

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO.739/96

HON. SHRI R.K. AHOOJA, MEMBER 'A'

NEW DELHI, THIS 15th DAY OF JANUARY, 1997

SHRI R.S. KUNDU
Aged 56 years
S/o Shri Shiv Dhan Kundu
30-N Central Govt. Housing Complex
Vasant Vihar
NEW DELHI - 57.

Working as:

Senior Technical Assistant
at the Dte. of Quality Assurance
'Warship Project'
'H' Block
NEW DELHI - 11.

...APPLICANT

'By Advocate - SHRI K.B.S. RAJAN'

VERSUS

1. Union of India, through
The Secretary
Deptt. of Defence Production
Ministry of Defence
South Block
NEW DELHI - 11.
2. Dte. General of Quality Assurance
Department of Defence Production
Ministry of Defence
DHQ PO
NEW DELHI - 11.
3. Director of Quality Assurance 'Naval'
West Block No.V.
R.K. Puram
NEW DELHI - 66.

..RESPONDENTS

'By Advocate - Shri P.H. RAMCHANDANI'

ORDER

The applicant while working as Senior Technical Assistant in the Directorate of Warship Project, a wing under respondent No.2, became due for crossing the Efficiency 'EB for short' stage in the pay scale of Rs.1640-9000 p.m.

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1.12.1988. The applicant submits that the applicable rules are that a DPC shall be convened at the commencement of the particular quarter during which an official's EB becomes due and in case the conclusion of the DPC is that there should be a postponement on account of adverse remarks in the ACRs, then the concerned individual has to be informed so that he can improve and further more his case has to be again reconsidered on regular annual intervals. Similarly, where there are disciplinary proceedings, the rules require that sealed cover procedure should be adopted which shall be opened subsequent to the finalisation of the departmental proceedings. The applicant claims that there were neither adverse remarks nor any chargesheet issued to him at the relevant time but even then no orders were passed on his crossing the EB. Accordingly, he submitted a representation dated 14.3.1991 (A-II) by which time he had also come to know that a DPC had in fact been convened and it had recommended his crossing of EB. As no reply was received to his first representation, he followed it by two further representations (Annexure III and IV). In June 1991 he was informed by the Vigilance Cell of respondent No.2 that initiation of disciplinary action against him was under process in consultation with Ministry of Defence. This shows that the respondent No.2 had yet to make up its mind to initiate any disciplinary proceedings till June 1991. Further representations were made by the applicant (Annexure V to VIII). Finally, it was in May 1992 with reference to his last representation dated 10.3.1992 that he received a reply that his case for crossing the EB would be considered only after vigilance clearance is accorded. Thereafter, he was issued two chargesheets - one in June 1991 and the other in June 1992. The second chargesheet resulted in a minor penalty of reduction of pay by three stages for a period of two years without cumulative effect and the relevant orders were passed in September 1992. The

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appeal of the applicant was rejected in October 1993. The applicant states that he has filed an OA No. 2447/93 before the Tribunal which is awaiting its turn for consideration. The respondents in that OA have however stated in the reply that the crossing of EB has been held up due to another case which would indicate that his EB case is pending because of the first charge memorandum dated 13.6.1991. The applicant understands that this relevant enquiry report has already been furnished and the same is pending finalisation by the disciplinary authority.

2. The case of the applicant before the Tribunal is that the disciplinary proceedings initiated in June 1991 cannot be made the ground for stopping his increment at EB which fell due as early as in 1988. There was no decision to initiate any proceedings against the applicant at the relevant time and he had also been found fit by the DPC to cross the EB. In view of this position, the applicant seeks a direction to the respondents to allow him to cross the EB with all consequential benefits including payment of arrears of increments at 18% interest. He also seeks a direction to respondents to dispose of the pending disciplinary proceedings within a reasonable time as the enquiry report has been submitted in 1995.

3. The respondents in their reply allege that the applicant has not stated the full facts. In particular, he has omitted to state that the replies to his representation regarding grant of EB were given to him on 9.5.1991. They also raise a preliminary objection that the relief claimed is barred by limitation as well as on merits. They say that DOP&T instructions provide that in case disciplinary proceedings are contemplated, the findings of the DPC would be placed in a sealed cover and the same should be opened only

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after conclusion of the proceedings. Since the disciplinary proceedings for imposition of a major penalty were recommended against the applicant in 1987 he could not be granted his increment on 1.12.1988. They admit that the DPC proceedings for the purpose were held on 6.12.1988 which cleared him for EB but before the EB clearance certificate could be issued it was brought to the notice of the cadre controlling authority, on the basis of a board of inquiry report, that a disciplinary case was contemplated against the applicant in connection with acceptance of non-standard stores.

4. I have heard the ld. counsel on both sides. ~~However~~ Shri Rajan, ld. counsel for the applicant, argued that since this was a case of recurring loss to the applicant, there was no question of limitation. Shri Ramchandani, ld. counsel for respondents, however urged that limitation would apply in the present case as the so called recurring loss was on account of a specific event, viz., crossing of EB and that event is as old as 1988. The applicant filed an application in 1966, after a delay of eight years. He himself admits that he filed a number of representations and it is on record now that the respondents had informed the applicant as far back as in 1991 that a decision on the crossing of EB would be taken only after vigilance clearance was accorded on the conclusion of the disciplinary proceedings against him. It was therefore open to the applicant to agitate the matter at that stage, in case he was aggrieved that there was a violation of rules on the part of the respondents. On careful consideration of the matter, I find merit in the argument of Shri Ramchandani. It was held in STATE OF PUNJAB VS. GURDEV SINGH 1991 (17) AIC 287 that the party aggrieved by an order has to approach the court for relief on declaration that the order against him is inoperative. In S.S. PAITHOR VS. STATE OF M.P. 1982 (2) SCALE 510, it was held that the

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cause of action shall be taken to arise on the date of order of higher authority disposing of the appeal or representation. In the present case, the event took place in December 1988. Thereafter, representations were filed and in May 1991, the respondents communicated to the applicant that his case for crossing the EB could not be considered on account of the contemplated disciplinary proceedings. The applicant himself states that he was aware even at that stage that no disciplinary proceedings were contemplated in 1988 and further more that the DPC had recommended his case for crossing the EB. There is thus no change in the circumstances nor any new facts have emerged material to the case of the applicant between 1991 and 1996. Yet the applicant has chosen to sleep over the matter except to file numerous representations to the respondents which have evoked the same response. Shri Rajan argues that since this is a matter of earning annual increments once he crosses EB, then with the loss of every annual increment, the applicant acquires a fresh cause of action. If this reasoning were to be accepted, then there would virtually be no limitation in service matters and laches may be overlooked in case of refusal of promotion if an applicant were to come today before the Tribunal and agitate the matter once again and seek relief on the ground that but for his supersession he would be entitled to a much higher pay on the date he filed the application. The grievance of the applicant here is that a final decision on his EB has been withheld, not that EB has been refused. As and when the respondents pass a final order, it would be open to the applicant, in case he is aggrieved by the decision, to agitate the matter in accordance with law.

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5. While, in the light of the above discussion, I conclude that the impugned decision of the respondents conveyed in 1991 as per Annexure 6 cannot be agitated by the applicant at this late stage, the other part of the relief sought for by him regarding delay in taking a final decision is deserving of consideration. The applicant has, in this context, sought direction to respondents to dispose of the pending disciplinary proceedings within a reasonable time as the inquiry report was furnished in 1995. The respondents on their own admission state that the disciplinary proceedings were contemplated against the applicant right from 1985. More than ten years have since passed but the inquiry has still not culminated in a final decision one way or the other. The respondents have given no explanation in their reply regarding this long delay. In view of this position, I consider it proper in the interest of justice to give a direction to the respondents to conclude and decide the disciplinary proceedings and inform the applicant of the decision within a period of four months from the date of receipt of a certified copy of this order.

The OA is accordingly disposed of. No costs.

R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)

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