

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2638 of 2001

New Delhi, this the 12th day February, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri S.L. Goel  
75, Anand Vihar,  
Pitam Pura,  
Delhi.

...Applicant

By Advocate: Shri Sohan Lal.

Versus

1. Union of India through  
Secretary,  
Ministry of Urban Affairs,  
Poverty Alleviation, GOI,  
Nirman Bhawan,  
New Delhi.

2. The Director General of Works,  
Central Public Works Department,  
Nirman Bhawan,  
New Delhi.

..Respondents

By Advocate: Shri R.N. Singh.

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant was working as Assistant Engineer in the pay scale of Rs.650-30-740-35-810-EB-35-1000-40-1200 and had retired on 31.7.1990.

2. The grievance of the applicant is that while he was working as Assistant Engineer his Efficiency Bar (hereinafter referred to as EB) was not cleared by the department when he had reached the basic pay of Rs.1000/- in the scale referred to above. Thereafter he made various representations and finally vide order dated 9.5.2001 his representation was rejected.

3. The applicant has also alleged that earlier

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his EB at the stage of Rs.810/- was due w.e.f. 1.12.1980 but the department had withheld his EB w.e.f. 1.12.1980 but subsequently granted the same to him w.e.f. 1.12.1981. The applicant thereafter made representations but to no effect and thereafter filed an OA 192/89 which was decided on 30.3.90 whereby the directions were given to the respondents to treat the applicant as having crossed the EB on 1.12.1980 and granted him all the consequential benefits of refixation and arrears of pay and allowances. Thereafter when the applicant reached the basic pay of Rs.1000/- he was again due for crossing the second EB. According to the applicant he was due for crossing the second EB w.e.f. 1.12.1985.

4. The respondents also admitted that the applicant was due for clearing the second EB w.e.f. December, 1985 but the second EB was considered by the DPC and its decision was put in sealed cover in accordance with the OM dated 30.3.1989, Annexure R-1. In the reply also the respondents pleaded that the DPC did not recommend his case for crossing the EB at the stage of Rs.1000/- since he was facing a disciplinary case. The applicant was informed that the competent authority did not find him fit to cross the EB at Rs.1000/- in the above mentioned scale, so from these pleadings the short question which arises for consideration is whether the DPC who recommended the case to be put in sealed cover relying upon an OM dated 16.2.90 could do so when the applicant was to be considered for crossing the EB in 1985 itself. Secondly whether even as per Office Memorandum the subsequent conduct of the applicant could

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be considered for putting his case in sealed cover or not. Both the counsels had relied upon the OM dated 30.3.1989.

5. The counsel for the applicant submitted that as per para 2.2. of this OM a schedule has been prescribed for holding of DPC for considering the EB cases, which is reproduced hereinbelow:-

"2.2 The following time schedule may be adopted for considering the EB cases:

Months during which the date of crossing the EB falls		Months in which EB cases should be considered by the DPC
January to March	... ..	January
April to July	... ..	April
August to October	... ..	July
November to December	....	October".

6. Para 2.5 of the same OM also prescribes that in the event if DPC could not be held as scheduled, then also the committee should consider only those Confidential Reports which it would have considered, had the DPC been held as per the prescribed schedule.

7. In this case the charge-sheet for a penalty was issued to the applicant on 16.2.90 in pursuance to the charge-sheet issued applicant was punished by imposing a cut in his pension. So on the face of this, the charge-sheet could not have been taken into consideration for an incident which was subsequent to the entire period when the applicant had become due for crossing of second EB, because the subsequent misconduct of the applicant which have no bearing when the DPC ought

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to have considered the crossing of second EB as per the schedule prescribed in the OM when the OM specifically mentions that the only record pertaining to the previous years from the date when the applicant had become due for crossing of EB is to be assessed. As such there is no case for relying on the charge-sheet which has been issued subsequently.

8. The learned counsel for the respondents also submitted that the case has become time barred since the representation of the applicant was earlier rejected on 3.2.98, so the OA has become time barred and the same be dismissed.

9. As against this, the learned counsel for the applicant referred to a judgment reported in ATR 1988 (2) CAT 499 wherein it has been held as follows:-

" Administrative Tribunal's Act, 1985 - Section 21 - Claim for overtime allowance relating to the period from 3.4.1966 to 18.8.1972 - Applicant became aware of his right only after the right was established by a judgment delivered on 30.5.1979 - Applicant thereafter made representation starting from 1980 onwards - All representations remained unanswered - Final decision taken on 11.8.1986 when the claim of the applicant and other similarly placed employees was rejected - Petition filed on 23.2.1987 claiming the above relief - Application if not barred by time - Held No. Application allowed".

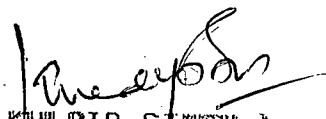
10. Relying upon this judgment the counsel for the applicant submitted that his representation was rejected vide Annexure P-I. The respondents had specifically mentioned that his case has been considered once again but it is regretted that it is not found possible to accede to the same. So perusal of the order shows that the department had considered the last representation

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also on merits and thereafter rejected the same. Thus the limitation be reckoned from the date when the last order was passed i.e. Annexure P-1.

11. In view of my observation above, I find that the OA has to be allowed and the respondents are directed to reconsider the case of the applicant for crossing the EB w.e.f. 1.12.1985 or from the date it became due and if he is found fit, he is to be allowed arrears from the date due and pension be also revised. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.

  
( KULDIP SINGH )  
MEMBER (JUDGE)

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