

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 518 OF 1994.

Date of Decision: July 9th, 1999.

H. P. Vohra, Applicant.

Shri R. S. Mohite, Advocate for
Applicant.

Versus

The Administrator of Dadra & Respondent(s)
Nagar Haveli,

Shri V. S. Masurkar, Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. D. S. Baweja, Member (A).

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to other Benches of the Tribunal?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 518/94.

the 9 day of July 1999.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A).

H.P. Vohra
Deputy Engineer,
P.W.D. Administration
of Dadra and Nagar Haveli
at Silvassa.

... Applicant.

By Advocate Shri R.S. Mohite.

V/s.

The Administrator of Dadra and
Nagar Haveli,
Silvassa,
Dadra and Nagar Haveli.

... Respondent.

By Advocate Shri V.S. Masurkar.

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(Per Shri Justice R.G. Vaidyanatha, Vice Chairman)

This is an application filed under section 19
of the Administrative Tribunals Act 1985. The
respondents have filed reply. We have heard the
learned counsel appearing on both sides.

2. The facts which are necessary to the
disposal of the application is as follows:

The applicant has been working as Deputy
Engineer in P.W.D. The Administration of Dadra and
Nagar Haveli, since 4.10.1992. His revised pay

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scale is Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200. According to the applicant the first Efficiency bar was due on 1.10.1978 and the second was due on 1.10.1983. However the department has not cleared the efficiency bar for both the stages. It appears the efficiency bar was not cleared for the first stage due to some adverse remarks in the ACRs of the applicant for the years 1975-76, 1976-77 and 1977-78. Then the applicant has filed O.A. 485/87 challenging the non-clearance of efficiency bar which was due on 1.10.1978. The department took the same stand that because of the adverse remarks in the ACR of those years his case could not be cleared. Then the Tribunal disposed of the O.A. by order dated 10.4.1992 allowing the application by holding that the adverse remarks in the ACRs of those three years are not valid and cannot be referred to since they were communicated long after the respective years and long after the date on which the applicant was entitled to cross the efficiency bar and further gave a direction to the department to pass the order in favour of the applicant for clearing the efficiency bar and release the increments within a period of four weeks and pay all consequential monetary benefits. Being aggrieved by this order the government preferred an S.L.P. before the Supreme Court which came to be registered as Civil Appeal No. 3797/92. The Supreme Court in its judgement dated 15.9.1992 took ~~an~~ 

exception to the direction given by the Tribunal ^{by} and straight away cleared the efficiency bar and observed that it is for the administration and not for the Tribunal and hence the appeal came to be allowed with a direction to the administration to consider the case of the applicant for crossing efficiency bar as per rules. In pursuance of the judgement the administration called a Review DPC who held meeting and again decided that the applicant is not suitable for crossing the efficiency bar and on that basis the administration passed an order dated 14.3.1993 holding that the applicant is not suitable to cross efficiency bar due on 1.10.1978. Being aggrieved by this order the applicant has approached this Tribunal.

The applicant is challenging the legality and validity of the order dated 14.3.1993 on many grounds.

3. The respondents in their short reply have justified the impugned order stating that in view of the judgement of the Supreme Court a Review DPC has considered the case of the applicant and in view of adverse remarks in the ACRs for the relevant years the applicant was not granted clearance to cross the efficiency bar.

4. After hearing the learned counsel for both sides, the one and only question which falls for determination is whether the applicant has made out a case for crossing efficiency bar on 1.10.1978 or any time thereafter?

5. This Tribunal in the previous judgement in O.A. No. 485/87 has clearly held that the adverse entries in the A.C.Rs. for 1975-76, 1976-77 and 1977-78 should not be taken into consideration since the adverse remarks were not communicated to the applicant within the particular period and further not communicated before the date on which the applicant reached the stage of crossing the Efficiency Bar. This Tribunal has considered some decisions of the Supreme Court in coming to that view. Having reached that view, the Tribunal further gave a direction that the department should grant clearance of Efficiency Bar to the applicant within four weeks and grant all monetary benefits. When the matter was challenged before the Supreme Court, we find that the only grievance made by the Learned Counsel for the respondents before the Supreme Court was that the direction given in the judgement directing the administration to clear the Efficiency Bar and pay all monetary benefits was not according to Law and this contention was accepted by the Supreme Court. The copy of the order of the Supreme Court is at exhibit R-1 to the written statement of the respondents. After narrating the facts in para 3, the Supreme Court has noted the objections taken by the Learned Counsel for the Administration that such a direction could not have been given and it is for the department to decide the question of clearance of Efficiency Bar. The Supreme Court accepted this by observing that the Tribunal cannot assume the role of the authority who have to decide the question of clearance of Efficiency Bar. In those



circumstances, the order of the Tribunal was set aside with a direction to the administration to pass appropriate orders as per rules.

The observations and findings of the Tribunal that adverse entries for the three years in the A.C.Rs. should not be taken into consideration since they were not communicated to the applicant in time and communicated belatedly long after the date for crossing the Efficiency Bar was neither questioned before the Supreme Court nor set aside by the Supreme Court. The Administration made no grievance before the Supreme Court about the finding of the Tribunal that the particular A.C.Rs. should not be taken into consideration. If that is so, then the finding of this Tribunal in that O.A. is binding on the Administration. Even assuming for a moment, we accept the contentions of the respondents' counsel that the entire judgement is set aside, no arguments were addressed before us to take a different view than the one taken by the Tribunal in the previous case. After going through the materials on record and reasoning of the Tribunal in the order dated 10.04.1992 in O.A. No. 485/87, we hold that the adverse entries in those three years cannot be looked into and has to be ignored for the purpose of considering the claim of the applicant for crossing the Efficiency Bar and we are in respectful agreement with the reasoning of the Tribunal on this point in the order dated 10.04.1992.

6. The Learned Counsel for the respondents has placed on record the original A.C.Rs. of the applicant

before us. In fact, an extract of the A.C.Rs. is annexed as exhibit R-2 to the written statement. It shows that there were adverse entries against the applicant only in 1975-76 and 1976-77. In view of our finding recorded above, the adverse entries have to be ignored. If these entries are ignored, then we find that the applicant has satisfactory record of service ~~in~~ the year 1972-73 and 1977-78. For 1973-74 there is only one observation that the official requires experience. The A.C.R. for 1974-75 is not available.

In view of the observations of the Supreme Court that the Tribunal cannot take the role of the Administrator, we feel that we should give a direction to the Administration to hold a review D.P.C. and again consider the case of the applicant for clearing the Efficiency Bar without taking into consideration the adverse entries for 1975-76 and 1976-77.

The Learned Counsel for the respondents contended that the D.P.C. can give its own grading and if the D.P.C. has considered the case of the applicant, this Tribunal should not interfere with the decision of the D.P.C. On perusal of the records it is seen that the D.P.C. has not given its own grading. We have perused the original records of D.P.C. produced before us. In the D.P.C. proceedings dated 28.01.1993 pertaining to the applicant, it is mentioned that in view of the grading given by the Reporting Officer and Reviewing Officer for 1972-73 onwards, except for 1977-78 and 1978-79, the *✓*

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D.P.C. recommends not to allow crossing of Efficiency Bar to the applicant. Therefore, the D.P.C. has not given its own grading on the basis of the entries in the A.C.Rs. The D.P.C. has followed the grading given by the Reporting Officer and the Reviewing Officer and on that basis, has come to the conclusion that applicant cannot be allowed to cross the Efficiency Bar. We, therefore, feel that necessary direction will have to be given to the administration to consider the case of the applicant as per rules.

7. In the result, the application is allowed as follows :-

i. The Administration of Dadra & Nagar Haveli shall consider the case of the applicant, H. P. Vohra, Deputy Engineer, for crossing the Efficiency Bar which was due on 01.10.1978 by considering the service records of the applicant, but excluding the adverse remarks made against the applicant in the A.C.Rs. of 1975-76 and 1976-77. The matter should be placed before the Review D.P.C. to consider the same.

ii. After considering the service record of the applicant by ignoring the adverse entries in the relevant years as mentioned above, the administration shall decide whether the applicant is entitled to cross the Efficiency Bar or not. In case it is held that he is suitable to cross the efficiency Bar, then appropriate orders may

for

be passed and increment shall be fixed from time to time and all consequential monetary benefits from 01.10.1978 till now shall be granted to the applicant.

- iii. In case the D.P.C. and/or the Administration decides that the applicant is not fit or suitable to cross the Efficiency Bar, then the administration may pass a speaking order giving reasons.
- iv. If for any reasons the D.P.C. comes to the conclusion that as on 01.10.1978 the applicant is not suitable to cross the Efficiency Bar, then the D.P.C. should consider the case of the applicant for crossing the Efficiency Bar in October, 1979 and again for successive years and then it should also consider whether he is entitled to cross the Efficiency Bar at the second stage, namely - October, 1983. In case the applicant is found suitable to cross the Efficiency Bar at any stage or any year and also the second Efficiency Bar due in October, 1983, then the applicant should be granted all consequential monetary benefits. However, in case he is found not suitable, the same shall be communicated to the applicant by a reasoned order.

by

v. The respondents are directed to comply with the direction in this judgement within a period of three months from the date of receipt of a copy of this order.

vi. In the circumstances of the case there will be no order as to costs.

(Signature)
(D. S. BAWEJA)
MEMBER (A).

(Signature) 9.7.99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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