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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 133/1997

Date of decision: 12-8-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Hon'ble Mr. V. K. Kapoor, Administrative Member.

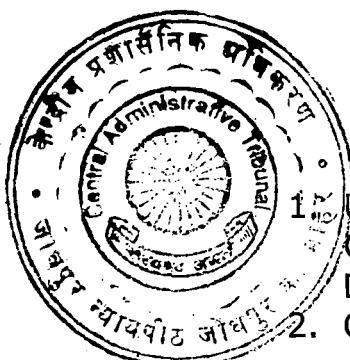
Shri G.R. Bhaskar, S/o late Deep Chand Bhaskar, aged about 55 years working as Telecom Distt. Engineer, Churu, resident of Sainik Basti, Churu.

: applicant.

Rep. By Mr. J.K. Mishra & Mr. A.K. Kaushik:

: Counsel for the applicant.

Versus



1. Union of India through Secretary to Ministry of Communication, Deptt, of Telecom Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom. Rajasthan Circle, Jaipur.

: Respondents.

Rep. By Mr. M. Godara proxy counsel

For Mr. Vinit Mathur : : Counsel for the respondents

ORDER

Per Mr. Justice S.M.M. Alam, Judicial Member.

Applicant Shri G.R. Bhaskar, who is working as Telecom. District Engineer at Churu, has preferred this application seeking following reliefs:

"(i) That the impugned order dated 17.12.96 Annexure A/1 passed by 2nd respondent may be declared illegal and the same may be quashed. The respondents may be directed to release the E.B. in pre-revised scale, in respect of applicant from 01.01.1986 in accordance with the OM dated 18.09.91 Annex. A/5 and allow all consequential benefits.

Or
in the alternative

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The respondents may be directed to consider the case of applicant for release of EB from the year 1987 in pre-revised scale and onwards and allow all consequential benefits including fixation of pay at higher stage taking into account the length of service from the due date i.e. 01.06.82 of crossing the EB

(ii) that any other direction, reliefs or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.

(iii) that the cost of this application may be awarded.

2. The case of the applicant in brief is that while he was holding the post of Telecom District Engineer ('TDE' for short) at Churu under the respondents, he was due to cross Efficiency Bar ('EB' for short) with effect from June 1982, at the stage of Rs. 810/- in the pre-revised scale of pay of Rs. 650-1200, but he was not allowed to cross EB. He made several representations requesting the respondents to allow him to cross EB, but he was not allowed to cross EB in spite of several representations. However, his case for crossing the EB was considered by the DPC, which met on 24.08.1984. But the recommendations of the DPC were kept in a sealed cover since the applicant was facing departmental proceedings at that time. Vide order dated 24.09.1985, a penalty of withholding of increment for two years without cumulative effect was awarded. Thereafter his case for crossing EB was not reviewed for quite sometime. However, vide letter dated 29.03.1989, (annex. A/3), his case for crossing EB was reviewed.

As per this letter he was not considered as 'fit' to cross EB from June 1984, June 1985 and June 86. In the meantime pay scales were revised from 01.01.86 as per the 4th Pay Commissions recommendations and the applicant's pay was revised and fixed at Rs.2375/- in the revised pay scale of Rs. 2000-60-2300-EB-75-



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3200-100-3500. The date of increment of the applicant is June every year and the increments due in the revised scale was withheld from June 1986 in implementation of the punishment order dated 24.09.1985. In normal course, until and unless EB is crossed there would be no question of giving effect to the withholding of increment for the reason that until a thing is due it cannot be stopped. In spite of that, the respondents issued an order for stopping the EB in June 1986 in pre-revised scale and did not consider it expedient to carry out any review for crossing the EB from subsequent years and due to that the applicant was not allowed to cross EB.



The further case of the applicant is that he had filed O.A. No. 204/89 before this Tribunal challenging the action of the respondents for non-crossing of the EB for the period from June 1982 to June 1984. However, the said O.A was dismissed vide order dated 01.11.1991 (Annex. A/4). It has further been stated that during the pendency of the above said O.A. No. 204/89, the Ministry of Finance (Dept. Of Expenditure) issued a OM dated 18.09.1991, which could not be brought on record at the time of hearing of O.A. No. 204/89. The said OM dated 18.09.1991, lays down the manner of operation of EB in Central Civil services, Revised Pay Rules, 1986. A copy of the said OM has been annexed with the application as Annex. A/5. The applicant has claimed that his case for crossing EB was required to be reviewed in accordance



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with the said OM and has quoted the relevant portion of the said OM which is being reproduced as under:

"2. The matter has been examined and the President is now pleased to decide that cases of all Government servants who were held up at efficiency bar in the pre-revised scales of pay prior to 01.01.1986, may be placed before respective DPCs for review in terms of guidelines contained in Department of Personnel and Training OM No. 29014/2/88 Estt. (A) dated 30th March, 89. If the DPC recommends, that the Government servant is fit to cross efficiency bar, necessary increment(s) may be released in accordance with due process of rules, viz, the benefits of withheld increment(s) may be allowed from the date the Government servant is found fit to cross efficiency bar.

3. The President has further been pleased to decide that in cases where the increment was due at efficiency bar stage on 01.01.86, the increment bar stage on 01.01.86, the increment may be released, without the review in the pre-revised scale and then the pay fixed in the revised scale under Central Civil Services (Revised Pay) Rules, 1986.

4. It has been stated that the case of the applicant should be reviewed on the basis of the instructions extracted above. It is stated that the applicant submitted detailed representations on 18.01.1993, 31.05.1996 and 25.09.1996, (annex. A/6, a/7 and A/8) for reviewing his case in accordance with the OM. The respondents vide order dated 17.12.1996 (Ann. A/1), informed the applicant that his case had been rejected vide letter dated 14.01.1993 (correct date is 14.06.1993.). This letter which is dated 14.06.93 has been annexed as Annex. A/9. According to the applicant, the order dated 17.12.96 passed by the respondents gave rise to the cause of action for filing this O.A.

5. On filing of the O.A, notices were issued to the respondents and in compliance of the notice, the respondents made appearance through their lawyer and filed reply of the O.A. As per their reply, preliminary objections were taken with regard to the maintainability of the O.A. on the ground that the applicant has



tried to mislead the Tribunal by asserting that the present application has been filed within limitation prescribed under the AT. Act, 1985 which is incorrect and the fact is that the applicant has presented this application belatedly after four years, since the case of the applicant for crossing the EB was decided as early as on 14.06.93 and not on 17.12.96 as contended by the applicant. The applicant had earlier filed O.A. No. 204/89, for crossing of EB with effect from June 1982 and the said O.A was dismissed by this Tribunal vide order dated 01.11.1991. Thus the applicant cannot re-agitate matter again by filing this O.A.

6. The further case of the respondents is that the case of the applicant for crossing the EB was due in June 1982. His case was not considered by the DPC which met on 25.02.1984, because Annual Confidential Report file was not available at that time. Thereafter, another DPC was held on 24.08.84. That DPC found that the work and conduct of the applicant for the year 1981-82 was not entirely satisfactory and disciplinary proceeding was pending against him and hence the DPC held the applicant not fit for crossing the EB with effect from June 1982. The said DPC looked into further CRs for the period 1982-83 and 1983-84 and found the work and conduct of the applicant satisfactory and hence the DPC considered it fit to allow the applicant to cross EB with effect from June 1984 but in view of the pendency of the disciplinary proceedings the recommendations of the said DPC was kept in sealed cover. The further case of the respondents is that



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on completion of departmental proceedings, vide order dated 24.09.1985, a penalty of stoppage of increment for a period of two years without cumulative effect was imposed on him and so vide order dated 29.03.1988 (Annex. P/1), the stoppage of increment for a period of two years without cumulative effect was passed. The matter was reviewed by Departmental Committee in the March of 1989 and the Committee on the basis of overall records including the punishment imposed, did not recommend the case of the applicant for crossing EB with effect from June 1984, June 1985 and June 1986, vide order dated 17.07.1989 (Annex. R.2). It has further been stated that the case of the applicant was duly considered in accordance with OM dated 18.09.91 and was rightly rejected by the competent authority vide letter dated 14.06.93 (annex. A/9) and this was communicated to him vide letter dated 17.12.96 (annex. R/3/Annex. A/1) and hence no interference is called for from this Tribunal. It is also stated by the respondents that the applicant has already exhausted the remedy available to him by filing O.A. No. 204/89 and the same was decided by this Tribunal vide order dated 01.11.1991. The respondents have prayed that on the above grounds this O.A should be dismissed.

7. We have heard the arguments of both sides at length. Perused the record of the O.A, reply filed by the respondents and the annexures attached with O.A and reply.

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8. From perusal of the record, it appears that this O.A was earlier decided by a Division Bench consisting of Hon'ble Mr. A.K. Misra, Judicial Member and Hon'ble Mr. Gopal singh, Administrative Member vide order dated 23.02.99. By the said order, this O.A was allowed with the direction to the respondents that the DPC recommendations permitting the applicant to cross the EB with effect from June 1984 be implemented and the applicant be allowed refixation of his pay in the new pay scales as recommended by the 4th Pay Commission after allowing increments for the years 1984 and 1985 and be further allowed normal increments when falls due till 29.03.1988. It further transpires that the respondents have preferred D.B. Civil W.P.No. 2539/1999, before the Hon'ble High Court Rajasthan at Jodhpur and the Hon'ble High Court vide its judgement dated 22.02.2010 quashed the order of this Tribunal dated 23.02.1999 passed in this O.A. and remitted back the matter for fresh hearing. Thereafter, this O.A has come up for hearing before us afresh.

9. Thus the admitted fact is that the order dated 23.02.99 passed by this Bench of the Tribunal in this O.A is not in existence. The plea of the respondents is that the applicant has prayed for same relief on earlier occasion by filing O.A. No. 204/89, which was dismissed on 01.11.1991 by observing that the applicant was not entitled to cross the EB in June 1984, June 1985 and June 1986. Thus it has been argued by the learned advocate of the respondents that the matter with regard to crossing of EB for the

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period June 1984, June 1985 and June 1986 cannot be re-agitated in view of the fact that the same has attained finality in the previous O.A No. 204/89 filed by the applicant. Admittedly, the applicant has not preferred any appeal against the order dated 01.11.91 and so the same has become final.

10. We have considered this aspect of the matter minutely and as per law we are of the view that since the order dated 01.11.1991 passed in O.A. No. 204/89 has attained finality and by the said order, this Tribunal has refused to grant any relief to the applicant by observing that the applicant is not entitled to cross the EB in June 1984, June 1985 and June 1986 and therefore the subsequent O.A praying for the said relief is hit by principle of resjudicata. Therefore, we hold that no relief can be granted to the applicant with regard to crossing the EB in June 1984, June 1985 and June 1986.

11. As regards the claim of the applicant for crossing the EB in June 1987 is concerned, we are of the view that the best course available for the applicant is to file representation before the competent authority concerned, requesting them to pass a detailed and reasoned order on his representation in the light of OM dated 18.09.91 issued by the Ministry of Finance (Dept. of Expenditure). We are saying so because, the orders passed by the respondents at Annex. A/1 and Annex. A/9 are very cryptic orders and cannot

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be termed to be a reasoned order ⁹ on the representation of the applicant.

12. With regard to the plea of the respondents that this O.A has been filed belatedly, we are of the view that since the loss caused to the applicant due to non-crossing of EB and the non grant of increments are recurring cause of action and as such the O.A. cannot be treated as barred by limitation and hence we are of the view that this O.A cannot be dismissed on that ground.

13. On the basis of above discussion, we dispose of this O.A with a direction to the applicant to file a fresh representation within a period of one month from the date of receipt of a copy of this order before the competent authority for allowing him to cross EB with effect from June 1987 and for grant of increments in the light of OM dated 18.09.91 issued by the Ministry of Finance (Department of Expenditure). The respondents are directed to consider such representation and pass a reasoned and detailed order on the representation within a period of three months from the date of receipt of such representation.

14. In the circumstances, the O.A is disposed of with above observation and direction. There will be no order as to costs.


 [V.K. Kapoor]
 Administrative Member

jsv


 [Justice S.M.M. Alam]
 Judicial Member.