (NZ)
CPWD East Block I Level III
R.K. Puram, New Delhi-110066

No.2/7/85-Estt.

Dated: 27 Aug 1987.

To

The Suptdg. Engineer,
Delhi Central Elec. Circle V,
CPWD, New Delhi.

Sub: Regarding E.B. Case of Shri Ashwani Kumar, JE(E)

....

With reference to your letter No.15(107-JE)/DCECV/6556 dated 3.7.87 forwarding the representation of Shri Ashwani-Kumar, Junior Engineer(E) against permitting him to cross the E.B. at a later date than the due date. The matter has been examined by the competent authority, but it is regretted that his request cannot be acceded to.

Shri Ashwani Kumar, Junior Engineer(E) may be informed accordingly.

Sd/- P. P. Popli
Superintending Engineer(HQ)

Copy to:

Executive Engineer(E) Lucknow Central Elect. Divn CPWD, Lucknow - with reference to your letter No. PE/87-LCEO/2226 dated 20.6.87. Shri Ashwani Kumar, JE(E) may please be informed accordingly.

Sd/- ~~for Suptdg Engineer~~
illegible.

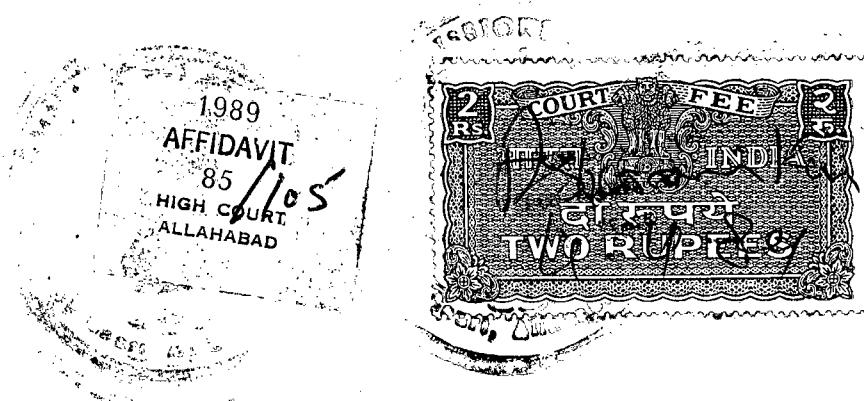
/True copy/

7/3/87
Suptdg. Engineer
CPWD
Delhi Central Circle V
R.K. Puram, New Delhi-110066

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW

+++++

--



Ashwini Kumar

.... Applicant

Versus

Chief Engineer, Northern Zone,
C.P.W.D. & Others

.... Opp. Parties.

REJOINDER AFFIDAVIT TO THE COUNTER AFFIDAVIT
FILED ON BEHALF OF THE OPPOSITE PARTIES.

I, Ashwini Kumar aged about 32 years son of
Sri Indrajeet Pandit, Junior Engineer (Electrical),
Central Electrical Sub-Division, C.P.W.D. GSI Campus,
Sector E, Aliganj, Lucknow, R/o. 70- Nehru Nagar, Lucknow,
do hereby solemnly affirm and state as under-

1. That the deponent is the petitioner-applicant
and has read the Counter affidavit after being fully
conversant with the facts, giving parawise reply to the
same as under -

2. That the contents of paragraph 1 of the Counter
Affidavit need no reply.

Swd

3. That in reply to the contents of paragraph 2A, of the Counter Affidavit, it is stated that the contention of the Opposite Parties are incorrect and wrong. The deponent was to cross his Efficiency Bar at the end of 5 years and in the beginning of sixth year of his service i.e. w.e.f. 1.2.1983. It is stated that the deponent was never informed about the decision of any so-called Departmental Promotion Committee dated 15.6.1983. However, it is stated that the decision was wrongly taken by the Departmental Promotion Committee. There was no adverse entry in the Character Roll of the Deponent and every officer of the deponent was satisfied with the work and conduct of the deponent and till date no adverse entry has been communicated to the deponent. It is stated that in the department of the deponent, every Junior Engineer against whom no adverse entry is recorded, has been allowed to cross the Efficiency Bar w.e.f. the date of expiry of 5 years of his service. The decision mention in Annexure C-1 was wrongly taken and the same is liable to be quashed as the same decision was baseless and was illegal.

4. That in reply to the contents of paragraph 2B of the Counter Affidavit, it is stated that the deponent was entitled to be allowed to cross the Efficiency Bar w.e.f. 1.2.1983 and the D.P.C. wrongly and illegally did not allow to cross the Efficiency Bar of the deponent from that date. Moreover, no decision of the D.P.C. was communicated to the deponent, although it was incumbent upon the department to convey the same, as it was affecting the rights of the deponent. There was nothing material before the Departmental Promotion Committee showing that the deponent was inefficient or unfit and the report itself submitted

Swark

by the Superintending Engineer vide Annexure CA-2 which shows that there was nothing material which could enable the D.P.C. to take such a decision stopping the crossing of Efficiency Bar of the deponent. The abstract of the character roll entries will show that the deponent was awarded 'Very good' and 'good' entries. There are entries showing 'Average' to the deponent for the period of two months and 5 months. Moreover, on the basis of the same entries, the deponent was confirmed on 5.1.1983 w.e.f. 1.4.1981 and two contrary decisions were taken in respect of two matters affecting the right of the deponent.

5. That in reply to the contents of paragraph 2(c) of the Counter Affidavit, it is stated that the decision of the D.P.C. is illegal and incorrect by which the deponent was allowed to cross the Efficiency Bar w.e.f. 1.2.1984.
6. That the contents of paragraph 3 & 4 of the Counter Affidavit need no reply.
7. That in reply to the contents of paragraph 5 of the Counter Affidavit, it is stated that the Opp. Parties have themselves admitted that the deponent was illegally not allowed to cross the Efficiency Bar. It is submitted that the decision of the D.P.C. was never communicated to the deponent. The decision of the D.P.C. was illegal, baseless and incorrect by which the deponent was stopped to cross the Efficiency Bar for complete one year.
8. That in reply to the contents of para 6 of the Counter Affidavit, it is submitted that the

Swah

decision of the D.P.C. is illegal and is liable to be quashed.

9. That the contents of paragraph 7 of the Counter Affidavit need no reply.

10. That in reply to the contents of paragraph ~~xx~~ 8 of the Counter Affidavit, it is submitted that since the earlier decision of the D.P.C. was not communicated to the deponent, the deponent made a representation praying for crossing his Efficiency Bar w.e.f. 1.2.1983 but it was wrongly decided to cross the Efficiency Bar of the deponent after one year from the date, when it became due.

11. That in reply to the contents of paragraph 9 of the Counter Affidavit, it is stated that the deponent was confirmed on the basis of the same record w.e.f. 1.4.1981 on 5.1.1983 and it is illegal, incorrect and ~~wf~~ wrong to say that the deponent was not found suitable for crossing the Efficiency Bar w.e.f. 1.2.1983. It is denied that there was no obligation to ~~x~~ communicate the ~~x~~ entries in the Confidential report to the deponent. It is further submitted that the deponent was never informed about the stoppage of the crossing of the Efficiency Bar as such, there was no question of allegation of malafide etc. and the case law is not applicable in this case. The decision of the D.P.C. stopping the Efficiency Bar is illegal and liable to be set aside. The decision of the D.P.C. was punitive in nature and it was the duty of the concerned official to communicate the same to the deponent.

Swaraj

12. That in reply to the contents of paragraph 10 of the Counter Affidavit, the contents of paragraph 6 (xii) of the application are reiterated. In view of the facts already stated above, the deponent was continuously approaching by means of representation to the concerned authority.

13. That the contents of paragraph 11 of the Counter Affidavit are denied. It is stated that this Hon'ble Tribunal has full jurisdiction to interfere into the matter.

14. That the contents of paragraph 12 of the Counter Affidavit are denied. The decision of the D.P.C. of stopping the one year in crossing the E.B. is liable to be set aside.

15. That in reply to the contents of paragraph 13 of the Counter Affidavit, it is stated that every action of the employer taken arbitrarily, illegally and baselessly can be challenged in this Hon'ble Tribunal and the same are liable to be quashed.

16. That the contents of paragraph 14 of the Counter Affidavit are denied and in reply the contents of

12. That in reply to the contents of paragraph 10 of the Counter Affidavit, the contents of paragraph 6 (xii) of the application are reiterated. In view of the facts already stated above, the deponent was continuously approaching by means of representation to the concerned authority.

13. That the contents of paragraph 11 of the Counter Affidavit are denied. It is stated that this Hon'ble Tribunal has full jurisdiction to interfere into the matter.

14. That the contents of paragraph 12 of the Counter Affidavit are denied. The decision of the D.P.C. of stopping the one year in crossing the E.B. is liable to be set aside.

15. That in reply to the contents of paragraph 13 of the Counter Affidavit, it is stated that every action of the employer taken arbitrarily, illegally and baselessly can be challenged in this Hon'ble Tribunal and the same are liable to be quashed.

16. That the contents of paragraph 14 of the Counter Affidavit are denied and in reply the contents of paragraphs 9 to 13 of the application are reiterated.

17. That the contents of paragraph 15 of the Counter Affidavit are denied. It is stated that the decision of the D.P.C. is liable to be set aside. The deponent is entitled to be allowed to cross the E.B. w. e.f. 1.2.1983.

.....

18. That the copies supplied to the deponent of the Counter Affidavit does not disclose the proper verification of the affidavit. As such the Counter Affidavit is not maintainable.

Lucknow-Dated,

March 30, 1989
4.4.89

Swami

VERIFICATION

I, the above named deponent, do hereby verify that the contents of paragraphs 1 to 18 of this Rejoinder Affidavit are true to my personal knowledge. No part of it is false and nothing material has been concealed by me. So help me God.

Lucknow-Dated,

March 30, 1989
4.4.89

Swami

Deponent

I identify the deponent who has signed before me. *He is personally known to me*

Lucknow-Dated,
March 30, 1989
4.4.89

Attm
Clerk, *Swami* Advocate

Solemnly affirmed before me on 30.3.1989 at 9:10 am/pm by Sri Ashwini Kumar, the deponent, who is identified by Sri I. Ahmad c/o Shri I. B. Singh Advocate, High Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been read over and explained by me to him.

Rehman
APU COURT/63
High Court, Lucknow Bench

4.4.89

VAKALATNAMA

CAT
In the Hon'ble High Court of Judicature at Allahabad
At
Lucknow Bench

Ashwani Kumar Plff./Applt./Petitioner/Complainant

Verses

Chief Engineer, P. and H. Defent./Respt./Accused

KNOW ALL to whom these presents shall come that I/We *C.E. & S.E. C.P.W.D.*
the above-named *Respondent* do hereby appoint

Shri V. K. CHAUDHARI, Advocate,

..... High Court, Lucknow Bench

(hereinafter called the advocate/s) to be my/our Advocate in the above-noted case and
authorised him :—

To act, appear and plead in the above-noted case in this Court or in any other Court
in which the same may be tried or heard and also in the appellate Court including High Court
subject to payment of fees separately for each Court by me/us.

To sign, file, verify and present pleadings, appeals, cross-objections or petitions for
executions, review, revision, withdrawal, compromise or other petitions or affidavits or other
documents as may be deemed necessary or proper for the prosecution of the said case in all
its stages.

To file and take back documents, to admit &/or deny the documents of opposite
partys.

To withdraw or compromise the said case or submit to arbitration any differences
or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

To deposit, draw and receive moneys, cheques, cash and grant receipts thereof and
to do all other acts and things which may be necessary to be done for the progress and in the
course of the prosecution of the said cause,

To appoint and instruct any other Legal Practitioner authorising him to exercise the
power and authority hereby conferred upon the Advocate whenever he may think fit to do so
& to sign the power of attorney on our behalf.

And I/we the undersigned do hereby agree to ratify and confirm all acts done by the
Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all
hearings & will inform the Advocate for appearances when the case is called.

And I/we undersigned do hereby agree not to hold the advocate or his substitute
responsible for the result of the said case. The adjournment costs whenever ordered by the
Court shall be of the Advocate which he shall receive and retain for himself.

And I/we the undersigned do hereby agree that in the event of the whole or part of
the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to
withdraw from the prosecution of the said case until the same is paid up. The fee settled
is only for the above case and above Court I/we hereby agree that once the fees is paid. I/we
will not be entitled for the refund of the same in any case whatsoever.

IN WITNESS WHEREOF I/we do hereunto set my/our hand to these presents the
contents of which have been understood by me/us on this day of 19

Accepted subject to the terms of fees.

Client

Client

Om
Advocate

Om (S)
Executive Engineer (Elect.)
G. P. W. D. LUCKNOW