

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 29 JUL 1994

APPLICATION NUMBER:

659/94

APPLICANTS:

Sri. M. Arakiyanathan v/s. Secretary, N.C.O. Defense, N.Delhi
T.O.

RESPONDENTS:

① Sri. N. Narayanaswamy, Advocate,
no.844, upstairs, 17-G-Main,
515 Block, Rajajinagar, Bangalore-10.

2. Sri. N. Vasudeva Rao, Addl. C.G.S.C.
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 22-07-94

Issued on
29/4/94

P.

of

S. Shanthi 29/7
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

APPLICATION NO. 659/1994

DATED THIS THE TWENTYSECOND DAY OF JULY, 1994

Mr. Justice P.K. Shyamsunder, Vice Chairman

Mr. T.V. Ramanan, Member (A)

Mr. M. Arokiyanathan
S/o. Masila Mani
Aged about 52 years
Upper Division Clerk (Admn.)
Gas Turbine & Research
Establishment
C.V. Raman Nagar
Bangalore-93.

..... Applicant

(By Shri M.N. Swamy, Advocate)

Vs.

1. The Union of India
rep. by its Secretary to
Govt., Ministry of Defence
North Block, New Delhi-11.

2. The Scientific Adviser to
Raksha Mantri and Director General
Defence Research & Development
Organisation, Sena Bhavan
New Delhi-11.

3. The Director
Gas Turbine & Research Establishment
(G.T.R.E.) C.V. Raman Nagar
Bangalore-93. Respondents

(By Shri M.V. Rao, A.C.G.S.C.)

O R D E R

(Mr. T.V. Ramanan, Member (A))

We have heard the learned counsel for the
applicant and the learned Standing Counsel for the respondents.



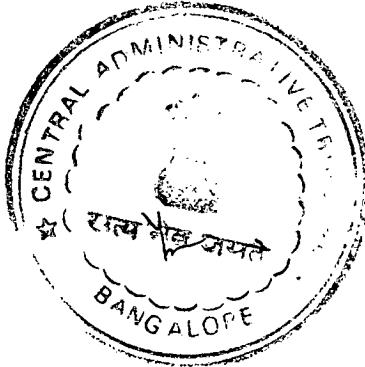
2. The applicant, who is an UDC, has challenged non-grant of increment to him by allowing him to cross Efficiency Bar (EB for short) with effect from 1.6.1993, so that his pay gets raised to Rs 1600 in the scale of Rs 1200-30-1560-EB-40-2040. It has been contended on behalf of the applicant that despite the fact that the applicant had not been subject to any disciplinary proceedings or was communicated with any adverse entries over the years, his not being allowed to cross the E.B by the Departmental Promotion Committee (DPC for short) which met on 26th June, 1993 was highly arbitrary and totally unjust.

3. The learned Standing Counsel for the respondents avers that the DPC had considered the case of the applicant but found him unfit to cross the E.B. At our direction, he produced the proceedings of the DPC, the assessment report which contains the remarks made by the Section Head, Divisional Head and the Group Director as to whether the applicant should be allowed to cross the E.B and the ACR Dossier of the applicant. A perusal of the assessment report referred to above, shows that the Section Head has categorically stated in writing "Recommended for grant of E.B increment". The Divisional Head has recorded "May be cleared" meaning thereby that, the applicant be allowed to cross the E.B. The Group Director, who subsequently received the report for recording his recommendation, has recorded "Recommended".

4. We have gone through the ACRs of the applicant for the period from 1987 to 1992. We find the applicant's performance was graded as 'good', 'very good' and 'good' for the years 1987 (the first report on him available on

the file after his appointment as U.D.C on 17.6.1986), 1988 and 1989 respectively. The reports for the years 1990, 1991 and 1992 show that his performance was graded as "average" for all these years. Apparently, the overall performance of the applicant during these years when he functioned as an U.D.C could be categorised as between "Average" to "Good". Even if it is taken as an 'average' performance, an average performance cannot be construed as poor performance. In fact, for crossing of E.B., fitness is the only consideration. It is well accepted that where promotion to the next higher grade is not by 'selection' but by seniority subject to not being declared unfit, even those with an average record of performance are to be cleared for promotion by DPCs. If that be so, a DPC which is required to consider the case of a Government servant in order to allow him to cross the E.B. in the very scale of pay in which he is already drawing pay at the cut off point of E.B. cannot take an average performance as the basis for declaring the Government servant to be unfit for being allowed to cross the E.B. Unfortunately, this is what the DPC seems to have done in this case. A perusal of the DPC proceedings shows that the DPC had considered the assessment report referred to above and the service records, which include the ACRs, but found him unfit to be allowed to cross the E.B.

5. We are of the view that the recommendation of the DPC, based on which the applicant was not allowed to cross the E.B., cannot be upheld. All the three functionaries, viz., the Section Head, Divisional Head and the Group Director have recommended in the assessment report that the applicant be allowed to cross the E.B. The overall performance of the



applicant as per the ACRs is 'average'. It is admitted even by the Standing Counsel for the respondents, that no remarks purported to be adverse have ever been communicated to the applicant after his promotion as U.D.C. In fact, this is borne out by the entries made in the ACRs themselves for the years 1990, 1991 and 1992. Column 3 of part V of these ACRs carries the following query: "Have adverse remarks, if any, been communicated to the individual in writing?" This part of the report is required to be filled in by the 'Accepting Authority'. The replies to the afore-mentioned query in these reports are 'No' for 1990, 'Nil' for 1991 and 'Not Applicable' for 1992. These replies show that nothing was construed as adverse in these reports, which categorise the applicant's performance as average, and as such no adverse remarks were communicated to the applicant.

6. Therefore, on the basis of the records as aforesaid produced, the finding of the DPC that the applicant was unfit for being recommended for sanction of E.B increment cannot be justified by any yardstick. We are, therefore, of the view that the applicant has unjustly been denied the benefit of crossing of E.B for securing the next increment in the pay scale of U.D.C.

7. We, therefore, quash the communication at Annexure-A1 conveying non-clearance of the applicant's case for crossing the E.B and the communication at Annexure-A4 conveying rejection of the representation made by the applicant and direct the respondents to treat the applicant as being fit for crossing the E.B for the purpose of increment from 1.6.1993 and give him, by issue of an order, all

4

consequential benefits from that date. This direction may be carried out by the respondents within a period of one month from the date of receipt of a copy of this order. No order as to costs.

Sd/-

mr.

(T.V. RAMANAN)
MEMBER(A)

Sd/-

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY



Se Shambay 29/7
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE