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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 815/86

Date of decision: 15.12.1988

Shri I.D. Raizada

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri G.N. Oberoi

Counsel for the applicant.

Shri M.L. Verma

Counsel for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri I.D. Raizada, Assistant Engineer, P.W.D., Police Headquarters, New Delhi, on 14th August, 1986, against impugned orders No. 32/878/68-EC-III dated 13.8.85 passed by the Deputy Director of Administration in the office of the D.G. (Works), C.P.W.D., New Delhi, dis-allowing ^{all} the benefits of crossing Efficiency Bar.

2. The brief facts of the case, as stated in the application, are that the applicant was due to cross the E.B. at the stage of Rs. 810.00 in the pay scale of Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 on 1.10.1974, but on account of his not passing the departmental examination in accounts, he could not cross the E.B. at that time. He passed the departmental examination on 18.1.1977 and was allowed to cross the E.B. with effect from 19.1.1977. According to the applicant, his salary ought to have been fixed at Rs. 920.00 and given the next increment on 1.10.1977 fixing his salary at Rs. 960.00 but it was wrongly fixed at Rs. 845.00 on 19.1.1977. Thus, the applicant was made to suffer a penalty of stoppage of increments with cumulative effect and even his original date of increment was changed against the provisions of F.R. 25. The applicant made a representation on 25.1.1978 which was recommended by his Executive Engineer recommending his pay to be fixed at Rs. 920.00 with effect from 19.1.1977 without paying arrears. He had made further representations, but these

were rejected. In their letter dated 15.3.1982, the D.G. (Works) informed the Executive Engineer, CPWD, Udaipur, that the case for crossing of E.B. at the stage of Rs. 1000/- with effect from 1.10.81 had also been considered by the competent authority, but the applicant was not found fit to cross the efficiency bar. The applicant also received a letter dated 29.1.1985 from the Deputy Director of Administration, D.G. of Works, CPWD, with reference to his representation dated 17.1.1985 that the points raised by the applicant had already been considered carefully before the decision earlier taken was communicated to him on 9/10.7.1984 and that no further representations would be entertained in this regard. In another letter dated 13.8.1985, the applicant was informed with reference to his representation dated 24.6.1985 that all the facts brought out by him had already been considered carefully and he was informed that any further representation would be viewed seriously.

3. The applicant has prayed that there has been discrimination in his case as some other Assistant Engineers, namely, Shri Y.K. Mittal, Shri P.K. Mukherjee and Shri H.R. Garg were allowed to cross E.B. at a later date than due and were given the full benefits of their increments and their dates of increments were also kept the same as if they were allowed to cross the E.B. on due dates although they were not given the arrears from the date on which they should have crossed the E.B. upto the period they actually crossed the E.B. By denying the applicant regular increments, respondents have penalised him with stoppage of increments with cumulative effect even after crossing the E.B. and has prayed that he should be allowed to cross the first E.B. on 19.1.77 and his salary fixed at Rs. 920.00 on that date and that he should be allowed to cross the second E.B. after his pay reached Rs. 1000.00 w.e.f. 1.10.1981 and his salary fixed at Rs. 1040.00 on that date. He has also prayed that he should be given the special

pay after crossing the maximum of the pay scale of Rs. 1200.00 and the stagnation period of two years and his pay ought to have been fixed at Rs. 1240.00 w.e.f. 1.10.1985 and his pension and retirement benefits fixed on the pay before revision at Rs. 1240.00 with further benefits of revision of pay scales by the present Pay Commission.

4. The applicant has sought relief that the impugned order dated 16.12.1975 be ordered to be modified fixing his salary at Rs. 920.00 per month w.e.f. 19.1.77 without giving arrears of increased pay upto 18.1.1977. Similarly, the order dated 15.3.82 of denying the applicant to cross the E.B. at the stage of Rs. 1000/- w.e.f. 1.10.81 and the order dated 22.12.82 denying the applicant to cross the E.B. from 1.10.1982 be quashed and his salary be refixed giving him the benefit of stagnation of pay etc. as mentioned above.

The applicant in an M.P. had also prayed for condonation of delay in filing the application and the same was allowed by the court on 5.5.1987 when the application was admitted.

5. The respondents in their reply have stated that the application is time barred under Section 21 of the A.T. Act. The applicant has asked for relief against the order dated 16.12.77, 19.1.77 and has asked for arrears of increments with effect from 18.1.1977 challenging the orders of the respondents dated 15.3.82, 1.10.82 and 1.10.85 which are not tenable under the law. The respondents have also argued that the applicant cannot get the advantage of crossing the E.B. at the stage of Rs. 810.00 with effect from 1.10.74 as he had not passed the departmental examination at that time which is essential for allowing crossing of E.B. He was allowed to cross the E.B. w.e.f. 19.1.1977 without any benefit of past service under FR 25. It has been stated that withholding an officer at the E.B. is not a penalty under the C.C.A. Rules and the pay of the applicant has been fixed strictly under FR 25. Similarly, they have denied that the applicant should have reached the next stage of E.B. i.e. Rs. 1000/- w.e.f. 1.10.81. He was

allowed to cross the E.B. w.e.f. 19.1.77 at the stage of Rs. 810.00 without the benefit of past service and he would reach the stage of E.B. at Rs. 1000.00 w.e.f. 1.10.81 only. His case was duly considered by the Efficiency Bar Committee but he was not allowed to cross the E.B. until 31.9.83. It has been stated that the other persons who were allowed to cross the E.B. at a later date than due with the benefit of past service were entitled to it on the basis of their performance and also on the basis of the guidelines being followed by the E.B. Committee.

6. The learned counsel for the respondents said that even though the case was admitted by the court, which was in the absence of the respondents or their counsel, the admission only means that the case was prima facie found fit for hearing. No specific orders have been passed condoning the delay. The question of limitation can be raised at any time and since the case of the applicant had been rejected on 16.12.77, 20.9.79, 15.3.82, 29.1.85 and 13.8.85, it clearly shows that the relief sought is totally time-barred. Shri M.L. Verma, counsel for the respondents, cited several cases to substantiate his point. These are:

1. SLJ 1986 (3) P. 439 - C.A.T. - Manindra Chakraborty Vs. U.O.I. & Others.
2. SLJ 1987(4) P. 482 - C.A.T. - Nirmalendu Pandit and Others Vs. U.O.I. and Others.
3. SLJ 1987 (4) P. 340 - C.A.T. - A.N. Tripathy Vs. Director of Audit, W. Rly. and Others.
4. II (1988) ATLT - CAT 125 - Dr. K. Padmavally Vs. Union of India and another.
5. SLJ 1986(3) p. 137 - CAT - Mangan Vs. Chief Security Officer R.P.F./S. Railway.

It has been held in these cases that the question of limitation can be taken up at any time. In the case of Manindra Chakraborty, the Calcutta Bench of the Tribunal has held that "if we allow such applications, then it would open the flood gates of many other matters of like nature which had been laid to repose finally years back and the applicants

would try to take a chance of making applications on those alleged claims which have long become stale by making some applications before this Tribunal on the basis of some long drawn useless correspondence. The Tribunal is not prepared to acceded to such applications; as a matter of fact, such an application would be an abuse of the process of court. The very insertion of provisions of Section 21 goes to show that the Legislature does want the provisions of limitation must be adhered to, whenever the occasion warrants and the Tribunal should not ignore that fact in disposing an application."

In the case of Nirmalendu Pandit and Others, the same Bench has discussed the question whether an application once admitted cannot be rejected on the point of limitation under Section 21 of the A.T. Act. In that case, the applicant had taken the plea that once the application had been admitted, the limitation would not arise, but the Tribunal held that limitation being a legal question can be raised at any time and in that case it was held that the application was beyond limitation.

In the case of A.N. Tripathy, the Ahmedabad Bench ^{by} of the Tribunal held that the applicant was covered by the doctrine of acquiescence by not filing the appeal in time.

In the case of Dr. K. Padmavally, the New Bombay Bench of the Tribunal held that Section 21 is complete and, therefore, the question of limitation has to be decided under Section 21.

In the case of Mangan, the Madras Bench of the Tribunal held that when the applicant had exhausted all departmental remedies in 1971 and gave further non-statutory representations again in 1983, 84, 85 without any reply, by no interpretation of Section 21, the application can be treated as within limitation period given therein.

7. The learned counsel for the applicant said that once the question of limitation was decided by the court, it could not be raised again at the final stage. This point had already been decided by this Tribunal that the question of limitation can be taken up at any time. This case has been rejected several times upto 15.3.1982 and, therefore, limitation certainly applies as far as those orders are concerned. It is to be seen whether the applicant could file an application under Section 19 of the A.T. Act against the orders passed on 29.1.85 and 13.8.1985. In both these orders, the respondents have clearly brought out that the facts mentioned by the applicant had already been considered carefully by them earlier and rejected. In the letter of the Deputy Director (Administration) dated 29.1.1985 it was mentioned that no further representation would be entertained in this regard. An application against this order should have been filed before the Tribunal within 12 months and by not doing so, the limitation applies. I, therefore, feel that this is a case which is barred under limitation and the application cannot be allowed on that count.

8. On merits also, this case is at par with the case of Shri Nirmal Kumar Vs. U.O.I. and Others - O.A. 1201 of 1988 - decided by this Tribunal on 8.11.1988. In that case the applicant was not allowed to cross the E.B. until he passed the departmental examination and he was allowed all the advantages from the date he actually passed the departmental examination. In the circumstances, the application is rejected. There will be no order as to costs.

(B.C. Mathur)

Vice-Chairman