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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 149/92

199

T.A. NO:

DATE OF DECISION 3.9.92.

S.D.Dhopade

Petitioner

Shri B.W.Vaidya

Advocate for the Petitioners

Versus

UNION OF INDIA and ors.

Respondent

Shri V.S.Masurkar.

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 ? No.
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Usha Savara
(USHA SAVARA) 3.9.92
M/A

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(C)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO: 149/92

Shri S.D.Dhopade,
Telephone Supervisor,
Shivaji Nagar Telephone
Exchange, Test Desk.
PUNE-411005

.... Applicant

V/s

1. Union of India
through Assistant General Manager,
Pune Telecom Dist. Having his
office at Telephone Bhavan,
Bajirao Road,
Pune- 411002
 2. General Manager,
Pune Telecom District having
his office at Telephone Bhavan,
Bhajirao Road, Pune-11002.
 3. Chief General Manager,
Maharashtra Telecom Circle,
having his office at GPO Building,
Bombay - 400001.
- Respondents.

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

Appearance :

Shri B.W.Vaidya,
Adv.for the applicant.

Shri V.S.Masurkar, Adv.
for the respondents.

JUDGEMENT

DATED: 3.9.92

(PER : USHA SAVARA, MEMBER /A)

The applicant was working as Telephone Supervisor in Shivajinagar, Pune Telephone Exchange, Pune, and was due to cross efficiency Bar on 1.8.1987. The Departmental Promotion Committee met on 14th August 1987 and he was not considered fit for crossing efficiency Bar. On the same date the applicant was served a letter dated 28.7.1987 communicating adverse

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entries given in his confidential report for the year 1986-87. It is the case of the applicant that the Departmental Promotion Committee which met on 14th August 1987 had considered the adverse remarks for the year ending March 1987 and for that reason he was considered unfit for crossing efficiency Bar. These remarks had been communicated to him only on 14th August 1987 and he filed an appeal against the adverse remarks on 31.8.1987.

2. Shri B.W. Vaidya, learned counsel for the applicant submitted that there are standing instructions which lay down the time schedule of holding Departmental Promotion Committee in relation to the cases for crossing efficiency Bar. Such cases are to be considered in the month 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.

3. It is laid down in the relevant instructions that in respect of cases where the efficiency bar becomes due during the month of August to December, it would not be necessary to obtain the ~~special~~ reports as a matter of course for the ~~incomplete~~ portion of the year for which regular Confidential Reports are not yet due. The efficiency Bar was to be crossed by the applicant in the month of August 1987 and according to the time schedule, the confidential reports pertaining to the year 1987 only were to be considered. The adverse remarks were communicated to the applicant only on 14.8.1987 and the Departmental Promotion Committee could not have relied upon those remarks and for this reason alone the entire proceedings are liable to be set aside.

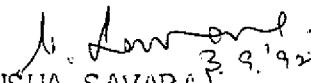
3. Various other grounds have been taken by the learned counsel for the applicant. In view of the order that I am about to make, it is not necessary to dilate upon them. Shri V.S. Masurkar, learned counsel for the respondents produced the minutes of the Departmental Promotion Committee and also Confidential Reports of the applicant for the three preceding years. It is seen that the reports for the years 1984-85 and 1985-86 did not have any adverse remarks and were fairly good. The first adverse entry has been made only in the year 1986-87. This entry was made on 28.7.1987 i.e. much after 1.4.1987. It was communicated to the applicant on 14.8.1987 and thereafter he has made representation to the authority for expunging the same. It is an accepted fact that the efficiency bar cases should be considered on the basis of "reports of performance up to the date available at the time of such consideration." Thus, Departmental Promotion Committee should have met in July 1987 to consider the cases of employees who were due to cross efficiency bar in the month of August to October and for this purpose the meeting would have considered only those Confidential Reports which it would have considered had the Departmental Promotion Committee meeting been held as per prescribed schedule. The consideration of confidential report in which the adverse remarks had been appended on a subsequent date was totally irregular and for this reason alone, the impugned order deserves to be quashed.

It is now an accepted principle that whether it be for crossing^S Efficiency Bar or for promotion, neither of the two can be withheld when it falls due, on the ground of adverse entry in the character roll unless the remark was communicated to the person concerned. The Bombay High Court has gone on to say that so long as the

representation against the adverse entry was pending, Efficiency Bar could not be held up on the basis of such adverse entries. This decision has been approved by the decision of the Supreme Court in Collector, Land Acquisition, Anantnag Vs. Mst. Katiji (1987) 2 SCC/87. That being the position of law, I have no hesitation in saying that as the crossing of Efficiency Bar fell due on ^adate anterior to the date of communication of the adverse entry, the adverse entry could not have been acted upon to withhold crossing of Efficiency Bar. I am of the view that the impugned orders are therefore unsustainable in law and they are liable to be quashed.

In the circumstances, I allow the application, and quash the impugned orders dated 25.8.1987, 31.1.1991 and 1.10.1991 and the respondents are directed to allow the applicant to cross efficiency bar with effect from 1.8.1987, to release the increment due to him with effect from that date and refix his salary progressively and disburse him the arrears worked out on the basis of increment within a period of two months from the date of communication of this order. The case is disposed of accordingly.

There shall be no order as to costs.


(USHA SAVARA)
MEMBER (A)

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