

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXXXX No 2285 of 1996
MA No.2358 of 1996

Decided on: 15.2.98

A.K. Gupta.Applicant(s)

(By Shri Surinder Singh Advocate)

Versus

Secretary, Min.Respondent(s)
of Finance & Others

(By Shri K.C.D. Gangwani Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER(A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? *yes*
2. Whether to be circulated to the other Benches of the Tribunal? *L*

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2285 of 1996

M.A. No. 2358 of 1996

New Delhi this the 15th day of April, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri A.K. Gupta
S/o Shri R.B. Gupta,
R/o 467, Vijay Nagar Colony,
Sector-9, Block-F,
Ghaziabad (U.P).

..Applicant

By Advocate Shri Surinder Singh.

Versus

1. Secretary,
Ministry of Finance,
North Block,
New Delhi.
2. The Chief Controller of Accounts,
Ministry of Finance,
North Block,
New Delhi-110 001.
3. The Principal Chief Controller of Accounts,
Central Board of Excise & Customs,
AGCR Building,
1st Floor,
New Delhi.
4. The Chief Controller of Accounts,
Department of Supply,
Akbar Road Hutments,
New Delhi.
5. The Principal Chief Controller of
Accounts,
Central Board of Direct Taxes,
9th Floor,
Lok Nayak Bhavan,
Khan Market.

..Respondents

By Advocate Shri K.C.D. Gangwani.

ORDER

Applicant is aggrieved over the non-clearance of his case for allowing him to cross the Efficiency Bar at the stage of Rs.2300 in the scale of Rs.2000-60-2300-EB-75-3200 as on 1.9.1990. It is stated that from 1.9.1990 to 14.6.1992 he was posted as

Assistant Accounts Officer in the office of the Deputy Controller of Accounts, Department of Economic Affairs, from 15.6.92 to 31.3.93 in the office of the Deputy Controller of Accounts, Department of Supply, Bombay and from 1.4.1993 to 23.6.1994 in the Zonal Accounts Office, Central Board of Direct Taxes, Bombay. The applicant alleges that he had not received any intimation regarding the Efficiency Bar being invoked in his case by the respondents and for the omissions and the failures of the department regarding his clearing the Efficiency Bar at the right time, he could not be held responsible. He alleges that the respondents have arbitrarily held his pay at the stage of Efficiency Bar. He, therefore, prays that he should be deemed to have crossed the Efficiency Bar at the stage of Rs.2300/- on 1.9.1990 itself and his pay revised accordingly with consequential benefits including interest at 18% for delayed payment.

2. The respondents have contested the application. They have averred that this application is barred by time. The applicant has filed this application in October, 1996 on a cause of action, which he alleges, to have arisen in September, 1990. On the facts, the respondents submit that certain adverse entries in his Annual Confidential Report for the periods from mid September 1989 to 31.3.1990 and for the period from 1.4.1990 to 31.3.1991 were communicated to him by the letter dated 1.8.1991. DPC was held for reviewing the performance of the applicant in May, 1992 and later on in August, 1992 and March, 1994 and in 1996 he was allowed to cross the Efficiency Bar with effect from 1.9.1993.

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Respondents also aver that by the letter dated 30.6.92, the position regarding his crossing the Efficiency Bar was also sent to the Chief Controller of Accounts, Department of Supply, respondent No.4, where the applicant was working at that time.

3. In the rejoinder filed by the applicant, he reiterates the non-communication about the stoppage of the increment at the Efficiency Bar stage. According to the applicant, his Efficiency Bar was to be crossed at 1.9.1990 and the respondents should have reviewed his case as per the Schedule in July, 1990 itself. Since there was no communication of adverse entries during this period, he should have been cleared to cross the Efficiency Bar. The department had delayed the convening of DPC held till August, 1992 and decided to invoke the Efficiency Bar. He also submits that his case should have been reviewed in the next year, i.e., in 1991, which was also not done nor was he given any intimation in this regard and only by the impugned order he had come to know that he had been allowed to cross the Efficiency Bar w.e.f. 1.9.1993. On the question of limitation raised by the respondents, he submits that drawal of increments after crossing the Efficiency Bar is continuing cause of action and, therefore, the question of limitation does not apply to him. He also relies on the decision in the case of A.N. Ahmed Ali Vs. Secretary, Tourism Department, New Delhi and Another, 1989 (11) ATC 524 to stress that the decision to stop a person from Efficiency Bar stage should be taken well in time. He submits that

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the respondents have not cared to review his Efficiency Bar case according to the schedule laid down by the Government in this behalf. He also submits that just because of certain adverse remarks which have been communicated to him subsequently, this should not be the reason for not allowing him to cross the Efficiency Bar when it was due in September, 1990 itself.

○ 4. I have heard the learned counsel for the parties and have carefully gone through the pleadings.

○ 5. It is an admitted position that the review of the applicant's case for crossing the Efficiency Bar was considered only on 18.5.1992 and a review DPC was held on 19.8.1992. There is no averment to the effect that there was any DPC prior to these dates, i.e., in the year 1990 or 1991. It is, however, an admitted position that adverse entries in the ACR of mid 1990 and April 1990 to March 1991 were communicated to the applicant by the respondents by their Memorandum dated 1.8.1991. While it is true that communication of the adverse entries cannot be a substitute for a communication on the stoppage of the increment at the Efficiency Bar stage, it is to be seen whether the respondents have acted in a bona fide manner throughout. The applicant was working in the office of the Deputy Controller of Accounts from September 1990 to 14.6.1992 and was subsequently transferred to Bomaby. Ordinarily his case should have been reviewed as per the instructions under FR 25 sometime in July, 1990 as his Efficiency Bar fell due on

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September, 1990. However, it is seen that it is provided in the aforesaid instructions that in the event of DPC being convened after a gap of time following the date on which the Government servant became due to cross the Efficiency Bar, the Committee should consider only those confidential reports which it would have considered had the DPC been held as per the prescribed schedule. So when the DPC was held belatedly in his case in May, 1992, the reports upto March, 1990 would have been considered. In this report, it is an admitted fact that there were certain adverse remarks which were communicated to him although in August, 1991. The next review could have become due in July, 1991 and the ACR of April, 1990 to March, 1991 also contained adverse entries which were communicated to him. It is true that there had been delay in the communication of the adverse entries but that does not take away the fact that there were adverse entries. The applicant should have raised the fact of his not crossing the Efficiency Bar in September, 1990 also in good time so that he might have come to know the position regarding his ACR for 1990 and 1991 well before the DPC was held in 1992. There is no averment in the application that he had represented against the adverse remarks and those remarks have been subsequently expunged by the respondents. In this view of the matter, it cannot be said that the respondents have acted in an arbitrary manner in consideration of his case for crossing the Efficiency Bar. When the DPC met in 1992 to review his case, it had duly taken note of the adverse entries and other average reports and the Committee came

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to the conclusion that his performance should be watched further and his case for crossing the Efficiency Bar should be reviewed thereafter. In the light of this, his case was reviewed thereafter and he was allowed to cross the Efficiency Bar on 1.9.1993.

6. Taking into account the entire facts and circumstances of the case, it cannot be said that the respondents have acted in an arbitrary or prejudicial manner. In the light of the above, there is no merit in the application and is accordingly dismissed. There shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

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