

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

(3)

REGN. NO. D.A. 661/87

DATE OF DECISION: 22.9.92

K.K. Bhatia

... Petitioner.

Versus

Union of India & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.  
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

... Shri B.B. Raval,  
Counsel.

For the Respondents.

... Shri K.C. Mittal,  
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,  
Chairman)

The grievance of the petitioner in this case is  
in regard to <sup>he</sup> not being allowed to cross the Efficiency Bar  
w.e.f. 1.5.1982. The records of the D.P.C. have been placed  
before us and we have perused the same. We are satisfied that  
the case of the petitioner for crossing the Efficiency Bar  
w.e.f. 1.5.1982 was considered by the D.P.C. which was held  
in October, 1982 though in the reply it is stated that the  
case of the petitioner was considered by the D.P.C. in May,  
1983. That mistake has been subsequently corrected by filing  
an additional affidavit by the respondents. The case of the  
petitioner was again considered by the D.P.C. for crossing the  
Efficiency Bar in the years 1983, 1984 and 1985, but in all  
these years he was found unfit. However, the petitioner was

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found fit by the D.P.C. for crossing the Efficiency Bar w.e.f. 1.5.1986.

2. So far as the year 1982 is concerned, it is stated that there are adverse remarks in the Confidential Reports of the petitioner for the period from October, 1980 to March, 1981, which were duly communicated to the petitioner. There is no good reason to disbelieve the version of the respondents. If there were adverse remarks against the petitioner during that period, the D.P.C. was well within its right to take that into account while deciding the matter as to whether he should have been permitted to cross the Efficiency Bar w.e.f. 1.5.1982. We do not, therefore, find any fault with the decision of the D.P.C. in not permitting the petitioner to cross the Efficiency Bar w.e.f. 1.5.1982.

3. So far as the periods from 1981 to 1983 are concerned, one of the contentions of the petitioner's counsel is that the petitioner was not allowed to work for two years and, therefore, no confidential reports were written on him during that period. It was submitted by the petitioner that there was a case before the Supreme Court challenging certain decisions in regard to transfers filed by Intelligence Bureau Employees Association in which there was an interim order. It was further submitted that it was in violation of the

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interim order that the petitioner was not permitted to function. It was, therefore, submitted that non-functioning for two years by the petitioner was attributable to the respondent's conduct in acting in violation of the order of the Supreme Court. That being the position, if the respondents did not write confidential reports for two years on the ground that the petitioner was not permitted to function during that period, it amounts to their taking action in contravention of the Supreme Court's order. The factual assertion of the respondents is that the confidential reports were, in fact, written. We see no good ground to disbelieve the version of the respondents. In regard to non-functioning of the petitioner for a period of two years, it appears that it stands admitted by the respondents that the petitioner did not function. The question is as to whether non-functioning of the petitioner for a period of two years was in violation of the order of the Supreme Court. The respondents' counsel fairly stated that if the respondents had violated the interim order, the petitioner would have ensured that appropriate action was taken against the respondents for contumaciously violating the interim order of the Supreme Court and got them booked. He urged that an inference should be drawn against the petitioner that he was not prevented from working for two years nor did he take any effective action against the respondents for the alleged violation of the interim order of the

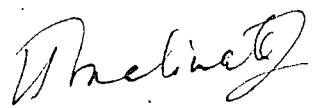
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Supreme Court. So far as the question of actual violation of the interim order is concerned, the stand taken by the respondents is that the stay was to prevent effecting of transfers to Jammu and Kashmir State. It is stated that this did not prevent the authorities from displacing the persons from the stations at which they had been posted earlier in the matter of giving them posting to places other than Jammu and Kashmir. It is for that reason that it is stated that the petitioner's not functioning for a period of two years was on account of his own volition and not because he was prevented by the respondents to work. The petitioner has not placed any satisfactory material before us to show that he was actually prevented from performing his duties. In the face of the material placed before us, it is not possible to take the view that the respondents have acted in violation of the interim order.

4. In these circumstances, we are satisfied that no case has been made out for taking the view that not permitting the petitioner to cross the Efficiency Bar in the years 1982, 83, 84 and 85 is arbitrary and calling for interference. This petition fails and is accordingly dismissed. No costs.

SRD  
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( I.K. RASBOTRA )  
MEMBER(A)

  
( V.S. MALIMATH )  
CHAIRMAN