

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH?

ALLAHABAD.

.....

Original Application No. 1350 of 2002.

this the 18<sup>th</sup> day of November 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Raj Kumar Tiwari, S/o late Sri Ram Bharosey Tiwari, R/o  
28/6 Babupurwa Colony, Kidwai Nagar, Kanpur, working as  
UDC in Controllerate of Quality Assurance (GS), Kanpur.

Applicant.

By Advocate : In Person.

Versus.

1. Union of India through the Director General of  
Quality Assurance Department of Defence Production,  
Govt. of India, Ministry of Defence, DHQ, P.O.  
New Delhi.
2. The Controller, Controllerate of Quality Assurance  
(GS), P.B. No. 127, Meerpur, Kanpur Cantt.

Respondents.

By Advocate : Sri S.C. Misra.

ORDER

By this O.A., applicant has sought the following  
relief(s):

"----- to kindly issue necessary instructions and  
directions to the respondents to grant Efficiency  
Bar w.e.f. 1.6.1974 fixing basic pay Rs. 296/- p.m.  
till 25.4.1975 and then on 26.4.75 penalty imposed  
for 3 years decreasing Basic pay to Rs. 278 till  
25.4.78 and after 3 years on 26.4.78 it should be  
again fixed at Rs. 296/-P.M. and then grant further  
increments increasing Basic pay w.e.f. 1.5.78 to  
Rs.302/- P.M. as per rules given above in para 5  
Grounds of relief with legal provisions till 1.6.82  
and further as per rules of the Govt. of India Pay  
Commissions & orders."

2. It is submitted by the applicant that he was due  
for clearing E.B. on 1.6.1974 from Rs. 290 to Rs.296/-, but  
the same was held up due to disciplinary proceedings. On  
26.4.75, he was awarded double penalty ( Annexure A-1)





which reads as under :-

"Accordingly the officer commanding imposes the penalty of reduction to the Third Lower stage at Rs. 272 P.M. in the Time Scale of pay Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400 from the date of issue of these orders on the said Sri R.K. Tiwari for a period of 3 years having cumulative effect with further directions that the said Sri R.K. Tiwari shall not earn any increment of pay during the period of such reduction. On expiry of 3 years from date of the reduction will have the cumulative effect of postponing his future increments by three stages.

3. It is submitted by the applicant ~~after three years~~<sup>was</sup> he should have been granted E.B. w.e.f. 1.6.74 or on 25.4.78 after three years, but the case <sup>was</sup> not decided. His submission is that he should have been allowed to cross EB on 1.6.74 by raising his pay to Rs. 296/- and then penalty imposed for 3 years at the stage of Rs. 296/- otherwise it amounts to double jeopardy. He has relied on FR 25(3) to suggest that when E.B. is allowed, he is entitled to all earlier increments as well. Being aggrieved, he filed O.A. and W.P., but both were dismissed. In SLP, however, the Hon'ble Supreme Court passed the following order :

"While we are not inclined to grant Special leave to appeal against the order imposing penalty, we are of the opinion that once the period of 3 years has exhausted during which under the punishment imposed the appellant was denied the regular increments, on expiry of 3 years, his monthly increments should be given to him. Mr. A.K. Srivastava, learned counsel says that the petitioner is not given such increments. Mr. Harbans Lal, learned counsel says that he has no information but he undertakes on behalf of the Union of India that the increments shall be given to the petitioner from and the arrears shall be paid within two months from today.

With this observation, the Special Leave Petition is dismissed."

It is submitted by applicant that B.  
4. Pursuant to these orders, respondents granted him increment at Rs. 296/- w.e.f. 1.6.82 as a result of which his 8 years increments were withheld which is absolutely wrong and arbitrary because the penalty was only for 3 years. He has also relied on the decision given in the case of Gajey Singh Sharma Vs. Union of India & Ors annexed as Annexure-9 to the O.A.





5. The respondents have, on the other hand, submitted that the applicant was suspended w.e.f. 20.12.1973 on disciplinary grounds and was issued a chargesheet on 10.7.74 for misconduct. Though his suspension was revoked on 17.10.74, but his misconduct was proved. Therefore, the disciplinary authority imposed the penalty of reduction of pay by three stages of Rs. 272/- from Rs. 290/- per month w.e.f. 26.4.75 for the period of three years having cumulative effect with further direction that he will not earn any increment during the period of such reduction.

6. They have further explained that the applicant was in the pay-scale of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400 and was drawing Rs. 290/- as basic pay with next date of increment on 1.6.74 prior to imposition of the penalty, but he was required to cross EB at Rs. 290/- before he could get the next increment. On expiry of the penalty, the pay of the applicant was fixed at Rs. 284/- on 11.6.78 with the next date of increment due on 1.6.79. However, the same was corrected to Rs. 290/- on 26.4.78 with the next date of increment due on 11.6.78. The applicant, however, filed a Civil Suit no. 1400/78 before III Additional Munsif, Kanpur challenging the validity of the punishment order, which was dismissed. He filed appeal before the District Judge and second appeal no. 1727 of 1981 in the High Court of Allahabad, which too were dismissed on 22.4.81 and 6.7.82 respectively. He then filed SLP (Civil) no. 11569 of 1982 before the Hon'ble Supreme Court, but the Hon'ble Supreme Court had, <sup>though B</sup> ~~however~~, dismissed the S.L.P. but it was observed that once the period of 3 years has exhausted during which under the punishment imposed the appellant was denied the regular increments on the expiry of 3 years his monthly increments should be given to him. Based on the Hon'ble Supreme Court's order, DPC meeting was held on 12.2.85 which considered the EB clearance w.e.f. 11.6.78, but was

B



of the opinion that he was not found fit to cross the EB, but cleared for crossing EB w.e.f. 1.6.82 only. The applicant then filed O.A. no. 203 of 1991 before this Tribunal for allowing him the benefit of crossing the EB after the stage of Rs. 290/- w.e.f. 1.6.74 or 1.6.77 or 1.6.78. The Tribunal directed the respondents to consider the case of the applicant for crossing the E.B. w.e.f. 1.6.78 till 1.6.81 and if the applicant is found fit for clearing the EB from an earlier date, he should be given the same. In compliance of the Tribunal's order, again a review DPC meeting was held on 28.9.2000 which found the applicant unfit to cross the EB from an earlier date in view of his poor performance and conduct and again recommended clearance w.e.f. 1.6.82 only, which was communicated to the applicant on 6.12.2000. They have, thus, submitted that there is no illegality in the orders passed by the respondents. The applicant has filed the present O.A. only in October'2002. The respondents have, thus, submitted that this O.A. is barred by limitation as it could have been filed within one year from 6.12.2000. They have further explained that as per Ministry of Finance UO No. 7743-E-III(A)/72 dated 4.11.72 (Annexure R-1) according to which the period of suspension is not to be counted for the purposes of determining the actual date of next increment and since the applicant was suspended, therefore, his date of next increment worked-out to be 28.3.75. Moreover as per the Ministry of Defence Memo dated 30.11.75 in case where crossing of EB has not been considered on account of pendency of negligence, in such cases cannot be considered with retrospective effect so long the Govt. servant is not completely exonerated and such cases can be considered only w.e.f. the date following the conclusion of disciplinary/vigilance case. In the instant case, on expiry of penalty period, the EB in the case of the applicant was not lifted by the DPC from 1.6.78 to 31.7.80 as he was not considered fit to cross EB, therefore, he could not have been considered w.e.f. 1.6.74 as he was not



exonerated from the charges levelled against him. They have <sup>also</sup> referred <sup>to</sup> ER 25(4) wherein it is clearly mentioned that if the Govt. Servant is not completely exonerated, his case for crossing the EB cannot be considered with retrospective effect from the due date. On the contrary, such cases can be considered with effect from the date following the conclusion of the disciplinary/vigilance case. As far as Headquarters' letter dated 10.7.1986 is concerned, they have submitted that the officer had only sought a clarification and it cannot be treated as directive because ultimately it was the DPC which considered the case of the applicant for crossing the EB and since the DPC found fit the applicant to cross the EB w.e.f. 1.6.82 only naturally, he could not have been given the increments from an earlier date. They have also explained that the EB remained in force till 31.12.1995 and that too was for Group 'D' employees by IV Pay Commission, which has no relevancy as the applicant belonged to Group 'C' post at the time of consideration for EB. They have, thus, submitted that there is no merit in the O.A., the same may, therefore, be dismissed.

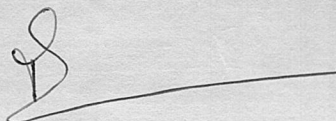
7. I have heard the applicant who has appeared in person and learned counsel for the respondents and have also perused the pleadings as well.

8. This is a simple case where on the day when the applicant was due to be considered for crossing the EB. He was put under suspension, therefore, naturally, his case had to be kept in the sealed cover. Thereafter, on the basis of the chargesheet, the charges against him were proved and the penalty was imposed on the applicant on 26.4.75 whereby he was given penalty of reduction to the third lower stage at Rs.272/- in the pay-scale of Rs.260-6-290-6-EB-326-8-366-EB-8-390-10-400/- for a period of three years with cumulative effect. Since



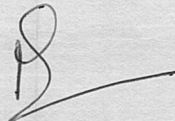


he was awarded punishment naturally, the recommendations of the DPC were not to be opened in his case and his case was to be considered for crossing the EB after three years only i.e. when the period of penalty was over. The respondents have categorically stated that his case was considered by the DPC not once, but twice and it was found that he was <sup>found fit</sup> fit for crossing the EB only w.e.f. 1.6.1982 and not for earlier years. The DPC did not find him <sup>fit</sup> fit for crossing the EB due to his poor performance. It was in these circumstances that from 1978 to 1982, the applicant could not get the increments because at the stage of crossing the EB, one becomes entitled for next increment only if the <sup>EB is</sup> /lifted by the DPC. In the instant case, since the DPC did not find him <sup>fit</sup> fit to cross the EB naturally, he could not have been granted increments from 1978 onwards till he was found fit. Therefore, it is wrong on the part of the applicant to suggest that as a result of penalty, his eight years increments have been withheld. The increments were held only for three years upto 1978, but thereafter he did not earn increments because he was not allowed to cross the EB by the duly constituted DPC. The applicant has not alleged any malafides against the members of the DPC, therefore, the recommendations given by the DPC cannot be doubted and if the applicant was not allowed to cross the EB, he has to blame himself for his poor performance and not the department concerned. The applicant appearing in person has strenuously argued that he should have been allowed to cross the EB before imposing of penalty and then his pay should have been reduced. This argument is not even open to him because he had challenged the order of penalty right from the Tribunal to the Hon'ble Supreme Court and all the Courts had not accepted his contention on this point and the Hon'ble Supreme Court





had also observed that after penalty period is over, his increments should have been given to him. For that purpose, he had already been considered by the DPC and informed that he was found fit for crossing the EB only w.e.f. 1.6.1982, therefore, I do not find any **illegality** in the orders passed by the respondents. The O.A. is accordingly dismissed with no order as to costs.



MEMBER (J)

GIRISH/-