

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~ Hyderabad

O.A. No. 417 of 1987
~~LA No.~~

DATE OF DECISION 21-05-1988

B. E. Reddy Petitioner

C. Suryanarayana Advocate for the Petitioner(s)

Versus

Suptg. Surveyor Suptg. of India Respondent
 & others

N. R. Devaraj, Addl. CGSC Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D. Surya Rao, Member (Judicial)

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?

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(Judgment of the Tribunal delivered by Shri D.Surya Rao,
Hon'ble Member (Judl.)

The applicant herein is now working as a
Topo-Auxilliary, Grade-II in the Survey of India, Uppal,
Hyderabad. In this application he questions orders issued
by the respondents whereby he was not allowed to cross
the Efficiency Bar. The applicant contends that he was due
to cross the Efficiency Bar on 1-1-1985 raising his pay
from Rs.530/- to Rs.545/- in the scale of Rs.425-600. By
order No.111/4-F-5 dated 29-11-1985 the first respondent
intimated the applicant that the second respondent had
informed that the applicant was not found fit to cross
the Efficiency Bar from 1-1-1985. On a representation
by the applicant dated 20-1-1986 that he had no adverse
A.C.Rs for the last four years and requesting reasons
why he was not allowed to cross the Efficiency Bar, the
impugned order No.17/4-F-5 dated 19-2-1986 was issued by
the first respondent^⑤ stating that the second respondent
had intimated that the case of the applicant for crossing
the Efficiency Bar was considered by the D.P.C, ^{with reference to} on the on 16

reports and he was not found fit to cross the Efficiency Bar with effect from 1-1-1985. The applicant again on 21-2-1986 sought reasons for not being allowed to cross the Efficiency Bar but received no reply. The applicant contends that not allowing him to cross the Efficiency Bar is illegal as he had received no adverse remarks for the period 4 years prior to 1-1-1985, that reasons were not given for not allowing him to cross the Efficiency Bar and that the impugned order should have been passed either before the applicant was due to cross the Efficiency Bar or soon thereafter and not 11 months later.

2. On behalf of the respondents a counter has been filed stating that the applicant had been issued various guidance letters and warnings about his short comings between 1975 and 1984. It is further contended that the integrity of the applicant was found poor as he had submitted a fraudulent L.T.C claim during the period 15-3-1983 to 22-3-1983. He was directed to refund the L.T.C. advance and he was informed that disciplinary action was contemplated against him and that these facts

were entered into in the A.C.R. for 1984. Subsequently, he was charged and a punishment of Censure was awarded ~~as punishment~~ by an order dated 24-5-1985. It is further contended that stoppage of a Government servant from crossing the Efficiency Bar is not a punishment and that reasons need not be furnished therefor. It is, therefore, prayed that the application may be dismissed.

3. Heard the arguments of Shri C.Suryanarayana, learned Counsel for the applicant and Shri Devaraj, Standing Counsel for the Department. The first contention of Shri C.Suryanarayana is that there is no proper delegation of power to enable the 2nd respondent to stop the increment of the applicant. F.R. ⁶ ~~25~~ provides ~~for delegation by the Central Government and the Railways~~ of the powers conferred upon the Central Government ~~and the Railways~~ ^{but} subject to certain exceptions. Appendix 3 ^{matters delegated under F.R. 6 and} contains ~~that the delegation made in F.R. 6 and the same~~ ^{for that} ~~under~~ Sl.No.8 provides ^{is delegated} ~~delegation of~~ powers to withhold an increment under F.R.24 to any authority which has the power to make substantive appointment to the post which the Government servant holds or an authority empowered ~~to~~

under CCS (CCA) Rules to withhold increment. F.R. 24 is thus the rule under which power to withhold an increment is delegated under Appendix-3. Shri Suryanarayana, however, contends that it is only F. R. 25 which provides for stopping a Government employee from crossing Efficiency Bar and that since there is no specific delegation of the power under F.R. 25, it is not open to the 2nd respondent to prevent the applicant from crossing the Efficiency Bar.

F.R. 25 reads as follows:-

"Where an efficiency bar is prescribed in a time-scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increment under Rule 24 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may, by general or specific order, authorise in this behalf."

Thus under the statutory rule itself, power is vested in the authority to whom delegation is made under F.R.24 to stop an employee from crossing the Efficiency Bar. The provision for further or specific delegation of the power under F.R.25 is therefore unnecessary. The contention that respondent 2 is not competent to impose stopping of E.B. on the applicant is therefore untenable.

4. The second contention of the learned Counsel for the applicant is that there was delay in communicating

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the decision that the applicant has not been allowed to cross the E.B. A reliance is placed viz. 1974(1) SLR 594 (Padam Singh Jhina v. Union of India) wherein it was held that an order passed preventing crossing of E.B. should be passed either before the appointment or shortly thereafter. In that case no time limit has been prescribed by the Supreme Court but an order passed two years after the appointed date was deprecated. In the instant case, the order has been passed about 11 months after the due date. A reliance also placed on a decision reported in 1987(1) ATLT p.232 (Y.P.Batra v. Union of India & others) wherein the Delhi Bench of the Central Administrative Tribunal held that normally the DPC should have met before the employee was to cross the EB (in that case 1-2-1978) and that if they had done so they could not have considered the adverse remarks recorded after 1-3-1978. Even this decision has not prescribed any time limit or expressly held that consideration of the case of an employee for crossing EB shall be before the due date. The case mainly proceeded on the ground that consideration of adverse reports recorded after the due date should not be taken into account. In the instant case, it has been explained that ACRs of the applicant and 2 others were held up as dossiers

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were not available and have not been submitted by the second respondent earlier. Since after receipt there of the question of consideration for crossing the Efficiency Bar was taken up in August 1985, the orders of DPC were obtained and immediately thereafter the decision was communicated. It is therefore stated that there is no inordinate delay in taking the decision. The question whether the delay vitiates the order preventing an employees from crossing the Efficiency Bar would depend upon the facts and circumstances of each case. As already explained, the DPC could not consider the case of the applicant and some others in view of the fact that the ACRs were not available. In these circumstances merely on the ground that there was some delay in informing the applicant that he was not allowed to cross the Efficiency Bar, it cannot be a ground for holding that the order is vitiated.

5. The next contention is whether the DPC was justified in finding that the applicant was not fit to cross the Efficiency Bar. It is seen from the records

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produced by the learned Standing Counsel for the Department that the ACRs from 1966 to 1973, 1974 and 1975 to 1984 were considered by the DPC. The learned Standing Counsel for the Department contends that the warnings referred to in the counter and other records were not the basis for in the DPC/coming to the conclusion that the applicant was not fit to cross the Efficiency Bar as none of the warnings were incorporated in the ACRs for the respective years. He further contends that the ACR for the year 1984 contains an entry in regard to the integrity of the applicant which reads as follows:-

"Assessment of integrity:

He submitted a LTC claim against four year block 1982-85 for his family (in respect of his brother), from Hyderabad to Kanyakumari. On verification it was found that the claim is false. He was asked to refund the entire LTC advance of Rs.900/- in one lumpsum along with penal interest by 27-8-1984 vide letter No.84/18-B-7 dated 18-8-1984.

He neither refunded the money nor replied to our letter.

Disciplinary action under Rule 14 (CCS.CCA) is contemplated against the individual and the case was forwarded to DPM vide letter No.107/18-B-7 dated 27-9-84."

This assessment regarding integrity was for the period from 1-10-1983 to 30-9-1984 and was written by the

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officer on 9-11-1984 before the applicant was due to cross the Efficiency Bar and well before the DPC met to consider his ACRs. It is contended by Shri Suryanarayana that ^{the} these ^{for the year 1983-84} Adverse Confidential remarks were never communicated to the applicant and these were communicated only after the disciplinary proceedings were taken and the Censure was communicated to the applicant. It is contended that since the Censure and punishment was imposed only after the due date viz. 1-1-1985 there was no valid ground for the DPC to have withheld the applicant at the stage of Efficiency Bar. It is further stated on the basis of un-communicated adverse remarks that an employee cannot be prevented from crossing the Efficiency Bar on the due date. Shri Devaraj on the other hand contends that the decision that the applicant had made a false claim of LTC from Hyderabad to Kanyakumari for his brother had been taken as early as in August 1984 and the same was communicated to the applicant by letter dated 18-8-1984. It is stated that the applicant never replied and denied the fact that the false claim had been made. It is,

therefore, contended by Shri Devaraj that it is open to the DPC to consider this entry in the ACR for the year 1984 regarding integrity of the applicant and prevent the applicant from crossing the Efficiency Bar on 1-1-85. There is no doubt that an employee cannot be prevented from crossing the Efficiency Bar on the basis of un-communicated adverse Confidential remarks and this is well settled by various decisions of the Supreme Court and High Courts. It has been held in 1983(3) SLR p.9 that the following proposition can be called out viz.(i) that the remarks must be communicated to the concerned Government servant as early as possible so that he can make improvement in his performances and (ii) that the remarks which are communicated after the relevant period should be ignored.(iii) If the representation made against the adverse remarks has not been disposed of, such remarks cannot be validly taken into consideration for assessing the performance of an officer. Again in 1978(2) SLR p.481 it was held interpreting F.R.25 that it is beyond doubt that unless ^{there is} specific satisfaction of the authority, the Efficiency Bar cannot be removed and the removal of the Efficiency Bar will depend upon the satisfaction of the

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competent authority. Again in 1979(1) SLR p.958 held by the Punjab and Haryana High Court, the crossing of the Efficiency Bar is not a matter of right and an order passed whereby the Efficiency Bar was held up on consideration and assessment of over all service record, cannot be interfered with. In the instant case, there is a specific communication to the applicant before he was due to cross the Efficiency Bar that he had put in a fraudulent claim for LTC & during the block period 1982-85 and calling upon him to refund the advance taken. He was also informed thereby that the disciplinary action will be taken both for recovery and for making the fraudulent claim. The applicant did not send any reply there-to. Subsequently proceedings were commenced and a punishment of Censure was imposed on the applicant. The question is whether it was not open to the DPC to take into consideration the notice/letter issued to the applicant in August 1984 wherein he was informed that the fraudulent claim has been made by him. If the applicant had denied that such a fraudulent claim had been made, there is no doubt that the DPC would not be competent to consider the effect of the letter. Since the applicant did not send

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any reply, it was open to the DPC to consider the same and deny the applicant the right to cross the Efficiency Bar on 1-1-1985. This is not a case where the Efficiency Bar has been stopped on the ground of contemplated disciplinary proceedings but one where an employee has been informed that he has made a fraudulent claim for LTC. This contention he never denied when put on notice thereof. In the circumstances I am in opinion that there are no valid grounds for assailing the findings of the DPC that the applicant was not fit to cross the Efficiency Bar on 1-1-1985. The application is dismissed. In the circumstances there will be no order as to costs.

D. Surya Rao
(D.SURYA RAO)
Member (Judl.)

Dated: 21 June, 1988.

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S. L. Ravi
Deputy Registrar
W. S. Ravi