

3

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

DATE OF DECISION: 26.7.1988.

Regn. No. O.A. 1715/87.

Shri J.S. Verma

... Applicant

Vs.

Union of India & Ors.

... Respondents.

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Kaushal Kumar, Administrative Member.

For the applicant:

Shri K.L. Bhatia, Counsel.

For the respondents:

Shri M.L. Verma, counsel.

JUDGMENT.

(Oral):- This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- (i) The impugned order of penalty dated 3.9.1986 may be set aside.
- (ii) The applicant may be allowed to cross the E.B. at the pay stage of Rs. 810/- on 1.6.76 when it was due in accordance with the procedure laid down in G.O.I. Order No. 7 under F.R. 25.
- (iii) That the applicant may be allowed to draw all the subsequent increments including that due on 1.7.81 after the crossing second E.B. in the scale.
- (iv) On refixing the applicant's pay after allowing all the increments, he may be given arrears of pay and

allowances due to him.

2. The facts giving rise to this application in brief are that the applicant has been working as a Section Manager under the Delhi Milk Scheme which is owned and controlled by the Government of India (Ministry of Agriculture) as a Department. He was due to cross the Efficiency Bar on 1.6.1977. Unfortunately, however, some vigilance case/disciplinary proceedings were pending against him, the first one having been commenced on 3.2.1976. The disciplinary proceeding culminated in imposition of penalty of stoppage of two grade increments without cumulative effect vide order dated 25th July, 1978 of the Disciplinary Authority. Hence, his case for crossing the Efficiency Bar was not considered during the said period. Even on the said date, another disciplinary proceeding, which had commenced on 19.5.1976, was pending. The same came to an end on 30th November, 1978 when warning was administered to the applicant. Although warning is not one of the recognised penalties under the C.C.S. (C.C.A.) Rules, the minimum punishment being that of censure, he was not considered for crossing the Efficiency Bar with effect from the date subsequent to 25th July, 1978 because, as ill luck would have it, another disciplinary proceeding had started against the applicant with effect from 5.7.1978. To his good luck, he was exonerated completely vide order dated 30th September, 1981 of the Disciplinary Authority. Even then, he was shadowed by misfortunes inasmuch as before the said order could be announced, he was proceeded against in another matter with effect from 31st July, 1980 and the said proceedings culminated in the penalty of censure being awarded to him on 8.6.1981. In the meanwhile, however, another disciplinary proceeding was taken up against him on 14.4.1981 and the

said proceeding lasted nearly for five years. Eventually, penalty of censure was imposed upon the applicant vide order dated 3.9.1986. The net result was that the applicant had been denied his right to cross the efficiency bar all these 11 years for the reasons stated above.

3. The question for consideration is whether having regard to the provisions contained in F.R. 25 and the instructions issued by the Government of India from time to time, the applicant could be considered at an earlier stage for crossing the efficiency bar. Before we take up the matter earnestly, we would like to refer to the relevant provisions on the subject. F.R. 25 reads as under:-

"F.R.25. Where an efficiency bar is prescribed in a time scale, the increment next above the bar should not be given to a Government servant without the specific sanction of the authority empowered to withhold increments under Rule 24 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may, by general or special order, authorise in this behalf."

On a plain reading of this rule, it is crystal clear that a Government servant is not entitled to cross the efficiency bar prescribed in a time scale without the specific sanction of the authority empowered to withhold increments under Rule 24 or the relevant disciplinary rules applicable to the Government servant. Vide Decision at No. (7) appearing at page 123 of the Swamy's Compilation of 'F.R. S.R.' (Part I General Rules) below F.R. 25, it was decided by the Government of India that "a question was raised as to the date from which a Government servant whose case for crossing the efficiency bar has not been considered on account of the pendency of a disciplinary/vigilance case against him, should be considered for being allowed to

6

cross the efficiency bar, after the enquiry is over. It has been decided, in consultation with the Ministry of Home Affairs, that if after the conclusion of the proceedings, the Government servant is completely exonerated, he may be allowed to cross the efficiency bar with effect from the due date retrospectively, unless the competent authority decides otherwise. If, however, the Government servant is not completely exonerated, his case for crossing the efficiency bar cannot be considered with retrospective effect from the due date. Such cases can be considered only with effect from a date following the conclusion of the disciplinary/vigilance case, taking into account the outcome of the disciplinary/vigilance case."

4. Still later, another decision was taken by the Government of India vide O.M. dated 9th February, 1971 reproduced as decision No. 10 below F.R. 25 of the Swamy's compilation, referred to above. In that decision, the Government answered the question as to how the penalty can be imposed and the pay of the Government servant regulated. The relevant portion from the said decision reads as under:-

"...It has been decided in consultation with the Department of Personnel and the Ministry of Finance that in the type of case referred to, the case of the Government servant for crossing the efficiency bar should be reviewed on a date immediately following the date of the order of penalty and if he is found fit to cross the efficiency bar, the stage at which he would draw pay above the efficiency bar should also be decided. Once it is done, five increments commencing from the date of next increment after being allowed to cross the efficiency bar can be withheld and the penalty thus enforced. In case he is not found fit to cross the efficiency bar from a date immediately after the conclusion of the disciplinary proceedings, his case should be reviewed with reference to every subsequent anniversary of the original due date until he is found fit to cross the efficiency bar. Thereafter, the stage at which he should draw the pay above efficiency bar should also be decided and the penalty order enforced as explained above."

5. On a mere juxtaposition of these two decisions, it is abundantly clear that in case an officer is exonerated completely on

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the conclusion of the disciplinary proceedings, he is entitled to be considered for crossing the efficiency bar with retrospective effect as if no such disciplinary proceeding had taken place. Looking at the matter on hand from this angle, it is evident that the disciplinary proceeding having ended on 25th July, 1978 in imposition of penalty of stoppage of two grade increments, he could not be considered for crossing the efficiency bar with retrospective effect from a date prior to 25th July, 1978 and he could only be considered for crossing the efficiency bar prospectively i.e. from a date subsequent to 25th July, 1978. But as already stated, another disciplinary proceeding was pending against the applicant which came to an end on 30th November, 1978 on which date he was warned by the Disciplinary Authority. In our considered view, warning should not have been considered as a kind of penalty which should have stood in the way of the applicant being considered for crossing the efficiency bar. All the same, the Disciplinary Authority took the view that another disciplinary proceeding having commenced on 5.7.1978, he could not be considered for crossing the efficiency bar on a date subsequent to 30.11.1978. So, at any rate, on complete exoneration of the applicant on 30th September, 1981, the applicant should have been considered for crossing the efficiency bar with retrospective effect which on the facts and in the circumstances of the case would have been from 30th November, 1978 or any date thereafter. Since the normal date of increment of the applicant was 1st June of every year, he would have been entitled to be considered for crossing the efficiency bar with effect from 1.6.1979. Unfortunately for him, the competent authority did not apply its mind to this aspect of the matter and did not take into notice

to
the decision at No. 7 of the Government of India, adverted above,
which is quite clear on the point. No doubt, another
disciplinary proceeding had started against the applicant
with effect from 31st July, 1980 but that being subsequent to
the date of earlier enquiry in which he was completely exonerated,
the same could not be taken into consideration at all.
We are, therefore, clearly of the view that the applicant
ought to have been considered for crossing the efficiency bar
from
by the competent authority / a date on or after 30th November,
1978 which in the normal circumstances would come to 1st June, 1979.

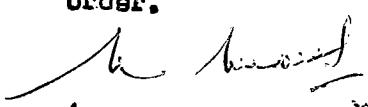
6. The learned counsel for the respondents has
fairly and candidly conceded that the competent authority
did not direct its attention to this aspect of the matter because
it was all along labouring under the impression that during the
course of the disciplinary proceeding, the case of the applicant
could not at all be considered for crossing the efficiency bar
but as we have noticed above, this assumption was fallacious
being
and ill-founded besides/contrary to the instructions given by the
Government of India itself, apart from being contrary to
notions of natural justice and fair play.

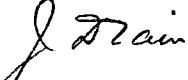
7. Indeed, the learned counsel for the applicant has
invited our attention to an illustration of the Government of
India given in the Office Memorandum dated 29th November, 1979 below
decision No. 10 adverted to above.

M. H. S.

8. To sum up, therefore, we allow this application and direct the competent authority in the instant case to re-consider the case of the applicant for crossing the efficiency bar from a date subsequent to 30th November, 1978 and, at any rate, with effect from 1st June, 1979 having regard to his performance and overall assessment of his work during the relevant period, in accordance with the relevant rules and instructions issued from time to time. However, we would like to mention here that we have ourselves perused the annual confidential report of the applicant for the year 1978 which is in two six-monthly parts and we find that his work has been by and large assessed as 'good' and he has been found capable enough to discharge his field duties well. Even his knowledge of the subject which he was dealing with is found to be quite satisfactory. Under the circumstances, the ACR of 1978 and the latest report of the applicant should furnish a good yardstick for requisite consideration inasmuch as the imposition of the penalty of stoppage of increments shall not stand in his way of crossing the efficiency bar in view of the decision at No. 10 of the Government of India below F.R. 25 and the increments, if any, which still remain withheld shall be with reference to those accruing after crossing of the efficiency bar.

9. Since the applicant has not pressed for other reliefs except to the extent which are consequential upon the crossing of the efficiency bar, we are not dwelling upon the same. The respondents shall implement this decision in the light of the observations made by us within two months of the receipt of a copy of this order.


(KAUSHAL KUMAR) 26/7/89
ADMINISTRATIVE MEMBER


(J.D. JAIN)
VICE CHAIRMAN.