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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.192 of 1986

Y.N.Saran Applicant

Versus

The Secretary, Central Board of
Excise & Customs, New Delhi and
Another. Respondents.

Hon. S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

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The petitioner Y.N.Saran retired as Supdt. of Central Excise from Kanpur on 30.9.1982. He has filed this petition under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioner's case is that he was due to cross Efficiency Bar at the stage of Rs.1000/- on 1.10.1974. His case was placed before the Departmental Promotion Committee in October, 1976. The Committee found him not yet fit to cross the Efficiency Bar. His case was next considered in February, 1984 and he was allowed to cross Efficiency Bar w.e.f. 1.10.77 instead of 1.10.74. In the year 1975 a chargesheet had been issued to the petitioner which resulted in awarding of a punishment of compulsory retirement to him. This retirement was ordered w.e.f. 29.1.1979. The applicant preferred an appeal to the President and the penalty of compulsory retirement was set aside and the period of compulsory retirement from 29.1.79 to 5.3.82 was treated as duty for all purposes and he was given full Pay & Allowances for the aforesaid period. When he was reinstated the applicant represented for being allowed to cross Efficiency Bar w.e.f. his due date but he was informed that in 1976 he was found not yet fit but in 1984 he was allowed to cross Efficiency Bar w.e.f. 1.10.77.

His representation made to the Board of Central Excise was turned down and thereafter he has come to the Tribunal with this petition challenging the order passed by the Board of Central Excise as arbitrary and illegal. According to the petitioner the Departmental Promotion Committee which met in 1976 was prejudiced because of the chargesheet which was given to him in March, 1975. The petitioner claimed that he has not received any adverse remarks and therefore there was no reason to withhold his increment at the Efficiency Bar stage. The petitioner has quoted note 8 under F.R. 25 which says that a Government servant against whom departmental proceedings are pending but who is due to cross Efficiency Bar may not be allowed to cross the Efficiency Bar until after the conclusion of the proceedings and if the Govt. servant is completely exonerated he may be allowed to cross the Efficiency Bar w.e.f. retrospective date unless the competent authority decides otherwise. The petitioner has therefore sought relief that the order of the Board of Central Excise communicated to him on 19.6.85 and received by him on 1.7.85 refusing him to allow cross Efficiency Bar w.e.f. 1.10.74 be set aside.

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2. The facts of the case are not in dispute. The respondents have however averred that in view of the pendency of the enquiry proceedings which were under contemplation the petitioner was not allowed to cross Efficiency Bar ^{34/ in} a disciplinary case ^{34/ which} concluded by the petitioner having been punished by way of compulsory retirement on 29.1.79. This was later cancelled and the petitioner was reinstated and the intervening period was treated as duty for all practical purposes as if no order

of compulsory retirement was ever passed. According to the respondents the petitioner's case was first considered by the Departmental Promotion Committee in October, 1976 and he was found ^{as} 'Not yet fit'. His case was next considered in February, 1984 and he was allowed to cross Efficiency Bar w.e.f. 1.10.77 and not 1.10.74 the date on which he was due. This was done taking into account the effect of the adverse remarks recorded in his Confidential Report. On the petitioner's representing against the decision of the Departmental Promotion Committee his case was placed before a Review Departmental Promotion Committee in November, 1984 and the Review Departmental Promotion Committee gave a finding that the case did not require any review. The respondents have further averred that in the event of the Departmental Promotion Committee being convened after a gap of time the Committee is required to consider only those Confidential Reports which it would have considered if the Departmental Promotion Committee would have met as per the prescribed schedule. In case of employees who were under suspension or who had disciplinary proceedings against them the findings of the Departmental Promotion Committee were to be placed in a sealed ^{as} cover which should be open ^{as} after the conclusion of the proceedings. It was in this background that a Review Departmental Promotion Committee was convened. But the Committee after considering his case decided that no change was required in the conclusion arrived at. His case was again put up before the Departmental Promotion Committee in February, 1985 to see if benefit of increments could be given to him

but the Departmental Promotion Committee did not consider his case fit for further review. In June, 1985 the Board of Central Excise to whom the petitioner's case was referred also agreed to the conclusions arrived at by the Departmental Promotion Committee.

3. We have heard the arguments put forward by the learned counsel for both sides. We find that procedurally there has been nothing wrong because the instructions issued by the Ministry of Home Affairs, New Delhi under O.M. No.29014/3/84/Estt.A dated 4.9.84 circulated under Ministry of Finance, Department of Revenue, New Delhi's letter No.F.No.18/139/84-Coord dated 11.10.84 have been followed in this case. These instructions ensure that if the Departmental Promotion Committee is convened after a gap of time following the date on which the Govt. servant becomes due to cross the Efficiency Bar to the Committee has ^{to} consider only those Confidential Reports which it should have considered had the Committee met as per prescribed schedule. According to these instructions the same Departmental Promotion Committee is also competent to consider the reports of subsequent years and therefore ^{it} ~~we~~ can arrive at a conclusion whether the employee was fit to cross the Efficiency Bar from the next success-ive year or not. According to what the respondents have averred it is clear that the Departmental Promotion Committee has considered only the relevant Confidential Reports before arriving at the date of 1.10.77 instead of 1.10.74 for promoting the petitioner to cross the Efficiency Bar. To ~~app~~ satisfy ourselves that this has been correctly followed we have sent for the Confidential Character Rolls of the petitioner. The entries from 1978 backwards

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give the following positions :

<u>Period Ending</u>	<u>Overall Assessment</u>	<u>Fitness for Promotion</u>
31.3.78	Good	Fit
31.3.77	Good	Fit
31.3.76	Good	Fit
31.3.75	Average	Not indicated
31.3.74	Good	Fit
31.3.73	Good	*In his turn (Secret note is attached in regard to S.P. E.) case
31.3.72	Average	In his turn
30.6.71	Satisfactory	In his turn
13.4.70	Satisfactory	In his turn
30.6.69	Satisfactory	In his turn

A perusal of the assessment made in respect of the petitioner during the various years from 1969 to 1977 would indicate that except for one Secret Note in regard to S.P.^E Enquiry which was made in the Confidential Report for the year 1973 there is no indication that the petitioner was not fit to cross the Efficiency Bar from the due date. Even ~~where~~ ^{where} an average assessment has been made by the Reviewing Officer, ³⁴ His fitness for promotion to higher grade has been certified as ' In his turn '. The Departmental Promotion Committee normally examines the Confidential Reports for preceding five years. ³⁴ The petitioner was due to cross Efficiency Bar on 1.10.74 therefore the relevant Confidential Reports would be upto 30.6.69. A perusal of these reports does not indicate that the petitioner was not fit for further promotion. Crossing of the Efficiency Bar is not a matter of right. It is the discretion

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of the authority empowered to lift the bar which is the Departmental Promotion Committee. However this discretion cannot be arbitrarily exercised. From the entries in the Confidential Report it is quite clear that the remarks showing that he was fit enough to be promoted in his turn is in conflict with the conclusion arrived at by the Departmental Promotion Committee which has declared him 'Not yet fit' for crossing Efficiency Bar. There does not seem to be any basis for such a conclusion. It is therefore unjustified and colourable exercise of power.

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4. In the result the petition is allowed. The petitioner should be considered to have crossed Efficiency Bar w.e.f. 1.10.74 i.e. the due date. Under the circumstances we allow the petitioner the cost, throughout.

[Signature]
V.C.

[Signature]
A.M.

RKM

Dated the 28th October, 1986.