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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA NO. 1099 of 1990

New Delhi this the 11th Day of November, 1994

**HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI B.K.SINGH, MEMBER(A)**

Shri S.L.Gupta,
s/o Shri Devi Sahai
Resident of 1/1 Arya Bhat Enclave
Ashok Vihar, Phase-III
Delhi - 110052.
(By advocate Sh. G.D.Gupta)

Applicant

VERSUS

1. The Administrator/Lt. Governor,
Union Territory of Delhi,
Raj Niwas,
New Delhi - 110 054
2. The Director,
Technical Education,
Delhi Administration,
Dayal Singh Library Building,
Deen Dayal Upadhyay Marg,
New Delhi - 110 001.
(By advocate Shri Arun Bhardwaj)

Respondent.

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ORDER(ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

The applicant who initially was appointed as Demonstrator in Civil Engineering in the Directorate of Technical Education in 1963 and was subsequently selected for the post of Junior Lecturer (Applied Mechanics) and was confirmed in this appointment w.e.f. 12th August, 1968. The scale in which the applicant was working as Junior Lecturer was Rs. 325-575. The applicant was given ad-hoc posting as Lecturer in Civil Engineering in August, 1969 in the scale of pay Rs. 400-950. Subsequently in May, 1975 he was regularly selected by Union Public Service Commission (UPSC) for the said post of Lecturer in the pay scale of Rs. 700-1300. By this time the applicant has reached the scale of pay at Rs. 900/-. The Efficiency Bar of the applicant was at this stage on 1st August, 1976 which would have given him the benefit of taking his pay to Rs. 940/-. The applicant was not given the benefit of crossing of the Efficiency Bar despite of his representation and though it was deferred for one year. But even then the respondents have not granted him the benefit of crossing E.B. He was allowed to cross the EB w.e.f. 1st August, 1982. The grievance of the applicant in this application is that he should have been granted the EB atleast from 1.8.1977 the deferred date by the respondents as the DPC at that time did not cross the EB and opted to consider the same in July, 1977.

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2. The applicant filed this application on 22nd May, 1990 praying for the grant of relief that the order dated 17th Feb., 1988 be quashed to that extent that the EB of the applicant be allowed to be crossed not w.e.f. 1st August, 1982 but w.e.f. 1st August, 1976. He has also prayed for quashing the order of 26th July, 1989 by which his appeal was rejected. He, therefore, prayed that EB be allowed to be crossed w.e.f. 1st August, 1976 with all consequential benefits.

3. Respondents contested his application and filed a reply mainly stating the fact that the case of the applicant was considered by the D.P.C. for crossing EB w.e.f. 1st August, 1976 but the same was not allowed and his case was deferred for year because of adverse remarks in his character roll for the previous year. Further the clearance of the EB was withheld on account of disciplinary proceedings initiated against the applicant which were finalised in 1984 resulting in an imposition of penalty of withholding five increments without cumulative effect. It is further stated that there was adverse remarks in the character roll of applicant in the year 1970, 1971, 1973, 1976, 1977, 1979 to 1981 and 1983 it is because of this fact the EB was not allowed to cross at the relevant point of time.

4. The applicant has also filed rejoinder re-iterating the facts averred in the original application and highlighted that adverse remarks as referred to in the reply by the respondents. Adverse remarks of successive years have not been conveyed to him except those of 1971 and 1973.

5. Further the adverse remarks given to the applicant for the period from June, 1976 to December, 1976 was conveyed to him in January, 1978. The applicant has also been given adverse remarks in the subsequent years after 1976 and those have also not been conveyed to him. The case of the applicant is also that his representation against the remarks of 1971, 1973 and 1978 remains untouched or if this has been disposed of the applicant has not been conveyed any decision taken thereon. The respondents in their counter has kept complete silence on this aspect.

6. We have heared the learned counsel Sh. G.D.Gupta yesterday. Since the learned counsel for the respondents Sh. Arun.Bhardwaj was not available at that time so we took up another original application filed by the same application OA no. 2558 of 1989. During the course of the arguments of that case Sh. Arun.Bhardwaj came and desired that he should be given sometime to reply to the arguments advanced by the learned counsel for the applicant in the case where the relief for crossing of the EB has been claimed by the applicant w.e.f. 1.8.1976. We granted time and the matter was taken up today in the morning session when Sh. Surat Singh, Advocate who is a counsel for the respondent in OA 2558 of 1989 stated that he has been briefed by Mr. Bhardwaj who argued the case and we heard him. It also appears that Sh. Arun. Bhardwaj told the Court Officer that he has nothing to say now and he has given the file of the ACR of the applicant which we have also perused and passed on to Sh. Surat Singh, Advocate for his perusal particularly with

respect to the remarks in ACR given to the applicant prior to 1976 and also from 1.1.1976 to 14.5.1976. The learned counsel Sh.Surat Singh did not make any further arguments in the case.

7. The EB in the particular scale of pay is allowed to be crossed to a Govt. servant under the provisions of FR 25. Normally before a meeting of DPC is held a special report is called of the officials from the supervisory authorities as to whether he is fit and is able to pull his weight for consideration for crossing the EB. No such steps have been taken and if taken has not been placed before us either in the reply filed by the respondents or during the course of the arguments by the learned counsel. Now what remains to be seen is whether DPC was justified in deferring the consideration of the EB of the applicant for a year when it met in 1976. There is nothing on record to show what prevailed with the DPC to take that decision. The respondents are silent in their counter and have not touched this point at all. It is also not on record that when the DPC was held though the year is referred to as 1976. The DoPT has issued specific instructions as to the period when the EB has to be considered and the corresponding with the month in which it was due in a particular year. Since the EB of the applicant was falling due in August, 1976 the DPC should have been held in July, 1976 to take a decision in this regard. It shall be presumed that the DPC was held in time as nothing else has been brought before us. Now if the DPC was held in July, 1976 then we are constrained to observe that in 1974 as well as in 1975 and also the ACR in

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14th July, 1976 does not speak of any such remarks which could come in the way of the crossing of EB of the applicant. The annual remarks in the particular years are satisfactory and the integrity of the applicant has been certified. It is not only expected but is mandatory that the statutory authority states in a bonafide and reasonable manner what prevailed with the DPC to defer the consideration of EB of the applicant for a year, is not known either the annual confidential roll was not available which is still not the ^{case} / of the respondents. In such an event the decision of deferring the EB for one year of the applicant cannot be said to be a fair, impartial and just decision.

8. The respondents have subsequently in the year 1988 have allowed the EB to be crossed w.e.f. 1.8.1982. This also shows a very hazy picture in as much as the applicant has been served with a Memorandum of chargesheet in the year 1980 and that culminated in the departmental proceedings which ended with a punishment against the applicant in the year 1984. Though penalty imposed was minor of withholding five increments but still at the time in the year 1982 the applicant was facing a departmental enquiry and what prevailed upon the DPC to cross the EB from that date i.e. the year 1982 is not known. The respondents are silent on this point in their reply nor anything has been argued before us during the course of hearing by the side of the respondents.

9. We emphatically observe that the applicant was regularised on the post of Lecturer in the Directorate of Technical Education w.e.f. May, 1975 and the Selection Body/DPC was chaired by one of the members of the UPSC. In due course of doing of the business it is assumed that the Selection Body/DPC must have looked into the ACR of applicant atleast for a period earlier to 1975. In view of this any of the adverse remarks in the year 1971 and 1973 must have also been considered by the said Selection Body/DPC. Those remarks were not found of such a nature as to withhold the regularisation of the applicant on the post of Lecturer in the scale of 700-1300. When the Selection Body has done so the applicant had reached at the stage of EB at Rs. 900/- then the DPC which was held in 1976 should not have ignored this particualr aspect and taken a decision of deffering the consideration of EB for a year.

10. The respondents have already crossed the EB e.e.f. 1st August, 1982 it means the applicant deserves this crossing of EB in 1982. Normally, we have remanded the matter to the Administration to consider the case of the applicant for crossing of the EB as it is particularly and of the respondent to specifically within the domain /consider that fact but the circumstances of this case warrant that the DPC which was held in 1976 would not now be available to re-consider that matter. In such a situation we can only order that a review DPC may be convened and to consider the case of the applicant excluding the entries given to him after May,

1976 and also taking into account that the adverse remarks of the year 1971 as well as 1973 have not been considered of such a nature as to withhold the regularisation of the applicant by the Selection Body in May, 1975.

11. We, therefore, dispose of and allow the application partly in the manner that respondents shall convene the Review DPC to consider the crossing of EB of the applicant w.e.f. 1.8.1876 ignoring the remarks given to him in the ACR after 1976 and taking into account the fact that the Selection Body has already cleared him for regularisation to the post of Lecturer in the scale of 700-1300 w.e.f. May, 1975. The remarks given earlier in 1971 and 1973 shall also be ignored by the DPC. The respondent shall consider the same expeditiously preferably within a period of three months and convey their findings to the applicant. In case the applicant is given the benefit he shall be entitled to re-fixation of the pay w.e.f. 1.8.76 or from 1.8.7⁷ ⁴ the date when allowed to cross the Efficiency Bar and thereafter he will get the arrears till 1982 and the pay in the revised scale be fixed in the year 1982 with all benefits and allowances etc. If the revision of pay arises as a result of the Fourth Pay Commission that shall also be done by the respondents. In this circumstances the case application is disposed of leaving the parties to bear their own cost. The ACR given to the Court Officer by Shri Bhardwaj Advocate are hereby returned to Shri Surat Singh, counsel who will be returning the same to the department concerned.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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