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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1922/1997

New Delhi, this 26th day of August, 1998

HON'BLE SHRI S.P.BISWAS, MEMBER(A)

Shri Probin Chandra Soni
95-C, UB Jawahar Nagar, Delhi-7 .. Applicant
(By Shri G.K.Aggarwal, Advocate)

versus

Union of India, through

1. Secretary
M/Urban Affairs & Employment
Nirman Bhavan, New Delhi
2. Director General (Works), CPWD
Nirman Bhavan, New Delhi .. Respondents
(By Shri Madhav Panickar, Advocate)

ORDER

The applicant, a retired Executive Engineer (Electrical), w.e.f. 31.3.1997, is aggrieved because of respondents' inaction to allow him to cross Efficiency Bar (EB for short) on the prescribed dates. Respondents have failed, as alleged by the applicant, not only in not fixing his pay in the grade of AE but also in the grade of EE in accordance with the Concordance Table. Consequently, he has sought for issuance of direction to the respondents for granting corresponding retiral benefits with arrears at least three years prior to the filing of this OA.

2. Applicant's trouble in terms of pay fixation has to be traced back to periods from 1.3.74 to 1.3.82. EB on 1.3.74, crossing of which in time would have raised his salary from Rs.810 to Rs.845, was allowed only on 1.3.80. Applicant holds respondents responsible for this since there was no

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communication of any adverse remarks to him arising out of Annual Confidential Reports (ACR for short) ever since 1972-73 and the adverse remarks of 1977-78 were expunged on 3.8.80.

3. Applicant admits that the issue has been raised with delays but raising of such matter cannot be dismissed on the plea of limitation in the light of the judgement of Hon'ble Supreme Court in the cases of M.R.Gupta Vs. UOI, 1995(2) ATJ 567 and R.K.Purohit & Ors. Vs. UOI & Anr. in SLP No.14536/96 decided on 20.9.96. But in view of hardship with a meagre pension he prays for allowing him to cross EB w.e.f. 1.3.74 with arrears since "fitness" for promotion implied "fitness" to cross EB and there were no adverse remarks from 1.4.72 onwards. This will allow him to draw salary in the manner indicated below:

<u>Date</u>	<u>Due salary on crossing EB</u>
1.3.1974	Rs.810
1.4.1975	Rs.845
1.3.1979	Rs.1000
1.3.1980	Rs.1050
30.3.1983	Rs.1200 (as AE)

4. His salary subsequently in senior scale Class I as EE could have been Rs.1600 w.e.f. 30.3.83, the learned counsel for the applicant argued. If he was allowed to cross EB in 1974 on the ground as mentioned aforesaid, there would have been consequential effects of further positive pay fixation, pension, gratuity etc. in accordance with concordance table on promotion from AE to EE on 30.3.83 and superannuation on 31.1.97. Based on the strength of the decision of the apex court in

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Purohit's case (supra) aforequoted, applicant would like to limit his arrears only for three years preceding the date of filing of this OA.

5. The additional grounds on the basis of which the applicant would support his claim are as under:

Only the ACRs considered good enough to promote the applicant from AE to EE should be deemed to be good enough to clear his past EBs during the entire period from 1.4.74 to 31.3.83. That apart, when the respondents cleared the applicant's EB in 1982 at Rs.810 they ought to have cleared him also at Rs.1000 w.e.f. 1.2.75 and 1.3.80 respectively. Applicant also claims the benefit of concordance table for the purpose of fixation of pay on promotion from AE to EE.

6. Shri Madhav Panickar, learned counsel for respondents submits that the applicant was due to cross his EB at the stage of Rs.810 w.e.f. 1.3.74. The DPC constituted for the purpose considered his case for EB on 15.11.77, 6.1.79, 8.2.79, 7.4.81 and 7.1.82. However, he was not found fit to cross EB on the basis of ACRs on each occasion. Finally, he was allowed to cross EB w.e.f. 1.2.82 at the stage of Rs.810 on the basis of ACRs of previous five years.

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7. Heard the rival contentions of learned counsel for both parties, perused the records as well as the personal file of the applicant alongwith the minutes of the individual DPCs held from time to time.

8. The question as how the crossing of EB has to be decided is now well settled by established norms. In the facts and circumstances of the present case, ACRs for five years preceding the date of EB crossing have been taken into account for the purpose of a decision in the matter. As per the system of "Bench Mark" evolved by the DPC, out of five ACRs atleast three should be "GOOD" and two "AVERAGE". The criteria for promotion is seniority-cum-efficiency whereas for purpose of EB it is only performance as reflected in the ACRs for the relevant period which is considered crucial. "Bench Mark" for the purpose of allowing to cross EB and the conditions for promoting an official are not identical. A perusal of the recommendations of the EB committee, which considered applicant's case in November, 1977, February, 1979, November, 1979, April, 1981 and January, 1982 would show that his performance was not at all satisfactory. The records reveal that although the applicant had worked under different officers since 1969-70, he could not earn even a single good report from any of the officers till November, 1979. Faced with this unpleasant situation, applicant had seen the DG(W) personally on 16.5.81 and reasons for which he was superceded on three occasions were explained to him by no less than the DG himself. Being not

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satisfied with the decision of the CPWD authorities, including that of DG. applicant had sent two representations to JS(W) of the Ministry. That Ministry, after reasons recorded, came to the conclusion "that there was no case for over-ruling the recommendations of the EB committee." That was on 27.5.81.

9. Case of the applicant herein was examined at different levels including that of Chief Engineer (Vigilance), besides DG and JS(W) concerned.

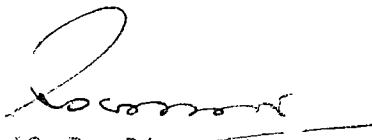
10. Applicant thereafter handed over his representation to the Hon'ble Minister for Works and Housing in February, 1982. His allegations were again examined in detail and a view was taken that "No injustice has been done to Shri Soni as alleged by him". This decision was reached with the knowledge of the Hon'ble Minister. From a perusal of the details in the OA, it is evident that he did not want to disclose all the factual details as regards his crossing of EB at different stages.

11. What the applicant has really challenged is not respondents' inability to fix his pay but decisions of different EB committees from 1977 onwards. While the issue pertaining to fixation of pay would not attract the provisions under the law of limitation following the decisions of the Hon'ble Supreme Court in the case of M.R. Gupta as also in the SLP of Purohit (supra), but applicant's indirect challenge to the EB

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committee's recommendations dating back to 1977, cannot be entertained in the eyes of law. Applicant cannot now deny that his claim for crossing of EB continued to be denied successively from November, 1971 onwards and cannot, therefore, be permitted to challenge the same in an indirect manner in the year 1997. Stoppage at the EB because of not conforming to the principles laid down cannot be equated with penalty. I am, therefore, of the firm view that his remedy against EB decisions upto April, 1981 is barred by limitation. In short, applicant's challenge of pay fixation is only a camouflage. In the garb of agitating issues of pay fixation or recalculation of retiral benefits, he is actually assailing EB committee's decision taken a decade before. This is impermissible.

12. In the background of the detailed reasons aforesaid, the application deserves to be dismissed and I do so accordingly; but in the facts and circumstances of the case, without any order as to costs.


(S.P. Biswas)
Member (A)

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