

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

\* \* \*

Date of Decision: 4.9.92

OA 2031/89

A.D. GHAI

... APPLICANT.

Versus

UNION OF INDIA

... RESPONDENT.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... SHRI K.N.R. PILLAI.

For the Respondent

... SHRI M.L. VERMA.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y

2. To be referred to the Reporters or not? Y

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is Assistant Engineer, has challenged the order dated 8.1.86 declaring the applicant unfit to cross the E.B. on 1.8.82, 1.8.83 and 1.8.84. He has also assailed the order dated 31.1.86 declaring the applicant unfit to cross the E.B. on 1.8.85. The applicant has filed this OA on 3.10.89 aggrieved by the aforesaid orders. The applicant has claimed the relief that the impugned orders dated 8.1.86 and 31.1.86 be quashed and a direction be issued to the respondents to treat the

applicant as having crossed the EB on 1.8.82 by grant of exemption from the Accounts examination on attaining the age of 50, with all consequential benefits.

2. The applicant has since retired on 31.8.90. The facts of the case are that the applicant was promoted as Assistant Engineer on 28.2.81 and he was subsequently given regular promotion w.e.f. 25.1.79. The EB in case of the applicant fell due on 28.2.82 but to cross the EB it was necessary that the applicant should have cleared the departmental examination in Accounts. However, under the rules, after crossing of age of 50 the applicant was eligible for consideration for grant of exemption from the Accounts examination. The applicant crossed the age of 50 years in August, 1982. However, the applicant was considered in January, 1986. The order dated 8.1.86 goes to show that the case of crossing of EB was considered and the applicant was not found fit to cross the EB at the stage of Rs.810/- and he was considered upto August, 1984. He was also allowed to prefer an appeal under Rule 23 of the CCS (CCA) Rules, 1965, if he so desired. Again his matter was considered and he was not found fit to cross the EB w.e.f. 1.8.85. He was also informed about this and was given opportunity to file appeal under Rule 23 of the CCS (CCA) Rules, 1965. The applicant was again informed in May, 1986 that exemption from passing the departmental examination could not be granted in his case

but he would be at liberty to file an appeal under Rule 23 of the CCS (CCA) Rules, 1965. The appeal preferred by the applicant has been dismissed by the order dated 2.1.87.

The applicant appears to have filed a review on 29.3.89 to the President of India against the order dated 2.1.87.

After the rejection of the appeal in January, 1987 the applicant did not take any step and it was only in March, 89 that he has submitted a Memorial to the President.

3. The respondents in their reply have taken the objection that the present application is barred by limitation under Section 20 and 21 of the Administrative Tribunals Act, 1985. The department has also, in their counter, stated that there are three conditions which are to be fulfilled for consideration of <sup>an</sup> Assistant Engineer to cross the EB in the time scale of pay:-

- (1) He should have passed departmental examination, prescribed for Assistant Engineers,
- (2) There should not be any disciplinary case pending or contemplated against him, and
- (3) He should have good record of service.

However, on a perusal of the CR of the applicant for the relevant years I came to the conclusion that the applicant has no case for crossing of EB. However, the applicant has preferred an appeal to the Directorate General (W), the Appointing Authority, but he was advised to prefer the appeal to the President and the appeal preferred to

the President has been disposed of by the order dated 2.1.87.

4. Having given a careful consideration and also to the application for condonation of delay, filed by the applicant it is not a case where the delay can be condoned. The ground taken in the application for condonation of delay is that the applicant has filed review to the President and that too on 29.3.89. He has taken the ground that in a case filed in the CAT the department has taken the plea that because of certain confidential guidelines the DPC recommended the crossing has not 1 of the EB and the officers who do not have a specified number of Annual Confidential Reports, assessing them as good or above. This was the ground taken not to approach the Tribunal in time. This cannot be said to be a reasonable cause in approaching the Tribunal in time. The applicant has come when only a few months remains in his retirement and he has taken the ground which is totally extraneous to the merit of this case. What plea a party takes in another case cannot be by itself considered as a reasonable ground for not approaching in the time limited prescribed under law for redress of his grievance.

5. The law of limitation as applicable in the service matter has been clearly laid down in the case of S.S. Rathor Vs. State of Madhya Pradesh (AIR 1990 SC 10) as well as in the case of State of Punjab Vs. Gurudev Singh (1991 (4)

SCC 1). In the case of S.S. Rathore, the applicant has to come against an order within one year. In the case of applicant, his appeal withholding his crossing of EB was decided 2.1.87. The applicant did not pursue the matter any further nor he came to the court. The Memorial to the President was specifically laid down in Section 20 of the Administrative Tribunals Act, 1985 as well as in the case of S.S. Rathore, the observations of the Hon'ble Supreme Court also to the effect that any memorial to the President will not add to the period of limitation. In the present case, the Memorial to the President has also been preferred by the applicant after more than 2 years in March, 1989. The present application has been filed in October, 1989. Thus, the application has been filed beyond the period of limitation. The applicant has since retired also sometimes in 1990. Again/<sup>in</sup>the case of State of Punjab Vs. Gurudev Singh the Hon'ble Supreme Court held that even in service matters the party should come within limitation.

6. However, the case has also been considered on merit. The respondents have also filed the personal file of the applicant. For the crossing of EB it is necessary, as per arguments of the learned counsel for the applicant, that there should be satisfactory record of service. The EB of the applicant was due to be crossed in August, 1982. He has been judged as a person of average ability in the year 1982 and he has been commented upon that he has not

submitted any bill for major work and only confined himself to minor work. In the next year his performance was only average. In 1984-85 he was commented not fit for promotion as an average officer. For the period from 1.4.85 to 31.3.86 he has supervised of the work and the applicant was not found satisfactory. In the year 1987, he has been commented upon that he is an average Assistant Engineer to just manages without serious problems. Thus, mostly he has not been in any of these years judged to be a good officer but only an officer of average working who apprise to avoid serious work.

7. As per recommendations of the 3rd Pay Commission as well as instructions on the subject laid down that the EB should be crossed when the applicant is capable of pulling his weight. In the case of the applicant, his service record does not show that he was discharged his duties quite satisfactorily. Thus, it cannot be said that the crossing of EB after the age of 50 years was not considered as per rules by the respondents. In fact, the applicant did not qualify for the same.

8. In view of the above facts, there is no case to with the impugned order interfere and the application is, therefore, devoid of merit and is dismissed as barred by time.

In the circumstances, parties to bear their own costs

*J. P. Sharma*  
( J.P. SHARMA )  
MEMBER (J) 4.9.82