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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

REGN. NO. C.A. 1111/1988.

DATE OF DECISION: 30th March, 1989

T.S. Bhatnagar Applicant.

Vs.

Union of India & Ors. Respondents.

CORAM: Hon'ble MR. B.C. Mathur, Vice-Chairman.

For the applicant Shri Sant Lal, Counsel.

For the respondents Shri P.P. Khurana, Counsel.

JUDGMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri T.S. Bhatnagar L.S.G. Sorting Assistant in the office of the S.R.O. R.M.S., Ghaziabad against the impugned orders dated 1.9.83, 30.12.83 and 15.3.85 disallowing the efficiency bar to the applicant w.e.f 1.6.1981 and refusing to release three increments when the Efficiency Bar was subsequently allowed. The brief facts of the case as stated in the application are that the applicant was due to cross Efficiency Bar w.e.f. 1.6.1981 in the scale of Rs.260-480 from the stage of Rs.420/- to the stage of Rs.432/-. He had already passed the requisite test required for crossing the Efficiency Bar. Since the order was passed about his passing the Efficiency test on 1.6.81, he requested the Senior Superintendent on 17.8.81 to allow him to cross the Efficiency Bar. This was followed by reminders but there was no reply. Senior Superintendent, RMS'KP' Dn. Kanpur vide Memo dated 1.9.83 (Annexure A-1) did not allow the applicant to cross the

Efficiency Bar due from 1.6.1981 alleging unsatisfactory confidential record. It was also mentioned that the question of crossing E.B. would be considered again next time. The Senior Superintendent declared the applicant fit to cross E.B. vide his Memo dated 24/30.12.83 but he was allowed to draw the increment from the stage of Rs.420/- to the stage of Rs.432/- w.e.f. 24.12.83 without any orders regarding the increments due from 1.6.81 to 1.6.83. The applicant submitted representations to the Senior Superintendent requesting for re-consideration of his case and allowing three increments from the due dates which have been illegally withheld. In the meantime, the applicant was granted promotion to the next higher grade in the scale of Rs.425-640 under the Time Bound One Promotion Scheme w.e.f 30.11.83, which was done on the recommendations of the D.P.C. His petition to the Director Postal Services, Kanpur was rejected on technical grounds without going into the merits (Annexure A-3). The applicant then submitted a petition to the Member(Personnel) Postal Services Board, New Delhi seeking his intervention to get the grievance removed but there was no response in spite of reminders.

The case of the applicant is that he was due to cross E.B. on 1.6.81 but the DPC did not meet to consider this for another two years although it was required to meet before 1.6.81. Shri Sant Lal, learned counsel for the applicant pointed out that in para 6.7 of the counter filed by the respondents, it has been stated that a disciplinary case was pending against the applicant which was not factually correct. The basis for denying the Efficiency

Bar is the adverse entry in the confidential record of the applicant for the year 1982-83 which was communicated to him on 15.5.83 long after the Efficiency Bar was due.

The adverse entry on which his E.B. has been allegedly stopped relates to the order dated 13.10.82 passed by the Superintendent, A.M.S. (Annexure A-19 enclosed with the rejoinder). This deals with the unauthorised absence of the applicant from 16.3.81 to 17.3.81 and the period was treated as break in the service under proviso to F.R.-17A.

This order is also wrong. Shri Sant Lal argued that under instructions issued by the Government of India, Department of Posts, it has been clarified that as far as crossing of E.B. is concerned, the disabilities under F.R. 17-A should not stand in the way of an official if he is otherwise found suitable to cross efficiency bar. Special pay and allowances, should not be withdrawn merely on the ground that F.R. 17-A has been invoked. He stated that the DFC was deliberately delayed in order to bring the fact of the applicant's going on strike which was recorded in the confidential records for the year 1982-83 so that the DFC would take that into consideration in disallowing efficiency bar to the applicant, which is illegal as the record prior to 1.6.81 alone should have been considered for this purpose. Besides, the adverse entry was not communicated to the applicant till 10.5.83 and the representation of the applicant dated 11.6.83 was still pending. He cited the case of Brij Mohan Singh Chopra Vs. State of Punjab

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reported in A.T.R. 1987(I)S.C 513 where the Supreme Court has held that such entries cannot be acted upon. He also emphasised that it appears very strange when the applicant was found eligible for promotion to the next higher grade on 30.11.83 on the basis of a selection by the DPC, he should not be found ~~to be~~ fit in a lower grade even on that date. Shri Sant Lal further stated that the orders rejecting his claim for efficiency bar from 1.6.81 are arbitrary, malafide and should be quashed.

Shri P.P. Khurana, learned counsel for the respondents raised a preliminary objection that the case lies under the jurisdiction of the Allahabad Bench as the applicant as well as relevant respondents are located in U.P. He said that no appeal in this regard could lie before the Member(Personnel), Postal Services Board, New Delhi, Respondent No. 2. Rule 6 of the Central Administrative Tribunal(Procedure) Rules, 1986 was applicable at the time of filing of the application. It was mentioned that the application could be filed with the Registrar of the Bench where any of the respondents against whom relief is sought, resides. Shri Khurana pointed out that since no appeal ^{was filed} before the respondent No. 2 was ~~made~~, this case should not be heard by the Principal Bench but only by the Allahabad Bench. In any case, since relief has been sought from the respondent No. 2, the preliminary objection is not sustained. The respondents have stated in their reply that the DPC could meet only on 1.9.83 and naturally have to consider

whatever record was available before it. ^R ~~As per~~, Shri Khurana emphasised that the incident mentioned in the confidential record for the year 1982-83 relates to March, 81 and, therefore, was for a period earlier than 1.6.81 when the crossing of the efficiency bar exists. It was perfectly correct on the part of the DPC to consider this aspect. The reply of the respondents does not indicate what were the unavoidable circumstances under which the DPC could not meet during 1981 or 1982.

I have examined the pleadings and the arguments raised before me both on behalf of the applicant and the respondents. It is quite clear that the DPC appeared to have been influenced by the adverse entry in the Character Roll for the year 1982-83. Had the DPC taken place on the due date sometimes in 1981, these remarks would not have been there before the DPC for consideration... Even if the remarks relate to a period prior to June 1981, they were not recorded during that year and communicated to the applicant only in May 1983. The DPC could consider these remarks after communications ^{but} ^a since there was/representation against these remarks ⁱⁿ ^{vide} application dated 11.6.83, which has not been rejected so far, the consideration of these remarks in deciding the case would certainly be contrary to the established procedure and law.

In view of the above, it is directed that the orders stopping efficiency bar of the applicant w.e.f 1.6.81 are quashed. The respondents are directed to

re-consider this matter by convening a fresh DPC and taking into consideration the relevant record prior to 1.6.81. In other words, the confidential record prior to the year 1981-82 along with the relevant record may be placed before the DPC for coming to a correct decision. With these observations, the application is disposed of. The respondents should take action to convene the fresh DPC within three months from the receipt of this order. There shall be no order as to costs.

B. C. Mathur 30.3.89
(B.C. Mathur)
Vice-Chairman