

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 54/91

199

T.A. NO:

DATE OF DECISION 23-7-92

Shri Mohandas Sadhuram Motwani Petitioner

Shri R.C. Rawlani

Advocate for the Petitioners

Versus

Union of India -Through the Respondent
Secretary, Ministry of Urban Devp.
Nirman Bhavan, New Delhi.

Shri J.G. Sawant

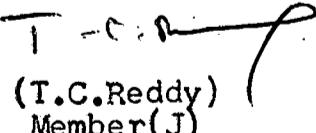
Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. T.C. Reddy, Member(J)

The Hon'ble Mr.

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. Whether it needs to be circulated to other Benches of the Tribunal ?


(T.C. Reddy)

Member(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : BOMBAY BENCH
AT BOMBAY

Original Application No. 54/1991

Shri Mohandas Sadhuram Motwani,
Asstt. Engineer (Civil),
C.P.W.D., Bombay-20.

... APPLICANT

Vs.

1. Union of India, through
the Secretary, Ministry of
Urban Development, Nirman Bhavan,
New Delhi-110 011.
2. The Director General of Works,
CPWD, Nirman Bhavan, New Delhi-11.
3. The Executive Engineer,
GCD, CPWD,
Sector 6, Gandhi Nagar, 382 006.
Gujarat.
4. The Executive Engineer,
PCD, CPWD,
Mukund Nagar, Pune-411 037.

... RESPONDENTS

CORAM: Hon'ble Mr. T.C.Reddy, Member (J)

Appearance:

Mr. R.C.Rawiani, Advocate for the applicant

Mr. J.G.Swant, Advocate for the Respondents

ORAL JUDGMENT Dated: 23-7-1992.
(Per: Hon'ble Mr.T.C.Reddy, Member (J)).

This O.A. is filed under Section 19 of the Administrative Tribunal Act to direct the respondents (i) to pay arrears of pay and allowances for the period from 1-12-80 to 31-12-85; (ii) to direct the respondents to allow the applicant to cross E.B. at the stage of Rs.1000/- and further to direct the respondents to pay arrears of pay and allowances with effect from 1-12-1985 onwards; (iii) to direct the respondents to pay interest for the delay in payment of arrears and for certain other incidental reliefs.

T. C. Reddy

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2. The facts giving rise to this O.A. in brief are as follows:

The applicant is working in CPWD, Calcutta as Assistant Engineer. The applicant was to cross EB at the stage of Rs.810/- on 1-5-1980. The applicant was not allowed to cross EB at the stage of Rs.810 with effect from 1-5-1980. ~~But anyhow~~ the applicant was allowed to cross the EB at the first stage of Rs.810 w.e.f. 1-12-80. The applicant was not allowed to cross the EB at the second stage at Rs.1000/- on 1-12-85. After filing of this O.A. the applicant had been paid the arrears of pay and allowances on 23-10-91 with regard to the crossing of first EB at the stage of Rs.810/-. So as there was delay in paying arrears to the applicant after the crossing of first EB according to the applicant he is entitled for interest on the said arrears. As already pointed out the second EB at the stage of Rs.1000/- the applicant was not allowed to cross. Hence this O.A. is filed as already indicated for the reliefs to direct the respondents to allow the applicant to cross EB at the second stage and also for payment of interest for all arrears that are paid and are liable to be paid to him after the crossing of the EB at the second stage of Rs.1000/-.

3. Reply is filed by the respondents opposing the O.A.

4. In the reply filed by the respondents, it is maintained that the present O.A. is barred by law of limitation. Further, it is maintained on behalf of the respondents in their reply that the EB Committee considered the case of the applicant on the basis of the service records of last five years CRs of the applicant, i.e. Service records for the years 1980-81 to 1984-85 and found him

not fit to cross the Efficiency Bar at the stage of Rs.1000/- w.e.f. 1-12-85 as overall performance of the applicant was not adjudged by the E.B.Committee as 'good'.

5. First we will deal with the point of limitation. The applicant was allowed to cross the E.B. at Rs.810/- but he was not allowed to cross the E.B. at the stage of Rs.1000/-. In the opinion of the E.B.Committee, the applicant was not fit to cross the EB w.e.f. 1-12-85. The applicant appealed on 18-12-85 but the appeal was rejected by the competent authority by order dated 28-10-88. The applicant had challenged the said order dated 28-10-88 in this O.A. The present application is filed on 5-2-91. As could be seen there is one and half years delay on the part of the applicant in approaching this Tribunal and in filing this O.A. In view of the delay in filing this O.A., the applicant has filed M.P.No.135/91 to condone the said delay filing of one and half years in this O.A. In the affidavit filed by the applicant to condone the delay in filing this O.A., the applicant has stated that under the impression that a favourable decision would be taken by the respondents and to avoid litigation with the respondents that he did not file the O.A. in time. It is further stated in the affidavit that the applicant was on medical leave from 30-9-90 to 3-11-90 and this contributed also for the delay in filing this O.A. After hearing both the sides on the question of delay in filing this O.A. we are satisfied that the applicant had made out sufficient cause in not filing this O.A. in time. As a matter of fact, Mr.J.G.Sawant, learned counsel for the respondents fairly conceded that technical pleas need not come in the way of tribunal in doing justice to the parties. So in view of this position, we have no hesitation to condone the delay in

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filling this C.A. Accordingly the delay is condoned in filing this C.A. and M.A. 135/91 is allowed.

6. Already pointed out, the arrears due to the applicant after crossing the EB at the stage of Rs.810/- are already paid to the applicant. The applicant has claimed interest for the delayed payment of arrears after he was allowed to cross EB at the stage of Rs.810/-. After hearing both the sides, we are of the opinion that this is not a fit case to grant interest for the said arrears. So, as the arrears are paid to the applicant after the applicant was allowed to cross the EB at the stage of Rs.810/- and as we have disallowed interest on arrears that are paid to the applicant with regard to the crossing of EB at the stage of Rs.810/-, there is nothing left for us to consider further so far as the first prayer of the applicant is concerned.

7. As a matter of fact, the emphasis is only with regard to the second prayer of the applicant. As already pointed out the grievance of the applicant is that he is not allowed to cross the EB at the stage of Rs.1000/- It will be pertinent to extract a para 9 at page 4 of the reply of the respondents which is as follows:

"The EB Committee considered his case on 5-2-88 and allowed him to cross Efficiency Bar at the stage of Rs.810/- with effect from 1-12-80. However, on the basis of the Service records of last five years CRs of the applicant i.e. servicerecords for the years 1980-81 to 1984-85, the EB Committee did not find him fit to cross the next stage of EB at the stage of Rs.1000/- with effect from 1-12-85. His overall performance wasnot adjudged by the EB Committee as "Good". The performanceof the applicant in the

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relevant five years CRs from the year 1980-81 to 1984-85 was assessed by the EB Committee as under:-

| <u>Year</u> | <u>Assessment</u> |
|-------------|---|
| 1980-81 | Average |
| 1981-82 | "Good" by reporting officer and satisfactory by reviewing officer. |
| 1982-83 | "Good" by Reporting Officer and 'Average' by Reviewing Officer. |
| 1983-84 | Average |
| 1984-85 | (i) From 1-4-84 to 15-11-84: Average/satisfactory (ii) From 16-11-84 to 31-3-85 "Very Good" by Reporting Officer and Reviewing Officer. But "Fair" by Countersigning Officer". |

From the reply statement of the respondents, it is quite evident that certain confidential guidelines issued by the respondent had been followed while considering the CRs of the applicant of the last five years with regard to the release of E.B. increment at the stage of Rs.1000/-.

8. The criterion for crossing of Efficiency Bar has been laid down in para 1, Section 6, Chapter-V, Volume 1 of C.P.W.D. Manual which reads as follows:

"Efficiency Bar: No officer is allowed to cross the Efficiency Bar when his work and conduct has been adjudged to be not satisfactory. For this purpose, his confidential reports should be reviewed at the time of consideration of the case of crossing efficiency bar."

The contention of the learned counsel for the applicant is that it was not open for the respondents to act on the said confidential guidelines while considering the applicant's case for the release of EB increment at the stage of Rs.1000/- and on the other hand that the E.B. Committee while dealing with the case of applicant with regard to said release of E.B. increment, should have acted only as per the above provision in the CPWD Manual.

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In support of the contention of the applicant, the applicant has relied upon a case reported in 1989 (9) ATC 558 in P.R.Dawara Vs. Union of India that is decided by C.A.T., New Delhi. As seen from the facts of the case, the applicant in the reported case was also working in CPWD as Assistant Engineer. The applicant therein had challenged ~~Secret~~ the said guidelines on which the E.B. Committee had acted for the release of E.B. increments to the applicant therein.

In the said decision there is reference to the secret guidelines according to which the E.B. Committee should declare a person unfit for crossing the Efficiency Bar who during the previous five years has not been graded atleast 'good' in three years and atleast 'fair' in other two years and the said guidelines indicate that the last year's entry must be 'good'. In the said case of P.R.Dawara Vs. Union of India, it is laid down that the said secret guidelines that were followed by the E.B. Committee in the said case cannot override the guidelines in the CPWD Manual.

9. In the present case also, as can be seen, the respondents have been guided by the recommendations of the E.B. Committee which E.B. Committee in its turn had followed the said secret guidelines in considering the case of the applicant for the release of the said E.B. increment at the stage of Rs.1000/-.

In the P.R.Dawara's case, after ^{therein} quashing the impugned order, Delhi Bench had directed the respondents therein that the question of the applicant crossing E.B. from that date onwards should be reviewed by the E.B. Committee directly in accordance with the instructions contained in CPWD Manual and those issued by the Department of Personnel and not with reference to the said secret guidelines.

10. So the decision in the case of P.R.Dawara is wholly applicable to the facts of this case also. In view of this position, we feel it will be just and proper to dispose of this O.A. with the same directions as were given by the Principal Bench, New Delhi in the P.R.Dawara's case.

11. In the result, we direct the respondents that the question of applicant's crossing of E.B. with effect from 1-12-1985 onwards should be reviewed strictly in accordance with the instructions contained in the CPWD Manual and those issued by the Department of Personnel, by E.B. Committee duly constituted by respondents, and without reference to the secret guidelines as are referred to in the reply of the respondents to this O.A. In considering the case of the applicant for release of E.B. increment at Rs.1000/- the CPWD Manual instructions as were in force as on 1-12-1985 shall be followed.

12. With the said directions, the O.A. is allowed. Parties p shall bear their own costs. Three months time is granted to the respondents, from the date of the receipt of this order to implement the directions herein.

T. Chandrasekhan Reddy
(T.C. Reddy)
Member (Judl.).

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