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1986

19.12.86

Petitioner

Advocate for the Petitioner(s)

Versus

Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H. P. BAGCHI, JUDICIAL MEMBER

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 their Lordships wish to see the fair copy of the Judgement ? *No*

(H. P. BAGCHI).

(S. P. MUKERJI)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.253/86

DATE OF DECISION: 19.12.86

Y. P. Batra . . . Applicant

Vs

Union of India & Others . . . Respondent

Shri N.D. Batra . . . Counsel for applicant

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H. P. BAGCHI, JUDICIAL MEMBER

ORDER :

The applicant who is working as Head Clerk in the Industrial Training Institute under Delhi Administration has moved this application under section 19 of the Administrative Tribunals Act praying that he may be allowed to cross ^{to his efficiency level to} (EB) with effect from 1.2.78 in the Stenographer's pay scale of Rs.330-10-380-EB-12-500-EB-15-560 at the stage of Rs.380 with all attendant and consequential benefits including arrears of pay and allowances. He has also prayed that the interest at the rate of 12% per annum on the arrears should also be given and the adverse remarks in the CR for the year 1977-78 may be expunged.

The brief facts of the case can be summarised as follows. The applicant was promoted as Stenographer in the aforesaid pay scale of Rs.330-560 on 13.2.1970. He was to cross the EB at the stage of Rs.380 on 1.2.78. The NPC which met in May 1978 deferred the crossing of EB by one year vide the impugned order dated 26.5.78. It appears that for the reporting year 1977-78 ending on 31.3.78 ~~an~~ adverse remarks to the effect that the Applicant 'tends to be defiant' and 'temperamentally emotional' were communicated to him and on this basis he was not allowed to cross the EB. His representations against the adverse remark and crossing of EB ended in rejection of his appeal. A second appeal was rejected on the dubious ground that no appeal lies against the order of competent authority. When the applicant served legal notice on the respondent, the question of his crossing the EP was taken up. On 8.7.86 he was allowed to cross the EB with effect from 1.2.79.

2. According to the respondents the question of crossing the EB could not be reviewed as he had represented against adverse remarks and had been transferred to another department.

3. We have heard the arguments of both the parties and gone through the documents carefully. The respondents in their counter affidavit virtually conceded that the question of petitioner's crossing EB after the impugned order was passed on 26.6.78, was taken up only in 1986; because it could not be taken up earlier as the applicant's representation against adverse remarks were under

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consideration. By implication therefore, the respondents have conceded that the applicant was not allowed to cross the EB because of that adverse remarks of 1977-78. It goes without saying that the adverse remarks for the year 1977-78, when the reporting year expired on 31.3.78, must have been written after 31.3.78 and was actually communicated to the applicant in August 1978.

4. It is also conceded that the applicant was to cross the EB on 1.2.78, but the DPC met in May '78 and had considered the adverse remarks which were recorded after 31.3.78. There is considerable force in the petitioner's contention that the DPC should have met on or before 1.2.78 and if they had done so, the adverse remarks which were recorded after 31.3.78 could not have been considered by them. Thus the DPC by considering the adverse remarks recorded subsequent to 31.3.78 for the purpose of considering whether the applicant should be allowed to cross the EB on 1.2.78 had ^{over}stepped ^{over} their purview and taken into account an extraneous matter of adverse remarks on the basis of which alone they disallowed the crossing of EB by the applicant.

5. It is also regrettable that the respondents in violation of their own instructions (Deptt. of Personnel and Administrative Reforms O.M.No.29014/2/75-Estt. dated 6.4.1979) for reviewing such cases annually, considered the case of the petitioner after 8 long years in 1986 only after the petitioner

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had been driven to move the Tribunal for justice. The DPC should not have taken into account the adverse remarks of May '78 which had not been communicated to the applicant till August '78. In Sontokh Singh Bhondhi Vs State of Punjab (1975 SLJ 480) it was held that the increment due in 1957 could not be withheld because of Departmental enquiry instituted in 1960.

6. In the instant case, it has to be held that the adverse remarks recorded after 31.3.78 could not be taken into account for the petitioner's crossing of EB on 1.2.78. The argument of the respondents that even if the DPC had met on or before 1.2.78 they could have got a special report on the applicant's performance and that report also would have been adverse, is a mere conjecture and cannot be a valid ground for withholding the clearance of EB. In accordance with the impugned order dated 26.6.78 the crossing of EB by the applicant on 1.2.78 was deferred for one year and this would imply that after one year the petitioner was to have crossed the EB. This is further corroborated by the orders of the respondents dated 8.7.86 by which he was allowed to cross the EB on 1.2.79. Thus by the negligence on the part of the respondents and not by any fault of the applicant the crossing of EB was delayed by 7 to 8 years. In the circumstances we allow the petitioner's plea that the arrears of increment should be paid to him along with interest at the rate of 12% though the Supreme Court in a case of delayed payment of pension


had allowed a penal interest of 18% in
State of Kerala and others Vs M. Padmanabhan Nair
(SLJ 1984(1) 121).

7. As regards the expunction of adverse remarks,
since no prima facie case of mala fide or vindictive
action has been made out by the petitioner, we do
not find it a fit case of intervention on our part.

8. In the facts and circumstances indicated above,
we allow the application in part to the extent of
setting aside the impugned order dated 26.6.78
with the direction that the petitioner should be allowed
to cross the EB with effect from 1.2.78 and arrears of
increments in pay and allowances should be paid to him
with 12% interest within next 2 months. There will
be no order as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER

19.12.86


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

19.12.86