

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A.No.260 of 1987  
(W.P.No.6675 of 1980)

K.C. Beharwal ..... Petitioner

Versus

Union of India & Others .... Respondents.

Hon.Ajay Johri, A.M.

Hon. G.S.Sharma, J.M.

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

In this writ petition received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985 the petitioner has prayed for quashing the orders dated 30.6.76, 12.10.76, 9.10.79, 15.7.78 and 23.11.79 placed as Annexures 4,8,9 and 15 of the petition and for issue of a direction to the respondents to decide his appeals filed in September, 76 and February, 1979 and representations filed in September, 1979 and December, 1979 and not to promote any junior to the post of Assistant Labour Commissioner till his appeals are decided.

2. The petitioner's case is that after recruitment as a Labour Enforcement Officer (LEO) he was confirmed in September, 1964 on the same post. Certain persons junior to him have been promoted as an Assistant Labour Commissioner (ALC) by an order dated 7.2.80 and

he thereafter became the senior most L.E.O. to be considered for promotion to the post of A.L.C. But inspite of the fact that there were a number of vacant posts his name did not find place in the list of eligible candidates. On enquiry from the respondents the petitioner came to know that he has not been considered for the selection because some enquiry was pending against him. According to him he was not served with any chargesheet upto February, 1980 nor was he aware of any case pending against him. Therefore in terms of the Ministry of Home Affairs letter of 14.7.77 since no conclusion had been arrived for the issue of chargesheet he should have been considered for promotion alongwith others. In July, 1974 he was served with a memorandum of charges to which he replied and after considering his explanation he was imposed the penalty of 'Censure' in June, 1976 on a partly established charge. He had preferred an appeal against the punishment in September, 1976 on which no decision has been taken by the appellate authority. On account of the delay in the decision of his appeal he has said that he is suffering because his name is not considered for promotion to the next higher grade and he is declared not fit for promotion on account of punishment of Censure imposed on him. He was also not allowed to cross Efficiency Bar in February, 1975 and again in February, 1976. He was

informed by the respondents that he was not allowed to cross Efficiency Bar as he was not found fit on account of the disciplinary proceedings which were pending against him. Thereafter though promised reconsideration for crossing Efficiency Bar the petitioner has alleged that he was never considered and no orders have been communicated to him. In 1979 the respondents informed the petitioner that his case for crossing Efficiency Bar was considered by the Departmental Promotion Committee but the Committee did not find him fit. In the order which was communicated to him no reason has been assigned as to why he was not found fit. So for more than three years the petitioner has not been allowed a single increment after February, 75 which becomes ~~000~~ a penalty in itself and withholding of increments for more than three years should normally attract the provisions of CCS(CC&A) Rules but nothing has been done in this regard. The petitioner has even challenged the formation of the Departmental Promotion Committee which according to him was not in terms of the instructions laid down in the Departmental Manual. The petitioner sent further representation in December, 1979 requesting for reconsideration of his case and allowing him to cross Efficiency Bar but even this representation has not been decided. Against certain adverse entries in the years 1977-78 the petitioner filed a representation which has also not been replied.

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3/ 1250/-  
He has also challenged a deduction of Rs. ~~1250/-~~ from his salary by an order dated 15.7.79 against which also he filed an appeal which also has not been replied by the respondents. According to him there were again vacancies available in 1980 against which he should have been considered but inspite of the fact no enquiry has been conducted and neither any conclusion had been arrived for issue of chargesheet the promotions have been denied to him. Thus terming the action of the respondents <sup>as</sup> discriminatory because persons with worst service records than the petitioner have been promoted whereas he has been denied promotion and because his appeals and representations have not been decided which is illegal and arbitrary and on the facts that no enquiry has been held against the petitioner <sup>3/ and praying that</sup> neither any chargesheet has been issued, ~~whereas~~ he should be considered for promotion, the petitioner has filed this application.

3. In their reply the respondents have said that the post of A.L.C. is a selection post and they have admitted that no chargesheet was actually served on the petitioner till February, 1980 but an enquiry is pending against him and no decision has been taken so far. On receipt of a number of complaints against the petitioner the matter was referred to the C.B.I. who advised the respondents to initiate action for major penalty and also

for issue of a simple warning in respect of certain allegations. The disciplinary proceedings were initiated and part of the charge was proved on which the penalty of Censure was imposed on the petitioner. His appeal has also been decided on 1.1.81 and the decision has been duly conveyed to him on 3.1.81. They have admitted that the petitioner was due for crossing Efficiency Bar but when his case was considered alongwith others by the Departmental Promotion Committee, on account of the disciplinary proceedings pending against him it was decided to take up the case later. On conclusion of the disciplinary proceedings his case was reconsidered in September, 1976 and he was declared not fit for crossing Efficiency Bar. His case was considered again in November, 1980 but he was not found fit to cross Efficiency Bar. Since he has been held at the Efficiency Bar there is no question of his being granted any increment and according to the respondents the case is not covered under CCS (CC&A) Rules. His representation of September, 1979 was replied in October, 1979. The respondents have denied that the Departmental Promotion Committee was improperly constituted. In regard to filling up of the post of Asstt. Labour Commissioner the respondents have said that being a selection post even adhoc arrangements

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were recommended by the Departmental Promotion Committee which did not recommend the petitioner's name.

4. We have heard Shri K.C. Sinha, learned counsel for the respondents. Nobody appeared for the petitioner. We have also gone through the petition and the replies filed by the respondents as well as the rejoinder filed by the petitioner. In his rejoinder the petitioner has reiterated the fact that he has not received any chargesheet or memorandum of charges for any disciplinary action against him and that the decisions given on his appeals are no decisions in the eye of law because the order rejecting the appeal is a non speaking order passed without application of mind and was hurriedly passed after the Court had issued directions to decide the appeal.

28/ As far as the allegation made by the petitioner in regard to certain charges levelled against him in 1980 is concerned in Registration T.A.No.998 of 1986 (W.P.No.5244 of 1985) the petitioner had said that he gave his explanation in February, 1980 and a chargesheet was given to him in December, 1980. In this case the order of dismissal was passed by the disciplinary authority. This order was set aside by this Tribunal on 15.12.87 directing the respondents to consider the list of documents which was to be given by the petitioner and also to consider the list of witnesses which the

petitioner may give in support of his defence and then the Inquiry Officer would pass suitable order and fix a date of hearing. After following the proper procedure the final order was to be passed.

It would be clear that in 1980 a chargesheet was ~~decided to be issued~~ <sup>38</sup> against the petitioner to which he had replied on 7.2.80. Therefore his allegation that he had not been given any chargesheet upto February, 1980 would not appear to be correct. Once his conduct was under investigation his case for further promotion had to be subjected to the relevant rules which have been elaborately laid down in the CCS (CC&A) Rules, 1965. Crossing of Efficiency Bar is also a matter which has to be decided by the Departmental Promotion Committee after considering the performance of the candidate.

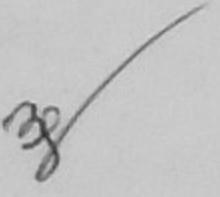
<sup>38</sup> The petitioner has not brought out any substantial arguments in his favour against his non clearance by the Departmental Promotion Committee for crossing Efficiency Bar. The respondents have clarified that the Departmental Promotion Committee was properly constituted and that the petitioner was not found fit to cross Efficiency Bar. The crossing of Efficiency Bar and promotion to the next post cannot be claimed as of right. A person can only demand that he should be considered if he is due and eligible but unless there is mala fide which is proved or there is an indication of arbitrariness in the action of the authorities the results of the deliberations of the Departmental Promotion Committee would not be challengeable.

6. In the reliefs that have been claimed by the petitioner in this petition, he has asked for quashing of the order dated 30.6.76 which is placed at Annexure-4 of the petition. By this order after a proper enquiry was conducted into the charges framed against the petitioner the Inquiring Officer submitted his report on 27.12.75 and on one of the charges the penalty of Censure was imposed on the petitioner. Nothing has been brought out by the petitioner to show in what way the enquiry conducted was not in accordance with the rules or in what way order given by the disciplinary authority could be challenged in a Court of law in its legal aspects. His grounds are that there has been discrimination and persons who are worst in service are offered promotion whereas he has been denied promotion and his appeals and representations have not been decided. We, therefore, do not find any force in this prayer. The second prayer is in regard to the quashing of the order dated 12.10.76 placed at Annexure-8 of the petition. This order is in respect of crossing of Efficiency Bar by the petitioner which was due in 1975. This order says that he was duly considered but was not found fit to cross Efficiency Bar on account of the disciplinary proceedings pending against him and disciplinary proceedings have since concluded and his case was again considered by the Departmental Promotion Committee but he was not found fit to cross Efficiency Bar.

Bar. The permission to allow crossing of the Efficiency Bar is also a function of the Departmental Promotion Committee which considers the various aspects. At the relevant time when his case was considered he had disciplinary proceedings against him which ultimately resulted in imposition of the penalty of Censure. During Efficiency Bar the mere fact that complaints have been made against an employee and some enquiries are being made about his conduct cannot debar him from crossing of the Efficiency Bar and if an employee has been proceeded against ~~for~~ minor penalty he can also not be held at the Efficiency Bar if he is found fit to cross the same. Even in case of major penalty if an employee is exonerated completely or is awarded only a minor penalty he is to be allowed to cross Efficiency Bar. It is not clear from the averments made by the respondents as to whether the petitioner was stopped at the Efficiency Bar by the Departmental Promotion Committee for any other reason. What they have said is that since a case was pending and ultimately the penalty was imposed he was not allowed to cross Efficiency Bar on his due date. This, to our mind, ~~is not a~~ <sup>is</sup> ~~not~~ <sup>not</sup> satisfactory explanation and since only a penalty of Censure was imposed on the petitioner the stoppage at the Efficiency Bar recommended by the Departmental Promotion Committee will not ~~be~~ <sup>be</sup> in keeping with the instructions on the subject. The case therefore has to be remitted

back for reconsideration by the Departmental Promotion Committee again who should take into consideration the various instructions on the subject and reassess their recommendations in the light of these instructions which do not debar a person from crossing Efficiency Bar in the case of minor penalty.

7. The other prayer made by the applicant is in regard to quashing of the orders dated 9.10.79 placed at Annexure-9. This order also pertains to a representation made by the petitioner in regard to his not being allowed to cross Efficiency Bar. This will be covered by our observations made in the para above.

8.  In regard to his relief for quashing of the order dated 15.7.78 which pertains to some transfer grant drawn by the petitioner on transfer from Kanpur to Bermo which was recovered by the impugned orders we do not think that the petitioner has been able to make out any case. He was advised that according to the rules he was not eligible for the reimbursement and if the rules do not permit utilization of the grant, the petitioner cannot run for relief to a Court of law. The petitioner has mentioned some documents in Annexure-15 in regard to an order dated 23.11.79 but we do not find any such order at Annexure-15 which

is only a letter addressed by the petitioner to the C.L.C. New Delhi in regard to non grant of his T.A. advance. This relief is therefore vague and cannot be considered.

9. Promotion is a matter of administrative discretion and the competent authority would be well within its right to decide whether an incumbent is suitable for the post or not and non promotion due to not being selected cannot be considered as a punishment, therefore <sup>31</sup> when ~~being~~ a Government servant has not been considered for promotion, he cannot complain in a court of law that any of his rights ~~have~~ been infringed and that he has been denied equality of opportunity. We reject the contention raised by the petitioner that he has been denied promotion and people who are less meritorious than him have been promoted. One cannot be a judge of <sup>31</sup> his <sup>31</sup> cause ~~his~~ own ~~case~~. It is the others who have to declare a person fit for promotion and we do not find that any case has been built up that there was any arbitrariness or discrimination against the petitioner, <sup>31</sup> to merit our interference.

10. On the above considerations except for allowing the relief in respect of his crossing of Efficiency Bar we reject the other prayers and dismiss the petition with costs on parties.

*31*   
 J.M.

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 A.M.

Dated the 19<sup>th</sup> Aug., 1988.