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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1208 of 1987

Date of decision: 3.1.1989

Shri Jagan Lal Gupta

Applicant

VS.

Union of India & Others

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Respondents

PRESENT

Shri Sant Lal, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Jagan Lal Gupta, retired L.S.G. Sub Post Master, Ansari Nagar, New Delhi, against orders No. B3/6 dated 7.10.85 and 12.12.86 issued by the Office of the Sr. Supdt. of Post Offices, South West Division, New Delhi (Annexures A-1 and A-2 to the application) and No. Staff/H.42/18/87 dated 12.8.87 issued by the Office of the Post Master General, Delhi Circle (Annexure A-3 to the application) against withholding of Efficiency Bar w.e.f. 1.9.1985. *See also Annexure A-5.*

2. The brief facts of the case, as stated by the applicant, are that the applicant joined the Postal Services as a Postman on 19.3.48 and was promoted as a clerk on 1.11.52 and was further promoted to Lower Selection Grade on 1.9.1980. He was due to cross the E.B. at the stage of Rs. 560.00 in the scale of Rs. 425-640 w.e.f. 1.9.1985, but he was informed by the office of the Sr. Suptd. of Post Offices, New Delhi, vide his letter No. B3/6 dated 7.10.85 that the DPC held on 7.10.85 considered his case and found him not fit to cross the E.B. The applicant submitted a representation to the Sr. Supdt. of Post Offices, New Delhi South West Division, on 2.12.1986 but the same was rejected on 12.12.86 (Annexure A 2 to the application). The applicant then made representations to the Director, Postal Services, Delhi Circle on 3.2.87, 20.3.87 and 24.7.87 but the Director, Postal Services, vide

his letter dated 12.8.87 rejected the applicant's representations (Annexure A-3). The applicant had been awarded the minor penalty of withholding of next increment for six months by Sr. Supdt. of Post Offices, New Delhi South West Division, but this penalty was subsequently modified to censure by the Disciplinary Authority vide its order dated 17.11.86 (Annexure A-9). Except this minor penalty of censure the applicant had very good record of service during past more than ten years during which he got promotion to the L.S.G. w.e.f. 1.9.80. He was, however, allowed to cross the E.B. at the stage of Rs. 560.00 in the pre-revised scale w.e.f. 1.9.1986. This order was redundant as the pay of the applicant had been fixed in the revised scale w.e.f. 1.1.1986 and there was no E.B. in that scale w.e.f. 1.9.86. The applicant has been suffering a recurring loss of Rs. 80.00 p.m. due to denial of permission to cross the E.B. w.e.f. 1.9.85. His pay in the revised scale has been fixed at Rs. 1640.00 w.e.f. 1.1.1986 with reference to his pay of Rs. 560.00 instead of Rs. 580.00 in the old scale. He has prayed that the impugned orders dated 7.10.85, 12.12.86 and 12.8.87 be set aside and the respondents be directed to allow him to cross the EB at the stage of Rs. 560.00 w.e.f. 1.9.85 and for payment of arrears due on this account with interest at the market rate from the date the payment was due and for grant of costs of the application.

3. The grounds urged by the applicant for relief are that the impugned orders are arbitrary, illegal, discriminatory and against the provisions of Articles 14 and 16 of the Constitution, that the decision of the DPC has been communicated to him not by the competent authority, but by some officer, namely, ^{and} the Sr. Supdt. That according to the instruc-

tions contained in O.M. No. 21/5/70-Estt.(A) dated 15.5.1971, the imposition of the minor penalty of 'censure' or withholding of increment does not stand in the way of consideration for promotion.

4. The respondents in their reply have stated that the application is misconceived and is not maintainable under law. The application is barred under Section 21 of the A.T. Act. The impugned order was passed on 7.10.1985 against crossing the E.B., but the applicant preferred time-barred representation on 2.12.86 (the appeal could be preferred within 45 days) and the same was rejected on 12.12.86. He made further representation on 3.2.87 which was rejected on 27.7.87. The Tribunal has held in several cases that successive representations subsequent to the rejection of representation by the Department, did not affect extending the period of limitation and as such the application is liable to be dismissed. The applicant was awarded the penalty of withholding of his next increment for six months, but the penalty having become inoperative due to there being E.B. in the pay scale, it was modified to that of censure. The punishment was awarded for refusal of the applicant to carry out orders of his immediate superiors and neglecting his primary duty as PRI (P) which ground alone is sufficient to withhold E.B. of the applicant. The respondents have prayed that the application may be dismissed with costs.

5. The learned counsel for the applicant has argued that the applicant was fit to cross the E.B. but merely that the applicant was fit to cross the E.B., but merely because the penalty of withholding of increment could not be carried out, it was changed to one of censure, but this by itself cannot authorise the respondents to stop the E.B. of the applicant which has to be allowed on the basis of the record of the applicant.

6. The learned counsel for the respondents said that the circumstances under which the punishment of withholding the next increment for six months was modified to one of censure have already ^{been} explained in the written statement, but the Assessment Committee stopped the increment of the applicant on the basis of his overall record and that the judgment of the Assessment Committee cannot be challenged, specially at this stage as the applicant did not make any representation to higher authorities within the statutory period of 45 days and, therefore, apart from the merits, the application cannot avoid limitation. Rule 23 of C.S.S. (C.C.A.) Rules clearly specifies that an appeal must be filed within 45 days to the appellate authority against disallowing of the E.B.

7. I have gone through the record of the applicant, including his annual confidential reports for the relevant period, and I feel there is no reason to interfere with the judgment of the Assessment Committee withholding the increment of the applicant. The withholding of the increment can be justified on the basis of the record and as such other considerations become irrelevant. In the circumstances, the application is rejected. There will be no orders as to costs.

B.C. Mathur
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(B.C. Mathur)
Vice-Chairman