

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 300 OF 1987
~~XXXXXX~~

DATE OF DECISION 24-06-1988.

Shri Kanaksinh N. Gohel Petitioner

Shri Y. H. Vyas Advocate for the Petitioner(s)

Versus

The Collector Central Excise Respondent

Shri J.D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI : VICE CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

J U D G M E N T

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OA/300/87

24-06-1988.

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

The petitioner Shri N.K. Gohel was promoted as Superintendent of Central Excise in the scale of Rs.650-1000-EB-40-1200. By letter dated 23-4-1984 he was informed that in his annual confidential report for the year 1983 he was graded as "Just Adequate" against the column "Quality of work and quality of inspection." This communication also stated that it was made for enabling him to improve his performance. He asked for a clarification of this remark and he was informed by Deputy Collector of Central Excise and Customs by letter dated 2-6-84 that the grading "Just Adequate" was not considered as adverse and as such the question of representation against it does not arise. The petitioner is admittedly confirmed in the Grade of Superintendent Group 'B' and promoted as Superintendent by order dated 26-5-1981. He was informed by letter dated 12-3-1985 that the Departmental Promotion Committee held on 16-2-1985 had considered his case for crossing the efficiency bar at the stage of Rs.1040/- with effect from 1-1-1985 but that committee did not find him fit to cross it. In reply to his representation against this decision it was stated by the letter dated 3-5-1985 that he was not found fit to cross the efficiency bar. He thereafter appealed against the rejection of his representation to the Chairman, Central Board of Excise and Customs dated 19-6-1985 and he was replied to by him to the effect (by letter dated 23-7-1986) that it was not found possible to accede to his request. On 19-12-85 the applicant was served with a memorandum regarding misconduct under Rule 16 of the C.C.S. (C.C.A.) Rules, 1965. Previous to this on 9-10-1985 he was suspended but the order was revoked from 29-11-85. On 20-5-1986 adverse remarks were communicated to him for the year 1985 that he was found to be remiss in controlling a licence for which



a charge sheet has been issued. He represented against these remarks on 9-10-86. The petitioner's contentions are that :-

- (i) Prior to 1-1-85 the petitioner had no adverse remarks, that the report "Just Adequate" for the year 1983 was not regarded by the respondent authorities as adverse and, therefore, it was stated to him that no question of filing representation has arisen^{and} on so being told, he had not filed any representation.
- (ii) The Departmental Promotion Committee, therefore, should not have withheld allowing the petitioner to cross the efficiency bar in its meeting dated 16-2-1985.
- (iii) That the disciplinary proceedings started against him are a distinct matter and should not be the reason for not allowing him to cross the efficiency bar.
- (iv) That the disciplinary proceedings relate to an adverse remark for the year 1985 which is subsequent to the due date for crossing the efficiency bar and, therefore, this is not to be allowed to stand in his way for crossing the efficiency bar.

2. The most important contention of the petitioner is that the pay scale has been revised to Rs.2000-2300-EB-75-3500 and his pay has been fixed therein at Rs.2820/- and in terms of the Government's instructions dated 13th March, 1987 bringing the Central Civil Services (Revised Pay) Amendment Rules, 1987 which have been deemed to have been brought into force from 1-1-1986, on pay being fixed under these rules, efficiency bar becomes operative only with reference to such bars in the revised scale, whether the Government servant has crossed or not crossed them or has been held up at the efficiency bar in the existing scale. In the revised scale there is no efficiency bar at or after the pay of Rs.2800/- as the only efficiency bar in that scale is the pay of Rs.2300/-. The petitioner, therefore, states that he has now no efficiency bar to cross. The petitioner has, therefore, sought relief for declaring that he has crossed the efficiency bar on 1-1-1985 with all consequential benefits.

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3. The respondent's stand in reply is :

- (i) that the application having been filed one year after has become time barred ;
- (ii) that the D.P.C. did not recommend that the petitioner was fit to cross the efficiency bar in its meeting dated 16-2-85 at the stage of Rs.1000/- and the representations of the petitioner were duly considered and rejected and appeal there against was also considered by the Chairman, Central Board of Excise and Customs and rejected by letter dated 9-7-86.
- (iii) that according to the Government's instructions dated 6-4-87, an officer against whom disciplinary proceedings are pending can have their cases for promotion or crossing efficiency bar considered only after completion of such proceedings. The respondent admits that category "Just Adequate" was not regarded as adverse and the petitioner was so informed and it was stated that the question of representation against it does not arise;
- (iv) that the petitioner was informed that the adverse remarks for the year 1985 communicated to him were based on factual performance and although a charge sheet in respect of it was under enquiry, the presumption that they do not carry any weight being premature until the charges are disposed of, was not correct;
- (v) that the respondent admits that the petitioner's pay has been fixed at Rs.2820/- in the revised scale and that in that stage there is no efficiency bar but the respondent disputes the interpretation of the petitioner regarding the interpretation of the notification. The respondent also states that in terms of Rule 25 of the Fundamental Rules when efficiency bar is prescribed in time scale, specific sanction of the authority empowered to withhold increments under Rule 24 is required and the stoppage of an increment after the efficiency bar on ground of unfitness is not a penalty within the meaning of Rule 11 and, therefore, the petitioner is not entitled to be given any opportunity to show cause against it.

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4. The petitioner was informed of the decision that he was not considered fit by the D.P.C. to cross the efficiency bar and, therefore, was not allowed by communication dated 12th March, 1985. His representation was rejected by letter dated 3rd May, 1985 and his appeal to the Board was finally rejected on 23-7-86. It is this communication which has to be regarded as final disposal of his representation. He has filed the present petition dated 24-6-87 which is within the period of one year and, therefore, under Rule 21 of the Administrative Tribunals Act, the petition is within the period of limitation.

5. Regarding the Government's circular dated 13-3-1987 which brings the Central Civil Services (Revised Pay) Amendment Rule, 1987 into force on the 1st day of January, 1986, the relevant extract reads as under.

"2.

(d) in rule 8,

(i) for Note 1, the following Note shall be substituted, namely :-

Note 1. - Wherever the pay has been fixed under these rules, the efficiency bar will become operative only with reference to such bars in the revised scale, irrespective of whether a Government servant had crossed or not crossed or had been held up at the efficiency bar in the existing scale."

The plain reading shows that after 1-1-1986 the efficiency bar in the pre-revised pay scale at Rs.1000/- does not remain operative whether the petitioner crossed or not crossed or had been held up in the "existing scale". Against this reading the respondent has merely stated as follows.

"The interpretation made by the applicant with regard to the Notification is misconceived and untenable at law. I beg to refer to and rely upon the said Notification as and when it is necessary."



In the further reply dated 25-1-1988 the respondent has stated as follows.

"Thus the consideration of the applicant's case for crossing the efficiency bar would arise from ~~the~~ following the conclusion of the disciplinary proceedings i.e. after 30-11-1987. The applicant's case is for crossing the efficiency bar in the pre-revised scale of Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200. This scale has been revised and come into effect from 1-1-1986 on the basis of the recommendations of the 4th Pay Commission and as such his case does not call for review for crossing efficiency bar in the pre-revised scale with effect from 1-12-1987 or a subsequent date thereto in terms of the instructions contained in O.M. dated 21-9-1967 as referred to above."

The respondent's case that the final decision in the disciplinary proceedings has been taken only on 27/30th November, 1987 and the petitioner has been censured and, therefore, not fully exonerated. The question, therefore, of reviewing the decision of refusing the petitioner to cross the efficiency bar in the pre-revised scale prior to 1-12-1987 does not arise. We do not accept this position as at all valid. The circular which is deemed to be in force from 1-1-1986 specifically refers to the cases which have been held up at the efficiency bar in the existing scale and states that on revision of the pay scale the efficiency bar in the existing scale will not operate. It is significant that the note referred to states that the efficiency bar will become operative only (emphasis supplied) with reference to such bars in the revised scale. It is, therefore, clear that from 1-1-1986 there is no efficiency bar at the stage of Rs.1000/- operative for the petitioner from that date.

6. There is force in the contention of the respondent that crossing of the efficiency bar is not automatic and cannot be regarded as a routine matter. The competent authority has to give a specific sanction for the increment after the efficiency bar and until it is so given, there is no automatic earning of the increment after the efficiency bar. The question is, therefore, whether the competent authority and the D.P.C.



which recommended on the subject have applied their mind to the relevant record for deciding the question. The respondent does not dispute that prior to the calendar year 1984 there was no adverse remark and that in the year 1984 the grading of "Just Adequate" given to the petitioner was not regarded by the respondent as adverse and they^{have} stated so adding that, therefore, the question of any representation against it does not arise. The petitioner was due to cross the efficiency bar on 1-1-1985. It is not understood on what grounds the D.P.C. considered the petitioner to be not fit to cross the efficiency bar on the basis of the record of the petitioner upto 1-1-1985. The question is not of promotion and for selection for promotion. If there had been any adverse remarks or if there had been any disciplinary proceedings or if there had been any fact or circumstance from which there could have been any legitimate inference that the petitioner was not fit, the competent authority may have felt justified in stopping the petitioner from crossing the efficiency bar. This has not been the case.

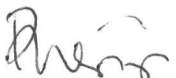
7. Adverse remarks were given to the petitioner in 1985 and disciplinary proceedings were started against him which resulted in censure in November, 1987 but all these developments are after 1-1-1985. No doubt they are distinct from the question of crossing of efficiency bar. The memorandum containing the articles of charge has been issued on 19-12-1985 and the adverse remarks for the year 1985 have been communicated to the petitioner only on 20-5-1986. The decision to allow the petitioner to cross efficiency bar had to be taken on the basis of the record on the performance of the petitioner upto the end of 1984. Therefore, while the respondents might be justified in imposing upon the petitioner such punishment, or cause such material injury to him as can be done through lawful orders, withholding of increment after efficiency bar cannot be upheld in this case. Until December 1985 when the memo of charges was issued, there was no material at all for bringing into operation the instructions relied upon by the respondent. No disciplinary proceedings were pending against the petitioner until then. Had such disciplinary proceedings been pending, when the efficiency bar was withheld from 1-1-1985, the respondent could have validly relied upon the instructions dated 6th April, 1979. This has not been the case.

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8. The petitioner has relied upon A.I.R. 1986 SC 180, A.I.R. 1978 SC 597, 1986 Lab IC 269 and 1973 (I) S.L.R. 546 to show that the petitioner is entitled to an order in his favour that there is no material to show why he was not allowed to cross the efficiency bar w.e.f. the due date and that an order not allowing him to cross the efficiency bar without giving him an opportunity of hearing was illegal. We have held in several cases that when any adverse order affecting the petitioner or causing him material injury is passed without giving him an opportunity, it is against the principles of natural justice and is invalid.

9. We, therefore, declare that the petitioner be deemed to have crossed the efficiency bar on 1-1-1985 and be allowed all benefits on that basis. These may be calculated and paid to him within four months of the date of this order. The respondent is free to take such action as is justified regarding the disciplinary proceedings and the result thereof.

10. In the result the petition has merit subject to our above observations and orders and is allowed. No order as to costs.


(P. H. Trivedi)
Vice Chairman.