

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

O.A. NO. 9/1990

DATE OF DECISION :

24.7.92

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Shri Lallan Prasad

...Applicant

Vs.

The C.P.M.G., New Delhi & Anr.

...Respondents

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

For the Applicant

...Shri Sant Lal

For the Respondents

...Shri K.C. Mittal

1. Whether Reporters of local papers may be ^{ys} allowed to see the Judgement?

2. To be referred to the Reporter or not? ^{ys}

JUDGEMENT

The applicant is employed as Postal Assistant, Lodi Road Head Office and assailed the order dt. 16.11.1989 (Annexure A1) and the Memo dt. 15.12.1986 (Annexure A2). By the order dt. 16.11.1989, the crossing of EB was not allowed as the applicant was not found suitable to cross the EB in the pay scale of Rs.975-1660 at the stage of Rs.1150/1180 w.e.f. 1.5.1986. The order dt. 15.12.1986 is also to the same effect. The applicant has claimed the

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relief that these impugned orders (Annexure A1 and A2) be set aside and the respondents be directed to allow the applicant to cross the EB in the revised pay scale at the stage of Rs.1150/1180 w.e.f. 1.5.1986.

2. The facts of the case are that the applicant was working as Postal Assistant since 1978 and he was allowed to cross the EB at the stage of Rs.300/308 w.e.f. 1.5.1984. On the recommendations of the 4th Pay Commission, the pay scale was revised w.e.f. 1.1.1986 and the pay of the applicant was fixed at the stage of Rs.1150 and the EB was due to be crossed on 1.5.1986 at the stage of Rs.1150/1180. The applicant was informed on 15.12.1986 that the case of the applicant has been reviewed for EB, but he was not found fit to cross the EB. However, subsequently on 19.2.1987, the services of the applicant were terminated under Rule 5(2) of the CCS (TS) Rules, 1965. However, the said order was set aside and the applicant was reinstated by the order dt. 16.10.1987 and joined on 2.11.1987. After reinstatement, the case of the applicant was again considered when he submitted the petition and by the order dt. 16.11.1989, the applicant was not considered suitable to

cross the EB. The case of the applicant is that the impugned orders are violative of principles of natural justice. Secondly that the service record of the applicant has been quite satisfactory and no adverse entry was ever communicated to him. That the mandatory instructions of OM dt. 15.11.1975 have been totally ignored while applying the test of crossing of the EB in the case of the applicant.

3. The respondents contested the application and stated that the case of the applicant was reviewed for crossing of the EB on 6.12.1986, but due to some unsatisfactory service record, he was not allowed to cross the EB as he was not found liable to put his weight which is clear from the CR for the period from 1.4.1984 to 31.3.1985 and he was informed about this on 15.12.1986. It is also stated that the applicant has since been chargesheeted for tampering/forgerying past certificates on the basis of which he got employment and he is on suspension w.e.f. 18.9.1989. The case of the applicant for crossing of the EB was considered in due time. The applicant was not found fit to cross the EB due to unsatisfactory service record and curt

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behaviour. It is also stated that adverse remarks were communicated to the applicant on 1.7.1982 and also on 2.5.1985. He was also reprimanded during the period from 1.4.1988 to 31.3.1989 for his unruly behaviour. Thus the application, according to the respondents, is devoid of merit.

4. I have heard the learned counsel for the parties at length and have gone through the record of the case. Firstly, the applicant has assailed the order of non crossing of the EB on 15.12.1986 (Annexure A2) in the present application which has been filed on 3.1.1990. The letter dt. 15.12.1986 clearly shows that he has not been found fit to cross the EB and his case will be again reviewed in April, 1987. It was on 3.10.1988 that the applicant has made a representation against this order dt. 15.12.1986. In fact when the EB was not allowed to be crossed, the applicant should have assailed the same, but he has not come at the proper time and the subsequent representation against that order will not add to the limitation as held in S.S. Rathore Vs. State of Madhya Pradesh, reported in AIR 1990 SC p-10.

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5. Further the services of the applicant were terminated under Rule 5(2) of the CCS(ES)Rules, 1965 by the order dt. 19.2.1987. However, the applicant was ordered to be reinstated with immediate effect vide order dt. 16.10.1987 and the applicant joined the duty on 2.11.1987. The applicant at that time did not agitate the matter and it was about one year after on 3.10.1988 when the applicant desired the review of the order dt. 15.12.1986 withholding the grant of EB w.e.f. 1.5.1986. The present application has been filed in January, 1990 and if the applicant was not given any reply within six months, then the applicant could have filed the application after the expiry of the period six months. But the applicant did not file the same at that time and he filed the present application in January, 1990. There is no explanation for the delay. Though the applicant appears to have again represented on 27.10.1989, but that will also not add to the period of limitation as provided under Section 21(1) of the Administrative Tribunals Act, 1985.

6. However, the matter has also been argued on merit as it was admitted already on 5.1.1990. The recommendation of the Third Pay Commission was accepted by the Central Government and it has been clearly laid down that the crossing of EB should not be considered as a routine matter and it should be crossed in the event the applicant is able to put his weight and work efficiently to the utmost satisfaction of the

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department. The departmental file was also placed before the Bench at the time of hearing. The report for the period from 1.4.1984 to 31.3.1985 shows that the applicant is of average and he is disciplined under strict hands, curt in behaviour and about devotion to duty, he is stated to be 'about satisfactory'. He has also been advised to be polite/cooperative in his dealings. The report for the period from 5.5.1985 to 23.12.1985 shows him to be an official of about with above average capability. EB of the applicant was due to be crossed on 1.5.1986. He has also been given the report for the period from 24.12.1985 to 31.5.1986 and he has been ranked as an average official and general ranking has been satisfactory. Thus till the time, the EB was to be crossed, the applicant has not earned any good remark. The DPC which considered the matter for crossing of the EB, in its opinion, recommended that the applicant's performance is not such that he may be allowed to cross the EB. This Court cannot sit as an appellate court over the recommendations of the DPC. There is an observation in the ACR of the applicant that the applicant is curt in his behaviour and he has also been advised to be polite. Thus it cannot be said that the opinion of DPC is in any manner arbitrary or prejudicial. It was after the consideration by the DPC that the applicant was informed in December, 1986 that he is not found fit to cross EB. Thereafter the

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applicant was terminated and again reinstated. He was also reprimanded for the period from 1.4.1988 to 31.3.1989 for unruly behaviour. The respondents have also stated that the annual review of Efficiency Bar in the case of the applicant was carried out in December, 1988 as well as in November, 1989. He has not been found fit to cross the EB. The applicant has also been chargedsheeted under Rule 14 of the CCS (CCA) Rules, 1965 on 1.12.1989.

7. The contention of the learned counsel is that the adverse remarks were not communicated to the applicant, but the respondents in para 5.5 have clearly stated that adverse remarks were communicated on 1.7.1982 and also on 2.5.1985. The applicant in the rejoinder did not give any reply to para-5.5. Again in para-5.11 of the counter it is stated that the adverse remarks in the ACR of the applicant were communicated to him. Thus it cannot be said in this case that the adverse remarks were communicated to the applicant.

8. The respondents while deciding the case of crossing of the EB have considered the relevant provisions of FR 25 and the instructions of Government of India below this Rule and have filed the extract as Annexure R4 to the reply. The respondents have also relied on Rules 270 and 271

of P&T Manual Volume-IV, 5th Edition and filed the same
as Annexure R6 to the counter wherein it is stated that
in regard to the second bar, it should be considered whether
such an employee has worked well and shown promise of being
capable of filling a higher appointment.

9. Taking all these facts into account, I find that the
present application is totally devoid of merit and, therefore,
is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J. P. SHARMA) 24.7.92
MEMBER (J)

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