

Bhawani Shankar Sharma

Vs

Union of India

Civil Appeal No. 2079 of 1968

(K. S. Hegde, A. N. Grover, G. K. Mitter JJ)

07.04.1972

JUDGMENT

HEGDE, J. –

1. The appellant-plaintiff was working as an Assistant Surveyor of Works in the Chief Engineer's Office, Southern Command, Poona-1 from November, 1953 to July, 1955. On November 22, 1953, the Chief Engineer served an order on him intimating him that he neither showed interest in the work nor applied himself sufficiently. Thereafter by another order, dated January 11, 1954, the Chief Engineer informed him that as his work was found to be unsatisfactory, it was proposed to withhold the grant of annual increment which fell due to him on August 7, 1953, which increment would have entitled him to cross the efficiency bar at Rs. 590/- per month. The appellant was called upon to make representation against the proposed order. He made a representation against the proposed order. He pleaded that his performance was not below normal. He further stated in his representation that he was unable to make a proper representation as he was not informed of the basis on which the Chief Engineer came to the conclusion that he was inefficient in his work. The Government after considering the representation made by the appellant ordered stopping him crossing the efficiency bar. The appellant's representation against that order was not accepted. Thereafter the appellant filed a suit from which this appeal has arisen challenging the validity of the order made by the Government.

2. The trial court dismissed the suit and that decision has been affirmed by the High Court.

3. The only contention urged on behalf of the appellant in this Court was that the impugned order was invalid inasmuch as the appellant was not granted a reasonable opportunity to which he was entitled under Rule 16 of the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952. Rule 13 of those Rules prescribes that withholding of an increment is a punishment. That rule nowhere refers to the stopping of the crossing of the efficiency bar. Rule 16 says :

"No order imposing the penalty specified in clauses (i), (ii) or (iv) of Rule 13 (other than an order based on facts which have led to his conviction in a criminal court or by a Court-martial or an order superseding him for promotion to a higher post on the ground of his unfitness for that post) on any Government servant to whom these rules are applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation, if any, has been taken into consideration before the order is passed :

Provided that the requirements of this rule may, for sufficient reasons to be recorded

in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned."

4. It is not necessary for our present purpose to decide whether the impugned order is one of the penalties prescribed under Rule 13. For purposes of the case we shall assume, without deciding it that it is one such penalty. But yet we see no justification for upholding the contention that there has been any contravention of Rule 16. The appellant has been given an opportunity to make a representation. He has made a representation as well as his records. The complaint of the appellant is that he was not informed of the reasons for coming to the conclusion that he was not informed of the reasons for coming to the conclusion that his work was inefficient. The conclusion that an officer's work is inefficient is based on his records as well as by the opinion formed by his superiors. The inefficiency is something which cannot be concretised. We are unable to accept the contention that the appellant had not been given reasonable opportunity to make a representation against the action proposed to be taken by the Government.

5. No other point was urged before us in this appeal. In the result this appeal fails and it is dismissed; but in the circumstances of the case we make no order as to costs.

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