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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2112/91

DATE OF DECISION:19.12.91

SHRI P.K. KANCHAN

...APPLICANT

VERSUS

UNION OF INDIA & ANOTHER

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI R.DORAISWAMY, COUNSEL

FOR THE RESPONDENTS

SHRI N.S. MEHTA, SENIOR
STANDING COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

We have heard the learned counsel for the applicant and perused the record of the case. The applicant herein is in the grade of Rs.2200-75-2800-EB-100-4000/-. The fixation of pay statement issued on 25.3.1987 fixed his pay as on 1.1.1986 at Rs.2725/-. The note against column 20 further stipulated that "one annual increment of Rs.75/- is allowed w.e.f. 1.3.1986 raising his pay to Rs.2800/- and one annual increment at Rs.100/- p.m. is allowed w.e.f. 1.3.1987, i.e., pay can be drawn at Rs.2900/- per mensem w.e.f. 1.3.1987. The next date of increment will be 1.3.1988." As would be apparent from the scale of pay, the applicant had to cross Efficiency Bar at Rs.2800/- to earn the next increment of Rs.100/- w.e.f. 1.3.1987. The applicant continued to draw pay as per the fixation statement and reached the stage of Rs.3100/- w.e.f. 1.3.1989. The respondents, however, detected their mistake in allowing the drawal of increment without the applicant crossing the E.B. beyond the stage of Rs.2800/-. The stand of the respondents is that the applicant could

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not have been allowed the increment beyond the stage of E.B. unless he had actually been allowed to clear the E.B. in terms of Fundamental Rule-25. Since this has not been done, his pay will have to be refixed. Respondents have also drawn our attention to the Ministry of Personnel's OM dated 6.4.1979, according to which, if the increment is granted above the E.B. by mistake, the same can be withheld; simultaneously, however, the official's case for crossing the E.B. from the due date has to be considered by the appropriate committee. If the official is then found fit to cross the E.B. from due date, the withheld increments have to be released. If, however, he is not found fit to cross the E.B., the amount paid to him by way of increments which was not due to him is to be recovered in easy instalments.

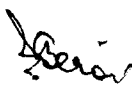
2. The learned counsel for the applicant submitted that as per D.G.S. & D's telegram dated 16.8.1990, the committee constituted in terms of Fundamental Rule 25 has considered the case of the applicant, but recommendations have been kept in the sealed cover. From the record, we find that there is no chargesheet/memo issued to the applicant as on the date he was due to clear the E.B. Accordingly, the recommendations of the D.P.C. which assessed his suitability to cross the E.B. stage cannot be kept in the sealed cover. Further, the Ministry of Personnel has since amended their OM of March, 1988 wherein they have stipulated that unless the charge memo is served on the relevant date, the sealed cover procedure cannot be adopted. Accordingly, direction has been given to all the departments/ministries that all sealed covers on the date of issue of the 1991 OM be opened and action taken in accordance with the DPC's recommendations.

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In view of the above, we do not find any justification for keeping the recommendations of the relevant committee in respect of the applicant in the sealed cover. We, therefore, direct that the sealed cover should be opened and in case the applicant has been assessed suitable for crossing the E.B., his pay should continued to be allowed to be drawn as fixed vide pay fixation statement dated 25.3.1987. The learned counsel submitted that the applicant should be allowed interest on the payment to be made in arrears in case he is found suitable for crossing the E.B. We, however, are not inclined to grant this prayer. The O.A. is disposed of accordingly, with no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)


(T.S. OBEROI)
MEMBER(J)

19.12.1991.

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