

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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Date of Decision: 17.11.88

Regn. No. OA.135/87

Shri V.K.Maithal

Applicant

Vs.

Union of India

Respondents

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PRESENT:

Shri K.N.R.Pillai, Counsel for the applicant

Shri M.L.Verma, Counsel for the respondents

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

Judgment

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against not allowing the applicant to cross the Efficiency Bar on the due dates and fixing his salary accordingly. The applicant was recruited as a Junior Engineer in the CPWD on 27.8.1954 and promoted as Assistant Engineer on 30.10.1967 in the Assistant Engineer's scale of pay in which there are two Efficiency Bars, one at the stage of Rs.810/- and the other at Rs.1,000/-. The applicant was due to cross the first efficiency bar on 1.10.75 but <sup>as</sup> he had not passed the departmental examination in accounts, he was not eligible to cross the EB. As the applicant had been declared unfit to cross the EB he made an appeal on 19.7.86 and for rejecting his application for exemption from passing the departmental examination in accounts. He was, however, allowed to cross the EB with effect from 9.3.84, the date on which he attained the age of 50 years but he has not been given the benefit of his past service. The applicant claims that once he was exempted from passing the departmental examination his increment should be restored from the normal date of increment allowing him to draw the arrears due to him on account of enhanced pay due to restoration of increments from the date of stoppage to the date of restoration. In other words, while he may not be given the arrears of salary for the period prior to 9.3.84 his pay on that date should be fixed taking into consideration the national increments which should be allowed to him from the date he was due <sup>to</sup> cross the first EB on 1.10.75 and the second EB on 1.10.80 and his pay on 9.3.84 should be fixed taking into consideration this fact of <sup>his</sup> having been exempted from passing the examination and, therefore, allowed to cross the EB retrospectively.

The learned counsel for the respondents said that the applicant was allowed to cross the EB with effect from 9.3.84, the date he attained the age of 50 years after granting him exemption from passing the prescribed departmental examination for the Assistant Engineer but he could not be given any national benefit of past service under FR 25 and the applicant

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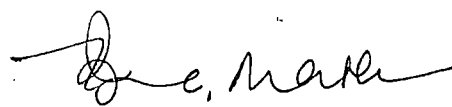
cannot be given benefit of arrears. The question involved is only whether it is the discretion of the competent authority to allow increments taking into consideration the entire length of service or whether under FR 25 and para 12 of the PWD Manual the applicant automatically gets the advantage of restoration of increments from the date on which the applicant was due to cross the EBs. Shri M.L.Verma, Counsel for the respondents contends that the applicant could not have been given the exemption from passing the departmental examination in accounts before he attained the age of 50 years and, therefore, he can get the advantage of crossing the EB from that date and not from 1.10.75. Shri K.N.R.Pillia, Counsel for the applicant cited two cases decided by this Bench on 18.1.88 to substantiate his claim. The first case is Shri L.D.Kandpal Vs. Union of India (783 of 1986) and the other Shri N.P.Agarwal Vs. Union of India (OA 1054 of 1986). These cases deal with guidelines issued by the DG in assessing the performance of Engineers for crossing EB. Both these cases are not relevant. In the present case where the EB was withheld not because of adverse confidential reports but on the basis of the applicant having not passed the departmental examination in accounts. The question to decide is very limited one; whether the length of service from the due date of crossing the first EB on 1.10.75 and 1.10.80 for crossing the second EB would be taken into consideration while fixing the salary or whether the applicant who has been exempted from passing the departmental examination and allowed to cross the EB from 9.3.84 to get his first increment on that date without taking into consideration the increments due from 1.10.75 to 9.3.84. A copy of the guidelines on the procedure for crossing the EB has been filed at Annexure A-X of the application. Para 3 of the same states as follows:-

"Benefit of past service under FR 25: In cases where the Committee postpones the crossing of EB for the reason that the officer has not passed the required departmental examination or in cases where the committee grants exemption to an officer from passing this examination the officer is allowed to have his pay fixed at the higher stage taking into account the length of service from the due date for crossing the EB."

If the above guidelines under FR 25 are strictly followed it would be reasonable to allow the officer to have his pay fixed at higher stage taking into account the length of service from the due date for crossing the EB. In other words while no arrears of salary would be given for the period from 1.10.75 to 9.3.84, the applicant would be entitled to count this period for getting due increments as if he had been allowed to cross the EB on 1.10.75 and 1.10.80 respectively. It can be argued that if the respondents could not have given exemption to the applicant from passing the departmental examination till he attained the age of 50 years and, therefore, he would not be allowed to cross the EB prior to that date and, therefore, the respondents have fixed the pay of the applicant correctly. On the other hand, if the benefit of the past service under FR 25 is rather ~~given~~

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interpreted in a liberal way the application of the applicant deserves to be allowed. It is clearly stated in para 3 of Annexure A-X that in cases where the committee postpones the crossing of the EB for the reasons that the officer had not passed the required departmental examination or in cases where the committee grants exemption from passing this examination the officer is allowed to have the pay fixed at a higher stage taking into account the length of service from due date for fixing the EB . As the due date for crossing the EB was 1.10.75 the applicant should get this benefit. If there are two interpretations, possibly the one beneficial to an employee should be adopted. As such, it is held that while the applicant will not be allowed any arrears of salary prior to 9.3.84 his salary on that date would be fixed taking into account the length of service from the due date of crossing the EB viz. 1.10.75 and 1.10.80. The respondents are directed to refix his salary accordingly and allow him all consequential benefits therefrom. The refixation of the salary and payment of all arrears should be completed within a period of three months from the date of receipt of these orders. In the circumstances, the application is allowed. There will be no orders as to costs.



(B.C. MATHUR)  
Vice-Chairman.