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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO.2247/2000

This the ~~1st~~ day of October, 2001.

HON'BLE SHRI JUSTICE B. DIKSHIT, VICE-CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

M.A.Ansari S/O Rahmatullah,  
Deputy Director (E),  
National Plant Quarantine Station  
(Near Vasant Kunj Police Station),  
Rangpuri, New Delhi-110037.

... Applicant

( By Shri Ajit Puddussery, Advocate )

-versus-

Union of India through  
Secretary, Ministry of Agriculture,  
Department of Agriculture and Cooperation,  
Government of India, Krishi Bhawan,  
New Delhi-110001.

... Respondent

( By Shri R.N.Singh, Advocate )

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Vide Annexure P-1 dated 6.10.1999 applicant's representation regarding review of DPC's decision to allow him to cross efficiency bar (EB) with effect from the original due date, i.e., 1.4.1987 has been rejected and the decision to allow him to cross EB w.e.f. 18.4.1989 in the pre-revised pay scale of Rs.2200-4000, in view of the penalty of reduction in his pay by two stages for a period of one year in a disciplinary matter, was upheld. The applicant has sought quashing and setting aside of the aforestated order and a direction to the respondents to backdate the crossing of EB under 1986 pay scales to 1.4.1987 when he became due for the same. He has also sought direction to the respondents to backdate his promotion to September, 1993/January, 1994

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when clear vacant post became available. He has also sought consequential benefits in the event of grant of the above reliefs.

2. The learned counsel of the respondents raised the issue of multiple reliefs sought by the applicant and stated that the OA is non-maintainable being violative of provisions of rule 10 of the CAT (Procedure) Rules, 1987. The learned counsel of the applicant admitted that the reliefs relating to crossing of EB and promotion are not consequential to each other. Thus, this application definitely suffers from the vice of plural remedies. The learned counsel of the applicant did not press the relief relating to promotion praying that he should be given liberty to file a separate case in that behalf.

3. The learned counsel of the applicant stated that the applicant while working as Entomologist/ Assistant Director (Entomology) reached the stage of crossing of EB in the pay scale of Rs.700-40-900-EB-40-1100-50-1300 on 1.9.1985. He was not allowed to cross the EB. His pay was fixed under the CCS (Revised Pay) Rules, 1986 vide Annexure P-2 dated 28.4.1987 in the revised pay scale w.e.f. 1.1.1986 at Rs.2650 in the scale of Rs.2200-75-2800-EB-100-4000 stating that his pay would be refixed only after a decision was taken by the competent authority on his EB case. He was not given increment in the revised scale on the due dates. He was eventually granted annual increments w.e.f. 1.9.1987 in the revised scale. Vide Annexure P-5 dated 20.8.1990 the applicant was allowed to cross EB at the stage of Rs.2800

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w.e.f. 18.4.1989 raising his pay to Rs.2900. The applicant has stated that no reasons were assigned for not allowing him to cross EB from 1.4.1987 when it became due. In the disciplinary proceedings initiated against the applicant on 6.10.1986, as per Annexure P-8 dated 17.4.1989, penalty of reduction of pay by two stages for a period of one year was imposed upon the applicant. Since the penalty was allegedly prima facie defective, it could not be implemented for a long period of five years. Vide Annexure P-9 dated 28.4.1994, order of the disciplinary authority reducing the applicant's pay from Rs.2800 to Rs.2650 for a period of one year w.e.f. 17.4.1989 was implemented. The learned counsel of the applicant contended that the penalty imposed on the applicant was a minor penalty as per the provisions of rule 11 of the CCS (CCA) Rules, 1965 and a minor penalty could not have the effect of postponing the date of crossing EB, and that the applicant ought to have been permitted to cross EB w.e.f. 1.4.1987. His representation in this behalf remained unattended. Eventually vide Annexure P-15 dated 27.10.1997 his pay was refixed as per CCS (Revised Pay) Rules, 1996 and as per Annexure P-16 dated 20.1.1998 the date of increment of the applicant was antedated to 1.4.1986 from 1.9.1986. The applicant had taken his grievance to the National Commission for Minorities also, which, as per Annexure P-24 dated 25.5.2000 recommended that applicant's case for crossing EB from the due date should be considered.

4. The learned counsel of the respondents contended that since the applicant had been imposed a

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major penalty of reduction by two stages for a period of one year w.e.f. 17.4.1989 he was not allowed to cross EB with effect from the original due date. Crossing of EB with effect from the original due date is considered by a review DPC only if the proceedings end in a minor penalty. On being confronted with the provisions of rule 11(3) of the CCS (CCA) Rules relating to reduction to a lower stage in the time scale of pay for a period not exceeding three years without cumulative effect and not adversely affecting pension, as a minor penalty, the learned counsel of the respondents accepted that the penalty visited upon the applicant was in the nature of a minor penalty and not major penalty.

5. The learned counsel of the applicant drew our attention to Annexure P-10 dated 9.2.1973 and Annexure P-11 dated 29.11.1979 relating to instructions on effect of penalty of withholding of increment at the EB stage, which read as follows :

"When penalty of withholding of increment imposed while official held up at efficiency bar stage. - Recently a case has come to the notice in which a Government servant became due to cross efficiency bar in October, 1970, but was not found fit to cross the bar. In the meantime, he was placed under suspension and he could not, therefore, be allowed to cross efficiency bar while under suspension in October, 1971 and October, 1972. The disciplinary proceedings against him ended with the imposition of penalty of withholding of increments for five years as per the punishment order issued in December, 1972. A question has been raised as to how the penalty can be enforced and the pay of the Government servant regulated.

It has been decided in consultation with the Department of Personnel and the Ministry of Finance that in the type of case referred to, the case of the Government servant for crossing

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the efficiency bar should be reviewed on a date immediately following the date of the order of penalty and if he is found fit to cross the efficiency bar, the stage at which he would draw pay above the efficiency bar should also be decided. Once it is done, five increments commencing from the date of next increment after being allowed to cross the efficiency bar can be withheld and the penalty thus enforced. In case he is not found fit to cross the efficiency bar from a date immediately after the conclusion of the disciplinary proceedings, his case should be reviewed with reference to every subsequent anniversary of the original due date until he is found fit to cross the efficiency bar. Thereafter, the stage at which he should draw the pay above the efficiency bar should also be decided and the penalty order enforced as explained above." [Annexure P-10].

"For a proper appreciation of this ruling the details of the following concrete case will be helpful :-

An official was not allowed to cross the EB with effect from 1-2-1973, on account of the pendency of disciplinary proceedings. As a result of the disciplinary proceedings, punishment order was issued on the 19th April, 1977, imposing the penalty of withholding of increment for a period of one year without cumulative effect. As a result of review of his case for crossing the EB he was allowed to do so with effect from 1-2-1978, releasing the earlier increments. In this case, the proper course would be to fix the pay on 1-2-1978, giving the benefit of five earlier increments which were due on 1-2-1973, 1-2-1974, 1-2-1975, 1-2-1976, 1-2-1977 and the sixth increment which was due on 1-2-1978, should be withheld for one year. Thereafter, the withheld increment should be released with effect from 1-2-1979, in addition to the increment which was due on that date." [Annexure P-11].

6. In view of the fact that the respondents have admitted that at the conclusion of the disciplinary enquiry against the applicant, he was imposed a minor penalty and in view of the relevant instructions, as stated above, the OA is allowed in the following terms:

The impugned order dated 6.10.1999 (Annexure P-1) is quashed and set aside and the respondents are directed

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to consider according crossing of efficiency bar to the applicant under the 1986 pay scales from the original due date, i.e., 1.4.1987, with consequential benefits. The respondents shall pass orders as per these directions within a period of six weeks from communication of these orders.

The applicant shall have liberty to raise the issue of promotion to the post of Deputy Director (Entomology) from backdate by filing a separate OA.

V.K. Majotra  
( V.K. Majotra ) 4.10.2001  
Member (A)

B. Dikshit  
( B. Dikshit )  
Vice-Chairman

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