

Central Administrative Tribunal
Principal Bench: New Delhi

2693 1996
OA No.....of.....decided on 29-6-98.....

Name of Applicant: Chetan Prakash Mittal

By advocate: Shri K.P.Dohare

Versus

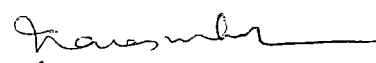
Name of Respondents: Union of India

By advocate :...Shri R.P.Aggarwal

Corum

Hon'ble Mr. N. Sahu, Member (A)

1. To be referred to the Reporter or not? No.....
2. Whether to be circulated to other Benches of the Tribunal? No.....


(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2693 of 1996

New Delhi, this the 24th day of June, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

Chetan Prakash Mittal son of late Lala Nanak Chand Lohiya, Resident of House No. C-5/A-130, Janakpuri, New Delhi.

-APPLICANT

(By Advocate Shri K.P.Dohare)

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Controller General of Defence, Accounts, West Block-V, R.K.Puram, New Delhi-66
3. The Controller of Defence Accounts, Air Force, West Block-V, R.K.Puram, New Delhi.

-RESPONDENTS

(By Advocate Shri R.P. Aggarwal)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

Relief claimed in this Original Application (in short 'OA') is to quash the impugned orders dated 5.1.1996 and 13.7.1995 [Annexures-1(a) and 1(b)] which denied the applicant his two Efficiency Bar (in short 'EB') service increments due with effect from 1.5.1992 and 1.5.1993 and seeks consequential benefits thereafter.

2. On the preliminary objection of the respondents that the OA is barred by limitation, it is stated that the final decision on the review-petition of the applicant was dated 5.1.1996 and as this OA was filed on 24.12.1996 it is very much within the period of limitation. The applicant's review-petition to the President, Union

of India under Rule 29A of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as "the CCS(CCA) Rules") is an approved statutory remedy. It was also mentioned that this matter was discussed in the Court and the Bench was pleased to admit the OA. The applicant alleges malafide and attitude of bias to the Reviewing Officer Shri J.S.Arya, who was stated to be responsible for his adverse remarks in the Annual Confidential Reports (in short 'ACR') of the years 1991-92 and 1992-93. The decision of the competent authority dated 25.4.1995 was communicated to him very late contrary to the instructions on the subject. It is stated that earning "average" reports does not debar a Government servant to cross the EB as per sub-para 3 of para 176 of Office Manual Part-I. It is submitted that the competent authority was not empowered to decide the appeal after a delay of three years against the adverse remarks in the ACRs. The basic claim of the applicant is that he filed representations against the adverse remarks and the representations were disposed of after a pretty long time and while the representations were pending, the DPC was convened and the said DPC held the applicant to be ineligible for crossing the EB.

3. On 17.2.1998 there were extensive arguments of Shri K.P.Dohare, learned counsel for the applicant and Shri R.P.Aggarwal, learned counsel for the respondents. I shall extract the proceedings of that

date as they sum up the basic arguments of counsel for both the sides -

"On the question of admissibility of the MA-1982/97 learned counsel for respondents states that even by applicant's own admission at Para 3, the amendments to Paras 4 & 5 of the OA would alter the basic structure. Learned counsel for the applicant states that this is a mistake in typing and he has filed another MA-248/98 wherein this inadvertent mistake was admitted and the prayer is made to the Court to modify that particular sentence. Learned counsel for respondents says that he opposes the admission of the MA.

Learned counsel for respondents had made three submissions in this case. His first submission is that this OA is barred by limitation. He states that the adverse remarks for the year 1991-92 was communicated in July 1992 and the adverse remarks for the year 1992-93 were communicated on 16.08.1992. The applicant superannuated on 30.04.1994. The representation was disposed of on 24.05.1995 rejecting the requests. The applicant did not think he had a grievance on any of these dates and filed the OA in this Tribunal. He waited till his review petition was disposed of in January, 1996. Sh. Aggarwal's point is that filing of a review is not a statutory remedy. In this regard, he cited the decision of the Supreme Court in S.S. Rathore Vs. State of M.P. -1989(4)SCC 582. He refers to para 20 of the Supreme Court order. The Supreme Court had clearly spelt out under what circumstances a time limit can apply when it is a statutory representation. Sh. Aggarwal submits that the applicant's case does not come in any of the criteria laid down by the Supreme Court and, therefore, the OA according to him, deserves to be dismissed in limine. The second point made by him is that there is a three tier system of Reporting Officer, Countersigning officer and Reviewing Officer. There is also a system of filing the representation against the communications of the adverse report/remarks. When all these safeguards exist and the representation itself is again considered by a three tier level, there is no question of malafide. The imputation of malafide raised by the applicant's counsel according to Sh. Aggarwal is without any basis. The third point raised by Sh. Aggarwal is by reference to the counter itself wherein it was mentioned that applicant after reaching at the stage of Rs.2,600/- was due to cross Efficiency Bar initially w.e.f. 01.05.1992 and then from 01.05.1993. The adverse remarks having been communicated and the appeal preferred by the

applicant for expunction of those adverse remarks having been rejected, there is no further scope for another representation.

Learned counsel for the applicant Sh. K.P.Dohare submits that on 01.01.1997 the OA was admitted after hearing on the point of limitation. He cites the case of A.Christopher Vs. Union of India, 1989(4)SLJ CAT Bangalore Bench 161 and also the Supreme Court decision in Dr.B.K.Aggarwal Vs. State of U.P. -SLJ 1995(2) SC 34. The Bangalore Bench of CAT has clearly laid down that if after considering the arguments on the question of limitation the OA is admitted, it is no more open to adjudicate the same finally. To this, Sh. Aggarwal states that a question of law can be raised at any time in the course of the disposal of the OA.

The most important point made by the learned counsel for the applicant is that it was inappropriate on the part of the respondents to hold a DPC when the representations of the applicant were pending. The first representation against the adverse remarks for 1991-92 was sent on 18.07.1992. A representation dated 12.09.1993 was sent against the adverse remarks for the year 1992-93. The applicant was communicated rejection of his representations only on 25.4.1995 after he superannuated on 30.04.1994. To repeat, he was communicated the rejection of his representation one year after his superannuation whereas he was due to cross the Efficiency Bar in May 1992 and May 1993 and he was denied the benefit of crossing the Efficiency Bar without disposing of the representation. He cited in this regard State of M.P. Vs. Bani Singh, AIR 1990 SC 1308 and has drawn my attention to Para 6 of the report. The Hon'ble Supreme Court mentioned that a representation was pending consideration at the time the Screening Committee meeting was held. It was disposed of only six years after Screening Committee meeting: "The remarks therefore, should not be taken to have become final so as to enable the Committee to take that remark into consideration. The deferring of the consideration in the meeting held on 26.11.80 therefore, could not be considered as valid."

Sh. Dohare, learned counsel for the applicant next submitted the decision of the Supreme Court in H.L.Trehan Vs.Union of India, AIR 1989 SC. The point made in that case is that pre-decisional hearing, is a condition precedent for alteration of the conditions of service. A post-decisional hearing will not cure the defect of not providing an opportunity of being heard. While this decision is not strictly relevant to the issue, learned counsel for the applicant, however, has drawn my

attention to certain observations of the Hon'ble Supreme Court at Para 9, 11 and 12 of the report. Learned counsel also mentioned that if the representations were disposed of in time, applicant would have known his position and would have made efforts while he was in service to improve himself. He stated that after the representations filed were rejected, he made an appeal to the President of India on 04.10.95 which was also rejected on 05.01.1996. His ground is that the respondents deliberately chose the time of the applicant's superannuation and with a view to harass the applicant deliberately withheld his Efficiency Bar crossing. He attributes malafide for this. He cites the instructions in this regard under Rule 25 and states that none of these instructions were complied with. Sh. Aggarwal, learned counsel for respondents, however, has drawn my attention to para 2.5 of the instructions under F.R.25 in support of his claim.

The most important point to be decided is whether the respondents are justified in not disposing of the representations pending before taking a decision and whether the DPC was right in not allowing the applicant in crossing the Efficiency Bar when the representations were pending. For this purpose, it is necessary to know the precise date on which the DPC was constituted and it is also necessary to know as to how the DPC was advised about pendency of the representation. Respondents are hereby directed to produce the relevant records in connection with the crossing of the EB of the applicant within four weeks."

4. The information called for in the above note was furnished at the time of hearing on 29.5.1998. The DPC was held on 26.6.1992 to adjudicate the evidence for crossing the EB at the stage of Rs.2600/- with effect from 1.5.1992. The minutes of the DPC meeting are not traceable. A review DPC was held on 24.6.1993 to review the applicant's case in 1993 for crossing the EB with effect from 1.5.1993. The DPC proceedings were made available to the Court. The applicant retired on 30.4.1994. No advice was tendered to the DPC on the pendency of the representation. It is made clear that the applicant was not communicated his unfitness to cross the EB

with effect from 1.5.1992 since he had already been communicated the adverse remarks in his ACR for the year 1991-92. The respondents relied on sub item (ii) of Para 2 of CGDA's letter no.0632/AN/F dated 4.12.1973 under which if the latest ACR of the official is adverse he cannot be allowed to cross the EB.

5. The learned counsel for the applicant cited a decision of this Court in the case of Gajey Singh Sharma Vs. Union of India, (1988) 8 ATC 720. It was held in that case that an aggrieved employee has right to represent against an adverse entry but if the representation has been considered by an appropriate authority and rejected, no injustice is caused to him. It is also held that it was necessary for the Government to inform the applicant that he had not been allowed to cross the EB on due date. The learned counsel also cited the explanation under Rule 11 of the CCS(CCA) Rules under which stoppage of a Government servant at the EB in the time scale of pay on the ground of his unfitness to cross the EB does not amount to a penalty within the meaning of Rule 11 ibid. The rule is also clear that in a case where a Government servant becomes due for crossing EB and is also undergoing a minor penalty the DPC shall consider his case taking into account the overall record including the circumstances leading to the disciplinary proceedings and the nature of penalty imposed and give the recommendations regarding his suitability to cross the EB. If, however, the Government servant is undergoing the

penalty of withholding of increments, the crossing of EB shall be given effect to only after the expiry of the period of penalty.

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6. I have heard the arguments of the learned counsel for both the sides. I have also perused the proceedings of the DPC held on 24.6.1993. I noticed that the applicant had three average reports for the financial years 1987-88, 1988-89 and 1989-90. He has only a 'good' report for the year 1990-91. He has two adverse reports for the years 1991-92 and 1992-93. It has been clearly brought to the notice of the DPC that at that time the applicant was undergoing penalty of reduction of pay of three stages for one year with effect from 20.2.1992. I have also seen the grading of the applicant for all the years beginning from 1975 onwards. Except for one year 1976 I noticed that there were either average or adverse remarks in his ACR. In fact there were six adverse remarks in the period from 1975-86 and all others are either average or good reports. The applicant's record is certainly not enviable. It does not commend to any dispassionate authority for recommending crossing of EB. An EB by definition means that the applicant should be at least efficient. The record shows that he is far away from efficient. The over all picture is one of not only an official of average ability but since the adverse remarks are also quite frequent, it is not a ~~mere~~ ^{fit} case of allowing the applicant to cross EB. The DPC comprised of four senior officers and they arrived at the conclusion that the applicant was not fit to

cross the EB. I agree with their decision. It is true that the DPC should have immediately asked for a decision on the representations against the adverse remarks for the years 1991-92 and 1992-93. This decision was taken subsequently. No doubt, the representations were rejected and the adverse remarks were confirmed. That does not advance the case of the applicant any further. Even if this court asks for a review DPC, ultimately the fact remains that the adverse remarks have been confirmed and any review DPC will only consider the said adverse remarks as confirmed after considering the representation. The applicant's case cannot improve in that way. In view of the above discussion, the O.A. is dismissed. No costs.

(N. Sahu) 29.6.98

Member (Admnv)

rkv.