

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1777/1988.

DATE OF DECISION: March 12, 1990.

N.C. Bharadwaj Applicant.
Shri A.S. Saxena Advocate for the Applicant.
V/s.
Union of India & Others Respondents.
Shri P.P. Khurana Advocate for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether his Lordship wishes to see the fair copy of the Judgement? No.
4. To be circulated to all Benches of the Tribunal? No.

Recd
(P.C. JAIN)
MEMBER(A)

V

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JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant who was earlier working as a Sorting Assistant in Moradabad R.M.S., and was not allowed to cross the Efficiency Bar at the stage of Rs.420 to Rs.432 with effect from the due date of 1.12.82, has prayed for the following reliefs: -

- *(A) Declaring the orders dated 27/5/80, 25/6/81 and 3/8/83 of Respondent No.2 in case No. K-6/Mis-NCB/79-80 and De novo trial orders of the 82-83 Respondent No.3 dated 18/3/81 and 17/3/82 as null and void, the applicant be allowed to cross Efficiency Bar with effect from 1/12/82 or 1/12/83 (as the Habib Tribunal determines) and fixing his pay at Rs.456/- on 1/12/84 and the order of the Respondent No.2 dated 27/11/84 allowing to cross E.B. with effect from 1/10/84 be modified accordingly and the order dated 18/10/87 of the Respondent No.3 be set aside
- (B) That the pay of the applicant in L.S.G. be refixed as on 1/12/84 in accordance with the revised pay as in para A above and the date of effect of applicant's promotion be changed from 30/11/83 to 1/12/84.
- (C) The cost of the application be awarded to him.
- (D) That the arrears which become due be paid to the applicant with interest at 17% P.A. from the date it became due to the date of their actual payment.

(L.S.G.)

(E) That the orders of the Habib Tribunal be ordered to be complied with within a fixed time, failing which proceedings for contempt of court come into force."

2. The facts of the case, in brief, are as under: -

The applicant, while working as Incharge Registration Branch Moradabad RMS/2 on 7.7.1979, was held responsible for the loss of an insured letter for Rs.500/-. He was proceeded against under Rule 16 of CCS (CCA) Rules, 1965 and the Superintendent of RMS 'SH' Division, Saharanpur, vide his order dated 27.9.80 (Annexure R-1 to the Written Statement) ordered that an amount of Rs.500/-, the loss sustained by the P&T Department be recovered from the applicant in 20 instalments of Rs.25/- each. Accordingly, the sum of Rs.500/- was recovered from him during the period from 1.11.80 to 1.3.81 (Annexure F to the O.A.). The applicant filed an appeal dated 28.10.80. The appellate authority, by his order dated 18.3.81 (Annexure B to the O.A. remitted back the case to the disciplinary authority for proceeding denovo. The disciplinary authority, vide his order dated 25.6.81 (Annexure R-2 to the Written Statement) again ordered that Rs.500/- be recovered from the pay of the applicant in 20 instalments of Rs.25/- each. The applicant preferred another appeal dated 3.8.81, on which the appellate authority once again, vide his order dated 17.3.82, remitted back the case to the disciplinary authority for denovo trial strictly in accordance with the provisions of CCS (CCA) Rules, 1965. The disciplinary authority, vide his order dated 30.8.83 ordered that Rs.500/- be recovered from the applicant in full from his pay in ten instalments of Rs.50/- each. (Annexure R-3 to the Written Statement). In accordance with this order, Rs.50/- was recovered from the applicant from his bill dated 1.10.83. The amount of Rs.500/- already recovered from the applicant was refunded to him vide Bill dated 5.9.84. On receipt of
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this payment, he voluntarily deposited the balance amount of Rs.450/- on 28.9.84. In the meanwhile, the applicant was due to cross Efficiency Bar on 1.12.82 at the stage of Rs.420/- to Rs.432/-. His case was considered by the Superintendent, RMS 'SH' Division, Saharanpur, but the applicant was not found fit to cross EB from the said date, vide order dated 9.11.82, a copy of which was sent to the applicant also (Annexure R-4 to the Written Statement). Vide order dated 28.11.84 (Annexure I to the O.A.), the applicant was allowed to cross the E.B. with effect from 1.10.84 raising his pay from Rs.420/- to Rs.432/-, which remained unaffected because the applicant had already been promoted to next higher scale of pay under Time Bound One Promotion Scheme w.e.f. 30.11.83, when his pay had been fixed at Rs.440/-. Thus, the applicant is aggrieved by the orders of the respondents which have not allowed him to cross the EB either from 1.12.82 or from 1.12.83. On his appeal, it was decided by the respondents that since the applicant had already been promoted w.e.f. 30.11.83, the question of allowing him to cross the E.B. in the lower scale was not relevant. (vide Annexure K to the O.A.).

3. The pleas of the applicant can be summarised as under: -

- (1) The disciplinary authority had decided the disciplinary proceedings case against him vide order dated 27.9.80 and the same became null and void by the order of the appellate authority dated 18.3.81, whereby the case was remitted for denovo proceeding; no cognisance could be taken of proceedings which were declared null and void and without legal sanctity.
- (2) Both the orders for denovo trial passed by the appellate authority were illegal and were not within the statutory provisions.
- (3) The amount of Rs.500/- had already been recovered from him by March 1981 and always remained with the Government except from 21.9.84 to 27.9.84. No punishment was pending against the applicant after 1-3-81 when full amount of Rs.500 had been recovered.

(4) There was no justification to stop him at the Efficiency Bar on 1.12.82 as there was neither any punishment nor any disciplinary proceeding pending against him.

(5) Even if some hypothetical proceedings were assumed to be pending on 1.12.82, there was nothing against him on 1.12.83, as the final order had been passed in August 1983 and full recovery of Rs.500/- had already been effected from him by March 1981 itself.

(6) Forfeiture of increments falling due on 1.12.82 and 1.12.83 cannot be imposed permanently on the whim of the officer, but it can be done only on judicious adjudication of the facts.

(7) The pay of the applicant in L.S.G. be refixed after allowing him to cross the E.B. and the date of effect of his promotion be changed from 30.11.83 to 1.12.84.

4. The case of the respondents is that the case of disciplinary proceedings was finally decided by the order dated 30.8.83 when it was ordered that the amount of loss of Rs.500/- be recovered from the applicant in ten instalments of Rs.50/- each. According to this order, the first instalment of Rs.50/- was recovered from him vide bill dated 1.10.83 and the amount of Rs.500/- which had been recovered earlier was refunded to him vide bill dated 5.9.84. On receipt of that payment, the applicant voluntarily deposited Rs.450/- on 28.9.84. On account of currency of disciplinary proceeding, he was not found fit to cross the E.B. and he was informed accordingly vide Memo dated 9.11.82. The penalty of recovery was over on 28.9.84. E.B. at the stage of Rs.420/- to Rs.432/- was allowed w.e.f. 1.10.84, vide office memo dated 27.11.84, but the applicant had already been promoted to next higher scale of pay under Time Bound One Promotion Scheme w.e.f. 30.11.83 at the stage of Rs.440/-, and hence the question of his earning increment w.e.f. 1.12.83 in lower grade does not arise.

5. I have gone through the pleadings of the case and have heard the learned counsel for the parties.

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6. It is not in dispute that the applicant was not allowed to cross the Efficiency Bar from the due date of 1.12.1982 because of pendency of disciplinary proceedings against him. The final order in this case was passed on 30.8.1983. The mere fact that the recovery of the penalty imposed in pursuance of the above final order was completed in September, 1984 cannot be taken to mean that the disciplinary proceedings continued until September, 1984. This is all the more so in view of the fact that the penalty initially imposed and finally maintained, i.e., recovery of Rs.500 from the applicant, was effected during the period from 1.11.80 to 1.3.81 and this amount continued to be with the respondents until it was returned to him vide bill dated 5.9.84. Thus, the recovery of the amount of penalty in monthly instalments of Rs.50 each as per the final order dated 30.8.83 cannot be deemed to have extended the pendency of the disciplinary proceedings until 28.9.84 when the account was again squared up.

7. Normally, review of the case of crossing of Efficiency Bar is made annually. In this case, however, it was dependent on the pendency of the disciplinary proceedings. The respondents themselves have allowed the applicant to cross the Efficiency Bar with effect from 1.10.84 instead of the normal increment date of 1st December, in the scale of Rs.260 - 480. In view of this as also because of the fact that the final order in the disciplinary proceedings was passed on 30.8.1983 and the amount of penalty imposed therein was already in possession of the respondents, this is a fit case in which the applicant should be deemed to have crossed the Efficiency Bar with effect from 1.9.1983, and I direct accordingly. The applicant would be entitled to refixation of his pay with effect from 1.9.1983 at the stage of Rs.432 in the scale of Rs.260 - 480 and thereafter to refixation of pay with effect from 30.11.1983 in the Selection Grade to which he was promoted with effect from that date. The applicant will also be

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entitled to arrears of pay and allowances on this account. This direction should be complied with by the respondents within a period of three months from the date of receipt of a copy of this order.

8. The application is partly allowed in terms of the above directions. Parties to bear their own costs.

(P.C. Jain) (2/3/1994)
MEMBER(A)