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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. OA 722 of 1988

Date of decision: 8.11.1988.

Dr. R.K. Gujral

Applicant

Vs.

Union of India and Others

Respondents

PRESENT

Applicant in person.

Shri Mukul Talwar

Counsel for the respondents.

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

This is an application under Section 19 of the Administrative Tribunals Act filed by the applicant, Dr. R.K. Gujral, Veterinary Assistant Surgeon, against impugned order No. F.4(MISC)/82-83/AHD/ESTT dated 22.3.1988 passed by the Development Commissioner, Delhi, concerning crossing of the efficiency bar.

2. The facts of the case are that the applicant who is working as Veterinary Assistant Surgeon, Incharge Veterinary Hospital, Karol Bagh, under Delhi Administration, was due to cross efficiency bar on 1.1.1984 in the pay scale of Rs. 550-25-750 EB-30-900. He was to get his next increment on 1.1.1984. The Deputy Director (Animal Husbandry) who is the Head of Office and the Controlling Authority of the applicant had recommended the crossing of the efficiency bar in the year 1984 with effect from 1.1.1984. The then Development Commissioner, Shri S.C. Bajpai, also recommended the crossing of the efficiency bar with a certificate that nothing adverse was pending against the applicant. He forwarded the case to the Secretary (Services) to put up the matter before the Chief Secretary who was the competent authority to allow crossing of efficiency bar. The applicant was not informed of the outcome of the decision of the DPC held in 1984 and as such he made an application to the Deputy Director on 9.1.1985 to intimate if any order had been passed. The applicant states

that the Deputy Development Commissioner, Shri S.S. Hareet, an Assistant to the Development Commissioner, himself took a decision in the EB case although he was not competent. The decision was sent to the Deputy Director (Animal Husbandry), photostat of this is at Annexure 'A'-I to the application. This letter states that the EB case of the applicant should be resubmitted as a fresh case as and when he is cleared from vigilance point of view. The case was not even put up to the Development Commissioner. Respondent No. 3 passed an order on 22.3.1988 stating ^{that} the Development Commissioner is pleased to enforce Efficiency Bar against the applicant who is due to earn his annual increment beyond the Efficiency Bar at the stage of Rs. 750.00 with effect from 1.1.1984 till the conclusion of the departmental proceedings against him (Annexure A-3 to the application). The applicant has stated that he had written two letters to the Prime Minister as well as to the Home Minister in 1980 and 1982 respectively disclosing a corruption case, in the capacity of a General Secretary of the Delhi Vety. Assistant Surgeons Welfare Association, and it was not connected with any misconduct or inefficiency of the applicant in the discharge of his official duties. The instructions issued by the Department of Personnel and Administrative Reforms in O.M. No. 29014/2/75-Estt. dated 6.4.79 mention about reviewing of such cases annually, but the case of the applicant had been considered after a lapse of four years. It is the case of the applicant that Respondent No. 3 had no legal authority to take into consideration extraneous matters, namely, the departmental proceedings against the applicant which fact was not available to the Development Commissioner ^{or} to Shri Harit at the relevant time on 1.1.1984, on the basis of which Respondent No. 3 disallowed the crossing of the Efficiency Bar since 1.1.1984. Respondent No. 3 was to consider the ACRs of the applicant only upto 1.1.1984 when he was due for crossing the Efficiency Bar and was not to go into the circumstances after that date. The applicant was charge-sheeted for writing two letters on 9.10.1985 and two Enquiry Officers and two Presenting Officers were appointed, one after

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the other, but the enquiry has still not started. The applicant prays for quashing the order disallowing the applicant to cross the Efficiency Bar on 1.1.1984 on the ground that Respondent No.3 was not competent to reverse the decision of his predecessor who took the decision at the relevant time in 1984 to allow the applicant to cross the Efficiency Bar. Respondent No.3 was not competent to take into consideration any circumstances after 1.1.1984. The applicant has quoted the Supreme Court case in Padam Singh Vs. Union of India SLR 1974(1) page 594 which provides "That in fairness to a public servant an order preventing him from crossing the Efficiency Bar should be passed either on the appointed date or shortly thereafter". In the present case, the impugned order has been passed after four years of the due date.

3. The Respondents in their reply have stated that the Joint Secretary (Services), Delhi Administration, had lodged a complaint against the applicant on 23.4.1983 for making false and malicious allegations against senior officers, including the Lt. Governor, Delhi. The applicant was eligible to cross Efficiency Bar on 1.1.1984 and, therefore, clearance of the Vigilance Department was asked for. The Vigilance Department informed the respondents on 14.12.1984 that a case was contemplated against the applicant. As the applicant did not receive the necessary clearance from the Vigilance Department, it was decided to enforce the Efficiency Bar till the departmental proceedings against the applicant were concluded. The Vigilance Department sent a memo dated 3.12.84 to the and the same was delivered to the applicant, Dr. Gujral, on 15.12.1984 although the same was not acknowledged. Finally, a memo was served alongwith a chargesheet on the applicant on 9.10.1985. According to the respondent, the applicant is deliberately and intentionally delaying the departmental proceedings against him. The complaint against the applicant has been pending since 1983 and no circumstances after 1.1.1984 have been taken into consideration while deciding the Efficiency Bar case

of the applicant. FR 25(7) clearly states that when departmental proceedings are pending against an officer, he should not be allowed to cross the Efficiency Bar until after the conclusion of the proceedings.

4. The applicant has pointed out that the Chief Secretary is the appointing authority in his case and that he alone was competent to stop the Efficiency Bar and that the Development Commissioner could not have passed the final orders. Again, Efficiency Bar can be stopped only when disciplinary proceedings are pending against an officer, but mere contemplation of disciplinary proceedings is not enough. The applicant was chargesheeted on 9.11.1985 by the Chief Secretary. At that time, the character roll of the applicant was clear and the reporting authority had sent the CR noting that there was nothing against the applicant. He cited the judgment of the Tribunal in ATLT 1987(1) 232 (CAT) where it has been held that stopping of the efficiency bar must be considered at the appropriate time and delay in considering this will be bad in law. Rule 6 of the FR 25 also lays down a time schedule for consideration of the cases of Efficiency Bar, according to which his case should have been considered in January and not later.

5. The learned counsel for the respondents pointed out that the applicant had not raised the ground of competency in his original application and had not said that the Chief Secretary was the competent authority. He produced the personal files of the applicant which show that the order stopping the Efficiency Bar was issued by the Deputy Development Commissioner on 22.3.88 and this order was approved by the Development Commissioner.

6. The following points are relevant to decide this case:

(i) whether the Development Commissioner or the Chief Secretary is the competent authority to deal with the crossing of the Efficiency Bar;


(ii) whether the case of Efficiency Bar due on 1.1.84 was considered at the appropriate time or much later;

- (iii) whether Efficiency Bar can be stopped on the basis of a contemplated enquiry or when departmental proceedings are actually started?

As far as the first point is concerned, even if it is accepted that the question of competency of the Development Commissioner to pass orders was not raised, it has been brought out that the Development Commissioner had recommended his case for crossing the Efficiency Bar. In their counter, the respondents have accepted that the case was only forwarded and not recommended by the Development Commissioner to the Secretary (Services). This shows that the Development Commissioner was not the competent authority, otherwise he would have passed the orders himself and not forwarded the case to the Secretary (Services) for orders of the Chief Secretary. The recommendation was made in the year 1984.

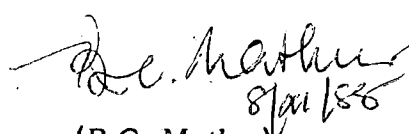
7. On the second point also, it appears that the case of the applicant was not considered on or soon after 1.1.1984 and the orders were passed at a much later date.

8. On the third point, it can be said that under FR 25(7), Efficiency Bar can be stopped if a department enquiry has been pending against a Government servant. No departmental proceedings were pending against the applicant on 1.1.1984. FR 25(7)(b) prescribes the same procedure when the conduct of an officer is under investigation. Here too, the Rule says that after the conclusion of the investigation where the competent authority on consideration of the result of the investigation has formed the opinion that a charge-sheet may be issued to the Government servant on specific imputations where departmental action is contemplated or that sanction for prosecution may be accorded where prosecution is proposed. Here also, the investigations have not been completed and no competent authority had formed any



opinion about issuing of charge-sheet on or nearabout 1.1.1984. Even on 13.3.1986 the Deputy Development Commissioner, Delhi, had written to the Deputy Director (Animal Husbandry) retaining the service book of the applicant saying that the EB case of Shri R.K. Gujral should be resubmitted as a fresh as and when he is cleared from the vigilance point of view. This is in violation of the time-schedule issued by the Department of Personnel & Administrative Reforms for dealing with such cases. The Supreme Court have also held this in Padam Singh's case cited by the applicant earlier. A similar case has also been decided by this Tribunal in 1(1988) ATLT (CAT) (SN) 30 - KV Rao Vs. Union of India and Others.

9. In the circumstances, the impugned order No. F.4(MISC)/8283/AHD /ESTT dated 22.3.1988 challenged by the applicant is quashed. The applicant should be deemed to have crossed the Efficiency Bar on 1.1.1984 and all consequential benefits given to him. There ^{is} application is allowed but there will be no order as to costs.


 (B.C. Mathur)
 Vice-Chairman