

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.59/96

New Delhi: this the 10 day of March, 2000.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

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

Kamaldin,
S/o Sh. Maulvi,
R/o T-510/C-3, Baljit Nagar,
New Delhi-8

.... Applicant.

(By Advocate: Shri D. R. Gupta)

Versus

1. Chief Commissioner (Admin) of Income Tax,
C.R. Building,
I.P. Estate,
New Delhi-2

2. Commissioner of Income Tax (Central),
Delhi-I,
Mayur Bhawan,
New Delhi -1

..... Respondents.

(By Advocate: Shri V.P. Uppal)

ORDER

MR. S. R. ADIGE VC (A)

In this OA filed on 20.12.96, applicant seeks consideration of his case for

(i) crossing E.B. w.e.f. 1.9.92 and

(ii) promotion to the cadre of supervisor Grade II with effect from the date his juniors were promoted.

2. Applicant was a Head Clerk in respondents' office. He was suspended w.e.f. 25.5.89 in respect of a criminal case in which he had been arrested and placed under custody for more than 48 hours. He had filed OA No.1142/91 praying for quashing of the suspension order which was allowed and the suspension order was revoked. Thereupon he filed OA No.3369/92 seeking appropriate order under FR 54(b). That OA was disposed of by order dated 17.3.93 (Annexure-A7) directing respondents to consider applicant's

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case and pass appropriate orders under FR 54(b) within six months. Meanwhile applicant retired on superannuation on 30.4.94. On 25.7.95 he sent a notice to respondents in regard to the aforementioned grievance, upon which he received reply dated 29.9.95 (Annexure II) and upon another notice dated 11.10.95 being sent to respondents, he received a further reply dated 8/15.11.95 (Annexure A-I to rejoinder). This O.A. was filed as mentioned above on 20.12.96.

3. Respondents have taken the initial objection that the O.A. suffers from non-joinder of proper and necessary parties, in as much as Union of India is required to be made a party under Section 79 C.P.C. It is also contended that the O.A. is hit by limitation.

4. As regards limitation, applicant in rejoinder has correctly stated that denial of crossing of E.B. gives him a continuing cause of action. Applicant also contends that it is not necessary for him to have impleaded Union of India as a party.

5. We note that applicant has impleaded senior functionaries of Union of India as parties in this O.A. While no doubt the Union of India through

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those functionaries should have been impleaded, we do not consider that it would be fair or equitable to dismiss the O.A. on this technical ground alone. *M*

6. Analysing applicant's claims on merits a perusal of the minutes of the meeting held on 17.2.93 (Anenxure A-III) to consider crossing of E.B. in respect of Group C employees, reveals that applicant's case was considered, but he was not allowed to cross E.B. *inter alia* because his C.C. Rolls for 1989-90 and 1990-91 had not been written. This was so because applicant was under suspension for the aforesaid period, but applicant could not have been denied crossing of E.B. w.e.f. 1.9.92 only because C.C. Rolls for the aforesaid two years had not been written. It is well settled that in such cases applicant's service record preceding that period should have been taken into consideration by respondents to form an opinion whether he was fit or unfit to cross the E.B.

7. Similarly as regards rejection of applicant's claims for promotion as Supervisor Grade II, if, as respondents in their letter dated 29.9.95 state, the DPC was made aware that a criminal case was pending in Court against applicant, the appropriate course should have been for the DPC to have considered applicant's case for promotion and kept its recommendations in a sealed cover till the conclusion of the criminal proceedings, which was not done. *✓*

8. Under the circumstances, this O.A. succeeds and is allowed to the extent that

- i) respondents should consider applicant's claim for crossing of E.B. w.e.f. 1.9.92 by taking into account applicant's service record for the preceding period, if the C.C.Rolls for 1989-90 and 1990-91 are not available and take a view by means of a reasoned order whether applicant is or is not fit for crossing E.B. w.e.f. 1.9.92. In case applicant is found fit he shall be entitled to refixation of pay as well as pensionary benefits along with arrears.
- ii) ^{view} respondents through DPC should consider applicant's claim for promotion as Supervisor Grade II w.e.f. the date his immediate junior was promoted and keep the recommendation in a sealed cover till the finalisation of the criminal proceedings.
- iii) these directions should be implemented within four months from the date of receipt of a copy of this order.
- iv) No costs.

Kuldeep
(Kuldeep Singh)
Member (J)

Arifchah
(S.R. Adige)
Vice Chairman (A)

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