

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 473 of 1987 ~~100~~
~~P.A. No.~~

DATE OF DECISION 16-9-1988

Shri P.D. Karelia Petitioner

Shri V.H. Vacharajani Advocate for the Petitioner(s)

Versus

Union of India 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.

(7)

J U D G M E N T

OA/473/87

16-9-1988

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

The petitioner was punished by order by District Manager Telephone, Rajkot dated 26th February, 1985 with the penalty of withholding of three increments without cumulative effect after disciplinary proceedings against which on appeal the punishment was reduced to censure by order dated 10-12-85. The petitioner was allowed to cross the efficiency bar from 1-6-81 according to the recommendation of the DPC which met on 27-3-85 but was denied arrears of increments till 26-2-85. The petitioner represented that, now that his punishment stood modified to censure, he should be paid interest on the delayed payment of gratuity and pension which was received on 10-2-86 although he had retired on 30-9-85. The petitioner was earlier suspended by order dated 19th August, 1980 but the order was revoked by S.D.O. Telephones on 26-2-81. The petitioner, therefore, claims that he was wrongfully kept under suspension for a period of 6 months and 15 days because proceedings were actually initiated only on 29-9-81. The petitioner has, therefore, asked for relief in terms of declaring that non-payment of arrears of his duly released increments from 1-6-81 to 26-2-85 is arbitrary and that he should be allowed full pay and allowances for the period of suspension from 19-8-80 to 23-8-81 as the disciplinary proceedings were initiated only on 29-9-81. The petitioner claims that although his cause of action has arisen in 1981 when he was due to cross efficiency bar, he could obtain a decision on the subject only on the conclusion of the disciplinary proceedings and on appeal against it being decided and after the recommendation of the DPC was available. This could not have been before 1985. Accordingly the bar of limitation does not apply from the cause of action having arisen in 1981 as pleaded by the respondents.

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2. The respondents contend that the cause of action has arisen in 1981, the application filed on 24-9-87 renders it time barred. Besides, the punishment was reduced to censure only because as the petitioner has reached the maximum of his pay scale and withholding of future increments could not be done and also because the petitioner was about to retire. The recommendations of the DPC to allow the petitioner to cross efficiency bar was only in accordance with FR 25(7) read with ~~FR~~ FR 25(10). The petitioner was not entitled to any arrears upto 26-2-85. The petitioner was informed by order dated 26-8-86 that he was not entitled to any interest as the petitioner was not fully exonerated and the punishment was reduced to censure. Both the order of suspension and of revokation are within the powers of S.D.O. as per C.C.S. Rules.

3. The parties were allowed to file written submissions at their request.

4. We find that in this case the question of giving full pay and allowances during the period of suspension has been confused with the entitlement regarding arrears of pay on increments following the crossing of efficiency bar and deciding upon the interest on delay in the payment of such arrears. The petitioner has cited 1986(2) SLR 453 - Daya Nand Vs. Haryana Development Corpn. in which it was held that prolonged suspension without initiating any disciplinary proceedings amounts to abuse of powers and the arguments that the right of the employer to place its employees under suspension is unfettered did not prevail upon the court in not interfering with that order. He has also cited AIR 1983 SC 130 - D.S. Nakara Vs. Union of India in support of legitimate classification resulting in discremination. The punishment of censure is specifically a revised order and substitutes the order of punishment of withholding of three increments. In other words with the revision of the order of punishment on 10-12-85, it takes its effect from the order of punishment of withholding of three increments without cumulative effect dated 26-2-85. The order of suspension was passed on 19-8-80 and was revoked

on 2-3-81. The date on which crossing of efficiency bar is to be allowed is governed by Rule 25(7) and 25(10) of F.Rs., S.Rs extract reproduced below.

"Rule 25(7) of F.R. S.R. : Date of effect of crossing efficiency bar when it is considered after conclusion of disciplinary case:

A Government servant against whom departmental proceedings are pending but who is due to cross the efficiency bar prescribed in his time-scale of pay may not be allowed to cross the efficiency bar prescribed in his time-scale of pay, until after the conclusion of the proceedings. A question was raised as to the date from which a Government servant whose case for crossing the efficiency bar has not been considered on account of the pendency of a disciplinary/vigilance case against him, should be considered for being allowed to cross the efficiency bar, after the enquiry is over. It has been decided in consultation with the Ministry of Home Affairs, that if after the consultation of the proceedings, the Government servant is completely exonerated, he may be allowed to cross the efficiency bar with effect from the due date retrospectively, unless the competent authority decides otherwise. If, however, the Government servant is not completely exonerated, his case for crossing the efficiency bar cannot be considered with retrospective effect from the due date. Such cases can be considered only with effect from a date following the conclusion of the disciplinary/vigilance case, taking into account the outcome of the disciplinary/vigilance case.

(Decision taken on M.H.A. file No.39/2/61-Estts.(A) and G.I.M.F./O.M. No.F.I(II)-E.III(A)/67, dated the 21st September, 1967)

RULE 25(10) OF F.R. S.R. :

When penalty of withholding of increment imposed while official held up at efficiency bar stage. Recently a case has come to the notice in which a Government servant became due to cross efficiency bar in October, 1970, but was not found fit to cross the bar. In the meantime he was placed under suspension and he could not, therefore, be allowed to cross the efficiency bar while under suspension in 1971 and October, 1972. The disciplinary proceedings against him ended

with the imposition of penalty of withholding of increments for five years as per the punishment order issued in December, 1972. A question has been raised as to how the penalty can be enforced and the pay of the Government servant regulated.

It has been decided in consultation with the Department of Personnel and the Ministry of Finance that in the type of case referred to, the case of the Government servant for crossing the efficiency bar should be reviewed on a date immediately following the date of the order of penalty and if he is found fit to cross the efficiency bar, the stage at which he would draw pay above the efficiency bar should also be decided. Once it is done, five increments commencing from the date of next increment after being allowed to cross the efficiency bar can be withheld and the penalty thus enforced. In case he is not found fit to cross the efficiency bar from a date immediately after the conclusion of the disciplinary proceedings, his case should be reviewed with reference to every subsequent anniversary of the original due date until he is found fit to cross the efficiency bar. Thereafter, the stage at which he should draw the pay above efficiency bar should also be decided and the penalty order enforced as explained above.

(D.G.P. & T Letter No.6/13/72-Disc.II/Disc.I, dte.9-2-1971)"

5. In this case there is no doubt that the period of suspension cannot be regarded as inordinately long and in view of the resultant punishment the petitioner cannot be regarded to have been fully exonerated. That a punishment of censure is one of the modes of punishment cannot be disputed. Accordingly the due date on which increment following the crossing of efficiency bar has to be allowed cannot have any retrospective effect unless the competent authority decides to do so. Such crossing of efficiency bar can only be allowed following the conclusion of disciplinary case taking into account the outcome thereof. The stage at which the increment following the crossing of efficiency bar is earned is to be decided following the order of penalty. In this case the order of penalty as revised is 10-12-85 and the officer has been allowed to cross efficiency bar following the DPC meeting which was held on 27-3-85 which resulted in denial of arrears of payment of increments until

26-2-85. The petitioner retired from service on 30-9-85. We do not find any illegality or irregularity in the decision of the respondent authorities nor find any right of the petitioner in terms of the relief he has claimed. We see no reason to interfere with the impugned orders. The petition is, therefore, found to have no merit and is rejected. There shall be no order as to costs.


(P.H. Trivedi)
Vice Chairman.