

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

...

D.A. No.1823 of 1993

20th Day of Dec., 1993

Hon'ble Shri B K. Singh, Member(A)

Shri P. K. Sarin  
S/o Shri S. N. Sarin  
R/o Flat No.492  
Block No.KG-1  
Vikas Puri  
NEW DELHI

... Applicant

(By Advocate Shri Sohan Lal)

Vs.

Union of India through

1. The Secretary  
Ministry of Urban Development  
Government of India  
Nirman Bhawan  
NEW DELHI - 11
2. Director General of Works  
Central Public Works Dept.  
Nirman Bhawan  
NEW DELHI - 11
3. Chief Engineer (Delhi Admn)  
Zone I  
Old Barracks, Durzon Road  
Kasturba Gandhi Marg  
NEW DELHI

... Respondents

(By Advocate Shri Jog Singh)

O R D E R

Hon'ble Shri B. K. Singh, Member(A)

This D.A. No.1823/93 Shri P. K. Sarin Versus  
Union of India through the Secretary, Ministry of  
Urban Development, Government of India and Director  
General of Works, CPWD and Chief Engineer (Delhi Admn)  
has been filed against the following orders:

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(6)

(i) Order No.32/4516/90 EC.III dated 8.4.1992

iii. Passed by the the Director General of  
Works, CPWD, Nirman Bhawan, New Delhi.

2. The facts in brief are that the applicant was  
appointed as Junior Engineer(Civil) in CPWD  
on 2.8.1976. He was promoted as Assistant Engineer  
on 22.10.1984 in the pay scale of Rs.2000-60-2300-75-  
3200-100-3500, after passing the prescribed depart-  
mental examination. He got increments till 1.10.1989.  
As a result of criminal proceeding pending in Tis  
Hazari Court under Prevention of Corruption Act in  
pursuance of his being caught red-handed by C.B.I.  
on 29th April 1991 accepting bribe, he was placed  
under suspension. The next increment was due on  
1.10.1990 followed by 1.10.1991, 1.10.92 and 1.10.93.  
These have not been allowed to him on account of  
Efficiency Bar which he was required to cross on  
1.10.1990. The reliefs sought are:

- (i) To direct the respondents to clear E.B.  
w.e.f. 1.10.90 on the basis of ACRs upto  
31.3.90 raising his pay from 2300 to Rs.2375  
in the pay scale of Rs.2000 to Rs.3500.
- (ii) To direct the respondents to grant the  
increments due on 1.10.91, 1.10.92 and  
1.10.93 and to revise the subsistence  
allowance on the basis of these increments.
- (iii) To direct the respondents to pay the arrears  
of increments for ~~regular~~ pay with 18%

(B)

(7)

interest and to complete the ACRs for ~~promoting~~ him to cross E.B. w.e.f 1.10.90 and to award the cost of this unnecessary litigation.

3. A notice was issued to the respondents who filed their reply and contested the application. Heard the learned counsels, Shri Sohanlal for the applicant and Shri Jog Singh for the respondents. The learned counsel for the applicant cited the following rulings of the Administrative Tribunal in support of his arguments that the applicant is entitled to cross the E.B. on 1.10.1990 since his arrest and criminal case were launched under Prevention of Corruption Act by C.B.I. on the 29th April 1991.

1. 1993(24) ATC-221 : Anil Mahajan Vs. U.O.I.
2. 1992(22) ATC-302 : Kalicharan Vs. U.O.I.
3. 1991(15) ATC-379 : N. P. Kunhi Krishaw Vs. U.O.I. & Ors.
4. 1988(1) ATR-153 : Hameed Khan Vs U.O.I.

5. 1990(1) ATC-153

4. The learned counsel for the applicant also also cited the ratio established in the case of K. V. Janaki Raman Vs U.O.I. AIR 1991 SC 2010/20/16 where it has been held that any criminal/departmental proceeding launched after the due date of crossing of E.B. or promotion due, will not be taken into consideration and the matter will be decided on the basis of the performance as reflected in the ACRs of the official concerned. Thus, the Hon'ble Supreme Court enunciated the principle that promotion, selection grade, E.B. or higher pay scale, cannot be denied on the basis of pendency of a disciplinary proceeding or a criminal case if the same have been started after the due date.

5. The same is practically ratio established in the case of the judgement of the Hon'ble Tribunal cited in para-3. e. In para 6.

6. The learned counsel for the respondents, Shri Jog Singh admitted that the balance of convenience is in favour of the applicant. It is admitted by both the parties that he was due to cross E.B. on 1.10.1990 but since only the part ACRs were available for the previous 3 years i.e., 86-87, 87-88, 88-89 and no ACRs were available for 89-90, a decision could not be taken. He also admitted that the ratio established in the case of K. V. Janaki Raman (supre) is in favour of the applicant. The judgement of the Hon'ble CAT also go to prove the contention of the learned counsel for the applicant.

7. The Prevention of Corruption Act was launched in April 1991 when the applicant was caught red-handed while accepting bribe, by the CBI, and as such, he cannot be debarred from being considered for crossing E.B. on 1.10.1990. The DPC should have normally met in July 1990 as argued by the learned counsel for the applicant and accepted by the learned counsel for the respondents and taken a decision about this case. The learned counsel for the applicant also argued vehemently that OM No.290/4/2/88-(Estt) dated 4th September 1984 to keep the findings of DPC in Sealed Cover is not at all applicable in this case contrary to their plea taken on the basis of letter No.32/4516/90.EC-III dated 8.4.92. Both the parties agreed that DPC should meet and consider the case of the applicant.

8. In the light of the foregoing observations, the D.A. is disposed of with the following directions:

(8)

(i) The respondents are directed to hold a Review DPC and consider the case of the applicant on merit, taking into consideration his ACRs upto March 1990, within a period of 2 months from the date of receipt of this judgement.

(ii) The Reporting/Reviewing/Countersigning Authorities are directed to complete their assessments of the officer for the missing period, within a period of one month of receipt of this order.

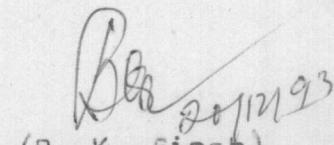
(iii) The E.B. should take the overall performance of the applicant and his efficiency on the basis of the part ACRs available from 1985-86 to March 1990 taking into consideration the part ACRs available and the other part ACRs to be recorded by the Reporting/Reviewing/Countersigning Authorities.

(iv) If he is considered fit for crossing the E.B., the respondents are directed to take a decision accordingly and increase the subsistence allowance and pay the arrears due to him.

(v) The applicant cannot be considered for increments w.e.f. 1.10.91, 1.10.92 and 1.10.93 since the case is pending against him in the Tis Hazari Court under Prevention of Corruption Act and the C.B.I. caught him red-handed on the 29th April 1991 and therefore the respondents will be well within their right to withhold the same till he is exonerated from the charges under the Prevention of Corruption Act launched by C.B.I. against him. There is no question of increasing the subsistence allowance on the basis of these increments which cannot be allowed to him during the pendency of the criminal case.

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9. With the aforesaid observations, the D.A.  
is disposed of. No costs.

  
(B. K. Singh)  
Member (A)

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