

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

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Date of Decision: 27.11.92

O.A. 1683/92

M.M. GUPTA

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... SHRI T.C. AGGARWAL.

For the Respondents

... SHRI P.H. RAMCHANDANI.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporters or not?

JUDGEMENT

( DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J). )

The applicant is aggrieved by the order dated 29.5.92 (Annexure A-1), by which the case of the applicant for crossing of the EB in the old scale of Rs.840-40-1000-EB-40-1200 was not considered and the applicant was not found fit to cross the EB at the stage of Rs.1000/- upto 31.12.85. In this OA, the applicant has prayed that a direction be issued to the respdts. to declare him to cross the EB from due date with all consequential benefits.

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2. The applicant has also filed earlier an OA 25/90, which was decided by the order dated 3.3.92 (Annexure A-2) with the directions to the respondents to reconsider the matter for crossing the EB w.e.f. 1.12.85. The departmental file was also summoned and the proceedings of DPC held on 12.5.92 were also perused. The DPC had observed that the CR of Shri Gupta for the calender year 1985 were considered alongwith the <sup>3rd</sup> recommendation No.37 of the Central Pay Commission, which was accepted by the Govt. It is also mentioned that the DPC has considered the facts for his confirmation w.e.f. 1.5.85 and found Shri Gupta not yet fit to cross the EB at the stage of Rs.1,000/- upto 31.12.85. In fact, the administration should have considered the matter in the light of the observations made in the judgement in OA 85/90 when the applicant has since been confirmed from 1.5.85 and his case of crossing of EB was due w.e.f. 1.12.84 when he was working as Pay and Accounts Officer in the aforesaid scale. However, his case was considered in the year 1985 for crossing of the EB but was not favourably considered by the than DPC. In fact, the crossing of the EB has been examined by an expert body i.e. DPC on the basis of the performance of the applicant recorded in the Annual Confidential Roll. In the year 1.1.84 to 31.12.84, the applicant has not been adversely commented in the ACR. From 1.1.85 to 31.12.85 he has also not <sup>been</sup> adversely commented though he has been judged as an average officer. In the next year i.e.

January, 1986 to December, 1986, the technical ability has been judged as good. The confirmation of an officer is an important matter and when the officer has been confirmed on 1.5.85 and only for the previous year his performance is <sup>does not</sup> to be judged for crossing of EB, it appears reasonable that the applicant was not able to pull the weight. As observed by the review DPG held on 12.5.92, <sup>while the</sup> record of the earlier DPC has not been furnished. The respondents have taken stand that the representation of the applicant for crossing of the EB with effect from due date was considered in the light of the OM dated 18.9.91 and instructions contained therein. The respondents have not given any reason whatsoever in the counter that as to when the applicant was found fit to be confirmed in the grade of Accounts Officer as to why he has not been considered fit for crossing of the EB. The respondents have also did not refer to any adverse remarks given to the applicant for the period earlier to the date when the EB of the applicant fell due. The applicant has also referred to the case of Kumari Ranjini Bajaj Vs. Lt. Governor (1992 (1) ATJ 582). The learned counsel for the applicant has also referred to the case of Nripendra Ch. Dey Vs. UOI (1990 (13) ATC 329).

3. Having given a careful consideration to the various submissions made and on the basis of the stand taken in the

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counter by the respondents, there appears to be no reason not to allow the applicant to cross the EB. For consideration of the Govt. servant for crossing the EB in a time scale of pay should be the same as the DPC constituted for the purpose of considering the case of confirmation of Govt. servant concerned. What the argument is that DPC need not be associated for considering EB case when the applicant has already been confirmed as Pay and Accounts Officer w.e.f. 1.1.85, and it was laxity on the part of the respondent No.1 that why the case of crossing the EB was not taken together at that time. The EB of the applicant was to be considered on the due date i.e. the entries earlier to that in the ACR have to be taken into account, which were also considered when the applicant was confirmed as Accounts Officers.

4. In the case of Gurdasw. Singh Fiji vs. State of Punjab (AIR 1987 SC 1622), the Hon'ble Supreme Court has observed that adverse report in Confidential Roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to prove his work and conduct or to explain the circumstances leading to the report. The DPC has not given at all any reason of withholding the crossing of the EB, though it mentioned that the applicant has been confirmed in the grade w.e.f. 1.5.85. There is no adverse remarks also in the character roll of the applicant. If the applicant in any manner was deficient then the applicant should have been informed.

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5. In view of the above discussion, I am of the opinion that the respondents should call the review DPC and favourably consider the case for crossing of the EB with effect from the due date and all consequential benefits be given to the applicant after crossing the EB in the revised scale also from 1.1.86.

In the circumstances, the parties to bear their own costs.

J. P. SHARMA  
( J. P. SHARMA )  
MEMBER (J)