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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXXX~~ No.1834 of 1991 Decided on: 26.2.96

Shri Jagdish ChanderApplicant(s)
(By Shri Shyam Babu _____ Advocate)

Versus

Delhi Admn. & OthersRespondent(s)
(By Shri B.S. Oberoi, proxy _____ Advocate)
Counsel for Shri Anoop Bagai, Counsel

CORAM:

THE HON'BLE ~~SHRI~~ DR. R.K. SAXENA, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *Y/S*
or not?
2. Whether to be circulated to the other
Benches of the Tribunal?

W
(K. MUTHUKUMAR)
MEMBER (A)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1834 of 1991

New Delhi this the 26th day of February, 1996

HON'BLE DR.R.K. SAXENA, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Jagdish Chander
S/O Shri S.R. Thangela,
R/o F-4 Police Station, Kalkaji,
New Delhi.Applicant

By Advocate Shri Shyam Babu

VERSUS

1. Delhi Administration, Delhi through its Chief Secretary, 5, Sham Nath Marg, New Delhi.
2. Deputy Commissioner of Police, Central District, Daryaganj, New Delhi.
3. Deputy Commissioner of Police Delhi Airport, New Delhi.
4. Commissioner of Police, Delhi, Delhi Police Headquarters, I.P. Estate, New Delhi.
5. Additional Commissioner of Police (SB), Police Headquarters, New Delhi. ...Respondents

By Advocate Shri B.S. Oberoi, proxy counsel for Shri Anoop Bagai, Counsel for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant, a Sub-Inspector in the Delhi Police is aggrieved that the respondents had not allowed him to cross the Efficiency Bar in the scale of Rs.425-600 at the stage of Rs.530 to Rs.545 on 1.2.1980 when he was due to cross the Efficiency Bar. The respondents by their order

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dated 23.2.1981 (Annexure-A), declared that the crossing of the Efficiency Bar by the applicant raising his pay from Rs.530/- to Rs.545/- with effect from 1.2.1980 was held in abeyance for a period of one year or till the decision of the departmental enquiry pending against him, whichever was earlier. By a subsequent letter dated 25.11.1981 (Annexure-C), the respondents ordered that the applicant was passed over to cross the Efficiency Bar raising his pay from Rs.530/- to Rs.545/- with effect from 1.2.1980 for a period of one year due to unsatisfactory record of service. By the order dated 7.6.1982 (Annexure-E), the respondents ordered the further passing over of the applicant to cross the Efficiency Bar with effect from 1.2.1981 for a period of one year in view of his indifferent record. By the impugned order dated 17.3.1983 as corrected by the order dated 18.5.1983, it was ordered that the applicant was permitted to cross the Efficiency Bar raising his pay from Rs.530/- to Rs.545/- in the aforesaid scale with effect from 1.2.1982. The applicant's grievance is that instead of him allowing to cross the Efficiency Bar with effect from 1.2.1980, the respondents have allowed only with effect from 1.2.1982 without any justification. The applicant also alleges that the departmental enquiry which was started against him after he became due to cross the Efficiency Bar with effect from 1.2.1980 resulted merely in the administration of warning to him and, therefore, contends that this should not have any effect on crossing the Efficiency Bar

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on the due date. Aggrieved by this, the applicant has filed this application with a prayer to quash the orders dated 17.3.1983 as corrected by the order dated 18.5.1983 (Annexure H), and also prays that he should be declared to have crossed the Efficiency Bar with effect from 1.2.1980 raising his pay from 530/- to 545/-.

2. One of the important grounds taken by the applicant is that there is nothing on record which will justify withholding of the crossing of the Efficiency Bar with effect from 1.2.1980. He also contends that subsequent departmental enquiry after the due date, i.e., 1.2.1980 or alleged unsatisfactory record, cannot be held against the applicant for permitting him to cross the Efficiency Bar.

3. The respondents have contested the pleas taken by the applicant. The respondents have strongly contended that this application is severly barred by limitation inasmuch as the applicant's representation against the impugned orders was rejected as early as in 1986 and the applicant had chosen to approach the Tribunal in 1991. They have also contested the application on merits. They have submitted that the applicant was correctly passed over from crossing the Efficiency Bar in view of the punishments awarded to him prior to the due date, i.e., 1.2.1980 and his record of service was also not satisfactory as

he was awarded 13 censures on major punishments during his service on various occasions, as listed in Annexure A to the counter-reply. His case was, however, reviewed subsequently and he was allowed to cross the Efficiency Bar on 1.2.1982. In view of this, the respondents maintain that the applicant has no case and he was held up on the Efficiency Bar stage in view of the unsatisfactory record of service and, therefore, the application deserves to be dismissed.

4. The learned counsel for the applicant relied on the decisions in *Nitya Gopal Vs. U.O.I.*, ATJ 1994(1) page 148 decided by the Calcutta Bench of the Tribunal and also on *P.L. Shah Vs. U.O.I.*, AIR 1989 SC 985 and on *M.R. Gupta Vs. U.O.I.*, 1995 (5) SCALE, on the question of limitation and argued that non drawl of increment as a result of applicant not being allowed to cross the Efficiency Bar at the appropriate stage would be a continuous cause of action and the limitation would not apply in this case.

5. When the application was admitted, the question of limitation was not kept open and, therefore, we are not inclined at this stage to reject the application on grounds of limitation. We, therefore, proceed to adjudicate the matter on merits. One of the grounds taken by the learned counsel for the respondents is that the

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respondents cannot withhold the crossing of the Efficiency Bar by the applicant due to the pendency of departmental proceedings particularly when the departmental proceedings were started after the due date of the crossing of the Efficiency Bar. For this purpose, he relies on the decision in H.P. Aggarwal Vs. U.O.I., 1985 (1) Vol.17 SLJ 48. We note that the respondents although initially ordered that the crossing of the Efficiency Bar of the applicant was held in abeyance for a period of one year or till the decision of the departmental enquiry pending against him, whichever is earlier, they subsequently passed another order to state that the applicant was passed over to cross the Efficiency Bar with effect from 1.2.1980 due to unsatisfactory record of service. So the real reasoning appears to be that the applicant was held up at the E.B. stage due to the unsatisfactory record of service. Subsequently on 1.2.1981 also he was passed over for the same reason. The respondents have stated that the applicant was censured many times. Even taking the argument of the learned counsel for the applicant that subsequent punishments should not be held against the applicant, we find that there was at least one censure which was ordered by the order dated 15.1.1980 which was immediately before the due date of his crossing the Efficiency Bar. Therefore, it cannot be said that the respondents did not have any reason whatsoever in holding that

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the record of service was not satisfactory. If in a judgment of the competent authority the record of service was not satisfactory to enable the applicant to cross the Efficiency Bar in view of the censure awarded to him on 15.1.1980, the Tribunal cannot interfere and hold that the applicant was qualified to cross the Efficiency Bar with effect from the due date. As regards of the crossing of the Efficiency Bar at least after one year, i.e., 1.2.1981, we find again that the applicant was censured by two orders of the same date, i.e., 7.7.1980 on two different cases and, therefore, naturally the respondents could not have considered him fit for crossing the Efficiency Bar with effect from 1.2.1981 also. The applicant's contention that these punishments were awarded arbitrarily is not tenable as this is not a matter under challenge here. His contention that the departmental enquiry resulted in a warning is relevant only for the purpose of considering his crossing the Efficiency Bar at least on 1.2.1981. This enquiry was ordered after 1.2.1980 and a show cause notice was served on him on 9.1.1981, which finally resulted in the administration of warning to him by 12.3.1981. However, we find that the applicant was awarded two censures by the orders dated 7.7.1980, as stated above. Even without reference to the of the departmental enquiry mentioned above, the facts woulds go to show that in the consideration of his case for crossing the Efficiency Bar on

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1.2.1981, the respondents were justified in holding that the record of service of the applicant was not satisfactory.

6: In the result, the applicant has not made out any justifiable reason for the Tribunal to interfere with the impugned orders. In the light of this, the application is dismissed but there shall be no order as to costs.


(K. MUTHUKUMAR)

MEMBER (A)


(R.K. SAXENA)

MEMBER (J)

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