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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. OA. 500 of 1986

31st July, 1987.

Shri Prem Chand

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Applicant

V/s.

The Manager Govt. of India  
Press & Another.

....

Respondents.

Applicant

....

Through B.S. Charya, Counsel.

Respondents

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Through Shri P.P. Khanna,  
Counsel.

CORAM:

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

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This is a case under Section 19 of the Administrative Tribunals Act, 1985, against the order of the Respondent No.1 for not allowing the applicant to cross the efficiency bar with effect from 1.6.1976 and again from 1.6.1977. As the cause of action took place in 1976, a point was raised by the advocate for the respondents that since the relief asked for this for the period which is nearly 10 years old, it becomes time-barred and no relief can be provided at this stage. It was, however, pointed out that the question of delay was specifically taken up before the Tribunal and after considering all the facts, the delay in filing the application has been condoned and the application was admitted. The point emphasised again was that although the case was admitted, that was for hearing the case, but as far as relief is concerned, it cannot be given because of delay and laches on the part of the applicant. I hold that since, after consideration of all the facts, the delay in filing the case has been condoned, the case has to be decided on merits without going into the question of delay at this stage.

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2. The facts of the case are that the applicant was appointed as a Compositor Grade II in the scale of Rs. 110-180 with effect from 9.6.1971. This scale was revised to 260-400 on 1.1.1973 with an efficiency bar at the stage of Rs. 290/-. The scale is elaborated as 260-6-290-EB-6-320-8-366-EB-8-390-10-400. The increments accrued every year on 1st June and the rate of annual increment was Rs. 6/-. The applicant was to cross the first efficiency bar on 1st June, 1976. The applicant was informed by a memorandum dated 3.2.1977 that he was not found fit to cross the efficiency bar with effect from 1.6.1976 at the stage of Rs. 290/- and that his case would be reviewed on 1.6.1977. His representation against the order stopping his increment at the efficiency bar stage was rejected summarily. It appears that there were some adverse entries in his annual confidential report of 1973, but on the representation of the applicant all the adverse entries except one were expunged. No adverse entries were conveyed to the applicant for the years 1974 and 1975. In 1977 again, adverse entry for 1976 was conveyed to him. The applicant has challenged the impugned order dated 3.2.1977 in which he was informed that he was not found fit to cross the efficiency bar with effect from 1.6.76 at the stage of Rs. 290/- and that his case will be reviewed on 1.6.1977 (Annexure P.1) and orders dated 30.6.1977 wherein he was informed that he is not found fit to cross the efficiency bar with effect from 1.6.1977 at the stage of Rs. 290/- and that his case will be reviewed on 1.6.1978 for crossing of the efficiency bar. In the confidential report for the year 1973, the remark that he was not punctual remained. Again in the confidential report for the year 1976, it was reported that he remained irregular during the year and that his work was indifferent. The orders of the

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respondents dated 3.2.1977 and 30.6.1977 have been challenged on the ground that these are retrospective in nature and, therefore, untenable. The learned counsel for the applicant has emphasised that the crossing of efficiency bar should have been considered before the actual time of the crossing of the efficiency bar and not later. In the first case the DPC met on 9.12.1976, i.e., more than six months after the actual date of crossing of the efficiency bar. It has also been argued that <sup>when</sup> the DPC had decided that the matter will be reviewed after one year <sup>it</sup> ~~did~~ not mean that he was considered unfit to cross the efficiency bar because in the DPC proceedings there is no such finding that he was not fit. The learned counsel for the applicant has taken objection to the counter filed by the respondents that when the DPC ordered review after one year, it inevitably meant that he was not found fit to cross the efficiency bar at the stage of Rs. 290/- on 1.6.1976. It is also <sup>since</sup> the case of the applicant that <sup>his</sup> crossing of the efficiency bar was due on 1.6.1976, the adverse entries for the year 1976 could not be taken into consideration. As the annual report for 1976 is to be written only after the completion of the year, i.e., in early 1977, the question of taking into consideration the adverse remarks of 1976 by the DPC which met on 9.12.1976 does not arise. In the file of the applicant, it has been recorded that the DPC met on 9.12.1976 and decided to review the case of the applicant after a year when the character roll of the applicant for the year 1976 would also be available. While the learned counsel for the applicant says that his case was not rejected, it is evident that when the DPC decided to review his case after a year, he was not considered fit to cross the efficiency bar on 1.6.1976 and they wanted to see his confidential report for the year 1976 also when the DPC would meet during 1977. As there was another adverse entry during 1976, the DPC again rejected his case <sup>for</sup> ~~for~~ crossing the efficiency bar with effect from 1.6.1977. The applicant was, however, allowed to cross the efficiency bar with effect from 1.6.1978.

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3. The learned counsel for the applicant has argued that the DPC has not made any objective assessment and the records do not show that such an objective assessment has been made. The orders denying the crossing of the efficiency bar by the applicant is, therefore, arbitrary and bad in law as the efficiency bar cannot be denied retrospectively. It has been stated that the applicant had never been punished at any stage on account of misconduct and his annual increments were never postponed during 1974 and 1975 or earlier and that the applicant was not given any opportunity to represent against the proposed action not to allow him to cross the efficiency bar and, therefore, the impugned action was contrary to principles of natural justice. It has been further stated by the learned counsel for the applicant that the confidential report for 1973 cannot be the basis for withholding of the crossing of efficiency bar in as much as in 1974 the applicant was made quasi-permanent.

4. The learned counsel for the applicant has drawn attention to Department of Personnel's O.M. No. 29014/1/76-Estt(A) dated 18.10.1976<sup>ben</sup> wherein a time schedule has been prescribed for considering cases of crossing efficiency bar. The procedure laid<sup>ben</sup> down that where the crossing of efficiency bar falls within the period April to July, the EB cases should be considered by the DPC in the month of April, whereas in the present case instead of considering the matter in April, it was considered much later in December, 1976. FR 25 deals with cases of efficiency bar. It says that where an efficiency bar is prescribed in a time-scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increment and the Government servant should be informed if the efficiency bar is enforced. According to F.R. 25(5), the revised procedure for efficiency bar application and fixation of pay

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on restoration, it has been laid down that "There should be a more effective application of efficiency bars than has been done hitherto. Measures should be taken to ensure that crossing the efficiency bar is no longer a routine matter and that those who do not pull their weight are denied further increments." It further lays down that cases for crossing the efficiency bar should be considered on the basis of records of performance up-to-date available at the time of such consideration.

5. The learned counsel for the applicant has cited the Supreme Court case Padam Singh Jhina Vs. Union of India and Others SLR, 1974(1), p. 594, where the court held that the order preventing the crossing of efficiency bar should be passed either before the appointed date, or shortly thereafter. In Jhina's case, orders were passed two years after the relevant date. The question is what would be the interpretation of shortly thereafter. In the present case, the delay is a little over six months. The learned counsel for the applicant also cited a Punjab and Haryana High Court case - Santokh Singh Vs. State of Punjab, S.L.L. 1975(1) (p.446). But it is seen that this is not quite relevant to the present case as that case deals with the interpretation of Punjab Civil Service Rules where an enquiry was pending against the petitioner. The main arguments of the applicant are, therefore, that the DPC did not meet on time and that orders stopping his increment on account of efficiency bar were conveyed retrospectively, that the D.P.C. did not find the applicant unfit but only wanted to review his case and that the DPC failed to make any objective assessment and no chance was given to the applicant to represent his case before the competent authority who rejected his representation summarily without assigning any reasons.

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6. The learned counsel for the respondents has raised the point that the last representation was made by the applicant on 8th February, 1977 which was disposed of on 19.8.1977 and, therefore, it was hopelessly time-barred in spite of the fact that the Admitting Bench took a prima facie view and admitted the case. He has cited the case of Rajputana Trading Co. Vs. Malay Trading Agency, AIR 1974, Cal.(p.152), where the application was admitted, but it was held that for final disposal, the court could go into the whole question again. Another case of Satya Pal Sharma Vs. Union of India decided by the Principal Bench - OA/955/86 - was cited. I have, however, already covered this matter earlier and having decided that since the delay has already been condoned by the Tribunal's Bench earlier, I would like to decide the case on merits without going into the question of delay.

7. It is true that there are guidelines that the DPC should have met in April, 1976 and that the Supreme Court has also held that such considerations should be either before the due date or shortly thereafter. We have, however, to see the effect of the delay. The DPC did meet in the year 1976 itself and at that time they had before them the relevant assessment reports of the officer upto 1975. The delay of few months cannot be considered as very abnormal and no malafide can be attributed to the members of the DPC. It would certainly have been useful if the DPC had given reasons for not finding the officer fit to cross the efficiency bar, but as denial of crossing of efficiency bar is not treated as punishment under the rules, it is not mandatory to record reasons. The applicant cannot say that he was not given an opportunity to defend his case because he was aware of the adverse entries in his annual assessment reports for the years 1973, when the DPC met in 1976, and for 1976, when the DPC met in 1977. He had already represen-

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ted against the adverse remarks and they had been considered by the competent authority. The case of the applicant before this court is not for expunging the adverse entries from his character roll, but against his not being allowed to cross the efficiency bar at the appropriate time. Since the DPC has considered the case of the applicant along with the others, there is no case that any discrimination has been done against the applicant and if, on the basis of the assessment reports, the DPC came to the conclusion that the applicant should not be allowed to cross the efficiency bar on 1.6.1976 and 1.6.1977, the DPC cannot be faulted on any count.

8. In the circumstances of the case, the applicant has not been able to establish that there has been any illegality in the competent authority denying the applicant crossing of the efficiency bar. I feel that when the DPC observed that the applicant should be reviewed after a year, it is obvious that they did not consider him fit to cross the efficiency bar at that time as their assessment was based primarily on the annual confidential reports and as there is evidence that there were adverse entries in the assessment reports of the applicant during 1973 and 1976, <sup>which were conveyed to the applicant</sup> there seems to be no irregularity in denying him the opportunity to cross efficiency bar at that stage. In the circumstances of the case, the application is dismissed. There will be no order as to costs.

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

Vice-Chairman

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