

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 458/87

Date of decision: 09.02.1993.

Sh. Jai Prakash Singh

....

Applicant

versus

Union of India & Ors.

....

Respondents

Coram:-

The Hon`ble Mr. P.C. Jain, Member(A)

The Hon`ble Mr. J.P. Sharma, Member(J)

Counsel for the applicant

Sh. Sant Lal

Counsel for the respondents

Sh. P.P. Khurana

JUDGEMENT(ORAL)

(delivered by Hon`ble Sh. P.C. Jain, Member(A).

In this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was working in the Postal Department is aggrieved in the matter of crossing Efficiency Bar which fell due on 01.07.1980. The D.P.C. which met in June, 1981 did not find him fit to cross the aforesaid efficiency bar and the same was communicated by memo dated 08.06.1981. However, he was allowed to cross the efficiency bar w.e.f. 01.07.1982 by memo dated 27.4.1982 by which his pay on 01.07.1982 was raised from Rs.560/- to Rs.620/-. Accordingly, the applicant has contended that though he has been allowed two increments while allowing him to cross

the Efficiency Bar w.e.f. 1.7.1980 instead of 1.7.1980, he has not been paid the arrears for the period from 1.7.80 to 30.6.82. His representation to the competent authority regarding arrears was rejected. He, therefore, filed a further representation to the Post Master(General) in 1983 which is said to have not been disposed of.

2. The petitioner had filed M.P.No.437/87 seeking condonation of delay. By an order passed on 2.9.1987 a Bench of this Tribunal held that the O.A. was within time and the aforesaid M.P. was disposed of as above.

3. The respondents have contested the O.A. by filing their reply to which rejoinder has also been filed by the applicant. We have perused the material placed on record and also heard the learned counsel for the parties.

4. The main contention of the learned counsel for the applicant is that on 1.7.1980 from which date he was due to cross the efficiency bar there was nothing against him, but, in view of the mala fide action of Respondent No.3 a memorandum of chargesheet was issued to him in December, 1980 which resulted in the imposition of punishment of censure by an order issued in June, 1981. Accordingly, it is argued that it is on account of the above punishment that the D.P.C. which met in June, 1981 was prejudiced against the applicant in the matter of his being allowed to cross the efficiency bar w.e.f. 1.7.1980. It is his contention that it is only work and conduct upto

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30.6.1980 which was relevant in the matter of crossing of efficiency bar w.e.f. 1.7.1980. The reply filed by the respondents gives a clear impression that the contemplated disciplinary action against the applicant in a case of fraud in which the applicant is alleged as a second offender, was taken into account. It is now well settled that unless the memorandum of chargesheet has been issued in disciplinary proceedings or a challan or a chargesheet has been filed in criminal case, or a government servant is under suspension and in which cases, for crossing the efficiency bar or promotion, etc. the case has to be kept in a sealed cover, but the contemplated disciplinary proceedings is neither a bar to the consideration of the government servant for crossing the efficiency bar nor for denial of the same if otherwise found fit. In this connection, we rely on a full Bench judgement of the Tribunal in the case of K.Ch. Venkata Reddy & Ors. Vs. U.O.I. & Ors. (1987)3 ATC P.174 This proposition of law has been upheld by the Hon'ble Supreme Court in the case of U.O.I. & Ors. Vs. K.V. Jankiraman 1991(2) Scale 423.

5. We are, therefore, of the considered view that neither the contemplated disciplinary proceedings which resulted in issue of memorandum of chargesheet in December, 1980 nor the imposition of punishment of censure in June, 1981 could be validly taken into consideration in the matter of allowing or disallowing the applicant to cross the efficiency bar which fell due on 1.7.1980..

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6. In the light of the foregoing discussion, this O.A. is allowed in terms of the directions that the applicant, who has already retired on 30.6.1985, shall be deemed to have been allowed to cross the efficiency bar w.e.f. 1.7.1980 (he has been allowed two increments, while being allowed to cross the efficiency bar w.e.f. 1.7.1982) and the arrears of pay and allowances admissible thereon on this account shall be paid to him within a period of 3 months from the date of receipt of a copy of this order. No costs.

J.P. Sharma
(J.P. Sharma)

Member(J)

P.C. Jain
(P. C. Jain)

Member(A)