HARYANA WAREHOUSING CORPORATION

*v.*

RAM AVTAR AND ANR.

JANUARY 17, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.]

*Punjab Civil Services Rules (as applicable in State of Haryana).*

*Rules 4, 8 Haryana State Government Instructions dated 29.1.1974, Paragraph 4—Efficiency bar—Stoppage at—Opportunity of hearing to employee before permitting or non-permitting him to cross efficiency bar—Held, need not be given—Order stopping an employee at efficiency bar should be a speaking order containing material details—Consideration of all material before passing the order is sufficient compliance of requirement.*

**The respondent, a Mali-cum-Chowkidar in the service of the appellant-Corporation was awarded adverse remarks in his confidential report for the year 1986-87 to the effect that his honesty and integrity was doubtful, he was in-efficient, lazy, indisciplined and was not performing his duties satisfactorily. The report was conveyed to him and his representation against the remarks was rejected, Later, on consideration of his earlier service record including the adverse entries, he was not allowed to cross the efficiency bar for one year with effect from 1.2.1988; and for another year with effect from 1.2.1989, as there was no improvement in his efficiency. The respondent filed a writ petition before the High Court challenging the two orders not allowing him to cross the efficiency bar as also for expunction of the adverse remarks in the Confidential Report for the year 1986-87. The High Court dismissed the Writ Petition.**

**The case of respondent for crossing the efficiency bar with effect from 1.2.1990 was again considered and was decided against him. The respondent filed a second writ petition challenging the said order as also the adverse entries in his Confidential Report for the year 1986-87. The High Court allowed the Writ petition and directed the appellant to afford the respondent an opportunity to represent his case. Aggrieved the Corporation filed the appeal.**

**It was contended by the appellant that under the rules no oppor-**

tunity to explain was required to be given to the employee before passing an order with regard to permitting or non-permitting him to cross the efficiency bar; and that the High Court erred in assuming that the case of the respondent for crossing the efficiency bar was not considered every year.

Allowing the appeal, this Court

HELD : 1.1. The High Court was not right in holding that an opportunity should have been granted to the respondent before an adverse decision is taken with regard to non-crossing of efficiency bar. Rule 4.8 of Punjab Service Rules, which deals with the efficiency bar, does not contemplate any bearing being granted to an employee before a decision is taken with regard to permitting or non-permitting an employee to cross the efficiency bar. Further, Paragraph 4 of the instructions dated 29.1.1974 issued by the Haryana State Government, validity whereof has not been challenged, clearly states that it is not necessary before it is decided to stop a Government employee at an efficiency bar to inform him in writing of the grounds on which it is proposed to take such action. [667-G-H, 668-A-B]

1.2. Stoppage of an employee at the efficiency bar is not by way of punishment and does not cause any stigma on an employee. When an efficiency bar is inserted in a time scale it only means that at that stage annual increment is not as of right but the bar will be removed, and an employee allowed further increments, if the authority concerned comes to the conclusion that such an employee in not inefficient. An opinion to this effect has necessarily to be a subjective one though it must be based on relevant facts. [688-E-F]

1.3. In the instructions, it has been stated that an order stopping an employee at an efficiency bar should be by speaking order and sufficient details should be given so that an employee can make a representation against the same. Besides, such an order can also be subjected to judicial review. The passing of speaking order, however, does not mean that before the authority concerned comes to the conclusion of stopping of a person at the efficiency bar stage, an opportunity of hearing must be given to him. Consideration of all material before taking the decision is sufficient compliance of the requirement. [668-F-H]

1.4. In the instant case, there was adverse entry in the annual

**Confidential Report of the respondent for the year 1986-87. The said adverse entry had been communicated to him and the objections filed thereto were rejected. The High Court was, therefore, not right in holding that the principles of natural justice were not complied with. [669-A-B]**

**2. The case of the respondent regarding the crossing of efficiency bar had been reviewed every year in accordance with the provisions of Rule 4.8 and, therefore, the High Court was not correct in assuming that this had not been done in the instant case. The earlier Writ Petition which had been filed by the respondent challenging the adverse entry for the year 1986-87 and the stoppage at the efficiency bar in the first two years was dismissed. In the judgment under appeal, the High Court has not even referred to the filing of the earlier Writ Petition which is unsatisfactory. [669-C-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2058 of 1996.

From the Judgment and Order dated 6.8.91 of the Punjab & Haryana High Court in C.W.P. No. 5848 of 1991.

D.B. Vohra and K.C. Bajaj for the Appellant

Ms. Kanwiljeet Kochhar and J.D. Jain for the Respondents.

The Judgment of the Court was delivered by

**KIRPAL, J.** This is an appeal by special leave challenging the order of the Punjab & Haryana High Court which had allowed the respondent's Writ Petition challenging the decision of the appellant to the effect that the respondent was not allowed to cross the efficiency bar.

The respondent had joined the service under the appellant as Mali-cum-Chowkidar in 1972. According to the appellant, the respondent was not discharging his duties to the best of his ability and honesty. It was alleged that on 9.3.1987 the respondent attempted to misappropriate one bag of wheat from the godown of the appellant but was caught red-handed. The respondent confessed to his guilt and requested that he may be excused. On an earlier occasion he had failed to perform a night duty and had also misbehaved with his senior officer. Vide his letter dated 26.2.1987, the respondent had admitted having committed the said mistakes and again requested that he may excused.

In respect of the year 1986-87, an adverse entry was recorded in the respondent's Confidential Report to the effect that his honesty and integrity was doubtful and that he had not been attending his duties efficiently and had been lazy, undisciplined and was not performing his duties satisfactorily. This adverse report was conveyed to the respondent who submitted his objections on 5.12.1987, but the same were rejected.

The respondent was in the pay-scale of Rs. 800-15-1010 EB-20-1150 and his case had to be considered for crossing the efficiency bar w.e.f. 1.2.1988. On the consideration of the respondent's entire record of service, including the adverse entries, decision was taken not to allow him to cross the efficiency bar for a period of one year and the matter was to be reviewed thereafter. In the following year i.e. 1987-1988, the respondent was assessed as 'average' and, taking his record into consideration, he was again held up at the efficiency bar stage of Rs. 1010 for another year w.e.f. 1.2.1989 vide order dated 5.4.1989.

The aforesaid two orders relating to the stoppage at the efficiency bar and for deleting the adverse remarks in the Confidential Report for 1986-87 were challenged by the respondent in HIgh Court by filing a Writ Petition No. 1836 of 1990. The same was, however, dismissed by a Division Bench of Punjab & Haryana High Court vide its order dated 11.7.1990.

The case of the respondent was again considered for crossing of efficiency bar w.e.f. 1.2.1990. Vide order dated 6.8.1990, it was again decided to stop the respondent at the efficiency bar stage for a further period of one year w.c.f. 1.4.1990. This led to the filing of the second Writ Petition being Civil Writ Petition No. 5848 of 1991 from which the present appeal arises where apart from the prayer for quashing the aforesaid order dated 6.8.1990, it was against prayed by the respondent that the adverse report for the year 1986-87 should be quashed. The case of the appellant herein before the High Court was that earlier Writ Petition for substantially the same relief had already been dismissed. Further more, the case of the respondent was stated to have been review in accordance with the provisions of Rule 4.8 of the Punjab Civil Service Rules Vol. 1, Part-1 as applicable to the Government employees in Haryana and also as per the instructions dated 29.1.1974 issued by the Haryana State Government as amended by instructions dated 24.11.1974.

By the impugned judgment dated 6.8.1991, the High Court came to

the conclusion that the principles of natural justice had been violated as the petitioner (respondent herein) was not afforded an opportunity of being heard or to represent his case before the orders stopping him at the efficiency bar were issued. It was further observed that the right of an employee to have his case for crossing the efficiency bar being considered every year could not be taken away by any executive order. While allowing the Writ Petition, the appellant herein was directed "to afford an opportunity to the respondent to explain the position and represent his case regarding the adverse material on the basis of which he was to be stopped from crossing the efficiency bar".

It was contended by the learned counsel for the appellant that the High Court erred in assuming that the case of the respondent for crossing the efficiency bar was not considered every year. The positive averment which had been made is that his case was considered every year in accordance with the rules. It is further contended that no opportunity of explaining is required to be given before the case of an employee is considered with regard to the crossing of efficiency bar. As far as the consideration of the adverse material is concerned, it was submitted that the adverse material for the year 1986-87 had been forwarded to the respondent who had filed his objections but the same were rejected. Therefore, the principles of natural justice, even if they were applicable, had not been violated.

The main contention which has been urged on behalf of the respondent was that the principles of natural justice were attracted and that no opportunity had been given before passing the orders whereby the respondent was communicated the decision of the appellant not to allow him to cross the efficiency bar.

The High Court, in our opinion, was not right in coming to the conclusion that any opportunity should have been granted to the respondent before an adverse decision is taken with regard to non-crossing of efficiency bar. Rule 4.8 of Punjab State Service Rules provides that where an efficiency bar is prescribed in a time scale, the next increment above the bar is not to be given to an employee without the specific sanction of the authority empowered to withheld increments. This provision does not contemplate any hearing being granted to an employee before a decision is taken with regard to permitting or non-permitting an employee to cross

the efficiency bar. Note-3 to the said Rule, on which reliance was placed by the learned counsel for the respondent, merely provides that the cases of all officers held up at the efficiency bar should be reviewed annually with a view to determine whether the guilty of their work has improved and generally whether the defects for which they were stopped at the bar have been remedied to an extent sufficient to warrant the removing of the bar. In the instructions dated 29.1.1974 issued by the Haryana State Government, it is stated in para 4 as follows :

> "It is thus not necessary before it is decided to stop a Government employee at an efficiency bar to inform him in writing of the grounds on which it is proposed to take such action. The order stopping an employee at an efficiency bar should however be a speaking order and it should give sufficient details so that, the employee can, if he so desires, make a representation against the same. It is desirable that every case should be scrutinised carefully by the Departments and good reasons given in support of an order of stoppage."

The validity of the aforesaid instructions had not been challenged and, in any case, it appears to us that the stoppage of an employee at the efficiency bar is not by way of punishment and does not cause any stigma on an employee. When an efficiency bar is inserted in a time scale it only means that at the stage annual increment is not as of right but the bar will be removed, and an employee allowed further increments, if the authority concerned comes to the conclusion that such an employee is not inefficient. An opinion to this effect has necessarily to be a subjective one though it must be based on relevant facts. It is further seen that in the aforesaid instruction, it has been stated that an order stopping an employee at an efficiency bar should be by speaking order and sufficient details should be given so that an employee can, if he so desires, make a representation against the same. Besides providing for a post facto hearing, a concept which is not unknown to the principles of natural justice, the speaking order which is passed can also be subjected to judicial review, as has been done in the present case. The passing of speaking order, however, does not mean that before the authority concerned comes to the conclusion of stopping of a person at the efficiency bar stage, an opportunity of hearing must be given to him. Consideration of all material before taking the decision is sufficient compliance of the requirement.

A decision not to allow the crossing of efficiency bar is required to be taken on the basis of the record of the employee concerned. In the instant case, there was adverse entry which was recorded for the year 1986-87 in the annual Confidential Report of the respondent. The said adverse entry had been communicated to him and the objections filed thereto were considered, but were rejected. The High Court was, therefore, not right in coming to the conclusion that the principles of natural justice were not complied in the present case.

From the facts as narrated hereinabove, it is also apparent that the case of the respondent regarding the crossing of the efficiency bar had been reviewed every year i... accordance with the provisions of the aforesaid Rule 4.8 and, therefore, the High Court was not correct in assuming that this had not been done in the instant case. The earlier Writ Petition which had been filed by the respondent challenging the adverse entry for the year 1986-87 and the stoppage at the efficiency bar in the first two years was dismissed. In the judgment under appeal, the High Court has not even referred to the filing of the earlier Writ Petition 1836/1990 and its dismissal vide order dated 11.7.1990. This is unsatisfactory to say the least.

For the aforesaid reasons, the judgment under appeal is set aside. This appeal is allowed. There shall be, however, no order as to costs.

Appeal allowed.