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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No.  
T.A. No.

198

DATE OF DECISION 15.7.1988

Shri P.N. Kaw

Petitioner

Shri M.K. Gupta

Advocate for the Petitioner(s)

Versus

Council of Scientific & Industrial

Respondent s

Research, New Delhi.

Shri A.K. Sikri

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

15/7/88

(BIRBAL NATH)  
Member.

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

...

DATE OF DECISION. 15-7-1988.

Regn. No. D.A. 1242/87

Shri P.N. Kaw

...

Applicant

Vs.

Council of Scientific & Industrial  
Research, New Delhi. ...

Respondents.

CORAM:

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant:

Shri M.K. Gupta, Advocate.

For the respondents:

Shri A.K. Sikri, Advocate.

J U D G M E N T.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed in the Tribunal in September, 1987, wherein the applicant, Shri P.N. Kaw, Assistant (Finance & Accounts), Council of Scientific and Industrial Research, New Delhi, has challenged the action of the respondents in not permitting him to cross Efficiency Bar with effect from 1.4.1976 in the scale of Rs. 425-15-500-EB-15-560-20-700-25-800. He has challenged the action of the respondents on the ground that he has never been communicated any reasons for withholding his Efficiency Bar. He has further extended the challenge on the ground that under the extant instructions, he was to be informed in case his Efficiency Bar was to be withheld.

In the application, he has further averred that no Departmental Promotion Committee meeting has ever been held since 1.4.1976 till this date. He has thus prayed that he should be declared to have crossed the Efficiency Bar with effect from 1.4.1976 i.e. the due date and he should be paid interest at the rate of 10 per cent per annum on the arrears due to him.

2. It is the case of the respondents that the applicant was involved in a case of embezzlement when he was working in the erstwhile Drugs Research Laboratory, Jammu etc. He was served with a charge-sheet in April, 1986 attributing negligences on his part which resulted in the misappropriation of stores amounting to Rs. 51,967.65 and loss sustained by the Council by way of forged entries, fictitious debits in the stores ledgers, short-billing/excess debits etc. during the period 1970-71 to 1974-75 functioning as Junior Accountant in the Sales Depot of the erstwhile Drug Farms and, Factories at Srinagar. There is second article of charge against him for not exercising proper checks over the accounts of the aforesaid Sales Depot which resulted in the misappropriation of stores of drugs causing loss amounting to Rs. 31,895.93 to the Council due to the non-raising of bills on the recipients of the stores of drugs sent out on the authority of gate passes.

3. The learned counsel for the applicant has vehemently argued that the respondents <sup>have</sup> was bound to communicate to the applicant the reasons for withholding his Efficiency Bar. He relied in this regard on the Government of India decision No. 3 under F.R. 25 reproduced at page 119 of 'F.R. S.R.' by Shri P. Muthuswamy. Since this decision has not been complied with nor any review was made in terms of Decision No. 4 (Govt. of India, MHA, Deptt.

of Personnel O.M. No. 29014/2/75-Estt.(A) dated 6.4.1979, the

counsel for the applicant went on to urge, the action of the respondents was liable to be held illegal and set aside.

However, the learned counsel for the respondents has vigorously resisted this argument on the ground that under Fundamental Rule 25, when disciplinary proceedings are pending against a Government servant, his case for crossing of Efficiency Bar was not to be considered. He further stated that the conduct of the applicant was under investigation much before he was due to cross Efficiency Bar and in terms of Government of India Decision 7 (b)

(Deptt. of Personnel & A.R. O.M. No. 29014/2/75-Estt.(A) dated 6.4.1979), the applicant was not entitled to any consideration with regard to crossing of Efficiency Bar. Another ground stoutly urged by the learned counsel for the respondents is that this application is barred by time as the applicant was denied Efficiency Bar in 1976 and he approached the Tribunal as late as 1987. The case, according to him, suffers from enormous delay and deserves to be thrown out on that very count.

4. Before coming to the contentions raised, we have to decide the issue of limitation first. The learned counsel for the applicant has tried to meet the question of limitation by referring to the words 'final order' in Section 21 of the Administrative Tribunals Act which deals with the question of limitation. Sub-section (1) (a)(b) of Section 21 clearly refers to 'final order'. It is the contention of the learned counsel for the applicant that no final order has been passed by the respondents in this case and, therefore, the application was very much within limitation. The learned counsel for the

applicant further argued that in March, 1985, the applicant was informed that his case regarding non-crossing of Efficiency Bar beyond 1.4.1975 was under consideration (Annexure A-3) and a similar reply was forwarded to him by the Under Secretary of the Council of Scientific and Industrial Research (CSIR) vide Memorandum of 27th May, 1985 (Annexure A-5). The learned counsel for the respondents argues that the latter Memo. is a reply to the representation made to the Vice-President, CSIR, who happens to be a Minister of the Cabinet and it is not a statutory representation. Be that as it may, the fact remains that no final order in this case has been passed by the respondents. The application would have become time barred if a final order had been passed prior to the period of limitation as given in Section 21 of the Administrative Tribunals Act. The contention of the learned counsel for the respondents that the applicant should have come within 18 months after May, 1985 is also not tenable because there was no finality in the memo. issued to the applicant. There was another memo. of 21st August, 1985 issued to the applicant on the same subject (Annexure A-7). In view of the above, the application is within limitation and has to be decided on merits.

5. On merits, we have to examine if the case of the applicant was considered at appropriate stage or not. It is admitted on both hands that the applicant was due to cross Efficiency Bar on 1.4.1976. No orders stopping him from crossing Efficiency Bar were communicated to him. Government of India Decision No. (3) on page 119 of 'F.R. S.R.' by P.Muthuswamy (Deptt. of Personnel O.M. No. 40/1/73-Ests.(A) dated 31.12.1973)

reads as under:-

"(3) Government servant to be informed if efficiency bar is enforced.- The cases of Government servants for crossing the efficiency bar in the time-scale of pay should be considered at the appropriate time and in case the decision is to enforce the bar against the Government servant, he should be informed of the decision."

This decision is of 31st December, 1973. So, it is applicable to the case of the applicant. It is clear that the aforesaid instructions issued by the Government of India have not been complied with by the respondents. Government of India Decision No. 4 under the same F.R. further lays down that the case of all officers held up at efficiency bar should be reviewed annually. It is also admitted that this was not done.

6. We have to take note of the contention of the learned counsel for the respondents that the conduct of the applicant was under investigation much before he was due to cross efficiency bar. Government of India's instructions in this regard coming under decision No. 7 (b) will apply in this case. Though these instructions were issued in April, 1979 much after the case of the applicant was ripe for consideration, yet they may be analysed as they are. These instructions clearly say that after the completion of investigation and where the competent authority on consideration of the results of the investigation, has formed the opinion that a charge-sheet may be issued to the Government servant, the crossing of efficiency bar may be denied to the Government servant. Although there were allegations of negligence leading to embezzlement against the applicant <sup>YK</sup> and the investigations were completed <sup>in late 1983</sup> in 1984, <sup>only</sup> i.e. after the aforesaid instructions were issued in 1979. As such, this decision of the Government of India will not be attracted to the case of the applicant.

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7. The learned counsel for the respondents was asked to produce the file on which the disciplinary action against the applicant was processed as well as the file on which the D.P.C. had considered his case for crossing of efficiency bar. The learned counsel was good enough to produce the file on which the disciplinary action against the applicant has been processed. However, he has not produced the file on which the DPC ever considered his case. The learned counsel fairly concedes that <sup>the applicant's</sup> his case was not considered by the DPC at any time. As such, it is self-evident that the case of the applicant was neither considered on 1.4.1976 nor thereafter. Every Government servant has a right to be considered for crossing of efficiency bar when it falls due in his grade or scale. The applicant has been denied this right on consideration of disciplinary action which had not ripened at that time. It is thus clear that his right to be considered has been denied to him without any valid reason. As such, this application is allowed and the applicant will be deemed to have crossed the efficiency bar with effect from 1.4.1976 with all consequential reliefs. This order shall be complied with within four months of the receipt of its copy by the respondents.

8. The next prayer of the applicant is that he should be paid interest on arrears at a rate of 10 per cent per annum. In this connection, the learned counsel for the applicant relies on the judgment of the Bombay High Court in the case of Ishwarlal J. Naik Vs.

The Development Commissioner cum Secretary, Education Department,  
Govt. of Goa, Daman & Diu & ors.<sup>1</sup>

However, the facts of every case have to be distinguished. In the present case, there were allegations of gross negligence against the applicant and since he had not been permitted to cross efficiency bar, he was fully aware that some action was afoot against him. Though the respondents' action in

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not considering his case for crossing of efficiency bar is legally untenable, at the same time, since they were investigating criminal allegations against him, it cannot be said that they were motivated by any ill-will towards the applicant or their action was moved by extraneous considerations. At the worst, it can be said that they did not put a correct construction on Government instructions and thought that mere existence of allegations against the applicant debarred him from crossing the Efficiency Bar. They failed to act upon Government of India instructions that an employee can be denied crossing of Efficiency Bar only when on conclusion of investigation, the competent authority forms an opinion that a charge sheet deserves to be issued to the Government servant. Thus, the respondents have laboured under a bonafide mis-construction of the instructions only. In these circumstances, it is not considered a fit case to award any interest.

The application is only partly allowed as indicated above, with no order as to costs.

15/7/88  
(BIRBAL NATH)  
Member.