

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(6)

O.A. NO: 521/91

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T.A. NO:

DATE OF DECISION 9.10.92

Shri Avinash Kumar Sharma

Petitioner

Shri S.P. ~~XXXXX~~ Kulkarni

Advocate for the Petitioners

Versus

Comptroller and Auditor Gen.
of India New Delhi

Respondent

Shri V.M. Bendre for Shri
P.M. Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. USHA SAVARA, MEMBER (A)

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 ?

No.

Usha Savara
(USHA SAVARA)
MEMBER/A

9.10.92

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO:521/91

Shri Avinash Kumar Sharma

.... Applicant

V/s

Comptroller and Auditor General
of India New Delhi.

.... Respondents

CORAM : HON'BLE USHA SAVARA, MEMBER (A)

Appearance :

Shri S.P.Kulkarni, Adv.
for the applicant.

Shri V.M.Bendre, Adv.for
Shri P.M.Pradha, Adv.
for the respondents.

JUDGEMENT

DATED: 9. 10.1992

(PER : USHA SAVARA, M/A)

The applicant, who is an officer in the I.A.A. Department since 7.12.1965, was due to cross the efficiency bar on 1.6.1987. Normally the Departmental Promotion Committee should have met in April 1987 for considering the applicant's case for crossing of efficiency bar on 1.6.1987. The Departmental Promotion Committee met on 24.2.1988, i.e. nearly 10 months later. He was communicated adverse remarks for the year 1986-87 on 25.2.1988 i.e. one day after the Departmental Promotion Committee met. He made a representation against the adverse remarks within the stipulated period on 17.3.1988. However, the Departmental Promotion Committee did not find him fit for crossing the efficiency bar from 1.6.1987.

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2. Shri S.P. Kulkarni, learned counsel for the applicant submitted that the Departmental Promotion Committee which met on 24.2.1988 could only have considered those confidential reports, which it would have considered, had it been held as per the prescribed schedule, i.e. in April 1987. However, it was alleged that the Departmental Promotion Committee had taken into consideration the uncommunicated confidential report for 1986-87, and for that reason alone, the applicant was not allowed to cross the efficiency bar. It was also Shri Saxena's case that when the applicant was allowed to cross the efficiency bar by order dated 8.3.1990 from 1.6.1989, his pay should have been fixed at Rs.2825/- instead of Rs.2675/- and he could not have been precluded from earning his two increments due on 1.6.1988 and 1.6.1989 as soon as he was allowed to cross efficiency bar. Reliance was placed on Fundamental Rules 25(6) as well as judgements of the Tribunal.

3. Shri Bendre appeared for Shri Pradhan and produced the relevant records as directed. The Departmental Promotion Committee which met on 24.2.1988 "deferred" the applicant's case for crossing of efficiency bar till receipt of next confidential report. This was also stated in the written submissions. The 'deferring' was done as the applicant had received adverse remarks for the year 1986-87. The Departmental Promotion Committee which met on 6.9.1988 deferred consideration of applicant's case in view of the fact that the applicant's representation against adverse remarks for the year 1986-87 and 1987-88 was pending. Subsequently, the competent authority came to the conclusion that there was no merit in the

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representation and all the adverse remarks were retained. In the Departmental Promotion Committee meeting held on 25.8.1989, the case was deferred ^{and was} ~~to get~~ a special report ~~and~~ was called for, which was placed before the Departmental Promotion Committee which met on 3.11.1989. The applicant was found fit to cross the efficiency bar from 1.6.1989, and his pay was fixed accordingly. It was not denied by Shri Bendre that the applicant was communicated the adverse remarks for the year 1986-87 on 25.2.1988, but it was submitted that the applicant had been warned verbally on many occasions. The Departmental Promotion Committee which met on 24.2.1988 had to take into consideration all the records which were placed before the Departmental Promotion Committee, and there was no illegality in their actions. The principles of natural justice had not been violated, and the Original Application deserves to be rejected.

4. I have heard both the learned counsel at great length, and perused the relevant records. Prior to 1986-87, the applicant's record was quite good. Though he had been given an adverse in 1984-85, the same had been expunged. So, as on 1.6.1987, there was nothing adverse in the record. However, the Departmental Promotion Committee, which met on 24.2.1988 took into ~~consideration~~ consideration the 'uncommunicated' remarks for the year 1986-1987, whereas they should have relied upon the reports which were recorded prior to April 1987, since

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according to the time schedule, the Departmental Promotion Committee should have met in April 1987. It is an accepted fact that the efficiency bar cases should be considered on the basis of "reports of performance upto date available at the time of such consideration". The consideration of confidential report which was written after April 1987 was totally irregular and for this reason, the impugned order deserves to be quashed.

5. It is now an accepted principle that whether it be for crossing efficiency bar or for promotion, neither of the two can be withheld when it falls due on the ground of adverse entry in the confidential report unless the remark has been communicated to the person concerned and so long as the representation, made within the stipulated period, is pending. This view is supported by the Hon'ble Supreme Court's recent pronouncement as well.

6. In view of this I have no hesitation in setting aside the impugned order dated 8.3.1990 viz-a-viz the applicant.

7. The respondents are directed to allow the applicant to cross the efficiency bar with effect from 1.6.1987, to release the increment due to him with effect from that date and refix his salary progressively and disburse the arrears worked out on the basis of increment within a period of 2 months from the date of communication of this order. The case is disposed of accordingly.

8. There shall be no orders as to costs.

Usha Savara
(USHA SAVARA)
M/A