

Central Administrative Tribunal
Principal Bench: New Delhi

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O.A. No. 1120/1991
in
M.A. No. 1402/1991

New Delhi this the 21st Day of September, 1995

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

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

Shri Kundan Lal Goel,
S/o Shri Jug Lal,
Resident of C/255, Gali No. 4,
Majlis Park,
Azadpur,
Delhi-110 033.

(By Advocate: Shri Astendar Kumar)

Vs.

1. The Secretary to Govt. of India,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

2. The Director General of Works,
C.P.W.D.,
Nirman Bhawan,
New Delhi-110 001.

The Executive Engineer,
P.W.D. Division XVII (DA),
Police Training School,
Nehrauli,
New Delhi-110 016.

Respondents

(By Advocate: Shri M.K. Gupta)

ORDER (oral)

Hon'ble Shri A.V. Haridasan, Vice Chairman, (J)

This litigation between the applicant, an employee, who retired from service way back in 1979 and the respondents has a long and chequered career. It commenced by the applicant filing a suit before the Court of the Senior Sub Judge, Delhi on 2.4.1980 for various reliefs like restoration of seniority as Assistant Engineer and his

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entitlement for crossing the efficiency bar at the relevant date to him, as a result of departmental proceedings. This original suit after commencement of the Administrative Tribunals Act, 1985 was transferred to this Tribunal under Section 29, A.T. Act, the same was registered as T-294/1986 and was disposed of by Order dated 29.7.1988. Leaving out details which are not necessary for resolving the issue involved in this case it is sufficient that this suit was disposed of inter alia with a direction that the respondents would review the question of the applicant's crossing the efficiency bar w.e.f. 1.1.1975 and subsequent dates as if there had been no disciplinary proceedings against him and thereafter allow arrears of pay as admissible to him on the basis of the order regarding the date of crossing the efficiency. For an Assistant Engineer to cross the efficiency bar he had to qualify in the prescribed test. The applicant had not passed the test though he attempted more than twice, but there is a provision which enables the competent authority to exempt an officer from the requirement of passing the test if he has on the date on which he is being considered for crossing the efficiency bar, crossed the age of 50 years. The applicant had crossed the age of 50 before 1.1.1975. The competent authority in his case should have considered his eligibility for exemption on the basis of his service record, because for granting exemption good record of service is necessary.

2. In 1975 the applicant was considered and he was not allowed to cross the efficiency bar and that was why he filed the suit. Pursuant to the directions contained in the judgement in T-294/1985, the respondents have reconsidered the case of the applicant for crossing the efficiency bar



with effect from 1.1.1975 and also on the subsequent years as if the departmental proceedings against him were not initiated. However, the applicant was informed that his case for crossing the efficiency bar at the stage of Rs. 810/- in the pay scale of Rs. 650-1200 with effect from 1.1.1975 had been reviewed by the competent authority who had not found him fit to cross efficiency bar with effect from 1.1.1975 or with effect from any of the subsequent anniversaries viz 1.1.1976, 1.1.1977, 1.1.1978 and 1.1.1979. Feeling aggrieved by this decision, the applicant had filed this application under Section 19 of the AT Act.

3. The applicant had alleged in this application that the respondents have not considered the case of the applicant for exemption for passing the departmental test and for grant of permission to cross the efficiency bar in an objective manner and therefore he has prayed that the impugned order dated 3.2.1989 to the extent it relates to the denial of his right to cross the efficiency bar be set aside with all consequential benefits.

4. The respondents in their reply statement have contended that the applicant was to found eligible for exemption from passing the departmental test and consequently for crossing the efficiency bar because of his bad record of service.

5. With a view to find out whether the case of the applicant has been duly considered by the competent authority for grant of exemption from passing the departmental test and permission to cross the efficiency bar

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with effect from 1.1.1975 or subsequent years we directed the respondents to produce for the perusal of the Bench the Minutes of the Departmental Promotion Committee which considered the case of the applicant and the file relating to the consideration for crossing the efficiency bar pursuant of the directions contained in the judgement in T-294/1986 as also the entire ACR dossiers of the applicant. When the application came up for final hearing it was stated on behalf of the respondents that the Minutes of the D.P.C. and the file are not available and an affidavit^{was} filed by the Deputy Director (Admn.) dated 14.9.1995 stating to the fact that despite best efforts made to trace out the record of the Minutes of the D.P.C. relating to the crossing of the efficiency bar of the applicant with effect from 1.1.1975 and later years could not be traced out.

6. However, the respondents have made available for our perusal the entire A.C.R. dossiers of the applicant.

7. Since the Minutes of the D.P.C. which considered the case of the applicant for crossing the efficiency bar as on 1. 1.1975 and subsequent years pursuant to the direction of the Tribunal in T-294/1986 is not available, we are left with no alternative but to take a decision on the basis of the available pleadings^{and} the ACR dossier of the applicant to see whether he had a good/bad or indifferent record of service.

8. It is strange that the records relating to the consideration of applicant's case for crossing EB ~~is~~ ~~the~~ pursuant to the judgement is missing especially when the

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matter was being fought out vigorously and when even a Contempt Petition was filed. How could such a document vanish into the air? There is no satisfactory explanation as to how the documents are missing. However, if the applicant has a good case for grant of the relief the mere lapse on the part of the respondents to preserve such valuable record should not be allowed to frustrate the relief. If the applicant had a good record of service he must be eligible for exemption from passing the departmental tests and from crossing the EB. Therefore we pursued the ACRs of the applicant for the year ending 31.3. 1974 and preceeding 3 years. In the year 1970-71 the applicant was shown as sincere and hard working officer and was rated as Good officer. In the year 1971-72 the applicant was rated as ~~was~~ good and hard working officer.

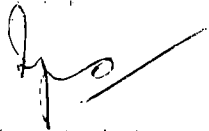
9. During the year 1972-73 he was shown an average officer. In 1973-74 he was graded as a good officer and fit for promotion. With this service profile for a period immediately preceeding w.e.f. 1.1. 1975, we are of the considered view that it cannot be held that the applicant did not have a good record of service.

10. In the light of what is stated in the foregoing paragraph, we are of the considered view that the decision contained in the impugned order dated 3.2.1989 that he was not found fit for crossing the efficiency bar with effect from 1.1.1975 is wholly unsustainable.

11. In the result we allow this application and set aside the decision of the respondent contained in the impugned letter dated 3.2.1989 and direct the respondents to,

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issue orders allowing the applicant to cross efficiency bar w.e.f. 1.1.1975, to refix his pay and pension accordingly and to disburse to him the resultant arrears of pay, pension and other benefits within a period of four months from the date of communication of a copy of the order.



(K. Muthukumar)

Member (A)

(A.V. Haridasan)

Vice Chairman (J)

'Mittal'