

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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OA.453/91

Date of Decision: 25.03.1993

Shri H.R. Ghera

Applicant.

Versus

Union of India

Respondents

Shri S.S. Tiwari

Counsel for the applicant

Shri P.P. Khurana

Counsel for the respondents

JUDGEMENT (Oral) (Single Bench)

(delivered by Hon. Member (J) Shri C.J. ROY)

Heard the learned counsel for both parties and perused the documents on record.

2. The applicant who was working in the Ministry of Agriculture filed OA.454/91 dated 14.8.91 praying for issue of gratuity and pensionary benefits, which was allowed by granting gratuity and pensionary benefits. In this OA, it is observed that as the Enquiry Officer who is appointed to enquire into bungling of the LTCs of the applicant as far back as 1987 was sought to be enquired into and subsequently due to lack of records the Enquiry Officer held that the hearing is closed on 22.4.91. On this aspect, ⁱⁿ the judgement ^{is} observed at page 3 that it amounts to that no enquiry is pending against the applicant by virtue of order dated 22.4.91. A reference was made to the

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the Enquiry Officer's report which is signed by Shri H.R. Ghare, charged Officer, Shri P.C. Gautam and Shri R.K. Gaur, Inquiry Officer and annexed at page 33 of the OA. This applicant in another OA 2149/88 challenged the compulsory retirement and in which he succeeded in getting the penalty imposed, quashed. However, in the same judgement it was also held that if the disciplinary authority may, if so advised, start the enquiry afresh.

3. Here, the present OA 453/91 is filed. By this, the applicant claims that he should be allowed to cross the efficiency bar which is due on 1.8.89 and 1.8.90. Subsequently, the applicant retired on 31.8.90. He is also paid all the gratuity and pensionary benefits pursuant to the judgement in OA 454/91 and rendered on 14.8.91. In this OA, the short point involved is since the charge sheet is quashed in one OA with observation that if so advised, a de novo enquiry be allowed, whereas, in OA 454/91 it was observed that there could not have been any enquiry as on 22.4.91. Pursuant to the order of the Tribunal, a de novo enquiry started and the applicant participated in the enquiry but due to non production of relevant documents to the applicant, it could not be completed. This enquiry clearly pertain to the LTC bungling of 1987. The efficiency bar has to be crossed on 1.8.89. Therefore, in my opinion when the efficiency bar crossing has to be examined, the starting of the de novo enquiry which revised the original issued of notice emanating from the department is pending. The issue of notice is also clarified by the Hon. Supreme court as emanated from the employer (JT 1993 (SC) page 697, in the case of DDA Vs. S.C. Khurana.

4. Therefore, I feel that unless the enquiry is completely stopped this efficiency bar cannot be allowed to be crossed. No document is placed on record other than the averment at para 4.8 of the counter to substantiate that there is still enquiry pending and that efficiency bar cannot be allowed to be continued. But this counter is filed on 23.5.91. consequently the latest position is not placed before me.

5. In the circumstances, the following direction will meet the ~~ends~~^{ends} of justice. If there is no enquiry pending and if the enquiry is already stopped by the competent authority, the respondents are directed to consider crossing of the efficiency bar of the applicant and may be given the consequential benefits. Otherwise not.

6. The OA is disposed of accordingly. No costs

(C.J. ROY)

MEMBER(J)

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25.08.1993