

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.219 of 1994

Date of decision: This the 30th day of October 1998.

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman
The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri B.K. Laskar,
Assistant Engineer,
Central Public Works Department,
Tripura Central Sub-Division No.4,
Gakulnagar B.S.F. Campur, Agartala.Applicant
By Advocates Mr B. Das and Mr M. Chanda.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Urban Development,
New Delhi.
2. The Director General of Works,
Central Public Works Department,
New Delhi.
3. The Chief Engineer,
Central Public Works Department,
Shillong.
4. The Superintending Engineer,
C.P.W.D., Silchar Central Circle,
Silchar.Respondents
By Advocate Mr G. Sarma, Addl. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

The applicant was appointed on promotion to the post of Assistant Engineer on ad hoc basis by Annexure I order dated 13.4.1982. According to the applicant this appointment was in fact a regular appointment. He was thereafter shown as regular Assistant Engineer with effect from 1.1.1985. Subsequently, by another seniority list, the applicant was shown as a regular Assistant Engineer with effect from 25.4.1986. However, the applicant was



13

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A.No. 219 of 1994

30.10.1998
DATE OF DECISION.....

Shri B.K. Laskar (PETITIONER(S))

Mr B. Das and Mr M. Chanda ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others RESPONDENT(S)

Mr G. Sarma, Addl. C.G.S.C.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



denied increment at Efficiency Bar stage on the ground that he was not fit. He was also denied proper fixation of his scale of pay. Though he was not allowed to cross the Efficiency Bar and also deprived of proper fixation of his pay scale he was not informed the reasons for the same. No adverse remarks were communicated to him, yet he was not allowed to cross the Efficiency Bar. Only in the year 1990, by Annexure A memorandum dated 29.6.1990, the applicant was intimated that there were some adverse entries in his Annual Confidential Report (ACR for short) for the period from 1.4.1986 to 31.3.1987 and from 1.4.1987 to 12.11.1987. However, there was no reason as to why such remarks were made in his ACR. On receipt of the aforesaid memorandum dated 29.6.1990 the applicant submitted Annexure B representation dated 23.7.1990, but according to the applicant the said representation was not disposed of. At the same time the authority on the basis of the adverse entries made in the years 1986 and 1987 and belatedly communicated to the applicant deprived him of his increment and also proper fixation of his pay scale. The applicant, being aggrieved and dissatisfied at the action taken by the authority approached this Tribunal by filing the present application.

2. We heard Mr B. Das, learned counsel for the applicant and Mr G. Sarma, learned Addl. C.G.S.C. appearing on behalf of the respondents. Mr Das submitted before us that the action of the respondents was not only arbitrary, but also unfair. According to him the action taken by the respondents was contrary to the provisions of the rules. Therefore, such action of the respondents, namely not allowing the applicant to cross the efficiency bar and depriving him of proper fixation of his pay scale

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was liable to be set aside and quashed. Mr Das further submitted that as per the relevant rules the authority was required to dispose of the representation against the adverse remarks within three months and without disposing of the representation the authority should not have acted on the adverse remarks. Mr G. Sarma, however, disputed the claim of Mr Das. According to Mr Sarma the action of the respondents did not call for any interference.

3. On the rival contention of the learned counsel for the parties, it is now to be seen whether the action taken by the respondents can sustain in law. As per Chapter 52 Clause 20 of Swamy's Complete Manual on Establishment and Administration all adverse entries in the confidential report of the Government servant, both on performance as well as on basic qualities and potential should be communicated along with a mention of good points within one month of their being recorded. This communication should be in writing and a record to that effect should be kept in the CR Dossier of the Government servant concerned. It is further mentioned that only such of the adverse entries as are accepted by the countersigning authority, if any, need be communicated. The countersigning authority should, therefore, normally indicate whether it agrees or disagrees with the remarks of the reporting officer. It should also record, additional remarks, wherever necessary, if the report is too brief, cryptic or vague. Alongwith the adverse entry, the substance of the entire report including what may have been stated in praise of the officer should also be communicated. The improvements made in respect of the defects mentioned in the earlier report should also be communicated to the

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officer in a suitable form. A copy of the letter communicating the adverse remarks duly acknowledged by the official concerned should be kept in the CR file and the fact of communication of the entries should be recorded in the report itself by the authority communicating them. It is further mentioned that great attention should be paid to the manner and method of communication of adverse remarks in order to ensure that the advice given and warning or censure administered whether orally or in writing shall, having regard to the temperament of the officer concerned, be most beneficial to him. As per clause 22 only one representation against adverse remarks should be allowed within one month of their communication. While communicating the adverse remarks to the Government servant concerned, the time-limit should be brought to his notice. However, the competent authority may, in its discretion, entertain a representation made beyond this time if there is satisfactory explanation for the delay. Again, as per clause 24, all representations against adverse remarks should be decided expeditiously by the competent authority and in any case, within three months from the date of submission of the representation. Adverse remarks should not be deemed to be operative if any representation filed within the prescribed time-limit is pending. If no representation is made within the prescribed time, or once this has been finally disposed of, there would be no further bar to take notice of the adverse remarks.

4. From the above it is clear that adverse entries made in the confidential report has to be communicated as early as possible and no adverse action can be taken on the basis of uncommunicated adverse entry. An



uncommunicated.....

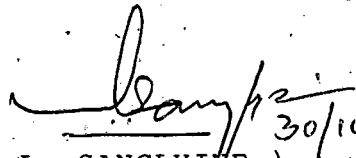
uncommunicated adverse entry should not form the foundation to deny the benefit to the Government servant when similar benefits are extended to his juniors. The adverse entry belatedly communicated also stands in the same footing, inasmuch the employee should not be deprived of the benefit for the period before communication. Besides, when a representation is submitted against a belatedly communicated adverse entry the employee cannot be deprived of the benefit due to him on the basis of the adverse entry against which a representation is pending. In the present case the adverse entries were made from 1.4.1986 to 31.3.1987 and from 1.4.1987 to 12.11.1987. On the basis of these adverse remarks the applicant was not allowed to cross the efficiency bar and he was also deprived of proper fixation of his pay scale, though the said remarks were communicated to him at a much later date, i.e. on 29.6.1990 and the representation filed by the applicant against the adverse remarks was also not disposed of.


5. In view of the above we agree with the submission of Mr Das that the action taken by the respondents by not allowing the applicant to cross the Efficiency Bar and also depriving him of proper fixation of his pay scale was arbitrary and unreasonable. Accordingly we set aside the action of the respondents and direct the respondents to give the benefit to the applicant till the disposal of the representation. We also direct the respondents to dispose of the representation as early as possible at any rate within a period of two months from the date of receipt of this order.

6. The application is accordingly disposed. In the

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facts and circumstances of the case we, however, make no order as to costs.


(G. L. SANGLYINE)
MEMBER (A)


(D. N. BARUAH)
VICE-CHAIRMAN

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