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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 511 of 1988
T.A. No.

DATE OF DECISION _____

Shri BS Charlu Applicant (s)

Shri LK Bhushan Advocate for the Applicant (s)

Versus

UOI rep. by Secy. M/o Water Respondent (s)
Resources, N/Delhi & another

Shri ML Verma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. --

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. To be circulated to all Benches of the Tribunal ? ✓

JUDGEMENT

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH
NEW DELHI

Dated Friday the eighth day of September,
One thousand, nine hundred and eighty nine.

Present

Hon'ble Shri NV Krishnan, Administrative Member

Registration No. DA 511/88

B S Charlu

: Applicant

Vs

1. Union of India rep.
Secretary to the Govt. of India
Ministry of Water Resources
Shram Shakti Bhavan
New Delhi-110001.

2 Shri JK Marwaha
Under Secretary to Govt. of India
Ministry of Water Resources
Shram Shakti Bhavan
New Delhi-110 001

: Respondents

Shri LK Bhushan

: Counsel of Applicant

Shri ML Verma

: Counsel of Respondents

JUDGMENT

In this application, the applicant seeks a direction to the Respondents to allow him to cross the efficiency bar at the stage of Rs 900/- from the due date i.e., 1.1.1985 in the pre-revised scale of Rs 700-1300 and to fix his pay at the stage of Rs 940/-. The facts of the case may be briefly noticed.

2.1 The applicant is an Assistant Director in the Central Water Commission. He was due to cross the efficiency bar in the scale of pay (prerevised) Rs 700-40-900-EB-40-1100-50-1300 from 1.1.85.

2.2 Before orders could be passed, disciplinary proceedings were initiated, which culminated in the

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final order dated 31.3.87 (Resp. Annexure-II). He was found guilty. The Disciplinary Authority imposed the major penalty of reduction by one stage in the time scale of pay for a period of three years with the direction that he will not earn increments during the period of reduction and on the expiry of such period, the reduction will not have the effect of postponing the future increments of his pay, as specified in clause (V) under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

2.3 As the said disciplinary proceedings were contemplated before he was due to cross the efficiency bar on 1.1.85 he was not allowed to cross the Bar.

2.4 Though the applicant has prayed that he should be permitted to cross the EB from 1.1.85, the learned counsel of the applicant gave up this prayer in the light of an O.M. dated 4.9.84, extracts of which have been filed by Respondents as Annexure-I. These are reproduced below:

"(EXTRACT FROM MINISTRY OF HOME AFFAIRS O.M. NO.29014/3/84-ESTT(A) DATED THE 4TH SEPTEMBER, 1984 PARAS 3 AND 4)

At present in cases where departmental proceedings etc. are in progress, the Efficiency Bar cases of the official concerned is not cleared till the proceedings are concluded. It has been decided that if on the date of the actual DPC., the concerned Government Servant is under suspension or disciplinary/criminal court proceedings against him are contemplated or pending, the findings of the DPC in regard to the crossing the Efficiency Bar stage should be placed in a sealed cover. The sealed cover should be opened after conclusion of the proceedings. If he is fully exonerated, the recommendations in the sealed cover may be considered by the competent authority who may lift the bar retrospectively from the date recommended by the DPC. In that case, the Government Servant will be entitled to the arrears of the increment(s). In case, however, the proceedings do not result in complete

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exoneration of the Government servant, he cannot be allowed to cross the bar with retrospective effect. His case will be considered by the next DPC which meets after the final orders on the basis of the proceedings have been passed, and committee will then consider him for crossing the bar from the prospective date. While doing so, the Committee will take into account the order passed on the conclusion of disciplinary proceedings.

In the case of officials who are undergoing any of the punishments mentioned in the CCS(CCA) Rules, other than 'censure', at the time their case for crossing the Efficiency Bar is considered, while they may be cleared for crossing the bar if they are otherwise considered fit by the DPC, actual effect of crossing the Efficiency Bar may be given only after the period of punishment is over".

The applicant's counsel conceded that in view of the second para of the above extract, his claim for being allowed to cross the EB from 1.1.85 cannot survive, as the period of punishment will be over only in 1990.

2.5 The applicant, therefore, argued that his case for crossing the EB in the prescribed scale at the stage of Rs 900/- ought to have been considered by the DPC which met immediately after the Annexure II order imposing penalty was passed on 31.3.87. He prayed for a suitable direction in this behalf, so that, if found fit, he could be permitted to cross the EB from 31.3.1990.

3 The Respondents have filed a reply affidavit. Their reply is fairly simple. This is in fact, contained in the letter dated 20th April, 1988 (Resp. Annexure III), extracts of which are reproduced below:

" Thereafter vide Ministry's order No.7(19)/84-Vig. dated 31.3.87, major penalty of reduction by one stage in the time scale of pay for a period of three years has been imposed upon him w.e.f.31.3.87, which would be operative upto 31.3.90. In terms of Ministry of Home Affairs OM No.29014/3/84-Estt.(A)

dated 4.9.84, in cases where such a major penalty is imposed, the case for Efficiency Bar Crossing can be put up to the next Departmental Promotion Committee after issuance of penalty orders who can allow Efficiency Bar Crossing only from a prospective date and that too can be made effective after the penalty period is over. In your case the penalty order was issued on 31.3.87 and before that the scale had been revised w.e.f. 1.1.86. Under these circumstances, it is regretted, it has not been possible to allow you "Efficiency Bar Crossing in the old scale".

4 I have heard the learned counsel of either side and perused the records. In the light of the ^{view} ~~decision~~ I am ^{about} taking ~~in~~ this case, it is not necessary to decide an issue revolving round the interpretation of the last sentence of para 3 of the Memo dated 4.9.84, extracted in para 2.4 above. The disputed question was whether the case should be considered by that OPC which meets immediately after the order imposing penalty was passed or by that OPC which meets after the period of punishment is over.

5 It required great persuasion to ^{try to} ~~convince~~ the learned counsel for the applicant that the reliefs he had prayed for in this application, as reproduced below cannot be granted:

" (a) an appropriate order or direction commanding and directing the respondents to allow the applicant to cross the efficiency bar on 1.1.85 in the scale of pay of Rs 700-40-900-EB-40-1100-50-1300 w.e.f. 1.1.1985;

(b) an appropriate order or direction commanding and directing the respondents to refix the pay of the applicant in the revised scale of pay of Rs 2200-75-2800-EB-100-4000 w.e.f. 1.1.1986 on such crossing of efficiency bar and to further allow the applicant to cross the efficiency bar in the revised scale of pay on 1.1.1987;

(c) an appropriate ^{order} ~~or~~ direction quashing and setting aside the order of respondent No.2 dated 24th March, 1987 (Annexure A) and directing the respondents to refix the pay of the Applicant in accordance with law".

(17)

He cannot be permitted to cross the EB at the stage of Rs 900/- in the ^{revised} ~~prescribed~~ pay scale from 1.1.85, as he has been ~~has~~ punished in disciplinary proceedings and according to the O.M. dated 4.9.84, he can be permitted to cross the EB only from 1.4.90, after he has fully suffered the punishment. As he has already opted for the revised pay scale from 1.1.1986, the prerevised pay scale is not in existence in his case, except for purposes relatable to periods prior to 1.1.1986. No doubt, he was normally due to cross the E.B in that scale from 1.1.85. But, in the above circumstances, he cannot be permitted to cross the E.B. from that date but only from 1.4.90. As that scale of pay is 'dead' as far as he is concerned for any matter relatable to a period after 1.1.86, there is no question of his being allowed to cross the E.B in that scale now. This is exactly the stand of the Respondents in their letter dated 20.4.1988 (Annexure III), and it is sound.

6 The learned counsel for the applicant still persisted in his claim and drew my attention to the Respondent's order dated 24.3.87 (Annexure-A) fixing the applicant's pay at the stage of 2650/- in the revised scale from 1.1.86. It was further stated therein that his pay would be revised further after crossing the E.B in the existing scale (i.e., the prerevised scale) from 1.1.85 - He, therefore, argued that he was still entitled to cross the E.B. from 1.1.85 in accordance with this order.

7 His interpretation of this order dated 24.3.87 is not correct. On that date, final decision in the disciplinary proceeding had not been taken. In case he was exonerated, he would be entitled to cross the E.B. with restrospective effect from 1.1.85, in accordance with the procedure laid down in the O.M. dated 4.9.84 (Annexure-1). It is on the basis of this possibility that it was indicated that his pay would be raised further after crossing the E.B. As that situation does not obtain, he cannot stake any claim now under the order dated 24.3.87 (Annexure-A).

8 The learned counsel then argued that the contention raised by the Respondents would hold good, only if it is established that disciplinary proceedings were contemplated against him in November, 1984 i.e., before he was due to cross the E.B. on 1.1.85 and therefore, his case was ^{required} to be dealt with in accordance with the O.M. dated 4.9.84 (Annexure-1). An averment to this effect has been made in the reply affidavit of the Respondents dealing with paras 6.1 to 6.6 of the application. He ^{had} ~~prayed~~ ^{in a M.P.} that the original records be seen to verify whether this allegation was substantiated, and this was allowed. He ^{desired} ~~directed~~ that the records be seen *as they have been produced.*

9 To a question from the Bench as to why the records should be seen by the Bench, ^{and} when the applicant has the Respondents averment not made out any prima-facie case to suspect ~~and~~ it could be presumed that the Respondent's statement would not be untrue, he replied that such a presumption cannot be drawn.

He relied for this contention on the judgement of the Supreme Court in O.P. Gupta Vs. Union of India (AIR 1987 SC-2257). He has drawn my attention in particular to para 15 thereof. The relevant portion of the judgement relied upon is extracted below:

"We have set out the facts in sufficient detail to show that there is no presumption that the Government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental enquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years." (emphasis supplied)

It is needless to emphasise that the facts in the case relied upon by the learned counsel are entirely different. That judgement does not lay down that a statement made in the reply affidavit by the Government of India in regard to certain facts cannot be presumed to be true, *unless effectively rebutted*.

10. That apart, the charge issued vide the Annexure II Memorandum dated the 5th March, 1985 clearly supports the averment made in this case that disciplinary proceedings were *contemplated* in November, 1984. The charge is reproduced below:

"That the said Shri B.S. Charlu, while functioning as Assistant Executive Engineer, Central Water Commission, Kurnool Gauging Sub-Division, Kurnool during the period 1984 exhibited utter negligence and lack of devotion to duty. In as much as he, after encashment of salaries Demand Draft No.703477 dated 28-2-1984 amounting to Rs.33,741.70 on 29-2-1984 from the State Bank of India, Main Branch, Kurnool, went along with the brief-case containing the money to Jaya Hotel opposite to the Bank to have coffee. While taking coffee there, he lost the brief-case and the money."


contd..

I am, therefore, of the view that the statement made by the Respondents that disciplinary proceedings were contemplated in November, 1984, can, in the aforesaid circumstances, be believed without perusal of any other official records. I am, therefore, satisfied that this statement does not need further verification.

11. The last plea made by the applicant was that in the implementation of the penalty imposed on him by Annexure III, ^{it or ds,} it would be necessary to take a decision to permit the applicant to cross the E.B. in the revised pay scale at the stage of Rs.2800/-. That is an entirely different matter which is not covered by the present application. It is for the Respondents to look into the matter as and when the occasion, therefore, ^{it} arises.

12. For the reasons mentioned above, I am of the view that the prayers made in this application cannot be granted and the application, therefore deserves to be rejected. It is ordered accordingly.

13. There will be no order as to costs.


20/9/89
(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER
20-9-1989