

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1912 of 1988
T.A. No.

DATE OF DECISION 9.5.89

Shri G.R. Gandhi, Applicant XXXXXXXXXX
Petitioner

Shri T.C. Aggarwal, Advocate for the Petitioner(s) applicant

Versus

Union of India & Others Respondent(s)

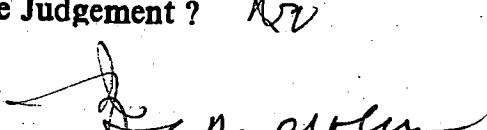
Shri K.C. Mittal, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. MATHUR, VICE-CHAIRMAN.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Ys*
2. To be referred to the Reporter or not ? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Nr*


(B.C. Mathur)
Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 1912 of 1988

Date of decision: 9.5.1989

Shri G.R. Gandhi

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Applicant

Vs.

Union of India & Others

....

Respondents

PRESENT

Shri T.C. Aggarwal, counsel for the applicant.

Shri K.C. Mittal, counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri G.R. Gandhi, Junior Engineer, C.P.W.D. against not being allowed to cross the E.B. on the due date and not allowing him higher salary from the same date.

2. The brief facts of the case are that the applicant was due to cross the Efficiency Bar on 1.1.1975 raising his pay from Rs. 500.00 to Rs. 515.00 but his case was not considered by the D.P.C. on the due date. On his representation regarding re-fixation of pay consequent upon crossing of E.B., the applicant was informed (Annexure A-1) that his case falls under the category of disciplinary case ending in a minor penalty and as such he could not be allowed to cross E.B. with benefits retrospectively. His pay has been fixed at Rs. 680.00 w.e.f. 1.1.84 taking into consideration the length of service between the date his E.B. was due and when it was actually allowed to be crossed but he could not be given arrears for the period disciplinary case was in progress. It has been stated that the applicant was awarded censure which should not stand as a bar for allowing crossing of efficiency bar which has to be considered on the due date taking into account the overall assessment of record. The action of the respondents has resulted in double penalty to the applicant, namely, censure and stoppage of increment for about 10 years. The applicant has quoted the Department of Personnel O.M. No. 21/5/70-Estt(A) dated 15th May 1971,

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which states that recovery from the pay of a Government servant of the whole or part of any pecuniary loss caused by him to Government, or withholding of increments or pay, are minor penalties as laid down in Rule 11 of the C.C.S. (C.C.A.) Rules. The penalty of censure or of withholding one's increment does not stand in the way of his consideration for promotion though in the latter case promotion is not given effect to during the currency of penalty. The Departmental Promotion Committee is to consider overall assessment of the service record for judging the suitability or otherwise of a person for promotion purposes. Similarly, where the sealed cover procedure has been followed, if the penalty is censure, this should not be taken into consideration.

3. F.R. 25 provides where an efficiency bar is prescribed in a time-scale, the increment is to be given with the specific sanction of the competent authority. The case of E.B. has to be reviewed annually by D.P.C. on the basis of overall performance. Even when disciplinary proceedings are pending, the case of crossing the E.B. is required to be considered and kept in a sealed cover and to be given effect to on the conclusion of the departmental proceedings. The rules are clear that consideration of E.B. cannot be postponed. The applicant has stated that in his case there has been a total disregard to the Rules laid down in Article 13 of the Constitution of India since respondents failed to consider the case of efficiency bar of the applicant. The disciplinary proceedings against the applicant were started with the charge-sheet dated 4.7.73 and ended on 31.3.83 taking 10 long years which itself is against natural justice and treating it as an embargo to grant E.B. crossing from due date simply for reasons of censure without considering the overall assessment is totally arbitrary, illegal and against natural justice. It has been held that 'Censure' should not be a bar to eligibility for consideration of promotion. Even if an employee is considered responsible for any pecuniary loss to Government, he is not debarred from being considered for promotion. The

applicant has not been communicated any adverse remarks and as such it is established he was fit to cross E.B. on his due date. This fact is further supported by respondents action in giving him the benefit of past service for increment.

4. Learned counsel for the applicant has stated that the sealed cover procedure has not been followed properly. He said that in the case of K.V. Rao Vs. Union of India - ATLT - (1) - 1988-CAT-Short Note No.30, the Hyderabad Bench has held that if an officer is fit for promotion, he is fit to cross the E.B. As such, if censure is not ~~barred~~ to promotion, it should be no bar to cross the E.B. In another case Gyanendra Jauhari Vs. Asstt. Collector, Central Excise, 1989 (9) ATC 451, it has been held that where there is a minor penalty, the sealed cover procedure will not make any difference and a person can be promoted in his turn. This is also covered by the instructions issued by the DP&AR dated 16.2.1979. Shri T.C. Agarwal, learned counsel for the applicant, has cited three other cases to support his contention in favour of the applicant:-

- (i) Shiv Shankar Saxena Vs. Union of India & Others 1989-1-SLJ-CAT-247.
- (ii) Parveen Kumar Vs. I.C.A.R. & Others - 1983(3) SLJ-CAT-694.
- (iii) P.P. Deshpande Vs. Collector of Customs, 1988(3)- SLJ - CAT -161.

In the case of Shri Shiv Shankar Saxena the Tribunal has held that

"Where the departmental proceedings have ended with the imposition of a minor penalty viz censure, recovery of pecuniary loss to the Government, withholding of increments of pay and withholding of promotion, the recommendation of the DPC in favour of the employees, kept in the sealed cover, will not be given effect to. But the case of the employee concerned for promotion/confirmation may be considered by the next DPC when it meets after the conclusion of the departmental proceedings. If the findings of the DPC are in favour of the employee, he may be promoted in his turn if the penalty is that 'censure' or recovery of pecuniary loss caused to the Government by negligence or breach of orders". In the case of employees who have been awarded the minor penalty of "withholding of increments" or withholding of promotion, promotion can be made only after the expiry of the penalty."

In this case it has been held that in case a Government servant is not totally absolved of the charge on which disciplinary proceedings have been conducted against him, but a minor penalty of "censure" is imposed, he is not only eligible for promotion/confirmation, but he is entitled to the same 'in his own turn' provided the findings of the D.P.C. which is held subsequent to the conclusion of the departmental proceedings, are in his favour.

5. The case of Praveen Kumar dealt with double jeopardy. In this case, the Tribunal has relied on the instructions/directions issued by the Department of Personnel & Administrative Reforms vide O.Ms dated 15.5.71 and 13.12.76 on the subject that "promotion of employees on whom penalty has been imposed, and if a person is not promoted even if considered suitable by the D.P.C., it would amount to double penalty."

6. The case of Shri P.P. Deshpande deals with the sealed cover procedure to be adopted and acted upon.

7. The case of the respondents is that the E.B. was due to the applicant on 1.1.75 but on that date disciplinary proceedings were pending against the applicant and which were completed only on 31.3.83 and the penalty of 'censure' was awarded. Instructions regarding sealed cover procedure in respect of the E.B. came only on 4.9.84 and are clearly not applicable in this case. Sealed cover procedure referred to by the learned counsel for the applicant was in respect of the departmental proceedings under C.C.S.(C.C.A.) Rules but cases of the E.B. are dealt with under F.R. 25. The departmental enquiry against the applicant ended on 31.3.83. The D.P.C. met on 2.4.84 and it allowed the E.B. w.e.f. 1.4.84. The procedure laid down under F.R. 25(7) has been scrupulously followed. It has been laid down that the Government servant against whom departmental proceedings are pending but who is due to cross the E.B. prescribed in his time-scale of pay, may not be allowed to cross the bar until after the conclusion of the proceedings. A question was raised as to the date from which a Govt. servant

whose case for crossing the efficiency bar has not been considered on account of the pendency of a disciplinary/vigilance case against him, should be considered for being allowed to cross the E.B., after the enquiry is over. It has been decided, in consultation with the Ministry of Home Affairs, that if after the conclusion of the proceedings, the Government servant is completely exonerated, he may be allowed to cross the efficiency bar with effect from the due date retrospectively, unless the competent authority decides otherwise. If, however, the Government servant is not completely exonerated, his case for crossing the E.B. cannot be considered with retrospective effect from the due date. Such cases can be considered only with effect from a date following the conclusion of the disciplinary/vigilance case, taking into account the outcome of the disciplinary/vigilance case. If after considering the case, taking into account the circumstances leading to the issue of the warning or the communication of Government's displeasure, the Government servant concerned is found fit to cross the E.B. on a date following the date of conclusion of the disciplinary proceedings, the question of fixing his pay at a suitable stage above the E.B. with reference to the length of service after the due date for crossing the E.B. can be considered in accordance with Order 5 of F.R. 25. (Decision taken by M.H.A. on 21.9.67 and Department of Personnel & A.R. dated 6.4.1979 - Muthuswamy's Compilation of F.R.S.R. - Part I - General Rules - Eighth Edition - page 95.)

8. In this case, the respondents took into account the service rendered by him after due date of cross^{ing} of the E.B. and fixed his salary at Rs. 680.00 but no arrears could be given retrospectively. The learned counsel for the respondents has stated that the sealed cover procedure became applicable to E.B. only after 4.9.84. He stated that court orders referred to by the learned counsel for the applicant applied to the cases of promotion wherein it has been held that where minor penalty has been imposed that should not be a bar for promotion of an officer. These cases are dealt with under Rule 11(6) of C.C.S. (CCA) Rules, but are not relevant cases of stoppage of increments under F.R. 25. It has been stated on behalf of the respondents

that the case of the applicant for crossing the E.B. was processed in time but as he was under disciplinary proceedings, the E.B. could not be allowed to him and in the departmental proceedings he was censured. He was not allowed to cross E.B. retrospectively, although in fixation of the salary advantage was given to him of the length of service after crossing the E.B. on the due date. The question of censure not being a bar is relevant only as far as promotion etc. are concerned but not in case of E.B. which is regulated under the F.R. and not the Conduct Rules. As the salary of the applicant has been fixed taking into consideration his service after the date on which E.B. was to be crossed, the applicant has not got the arrears of salary w.e.f. 1.1.1973 and his pay has been fixed correctly taking into consideration his service between 1.1.73 to 1.1.84.

9. Learned counsel for the applicant has stated that while it is true that E.B. is governed by F.R., increments were disallowed to the applicant because of the disciplinary proceedings, not because of the poor performance of the applicant. E.B. was allowed on the basis of the performance by the D.P.C. and, therefore, it is presumed that his work was satisfactory. Since no adverse remarks were communicated to the applicant, his work has to be taken as good and this fact is also admitted by the respondents as the applicant has been allowed to cross the E.B. retrospectively. D.P.C. had not found anything adverse regarding the performance of the applicant but increments have not been allowed because of the result of the departmental enquiry. Had the applicant been awarded more serious punishment like stoppage of two or three increments without cumulative effect, he would have lost only two or three increments whereas by awarding the minor punishment of censure he has lost a much larger number of increments and, therefore, this award of censure in effect does not remain a minor punishment and becomes even more serious than a major punishment.

10. The learned counsel for the applicant argued that stoppage of increment can only be done under the conduct rules

and since censure is not to be taken into consideration as a punishment even for promotion, the arrears of salary must be allowed to the applicant w.e.f. 1.1.1973.

11. Shri Agarwal said that the penalty of censure itself was held illegal in the case of K. Mahadevan Vs. Commissioner of Income Tax - 1983 (1) SLJ 241. He said that under FR 24 "increment" (not qualified) can only be withheld by process of C.C.S. (C.C.A.) Rules. Under these Rules "increment withholding" and "censure" are both penalties. When censure has been awarded, the withholding of increment cannot be applied under F.R. 24 as two penalties for one offence would amount to double jeopardy.

12. He also cited the case of Madhusudan Chowdhury M.C. Chowdhury Alias /Vs. U.O.I. - 1989(9) ATC 386 - which also refers to the case of O.P. Gupta Vs. U.O.I. 1988(1) SLJ (SC) 121.

13. I find that in the case of Madhusudan Chowdhury, the Tribunal had quashed the stopping of the E.B. on the grounds that the respondents had considered an adverse entry which was not relevant and in that case, the Annual C.R. or the D.P.C. proceedings had not been produced before the Tribunal. The Tribunal, however, held that the applicant was entitled to cross the E.B. and allowed payment of arrears and all consequential benefits.

14. In the case of O.P. Gupta before the Supreme Court, the case was of a person who had been stopped from crossing in the E.B. from a retrospective date after exonerating him/ the disciplinary proceedings. The Court had, however, held that there was no reason why the power of the Government to direct stoppage of increments at the efficiency bar on the ground of unfitness or otherwise after his retirement which prejudicially affects should not be subject to the same limitations, namely, to hear the Government servant concerned after giving him full opportunity to make out his case. This again is not fully applicable in the present case as there would be no question of giving

an opportunity to the applicant when the assessment is done by the D.P.C. on the basis of ACRs.

15. The point, however, remains that in the present case, the E.B. has not been stopped on the basis of the assessment of the work of the applicant by the D.P.C., but because on the due date, he was under a departmental enquiry and under FR 25(7), he could not be allowed his increment. Strictly applying FR 25(7), the respondents would be right in not allowing the applicant to cross the E.B. while the proceedings are pending and then fixing his pay giving him the advantage of the length of service for the period increments became due and when he was allowed to cross the E.B., but natural justice also demands that a person should not suffer for no fault of his. Evidently, the E.B. was not stopped because of his quality of work as assessed from the A.C.R., but because of his conduct and conduct itself can only be looked into under the Conduct Rules, namely, the CCS (CCA) Rules. These Rules provide that censure is no bar for promotion purposes. If that is so, it should follow that it should not also be a bar to prevent a Government servant from crossing the E.B. if his performance is otherwise satisfactory. It is clear that the arrears of increments have been withheld because of the penalty of censure. Since the applicant has already been punished by the award of censure, any other action which may cause any harm to him would amount to double jeopardy and even though FR 25(7) provides withholding of increments, from the point of view of natural justice, having suffered the penalty of censure after the departmental proceedings for 10 long years, it appears reasonable that the applicant should be allowed to get all the benefits of crossing the E.B. on the due date. In the circumstances, the application is allowed and the respondents are directed to make all the arrear payments within a period of three months from the date of receipt of

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these orders. However, no interest charges may be allowed on the arrears of increments so paid. In the circumstances, there will be no orders as to cost.

B.C. Mathur
(B.C. Mathur)

Vice-Chairman

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