

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 10th day of August, 2000
Original Application No. 1625 OF 1993

A N D

Original Application No. 595 OF 1995

CORAM :-

Hon'ble Mr. SKI Naqvi, J.M.

Hon'ble Mr. M.P. Singh, A.M.

P.K. Srivastava

Son of Late S.P. Srivastava,

R/o Mohalla-Girital Road,

Prem Rani Bhawan,

Kashpur (Nainital).

(Sri K.C. Sinha, Advocate)

• • • • • Applicant
(In both the OAs)

Versus

1. Union of India through
Ministry of Finance, New Delhi.
2. Secretary, Central Board of
Excise & Custom, New Delhi.
3. Collector, Central Excise,
Meerut.
4. Assistant Collector,
Central Excise, Rampur.

(Sri Amit Sthalekar, Advocate)

• • • • • Respondents
(In both the OAs)

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By Hon'ble Mr. M.P. Singh, A.M.

By filing this OA the applicant has sought direction to quash the orders dated 28-2-1985 and 4-8-1986 and has also sought direction to grant consequential benefits and allow the applicant to cross efficiency bar w.e.f. 1-9-1977. He has also sought further direction to respondents to grant him selection grade and promotion with consequential benefits which have been withheld due to alleged disciplinary case and allow the applicant all the arrears of pay and allowances.

2. The case of the applicant as stated by him is that while working as Inspector in Customs, he was suspended on 2-1-1975. A charge sheet was given to him on 8-4-1975. The suspension was revoked on 17-6-76. As a result of this enquiry no penalty was imposed on him. He was given a simple warning vide an order dated 28-2-1985. On 30-3-1985, another order was issued treating suspension from 4-1-1975 to 20-6-1976 as duty. The applicant filed an appeal against the order of warning.

3. The order dated 4-8-1986 was issued by the respondents, through which certain officers were allowed to cross efficiency bar. The applicant's name is at Serial No.9. At the bottom of the list it is mentioned that the date of crossing efficiency bar of the applicant was 01-2-79, but he was found fit w.e.f. 5-3-1985 due to penalty imposed in disciplinary case. The applicant submitted a representation stating that the date of crossing efficiency bar of the applicant falls in 1977. He also stated that since the applicant

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has not been awarded any punishment prescribed in rules, such efficiency bar cannot be withheld. The representation of the applicant was rejected by the respondents. Hence, he has filed this OA.

4. The respondents have contested the case and stated that the applicant was due to cross the efficiency bar on 1-9-1977. The D.P.C. held on 2-4-1980, 24-7-1980, 28-4-1981 and 8-8-1981 did not consider his case, as a disciplinary case was pending against him. The disciplinary case was decided on 4-3-1985 resulting in the award of the penalty of deterrent warning. Thereafter, the case of the applicant for crossing of efficiency bar was considered by the D.P.C. held on 31-3-1986 which adjudged him fit to cross efficiency bar w.e.f. 5-3-1985. The respondents have also stated that the reliefs sought for by the applicant are grossly barred by limitation. Hence, the present application is liable to be dismissed as barred by time.

5. The applicant has subsequently filed another OA No.595 of 1995 wherein he has sought the direction to the respondents to give him promotion on the post of Superintendent and fix his pension treating him to have been retired from the post of Superintendent with all consequential benefits including payment of DCRG, Leave Encashment with 18% interest. Since the facts of both the OAs are similar and the reliefs sought for in the OA No.595/^{/95} are consequential to the reliefs sought in OA No.1625 of 1993, both the OAs are being decided by a common order.

6. We have heard counsel for both the parties and perused the record carefully.

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7. It is an admitted fact that the applicant was eligible to cross efficiency bar on 1.9.1977. He was not considered by the D.P.C. on the ground that a disciplinary case was pending against him which resulted in issuance of the warning. As per Rule 11 of CCS (CCA) Rules, 1965, warning is not one of the penalties, which can be imposed out of disciplinary proceedings. The Hon'ble Supreme Court vide its judgment dated 27.8.91 in the case of U.C.I. Vs. K.V. Janakiraman and others (1993 SCC (L&S) 387) has held "that if it is found as a result of the proceedings that some blame attaches to the officer then the penalty of censure at least, should be imposed. This direction is in supersession of the earlier instructions which provided that in a case where departmental disciplinary proceedings have been held, "warning" should not be issued as a result of such proceedings." In this case minor penalty of censure has not been imposed on the applicant and instead only a warning has been issued on the conclusion of disciplinary proceeding. Moreover, crossing of efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of disciplinary case against the official. As the applicant has not been awarded any penalty, he was eligible to ^{be considered to} cross ^{due} efficiency bar from the ^{due} date i.e. 1.9.1977. The directions are, therefore, required to be given to the respondents to allow the applicant to cross efficiency bar from 1.9.1977.

8. In the light of the above discussions, both the O.A.s are allowed and the orders dated 4.8.1986 and 28.2.1985 are quashed and set aside. The respondents are directed to ^{consider} ~~permit~~ the applicant to cross efficiency bar w.e.f. 1.9.77 and also grant him all consequential benefits including retirement benefits within a period of three months from the date of receipt of the copy of this order.

with

9. As regards relief sought^{for} by the applicant for promotion to the post of Superintendent, the same is not allowed as promotion to the post of Superintendent depends upon the suitability of the applicant and also his eligibility as per rules and instructions.

10. With the above directions, the OAs^{are} disposed of with no order as to costs.

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Member (A)

S. A. T. Magni
Member (J)

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