

(1983) 07 GUJ CK 0003
In the Gujarat High Court

N.S. Madhavan

APPELLANT

Vs

Physical Research Laboratory and Another

RESPONDENT

Date of Decision : 06-07-1983

Acts Referred:

Citation : (1983) 2 GLR 1465

Hon'ble Judges : S.L. Talati, J

Bench : Single Bench

Judgement

S.L. Talati, J.—The petitioner is an employee serving as a Stenographer with Respondent No. 1 - Physical Research Laboratory, Ahmedabad. He has filed this petition challenging the order at Annexure "I" dated 10-12-1982. That is the order by which he is not allowed to cross efficiency Bar with effect from 30-12-1981 but allowed to cross efficiency Bar: with effect from 30-12-1982.

2. The short history which gave rise to this petition may be stated as under. The petitioner had filed Special Civil Application No. 1503 of 1981 challenging the order dated 15-12-1981 which is produced with this petition at annexure VI. By that order he was not allowed to cross E. B. on the ground that he was not upto the mark and reported to be going slow. It was also stated that there were complaints received against him regarding his not doing filing work, not collecting stationery, not remaining at his place of work and reducing typing output to only 4 to 6 pages per day on an average. It was also stated that he had failed to improve his work and to give reasonable quantum of work as was expected from him as a Stenographer. Under these circumstances he was not allowed to cross E. B. and that led to the filing of Special Civil Application No. 1503 of 1981 and the petition was allowed by an order dated 25-3-1982 and that order is produced at annexure VII. That petition was allowed on the ground that the rules of natural justice were not followed inasmuch as before passing the order dated 15-12-1981 the petitioner was not given opportunity of being heard. As a result the order was quashed and set aside, and the learned advocate Shri Sanjanwala at that time agreed that the impugned order would be withdrawn

and the question in regard to allowing the petitioner to cross E. B. at the appropriate stage would be redetermined after affording the petitioner an opportunity of being heard. It was also understood that if the petitioner was allowed to cross E. B. as a result of redetermination of the issue the petitioner would be paid all arrears of salaries due to him from the date he was allowed to cross E. B.

3. Thereafter by an order dated 23-4-1982 which is produced at Annexure VIII the petitioner was given a show-cause notice by the Senior Administrative Officer and the petitioner was called upon to give reasons as to why he should not be stopped at the Efficiency Bar at the stage of Rs. 500/- in the grade of Rs. 425-700 from 30-12-1981 and the reasons given were that he was very slow in his work and not upto the mark was also mentioned that he was informed about that earlier vide letter dt. 2-5-1981. It was also mentioned that he had been also told by his project Leader that there were complaints received against him about his not doing the filing work, not collecting stationery, not remaining at the place of his work and reducing typing output to only 4 to 6 papers per day on an average. He was told that he had failed to improve his work and give reasonable quantum of work as expected of him till December 1981. He was requested to submit his explanation to the above show-cause within a period of seven days from the date of receipt of the memorandum. Now the letter which" "is mentioned in this show-cause notice dated 2-5-1981 is written by the Administrative Officer to the petitioner and also produced at annexure IV. In that letter the Administrative Officer wrote to him that during the last four months, there was marked deterioration in his typing output averaging about 7 to 8 pages per day. It was also mentioned that his replies to the senior members were indifferent. It was also mentioned that he never used to report to his officers regarding urgent nature of work which was lying on his table. It was also written that on 17-3-1981 he behaved discourteously and arrogantly with the Chairman and the co-Chairman of his group when they visited his room to find out the typing situation. The telex message which was received by the co-chairman from Bombay 2 days prior was lying simply on the table without anything being done about it. The letter mentioned that he lost his temper and behaved rudely. The details about his absence which were found by the Project Leader were mentioned in that letter and it is mentioned that at a particular hour mentioned in that letter on 23-3-1981, 4-4-1981, 9-4-1981, 13-4-1981 & 16-4-1981 he was absent from his room and on 21-4-1981 at 13-57 hours he was present but he was sleeping. So far as show-cause notice dated 23-4-81 is concerned he gave his explanation on 4-5-1982 which is produced at annexure IX. He denied that he was not remaining at the place of work and that he was not doing typing work as was required of him. He tried to make out a contradiction from the memo in which it was stated that the output has been reduced from 4 to 6 pages while in the letter dated 2-5-1981 it was mentioned that it has been reduced to 7 to 8 pages. The contradiction is useless in the sense that it may be that he may be typing 7 to 8 pages in May, 1981 and thereafter when farther notice was issued

or when decision was taken in December, 1981 he might have still reduced his work. So what was done in May was not done in December. It only shows that inspite of the letter dated 2-5-1981 he did not improve and still deteriorated further in December, 1981. So this contradiction on the contrary does not help him but goes against him. However, he got an opportunity to explain and. he did explain and everything in the manner he best chose. Thereafter on 1-6-1982 Senior Administrative Officer personally called him and heard him. Therefore, he got an opportunity to present his case orally as well and he told the Senior Administrative Officer and. he had nothing to add to his memo dated 23-4-1982. This was reported by the Senior Administrative Officer on the very day i.e. 1-7-1982 and that letter is produced at annexure "I". Thereafter the decision was taken on 11-6-1982 where after considering the explanation and after personally hearing the authorities came to the conclusion that the explanation given by him was not satisfactory. The authorities came to the conclusion that there was no reason to disbelieve the reports of the project Leader. It is further mentioned that the petitioner was, given show cause notice and he was given copies of the complaints received against him. The reply was not considered satisfactory so far as the relevant period is concerned and, therefore, he was not allowed to cross Efficiency Bar from 30-12-1981. It was also mentioned that his case would be reviewed before the next date of increment. Ultimately it appears that before the next date his case was reviewed and he was ultimately allowed to cross E. B. with effect from 30-12-1982. The only grievance, therefore that remains is that for one Year he was not allowed to cross the Efficiency Bar.

4. The question whether the authorities were satisfied regarding his work or not is required to be decided by the authorities themselves. This Court cannot decide as to whether the petitioner was working efficiently in the organisation or not. It is for the authorities to decide. This Court has to see that the authorities did not take arbitrary or capricious decision or they do not act with malice. This Court has further to see that proper opportunity has been given to the concerned person so that if he has anything to say in the matter he might be able to explain his position. Now, therefore, in this case it clearly appears that the authorities based their decision on the report received from the project Leader and other officers. The complaints received from all of them were duly supplied to the petitioner. He was given full opportunity to explain his position and which explained in writing. Thereafter he was personally heard and the authorities were not satisfied regarding the work for one year and/therefore, they did not allow him to cross E. U. for a period of one year. Now, therefore the question is, is there anything which remains to be considered in this particular case? The answer would be in the negative from the very facts which are narrated above.

5. Nothing has been shown to me which it could be suggested that the action is taken without any complaint or without any opportunity being given to the petitioner to explain his case. No case of malice is made out. Under the circumstances I do not find any merit in this petition.

6. A reference may be made to the case of Pritam Singh Gill v. The State of Punjab and Anr. reported in 1979(1) SLR 858. Punjab and Haryana High Court in regard to Efficiency Bar in paragraph 4 of that judgment has observed as under:

One cannot cross the efficiency Bar as a matter of right. It is the discretion of the authority concerned to allow a Government servant to cross (he Efficiency Bar or not. This discretion, however is not to be arbitrarily exercised. It the authority after the subjective satisfaction on the assessment of the over all service record of the officer in regard to his efficiency, integrity, intelligence etc. forms an opinion that the officer does not deserved to be put across the line drawn in the grade at the stage of the efficiency bar, then the matter cannot be agitated by the adversely affected officer against the authority's decision.

7. I agree with the reasoning adopted and on facts as I have narrated above this petition is required to be dismissed and it is dismissed. Notice is discharged with no order as to costs.