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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 232/90

DATE OF DECISION : 10.9.92

Shri B.S. Kasana

...Applicant

Vs.

Lt. Governor, Delhi

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

.. Shri Shyam Babu

For the Respondents

...Ms. Mukta Gupta, proxy
counsel for Mrs. Avnish
Ahlawat, counsel.

1. Whether Reporters of local papers may be allowed to see the Judgement? yb
2. To be referred to the Reporter or not? yb

JUDGEMENT

The applicant, Deputy Superintendent in the Directorate of Social Welfare has filed this application for a direction that he should be deemed to have crossed Efficiency Bar in the pay scale of Rs. 550-900 on 1.5.1980. The applicant has made representation but to no effect and last representation is made in May, 1989 and no reply has been received by him. The applicant has prayed that a direction be issued to the respondents that he be deemed to have crossed the EB in the pay scale of Rs. 550-900 (pre-revised) as Deputy Superintendent, Directorate of Social Welfare, Delhi w.e.f.

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1.5.1980 and further relief be granted to the applicant in the revised pay scale of Rs.1640-2900 and Rs.2000-3500 and he be given all the consequential benefits.

2. The facts of the case are that the applicant was appointed as Deputy Superintendent in the Directorate of Social Welfare in 1976 in the pay scale of Rs.550-900 and he was to cross the EB on 1.5.1980. The case of the applicant is that he was never communicated adverse ACR and instead he was promoted by respondent No.2 on 4.10.1982 as CDPO in the pay scale of Rs.650-1200 on ad-hoc basis for a period of six months or till the vacancy is filled up by regular selection. A copy of the order of promotion (Annexure A) dt. 4.10.1982 has been filed which shows that the applicant along with seven others was promoted on ad-hoc basis for a period of six months. The applicant was, however, reverted to the post of Deputy Superintendent/PO Grade I in the pay scale of Rs.550-900 w.e.f. 6.3.1985. However, the applicant received the ACR of 1983 in 1985 in which the performance of the applicant was adjudged to be disappointing and it was also pointed out that the applicant cannot take on the

responsibility of independent charge. The applicant made a representation against that entry. Again the applicant was promoted on 21.10.1987 to the post of Superintendent/COPS in the pay scale of Rs.2000-3500 (revised) on ad-hoc and on emergent basis for a period of six months. This ad-hoc promotion was extended for another period of six months w.e.f. 23.4.1988 and it was further extended till 30.4.1989. However, it was terminated on 8.2.1989 and he was reverted to the post of Deputy Superintendent in the pay scale of Rs.1640-2900 with immediate effect. The applicant was also suspended by an order dt. 9.2.1989 on the allegation that a criminal offence is under investigation.

3. The respondents contested the application and stated that there were some adverse entries in the ACR of the applicant and a vigilance case was pending against him. It is stated that there was an adverse report against the applicant in the year 1978. He was communicated this entry in April, 1982 and his work and conduct was not found satisfactory. His promotion was totally on ad-hoc basis and he was not appointed on regular basis with the approval of

the DPC. So the promotion of the applicant to the next higher grade would not entitle him to the benefit of the crossing of the EB. The case of the applicant was referred to the concerned DDO/HO (Poor House), Delhi in the year 1984. But since there was an entry in 1978 and as well as in 1983 and vigilance case was also under process, so the case could not be put up before the DPC. Thus the case of the respondents is that in view of the adverse remarks given to the applicant for the year 1978 as well as 1983, the EB could not be crossed. The EB was referred to the DPC in February, 1986 and the DPC observed that the case may be submitted when the vigilance case is decided. Again his case was referred for consideration of crossing of EB in January, 1988 and since the adverse entries of 1983 were not expunged, so the matter could not be considered. There has been representation against the adverse entries of 1983, which was examined by the department and rejected in March, 89. In the meantime, other vigilance case has been contemplated against the applicant and he has been placed under suspension and since the decision of the vigilance case is still awaited, so his case of EB has not been again referred to the DPC. The applicant was appointed to the post of Superintendent only on ad-hoc basis and not on regular basis. Thus the applicant has

no case.

4. The applicant filed the rejoinder and stated that no adverse remark was given to him in 1978 nor it was communicated to him in April, 1982. The adverse entries of 1983 were communicated to him in 1985. Thus according to the applicant, his averment in the application be read.

5. I have heard the learned counsel for the parties at length and have gone through the record of the case as well as the personal file of the applicant was summoned. It is not disputed that the EB of the applicant was due for crossing on 1.5.1980. The five years entries prior to 1.5.1980 have been perused. In 1976, the applicant has been assigned as a good official. In 1977 also, the applicant has been given the remark that he is occasionally late. In 1978, though it is stated that he is occasionally late, but he has been adjudged as an average officer. Thus the only hurdle in the way of the applicant was the entry of the year 1978 which was communicated to him in 1982. This entry also is only to the effect that the applicant is occasionally late. The ACR of 1983 is immaterial. The respondents have vaguely replied in

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the counter that the crossing of the EB was not decided by the duly constituted DPC because there were some adverse entries in the ACR and the vigilance case was also pending against him. As regards the nature of the adverse remark, it was only to the effect that the applicant is only late and in all other respect of his official working, he has not been adversely commented upon. There is no specific averment by the respondents that the case of the applicant was considered for crossing of the EB before it fell due in May, 1980. It is well settled that the subsequent acts of commission and omission cannot be taken into account for a period beyond the date of crossing the EB. Earlier to 1.5.1980, there is nothing adverse which can come in the way of the crossing of the EB. It is also evident from the record that on the basis of the representation in 1983, the case of the applicant was put to the Director (Social Welfare) for crossing of EB and the Director of Social Welfare has pulled up the officer concerned as to reason of delay and it is only thereafter that the steps were taken for consideration of the crossing of the EB of the applicant. But what transpires is that the respondents have taken into account the

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entries appearing subsequent to 1.5.1980 in the ACR of the applicant. The entries after 1.5.1980 would no longer be considered. In the year 1986 when the case was referred to the DPC, when the DPC has observed that the case may be considered after the conclusion of the vigilance case against the applicant and should be sent along with the ACR upto the year 1984-86. However, the ACRs of 1984-86 are immaterial because only the period under consideration of the ACR should have been upto 1.5.1980. Besides the above facts, it is evident on record and admission in the counter itself that the applicant was promoted as CDPO in the pay scale of Rs.650-1200 for a period of six months on ad-hoc basis w.e.f. 4.10.1982. Even at this stage, no orders were passed for crossing of the EB of the applicant w.e.f. 1.5.1980. The applicant was again promoted on 21.10.1987 to the post of Superintendent/COPS in the scale of Rs.2000-3500. The applicant appears to be again reverted w.e.f. 8.2.1989. The question of promotion and reversion of the applicant is not the issue in this present OA. What is relevant is that when the applicant was due to cross the EB from 1.5.1980, then why the applicant was not allowed to cross the EB when there

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was nothing adverse in the ACR of the applicant for a
period of five years before the date when the EB was
due?

6. The case of the applicant, as projected by the
learned counsel for the applicant, is that the respondents
have not acted fairly and passed orders in an arbitrary
manner sometimes promoting the applicant on ad-hoc basis
without considering the case of crossing of the EB and then
again reverting him and also promoting him on the second time
to the post of Superintendent in the higher scale ^{even then} ~~to~~
withholding the crossing of the EB and postponing it till
the vigilance case is decided against the applicant. The
applicant in contemplation of any disciplinary proceedings
has also been put under suspension, but that will not come
in the way in the disposal of the matter of crossing of the
EB. The learned counsel for the applicant has relied on
a decision of Sardar Santosh Singh Dhondi Vs. State of Punjab
and Others, decided in SLJ 1975 (Punjab and Haryana) Page-480.
In that case, the Lordships have held that crossing of EB
of a Government servant fell due in 1957, but withheld on

account of misconduct relating to subsequent period, that misconduct of the subsequent period cannot be taken into account while judging the fitness to cross the EB in 1957. The facts of the present case are also similar. In this case, the present applicant did not earn any adverse remark immediately five years before the crossing of the EB. There is an observation in the ACR of 1978 as well as of 1977 that the applicant is occasionally late. The ACR of 1977 was not communicated to the applicant and the applicant has denied having received the communication of ACR of 1978. The respondents themselves admit that it was communicated in 1982. The nature of the adverse remarks is only to the effect that the applicant is occasionally late. The guidelines and instructions for crossing of the EB have also been elaborated in the Third Pay Commission's report and ordinarily it should be allowed to be crossed if the employee is able to pull his weight. In the present case, going through the ACR of the applicant for five years before May, 1980, there is nothing on record to show that the applicant was not giving his performance to the satisfaction of the superiors. Only

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passing remark that he is occasionally late would not by itself condemn the officer. Again the applicant has been promoted in 1982 as well as again in 1987. If the applicant was not able to pull his weight on a lower post, then even on ad-hoc basis, his promotion would not have been justified. When the respondents themselves have found him suitable for a promotional post, it cannot be said that the applicant was not fit to cross the EB w.e.f. 1.5.1980. Even the DPC which was constituted subsequently in 1986 referred the matter till the vigilance case against the applicant comes to an end and also called for the ACR of the year 1984 to 1986. The DPC has lost sight of the fact that the EB was due to be crossed on 1.5.1980 and only the ACR prior to this period has to be taken into account. Thus the action of the respondents in withholding the EB of the applicant w.e.f. 1.5.1980 is not justified.

7. The applicant has been making constant representations to the respondents, but the respondents have not disposed any of them by any speaking order. The vigilance case or his ACR for the year 1984-86 as well as any subsequent misconduct

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has nothing to do with the crossing of the EB on 1.5.1980. The respondents in their counter have not specifically stated any particular misconduct or inefficiency of the applicant which may show that he was not fit to cross the EB on the due date. The respondents too could not explain in the reply as to why the applicant was promoted to the higher post of Superintendent on 4.10.1982 and again in October, 1987 which can only show that the applicant was fit for promotion and when he has been adjudged fit for promotion, so the crossing of EB from 1.5.1980 can no longer be withheld.

8. In view of the above discussion, the application is allowed with the direction to the respondents to constitute a review DPC who will consider the crossing of the EB of the applicant w.e.f. 1.5.1980 taking into account the ACR of the period earlier to the date of crossing of the EB ignoring the remark of occasionally coming late and in case the applicant is found fit to cross the EB, he should be given the benefit from the due date with all consequential benefits and fixation of pay in the revised pay scale. In the circumstances, the

parties shall bear their own costs. The respondents to comply with the directions preferably in a period of 3 months from the date of receipt of a copy of this order. &

12/9/92
(J.P. SHARMA)
MEMBER (J)