

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1022/86
T.A. No.

199

DATE OF DECISION 18.3.1991

Mrs. Kanwaldish Kaur Petitioner
Shri Sant Singh Advocate for the Petitioner(s)
Versus
Union of India & Ors. Respondent
Shri M.L. Verma Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Kamleshwar Nath, Vice Chairman

The Hon'ble Mr. I.k. Rasgotra, Member (A)

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? —
4. Whether it needs to be circulated to other Benches of the Tribunal? —

I.K. Rasgotra
(I.K. Rasgotra)

Member (A)

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A. 1022/1986

DATE OF DECISION 18.3.1991

Mrs. Kanwaldish KaurApplicant

Vs.

Union of India & Anr.Respondents

CORAM

JUSTICE SHRI KAMLESHWAR NATH, HON'BLE VICE-CHAIRMAN
SHRI I.K. RASGOPI, HON'BLE MEMBER (A)

For the ApplicantShri Sant Singh

For the RespondentsShri M.L. Verma

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

J U D G E M E N T

DELIVERED BY JUSTICE SHRI KAMLESHWAR NATH,
HON'BLE VICE-CHAIRMAN

This application under Section-19 of the Administrative Tribunals Act is for a direction to the respondents to grant increments in her scale of pay at the stage of Rs.380/- per month from 1.7.1979 and to pay the arrears and allowances admissible.

2. The applicant was working as a Steward in Safdarjung Hospital, New Delhi since 20.7.1976 in the

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scale of Rs.330-10-380-EB-12-500-EB-15-560/-. She was to cross the Efficiency Bar at the stage of Rs.380/- from 1.7.1979. However, she was not allowed to cross the Efficiency Bar which continued to be operative till 14.3.1984, when a D.P.C. consisting of four members considered her case and observed that her A.C.Rs. for the earlier years were adverse, but keeping in view the report for the year 1983 and to avoid hardship to her which she was undergoing in the preceeding five years, the Committee took a compassionate view and recommended her for crossing the Efficiency Bar w.e.f. 1.7.1983. In consequence of the recommendations of the D.P.C., orders were passed on 23.3.1984 to allow her to cross the Efficiency Bar w.e.f. 1.7.1983 and thereby raising her pay from Rs.380/- to 392/- from 1.7.1983.

3. The applicant's case is that the orders dated 23.3.1984 implied withholding of increments for four years with cumulative effect and, therefore, constituted punishment and since the punishment was given without an opportunity to show cause, it was illegal.

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There is no force in this contention because Efficiency Bar is not a punishment within the meaning of the C.C.S. (Classification, Control and Appeal) Rules and Efficiency Bar is an element in the time scale and is applied automatically when the stage at which it is fixed, arrives in the career of a particular employee. F.R. -25 says that where an Efficiency Bar is prescribed in a time scale, the next increment above the Bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold the increments. Clearly, the application of the bar is automatic, the event of the removal of the bar has to follow a specific sanction, therefore. The effect of the Efficiency Bar is stoppage of the increment at that stage. It is not the otherway around; i.e., to say it is not as if the increment is first withheld and the bar is then applied. A stoppage of increment follows the application of the bar. That is why, even though stoppage of an increment is one of the punishments prescribed under the C.C.S. (C.C.A.) Rules, withholding of Efficiency Bar is not, although the effect in either case is the same. It may also be mentioned that the

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Government while accepting the recommendation No.37 of the Third Central Pay Commission Report, adopted the recommendation that measures should be taken to ensure that crossing of the Efficiency Bar is no longer a routine matter and that those who do not pull their weight, are denied further increments (See Muthu Swamy's F.R.S.R. Part-1 General Rules, 9th Edition at P-122). The mere fact that the bar remains in force for a certain number of years till it is allowed to be crossed, does not constitute punishment and is part of the position in Fundamental Rule-25. There is no question, therefore, of the applicant having been given any opportunity to show cause in the matter.

4. The second point urged is that no order withholding the bar was communicated to the applicant. It is stated in para 6-6 of the original application that the case of the application of the Efficiency Bar should have been considered before 1.4.1979 in view of the time schedule set out under the orders of the Government as published at P-122 of the aforesaid publication. The position as stated in the publication is that the time

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schedule may be adopted in order to avoid the procedural delays. It is plainly a directory provision and cannot prevent the operation of the Efficiency Bar if a decision is not taken by April in cases where the bar is to apply in July.

5. We may mention in this connection that the reply to para-6.6 of the O.A. in the counter simply is that, "It is a matter of record"; but the learned counsel for the respondents has not been able to produce any material in the voluminous records produced before us to show that the question of crossing of Efficiency Bar had been considered on or before 1.4.1979. That, however, does not affect the automatic operation of F.R.-25.

6. The same situation will apply to the instructions of the Government of India that the Government servants should be informed of the decision to enforce the bar. It will be appreciated in this connection that as soon as a bar comes into operation, the next increment automatically stops and the employee knows in the next month's salary that the bar has come into operation. The failure of the concerned authority, therefore, to inform the employee of the application of the bar causes no prejudice to the

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employee from the point of view of his knowledge of the operation of the bar.

7. The next, and indeed the most important, point raised by the applicant is that after the E.B. became operative on 1.7.1979 and a review did not take place despite the instructions of the Government in this regard. These instructions are contained at pages-121 and 122 of the aforesaid publication. According to these instructions, the Departmental Promotion Committee constituted for considering confirmation should examine the case of the crossing of Efficiency Bar annually with a view to determine whether the quality of their work has improved to an extent, sufficient to warrant the removal of the bar. It is not shown by the respondents that such review was held. The only D.P.C. review proceedings placed before us are those of 14.3.1984, in which it was recorded that although the applicant's earlier years' A.C.Rs. were adverse, yet keeping in view the report for the year 1983 and to avoid hardship to her, which she had been undergoing for the preceeding 5 years, crossing of the Efficiency Bar w.e.f. 1.7.1983 was recommended on a compassionate view. We find, therefore, that in this

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respect, the instructions issued by the Government have not been carried out by the Department. What should be the effect of this omission is the important question for consideration.

8. We asked the respondents to produce before us the A.C.R.s of the applicant. The A.C.R.s. have been recorded annually ending the 31st December each year.

9. We notice that the A.C.R. of 1975 was good; indeed in some respects, the applicant was rated as excellent or outstanding.

10. In the A.C.R. of 1976, it was remarked that she needed to accept responsibilities as Steward and could do better, if she took more interest. Nothing seriously adverse could be read therein.

11. The trouble begins from 1977. It is recorded for that year that the applicant did not accept responsibilities easily, did not possess goodhold on employees and lacked self-confidence. The entry was communicated to the applicant on 12.6.1978. For the year, 1978, it was recorded that the applicant was not able to discharge the duties of a Steward.

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12. The entries upto the year 1978 were relevant for the purposes of the application or otherwise of the Efficiency Bar at the stage on 1.7.1979.

13. For the year 1979, the remark is that the applicant was not capable of shouldering responsibilities of a Steward, used to get provoked easily and was not fit as a Steward. This was communicated to her on 10.6.1980. For the years 1980-81, it was again mentioned that the applicant was not fit as a Steward, the responsibility of which she could not shoulder. The remark of 1981 was communicate to her on 26.4.1982.

14. For 1982, her work and conduct was recorded to be unsatisfactory and it was mentioned that she had been warned several times for not doing evening duty. The remarks were communicated to her on 7.5.1983 against which she made a representation on 17.6.1983. For the year 1983, remarks were recorded in two parts. In the part for the period from January to June, 1983, it was stated that while posted to the Nurses' Hostel, the applicant did not carry out her duty and had not done evening duty at all which used to fall for one week in a month. In the second part concerning July, 1983 to December, 1983

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it was recorded that the applicant promptly performed all her duties which were assigned. It is this last entry which seems to have persuaded ^{the} D.P.C. of 14.3.1984 to allow the applicant to cross the Efficiency Bar w.e.f. 1.7.1983.

15. The settled law in the matter of consideration of application or removal of the Efficiency Bar is that only that part of the Service record is to be considered which extends upto the date on which the Efficiency Bar becomes operative. As year after year passes, the appropriate Departmental Promotion Committee has to consider not only the record upto the period on which the Efficiency Bar became operative, but also upto the succeeding period of the relevant succeeding year when the D.P.C. examines the case. In other words, if a D.P.C. met in 1980, it would have seen the A.C.Rs. upto 1979; if it met in the year 1981, it would have seen the records upto the year 1980 and so on till 14th March, 1984 when the D.P.C. actually saw the records of the previous years.

16. It will also be appreciated that when the service record of a limited period is considered, it may have an

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impact on the mind of the D.P.C. which may be different from the impact which may be made by consideration of all the entries at one time. That is why the law developed is that record upto only the particular period in which the bar becomes operative or is considered for continuance, removal comes up. We think that it is not for this Tribunal to hold whether or not the applicant was fit for crossing the Efficiency Bar on or after 1.7.1979; that is the function belonging to the competent authority on the recommendations of the D.P.C.


17. In this case, while on the one hand the case does not appear to have been considered by the D.P.C. annually, on the other hand, the applicant is not shown to have made any representations against the operation of the Efficiency Bar, even though she made some representations against some adverse entries in the A.C.Rs. On a consideration of the entire situation in the case, we think that fairness and justice demand that the case of the applicant's crossing the Efficiency Bar should be examined by the appropriate D.P.C. on year-to-year basis and thereafter the appropriate orders may be passed.

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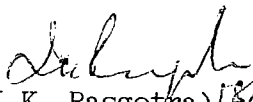
We do not think it proper to direct the Efficiency Bar to be removed from any particular date in the absence of the consideration of the matter by the competent authority.

18. This application, therefore, is disposed of with a direction to the respondents to constitute an appropriate D.P.C. to consider the case of operation or removal of the applicant's Efficiency Bar w.e.f. 1.7.1979 from year-to-year till 1.7.1982 and thereafter pass appropriate orders in the matter. The respondents shall comply with these directions within a period of three months from the date of receipt of the copy of this judgement. Parties shall bear their own costs.


(I.K. RASGOTRA)
MEMBER (A) 18/3/91


(KAMLESHWAR NATH)
VICE-CHAIRMAN

Pronounced by me in the open court on 18.3.1991.


(I.K. Rasgotra) 18/3/91
Member (A)