

I/8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR.

Date of Order : 31/11/2003

O.A No. 225/2001.

S. P. Talwadiya son of Shri Mani Lal Talwadiya, aged about 45 years, resident of 12, Shantinagar, Sirohi, at present employed on the post of Superintendent Customs Range, Sirohi, Near PWD Dak Bungalow, Sirohi.

... APPLICANT.

v e r s u s

1. Union of India through Secretary to Govt. of India, Min. of Finance, Department of Revenue, North Block, New Delhi.
2. Additional Commissioner (Personnel and Vigilance), Cadre Control Unit, Central Excise Commissionerate Jaipur-I, Statute Circle, C-Scheme, Jaipur.
3. The Chief Commissioner of Customs and Central Excise, CR Building, Statute Circle, C-Scheme, Jaipur.
4. Chairman, Central Board of Excise and Customs, North Block, New Delhi.
5. Secretary to Government of India, Department of personnel and Training, New Delhi.

... RESPONDENTS.

Mr. B. Khan counsel for the applicant.
Mr. S. S. Jodha Adv. brief holder for
Mr. Ravi Bhansali counsel for respondents.


CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :

(per Hon'ble Mr. A. P. Nagrath)

The applicant was due for crossing the Efficiency Bar (EB, in short) w.e.f. 01.11.1993 in the pay scale of Rs. 2000-60-2300-EB-75-100-3500. He was not allowed to cross the EB and the bar was released only w.e.f. 01.11.95 vide letter dated 12.01.2000 (Annexure A-1). His pay was



fixed at Rs.2375 w.e.f. 01.11.1995. By filing this OA, the applicant is seeking restoration of his two increments which were not given to him for the period he was not found fit to cross EB. He has also challenged the provisions of para 2.6 of the OM dated 30.03.1989 (Annexure A-4).

2. The short controversy involved in this case revolves around the provisions relating to crossing the EB as laid down in FR 25 and Govt. of India's decision there under. In para 2.6 of the OM dated 30.03.1999, which has been assailed by the applicant in this OA, it has been stated as follows :-

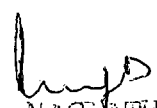
"2.6. Crossing bar after being held up at that stage where a Government servant held up at the EB stage on account of unfitness is allowed to cross the EB at a later date as a result of subsequent review, his pay shall normally be fixed at the stage immediately above the EB. In case the competent authority proposes to fix his pay at a higher stage by taking into account the length of service from the due date of EB, the matter shall be referred to the next higher authority for a decision."

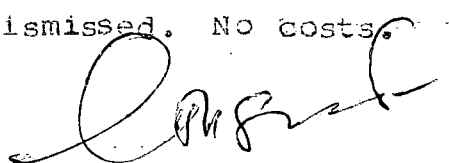
3. Having heard the learned counsel for the parties, we do not find any substance in the claim of the applicant. The orders states very clearly that after a government servant is held up at the EB stage on account of unfitness and is allowed to cross the EB at a later date, as a result of subsequent review, his pay shall normally be fixed at the stage immediately above the EB. (Emphasis supplied) Since he has been allowed to cross EB only w.e.f. 01.11.95, his pay has been correctly fixed at Rs.2300-7500 w.e.f. that date because as on 31.12.1992 i.e. prior to the stage of EB he was drawing the pay of Rs.2300/-. What the applicant is seeking is nullifying the impact of his being held up at the stage of EB. If his plea was to be accepted, the very purpose of having to cross the EB would be rendered a nullity. Of course, the government order does provide that

in case the competent authority proposes to fix the pay of such a government servant at a higher stage by taking into account his length of service from the due date of EB, the matter shall be referred to the next higher authority for a decision. A simple reading of this instruction makes ~~xx~~ it clear this it is for the competent authority to decide whether a particular case is worthy of being recommended for consideration by the higher authority. In such circumstances, it is not for any court or Tribunal to direct the competent authority to take a particular view in the matter. The competent authority has to make up its own mind, keeping in view the performance and conduct of the government servant. The claim of the applicant merits no consideration by us.

4. The ground on which para 2.6 of the OM has been challenged is that it amounts to leaving the decision to the whims and fancies of the concerned authority to release or to withhold increment without following the principles of natural justice. In our considered view, para 2.6 lays down very clear guidelines and, also, provides scope for ~~xx~~ a situation where the increments not released because of unfitness of the government servant to cross EB could still be caused to be released, if the competent authority takes a favourable view in the facts and circumstances of any case. Sans this provision also the remaining part of the rule can also not be faulted with and is, in fact, a direct consequence of being held back at the stage of EB.

5. Applicant's claim is totally devoid of merits and is liable to be rejected. The OA is dismissed. No costs.


(A. P. NAGRATH)
Member (A)


(G. L. GUPTA)
Vice Chairman