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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.1526/2000

New Delhi, this the 15th day of the May, 2001

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

Shri Tilak Ram S/o Shri Ranjit Singh
working as LDC in Delhi College of Engineering
Project near Metcalf House,
Bela Road, Delhi-110 054.Applicant

(By Advocate:Shri S.C. Luthra)

V E R S U S

1. Union of India,
through its Secretary,
Ministry of Urban Developoment,
Nirman Bhawan,
New Delhi.
2. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi.
3. Project Manager,
Delhi College of Engineering
Project near Metcalf House,
Bela Road, Delhi-110 054. ...Respondents

By Advocate: Mrs. Neelam Singh.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

This is an application filed for the applicant under Section 19 of the Administrative Tribunal's Act, 1985 as he is aggrieved by the inaction of the respondents for not convening a DPC for allowing the applicant to cross the Efficiency Bar with effect from 1.4.1983 although more than 17 years has lapsed with the result that the applicant is suffering an irreparable monetary loss and damages.

2. The applicant claims that he had joined the services with the respondents on 23.4.1977 in the Construction Division No.8, CPWD, New Delhi and in

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the year 1977 he was transferred to the office of Chief Engineer, New Delhi where he worked till 31.3.1983. From 1.4.1983 the office of the Chief Engineer was bifurcated and the applicant started working in the office of the Chief Engineer (Training), CPWD, Nirman Bhawan, New Delhi.

3. On 22.5.1995 the applicant was transferred to Guru Teg Bahadur Hospital Project, Shahdara, and from 21.9.1995 he was working in the Delhi College of Engineering. The pay scale of LDC at the time of joining was Rs.260-6-290-EB-6-326-8-400.

4. The applicant further states that he has earned normal increments upto the stage of Rs.290/- on 1.4.82 and his next increment fell due on 1.4.83 which was to be sanctioned to the applicant after clearing him of the Efficiency Bar at Rs.290/-.

5. As per the department rules, a DPC for clearing Efficiency Bar for Government servant whose increment is due on 1st of April ought to have been convened in January, 1983 but strangely enough no DPC till this day has been constituted to consider the case of the applicant for crossing the EB. Similarly the applicant's case for confirmation was also not put up before any DPC on the pretext that Recruitment Rules were not available and the applicant has now been confirmed on 17.7.2000 retrospectively w.e.f. 22.4.81 mentioning, inter alia, that there was nothing

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adverse against him and it is not understandable as to why in the first place the respondents have taken 19 years to issue the confirmation order and still they have not convened any DPC to cross the Efficiency Bar.

6. It is further pleaded that from 1.4.1983 to 31.3.1986 the applicant continued to draw Rs.290/- and it is only on 1.4.1986 consequent upon the acceptance of the recommendations of the 4th Pay Commission the pay scale of the LDC was revised from Rs.260-400 to Rs.950-1500 and the applicant's pay in the revised pay scale was fixed at Rs.1070/- in the pay scale of Rs.950-20-1150-EB-25-1500. There was an Efficiency Bar at the stage of Rs.1150 and from 1.1.1990 the applicant is drawing basic pay of Rs.1150/- but for non-holding of any DPC the applicant continued to draw basic pay of Rs.1150/- till 31.12.1995 and further with the acceptance of 5th Central Pay Commission report the pay scale of LDC has been further revised to Rs.3050-75-3950-80-4590 but in this grade there is no stage where Efficiency Bar is to be crossed. However, the applicant's pay was fixed at Rs.3650/- and had the respondents cared to convene a DPC for crossing the EB at Rs.1150/- the applicant would have earned another 5 increments and his pay would have been fixed at a much higher rate.

7. The applicant had all along been representing but no DPC was convened for crossing of

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EB so it is prayed that the respondents be directed to convene a DPC w.e.f. 14.83 to allow the applicant to cross EB and to further direct the respondents to convene a further DPC after 1.4.86, if it becomes necessary to convene one on account of pay fixation of the applicant if he reaches at the stage where crossing of EB is required.

8. The respondents are contesting the OA. The respondents have taken a main objection that the OA is barred by limitation and the same is not maintainable.

9. The respondents further pleaded that as per the procedure and guide-lines in para 15 of the CPWD manual Vol.I the case of Government servants for crossing the Efficiency Bar in a time scale of pay shall be considered by the Departmental Promotion Committee on the basis of performance of Government servants in the preceding years and a Government servant is allowed to cross the EB unless his work and conduct has been adjudged to be good.

10. The performance of the applicant and his work and conduct from the date of his joining in the department remained poor, unsatisfactory, average and below average and despite being conveyed these reports he did not improve himself and thus keeping in view of poor and below average performance, he is not found eligible to cross the probation period and

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EB in his original pay scale of Rs.260-400 and revised pay scale after 4th Pay Commission's Report.

11. It is further submitted that his probation case and permanency case could be finally decided by the DPC and he was allowed to have cleared probation period w.e.f. 22.4.81 without any financial benefits. In the 5th Pay Commission's report the pay scales were further revised but there was no condition in the present pay scale.

12. It is also pleaded that the respondents have conveyed to him "below average" and "average" reports so it is stated that the OA has no merits and the same is liable to be dismissed.

13. I have heard the learned counsel for the parties and have gone through the records of the case.

14.. The main grievance of the applicant is that whatever may be the record of the applicant but according to the CPWD Manual, the respondents were supposed to convene a DPC to consider the case of the applicant for crossing of the EB, since this has not been done, directions should be issued to the respondents for holding the DPC. The counsel for the applicant has also referred to the instructions on the subject and submitted that a time schedule should be observed for crossing the Efficiency Bar and submitted that along with the counter affidavit

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document has been relied upon by the respondents. According to paras 15, 16 and 17 of the said OM No.51/5/72-Estt.(A) dated 20.5.72 the department was to follow a time schedule for considering the case of the employees who are to cross the EB. Para 17 is reproduced hereinbelow for easy reference:-

" The following time schedule may be observed in processing the cases for crossing the EB:-

Month in which EB cases should be considered by the DPC	Months during which the date of crossing of EB falls
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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 EB, the Committed should consider only those CRs, which it would have considered had the DPC been held as per prescribed schedule. In the event of a Government servant being found unfit to cross the EB from the date, the same DPC would be competent to consider the report for the subsequent year also if available. Thus the same DPC could examine whether the Government servant is fit to cross the EB from the next successive years also".

15. So the counsel for the applicant submitted and it was mandatory for the department to convene a DPC meeting for clearing the Efficiency Bar of the applicant and since they have not done so even on the basis of the representations made by the applicant, so the OA deserves to be allowed.

16. The respondents, who are contesting the OA, submitted that since the applicant did not have a good report and DPCs had been convened on 30.10.1996, 18.3.97, 9.2.2000 and now the department

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has considered the case of the applicant and had found him to be unfit, so there is no question of allowing the OA.

17. I have considered the rival contention of the parties and have gone through the record. Department was asked to produce the relevant record and they have produced it.

18. The learned counsel for the respondents has submitted that the proceedings recorded on these DPC show that the case of the applicant was considered and the applicant has been rightly denied clearing of probation period so the question of crossing of the EB does not arise.

19. I have gone through the record and from a perusal of the minutes of the DPC I find that none of the DPCs had been convened to consider the case of the applicant for crossing of the EB. All the minutes show that the case of the applicant was considered only with a view to find whether he was fit to be confirmed or not and whether his probation period has to be cleared or not. Though the counsel for the respondents referred to a DPC note dated 9.2.2000 and stated that this meeting did contain an agenda with regard to clearing of EB but a perusal of the minutes, which is recorded in Black Ink and signed by the DPC members show that the DPC was held for clearing his probation period and not for crossing of EB. The register which is maintained for

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recording the minutes also show that it has a heading in Hindi as "awar shrani lipic ki dakshta rok" which, if translated in English, will meant Efficiency Bar. But while recording proceedings of this DPC it is categorically stated that this was for clearing of probation period and the word dakshta rok has no mention over it which clearly shows that no DPC has ever been held to clear the EB. I, therefore, think that this is a fit case where the OA should be allowed because as per the CPWD manual para 15 it was mandatory on the part of the respondents to convene a DPC meeting which has not been held, so the respondents have to convene a DPC for considering the crossing of EB of the applicant at an appropriate stage.

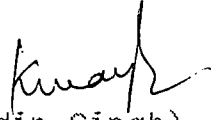
20. The respondents has also taken a plea of limitation but I find that it is the respondents who have never held any DPC for considering the crossing of EB of the applicant so the respondents cannot be allowed to take the benefit of its own wrong. Besides that if the respondents have considered the clearing of the probation period of the applicant after a lapse of 19 years and have also allowed clearing of probation period with retrospective effect so they can also consider clearing of EB of the applicant in the same manner. Hence I hold that the plea of limitation is not attracted to the facts of the present case.

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21. In view of the above, OA is allowed. Respondents are directed to consider the case of applicant for clearing EB by convening a DPC for clearance of the EB of the applicant in accordance with the rules and instructions and judicial pronouncements on the subject. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.


(Kuldip Singh)
Member (J)

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