

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.89/2013

Jodhpur, this the ^{29th} day of July, 2015

Reserved on 03.07.2015.

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

* P C Yadav S/o Shri Nand Ram, aged 51 years, by caste Yadav (SC), R/o H.No.58 Neelkanth Colony, Pratap Nagar, Chittorgarh, District Chittorgarh. Office Address: HO Chittorgarh (Postal Dept), employed as SPM at Bagon Post Office.

.....Applicant

By Advocate: Mr. S.P. Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. Chief Postmaster General Rajasthan Circle, Jaipur-302007.
3. The Director, Postal Services, Rajasthan, Southern Region, Ajmer.
4. Superintendent of Post Offices, Chittorgarh Division, Chittorgarh.

.....Respondents

By Advocate : Smt. K. Parveen.

ORDER

This present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 against the

whereby the appeal of the applicant is rejected, seeking the following relief(s):-

- “(a) *That by writ, order or direction the impugned order dated 09.01.2013 may kindly be declared illegal, unjust, improper and deserves to be quashed and set aside. The consequential benefits may be granted in favour of the applicant.*
- “(b) *That the respondent may kindly be directed to cross the efficiency bar for the year 1991, 1992 & 1993 with all consequential befits.*
- “(c) *By writ, order or direction the impugned order dated 02.09.1994 may kindly be declared illegal and may be quashed and set aside. The consequential benefits may be granted in favour of the applicant.*
- “(d) *That any other direction 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 in the interest of justice.*
- “(e) *That the costs of this application may be awarded to the applicant.”*

2. Brief facts of the case as averred by the applicant are that the applicant was appointed on the post of Postal Assistant (PA) on 01.07.1983 and he has rendered his service for a period of 28 years with full zeal, enthusiasm, honesty, sincerity and the applicant despite eligible to cross Efficiency Bar the same has not been done for the year 1991, 1992 & 1993 which has effected his pay and promotion and increments. It has been averred that the Efficiency Bar is not crossed due to animosity of respondent No.4 and also of his malice and malafide intention because the Efficiency Bar is not crossed during the tenure of SPO Chittorgarh namely S.C. Singhal. When the respondent did not reveal the reason for not crossing Efficiency Bar then the applicant moved application under RTI, whereby the respondent stated as ‘not allowed to due to unsatisfactory records of service’. The applicant opted hierarchy of channel and mercy petition was presented

nothing is done in respect of mercy petition. It has been further averred that the guidelines/policy dated 21.09.1987 states that the Efficiency Bar if due in the month of January, February & March, E.B. should be decided on 19th January, if due in the month of April, May and June, E.B. case should be decided on 19th April, and if due in the month of July, August & September, E.B. should be decided on 19th July, and if due in the month of October, November and December it is to be decided on 19th October. The Guidelines also states that for consideration of E.B. Crossing case, the totality of service record for the last 3/5 years of the officials are to be considered and the decision is not to be based purely on a single Adverse Entry or a single punishment order. It also states that records only upto the date the official is due to cross EB are to be taken into consideration for deciding the particular EB case. In case EB crossing is not allowed to any official a letter should be invariably issued to that official by the competent authority to this effect and his case should again be automatically considered before his next DNI. But the respondents violated the policy and guidelines given under FR-25 as the DPC was not convened in accordance with the guidelines and policy. It has been averred that the applicant has to cross only first EB but the Appellate Authority considered in accordance with IIIrd Pay Commission. The applicant presented representation before CPMG

ought to be convened in the month of April, 1991 but the same was not convened on time, but only in September, 1991. It has been further averred that the then SPO, SC Singhal, was specifically directed to take into consideration the matter with regard to the crossing efficiency bar and the competent authority itself observed that the illegality/irregularity is committed. It has been further averred that

- the respondents passed punishment order reduction of one stage for three years with cumulative effect on 31.05.1993, the fault on the part of applicant was only that due to heavy load he could not attend telephone and these extenuating circumstances have not been taken into consideration and punishment order was passed. The applicant preferred appeal which was decided by withholding of increments for one year by amending the punishment order but the punishing authority did not make it effective and it was made effective after passing of one year in the year 1994 while his Efficiency Bar was crossed. Thus, the respondent with ill intend punished applicant twice because the Efficiency Bar and withholding of increment were not continued which is evident from letter dated 02.09.1994. It has been averred that the applicant crossed Efficiency Bar in the year 1994 and the applicant was punished reduction of his one stage from Rs.1150/- to 1125/- in the time scale of pay for the period of 3 years. The Appellate Authority reduced the punishment by withholding of one

effect of the punishment was for the year 1993 but the respondent with malafide intention kept pending the punishment and awarded while the applicant crossed the Efficiency Bar in the year 1994. The Hon'ble Court vide OA No.322/2012 decided on 14.08.2012 directed the Appellate Authority to decide the matter on presenting the appeal. The applicant preferred his appeal but the Appellate Authority without taking into consideration of substantial facts and circumstances rejected the appeal vide order dated 09.01.2013 (Annexure-A/1). It has been averred that there are number of cases where by the Efficient Bar is crossed despite censure in service record and even allowed to cross Efficiency Bar with retrospective effect. The Appellate Authority considered for crossing two Efficiency Bar whereas it ought to be first EB in accordance with IV Pay Commission at pay scale (975-25-1150EB-30-1660) but the Appellate Authority considered in accordance with III pay Commission (260-8-3000EB-8-340-10-360-12-420EB-12-480) II stage. The appellate authority denied to comply the order of Hon'ble CAT Bench Kolkata, and therefore the appellate order is non-speaking. Hence, the applicant prays for the reliefs mentioned in para no.1.

3. By way of reply, the respondents have averred brief history of the case that the DPC was held on 23.09.1991 and the applicant was

the applicant had been informed accordingly vide OM dated 06.03.1992. Again the applicant was not allowed to cross EB by the DPC held on 01.07.1992 due to unsatisfactory service record and the applicant was informed accordingly vide OM dated 15.09.1992. The applicant preferred an appeal to the Appellate Authority i.e. DPS, Rajasthan Southern Region, Ajmer against these orders, the same was rejected vide letter dated 31.12.1992. After lapse of a long period of 13 years 6 months the applicant had preferred a Revision Petition to the Chief Postmaster General, Rajasthan Circle, Jaipur on 31.03.2006, which was forwarded to RO Ajmer vide letter dated 23.07.2006. The competent authority had rejected the Revision Petition vide memo dated 06.09.2006 by speaking order that the Revision Petition was required to be submitted within 6 months as per Rule 118-D of the Postal Manual Vol.II. Thereafter the applicant had preferred a Mercy Petition before Hon'ble President, Republic of India, New Delhi on 21.05.2007, which was received in DO Chittorgarh on 23.05.2007 but probably it was not further processed, then he again submitted the same on 31.10.2008. The applicant also submitted an application 23.08.2011 for consideration in the Staff Adalat held on 12.09.2011, in which he put up his case of mercy petition regarding non-crossing of E B along with other grievances. His case was considered and the same was rejected as there is no provision to send mercy petition to the

was communicated to the applicant vide letter dated 05.10.2011.

Aggrieved with this decision, the applicant filed OA No.322/2012

before the Hon'ble Tribunal on 26.07.2012 and the same was decided

by order dated 14.08.2012 and applicant was directed to file an appeal

before the Appellate Authority, who shall dispose of the same within

two months after being given the due opportunity to the applicant to

appear in person and present his case under the existing rules by a

reasoned order. Accordingly, the applicant had preferred an appeal on

10.10.2012 before the appellate authority vide letter dated 02.11.2012

and the competent authority directed the answering respondents to ask

the applicant to appear in person before the appellate authority and

present his case at Regional Office, Ajmer on 24.12.2012 at 11.00 AM

and the applicant was informed accordingly. The appeal of the

applicant was rejected by the Appellate Authority on 09.01.2013 and

copy of the decision was delivered to the applicant on 18.01.2013.

4. Further, in parawise reply, the respondents have averred that it is crystal clear that the service career of the applicant is not unblemished and it is not true that non-crossing of his EB has effected his promotion. As per FR-25, the applicant could be given next increment only after crossing EB, however, it has no effect on promotion and the promotion is considered by the DPC constituted for the purpose which

averred that crossing of EB is a matter of consideration by the DPC and does not relate to SPOs Chittorgarh. The DPC could not be held in April 1991 due to administrative reasons but the same was held on 23.09.1991 and the applicant was considered and not allowed to cross EB due to his unsatisfactory record of service and was informed that he was not allowed to cross EB by the DPC held on 23.09.1991 and 01.07.1992 vide SPOs Chittorgarh letters dated 06.03.1992 and 15.09.1992. It has been averred that the punishment order for stoppage of next one increment awarded by the Director Postal Services, Rajasthan Southern Region, Ajmer under Memo dated 07.12.1993 could have only been effected from the date of next increment, which was 01.07.1994. Meanwhile, the orders to cross EB at the stage of 1150-1180 in time scale pay 975-25-1150-EB-30-1660 w.e.f. 01.07.1994 were also issued vide SPOs Chittorgarh letter dated 02.09.1994 and the penalty was enforced w.e.f. 01.7.1994 in view of the DGP&T letter dated 29.11.1979. It has been averred that the applicant has described the position on 01.03.1993 and 02.03.1994 which is no more related with this case of crossing of EB and it has been denied that the respondents with malafide intention kept pending the punishment and awarded when the Efficiency Bar was crossed in the year 1994. The appeal preferred by the applicant was decided on 07.12.1993, thus, the penalty could only take effect from 01.07.1994

Authority had gone through the appeal and related record of the case and found that the applicant was not allowed to cross EB due to his unsatisfactory record of service and he was duly informed of the reasons for non-crossing of EB. Thus, the action of the DPC not allowing the applicant to cross the EB from due date is in order and further the applicant has referred the case of CAT Kolkata which is not applicable in general but it is applicable in a particular case. Therefore, the respondents prayed for dismissal of the OA.

5. The applicant has filed rejoinder, reiterating the points raised in the OA denying the points in the reply and further enclosing Annexures-A/12 and A/13.

6. Heard counsels for both the parties. Counsel for the applicant Shri S.P. Singh contended that the applicant has been working as Postal Assistant from 01.07.1983 and in view of this, the provisions of

IV Central Pay Commission (CPC) are applicable and the applicant had to cross only first EB. There are provisions of crossing of 2 EB's ; the first is granted after seeing the general suitability and the second is considered after 16 years of service and to assess whether a person can work on a supervisory post. However, the department applied the provisions of III CPC in the case of the applicant and his case was considered for crossing the EB regarding ability to work on a higher supervisory post, which was not as per the rules. Counsel for applicant

the applicant was not given the crossing of EB in the year 1991, 1992, 1993 and was granted only three years later in the year 1994. Counsel for the applicant referred to guidelines and instructions under FR 25 (Annexure-A/4) wherein as per para 2.2, the DPC for EB is to be held as per the time schedule and in his case as he was appointed in July, the DPC should have been held in April. He referred to para 2.4 and 2.5 of the instructions as relevant for considering his case and contended that as per para 2.5 of Instruction below FR 25, in the event of DPC being convened after a gap of time following the date on which the Government servant became due to cross the EB, the Committee should consider only those Confidential Reports which it would have considered had the DPC been held as per the prescribed schedule, but the respondent department did not follow this instructions. The applicant was not informed for the reasons why he was denied crossing of EB but through an RTI application, he came to know that he was denied crossing of EB because of penalty of censure which was imposed on him because of participation in a nationwide strike. Counsel for the applicant in this regard, referred to notification of DoPT dated 16.02.1979 communicated in DGP&T letter dated 07.05.1979 (contained in communication of Department of Posts, Ministry of Communication & IT dated 18th October, 2010) in which penalty of censure or of recovery of pecuniary loss are not a bar for promotion if the findings of the DPC are in favour of the employee.

Counsel for applicant contended that when the penalty of censure is not a bar even for promotion, how can it be a bar for crossing Efficiency Bar and in this context he also referred to judgment of the Hon'ble Supreme Court in Dev Dutt vs. Union of India & Others, reported in 2008 SC CANDID 737 in which if any adverse entries in the CR's are not communicated that cannot be held against the individual. He also referred to judgment dated 16th April 1986 of the Calcutta Bench of CAT in OJC No.975 of 1979 in support of his contentions. Counsel for the applicant also referred to Annexure-A/13, attached with the rejoinder, which is the service record of the applicant, in which initially his pay from 01.07.1991 to 30.06.1992 was shown as Rs.1180/- i.e. indicating that he has crossed EB, but later it was circled and reduced to Rs.1150/-. Counsel for the applicant submitted that in view of the above position, the applicant is entitled to crossing of Efficiency Bar from the year 1991 itself when he became eligible. On all these grounds, counsel for applicant prayed that the OA may be allowed.

7. Per contra, counsel or the respondents, Smt. K. Parveen, reiterated the points brought out in the reply, contended that, as brought out in the reply, the applicant was due to cross the EB on 01.07.1991 but in the DPC held on 23.09.1991 the applicant was not allowed to cross the EB due to unsatisfactory service record and the

applicant was informed of the same vide OM dated 06.03.1992. Again the applicant was not allowed to cross EB by the DPC held on 01.07.1992 due to unsatisfactory service record and the applicant was informed vide OM Dated 15.09.1992 and even the appeal preferred by the applicant to the Appellate Authority was rejected by letter dated 31.12.1992 and a revision petition which was filed after 13 years 6 months was justifically rejected vide memo dated 06.09.2006. The applicant also filed Mercy Petitions and also submitted an application dated 23.08.2011 regarding the same in the Staff Adalat held on 12.09.2011, but no satisfactory justification was found in the Staff Adalat regarding his application and the decision of the Staff Adalat was communicated to the applicant vide letter dated 05.10.2011.

Aggrieved of this decision, the applicant was filed OA No.322/2012 before the Tribunal and the same was decided vide order dated 14.08.2012. The Hon'ble Tribunal directed the applicant to file an appeal before the Appellate authority and the appeal filed by the applicant on 10.10.2012 was rejected by the Appellate Authority on 09.01.2013 (Annexure-A/1) after thorough examination and due considerations and the applicant has filed the OA against the same.

Counsel for the respondents also submitted that as the applicant had adverse entries and penalties it cannot be said that service career of the applicant is unblemished. Counsel for the respondents reiterated that

record and the applicant was duly informed of the reasons for not being allowed to cross the same, and further contended that the order dated 09.01.2013 (Annexure-A/1) is just and proper and in view of the unsatisfactory service record, the applicant was justifiably not allowed to cross the EB and prayed for dismissal of the OA.

8. Considered the rival contentions of both the parties and perused the record. The following facts and points are noted.

The applicant was appointed on the post of Postal Assistant (PA) on 01.07.1983 and while posted as Postal Assistant in Chittorgarh HO in the year 1991, was due to cross EB on 01.07.1991 at the stage of Rs.1150-1180 in the pay scale of Rs.975-1660. With reference to Government of India instructions dated 21.09.1987 dated 30th March, 1989 with reference to FR 25 regarding crossing of EB (Annexures-A/3 and A/4), the DPC in the case of the applicant should have been held in the month of April, 1991 but it was actually held on 23.09.1991 and as mentioned by the respondents the delay was due to administrative reason. The applicant was not allowed to cross the EB due to unsatisfactory service record and the applicant was communicated the result of the DPC vide SPO's Chittorgarh letter No.B2/-128/II dated 06.03.1992. Again the

01.07.1992 due to unsatisfactory service record and the applicant was informed accordingly vide SPOs Chittorgarh Letter No.B2-128/II dated 15.09.1992.

The applicant preferred an appeal before the Appellate Authority i.e. Director Postal Services, Rajasthan Southern Region, Ajmer against the orders dated 06.03.1992 and 15.09.1992, but the appeal was rejected by the Appellate Authority vide letter dated 31.12.1992.

The applicant was also awarded a penalty of reduction of his one stage from Rs.1150/- to Rs.1125/- in the Time Scale of Pay for the period of 3 years without cumulative effect vide SPO's Memo dated 31.05.1993, which was later reduced in appeal to withholding of next one increment for a period of one year without cumulative effect vide Director Postal Services, Rajasthan Southern Region, Ajmer Appellate order vide Memo dated 07.12.1993 (Annexure-A/7).

Orders of crossing the EB at the stage of 1150-1180 in time scale pay 975-25-1150-EB-30-1660 w.e.f. 01.07.1994 were also issued vide SPOs Chittorgarh letter dated 02.09.1994 (Annexure-A/8) wherein it was mentioned that "Shri P.C. Yadav, Postal Assistant , Cement Factory, Chittorgarh is hereby

pay 975-25-1150-EB-30-1660 with effect from 01.07.1994, but the punishment orders for stoppage of next one increment awarded by Director Postal Services, Rajasthan Eastern Region, Ajmer under their memo No. Staff 2-20/93-94 dated 07.12.1993 will take as effect immediately after crossing EB."

Further, the applicant preferred a revision petition on 31.03.2006 against appellate order dated 13.12.1992 after lapse of a long period of 13 years 6 months to the Chief Postmaster General, Rajasthan Circle, Jaipur, which was forwarded to RO Ajmer vide letter dated 23.07.2006 and the competent authority rejected the Revision Petition vide memo dated 06.09.2006 by speaking order as the Revision Petition was required to be submitted within 6 months as per Rule 118-D of the Postal Manual Vol.II and the delay of 13 years and 6 months cannot be condoned. The memo was delivered to the applicant on 18.09.2006.

Thereafter the applicant preferred a Mercy Petition before Hon'ble President, Republic of India, New Delhi on 21.05.2007, which was received in DO Chittorgarh on 23.05.2007 but was not processed. Applicant then again submitted the same on 31.10.2008, which was received in DO Chittorgarh on 03.11.2008 forwarded to RO Ajmer vide letter dated 29.12.2008.

[Signature]

The applicant also submitted an application on 23.08.2011 for consideration in the Staff Adalat held on 12.09.2011 regarding his mercy petition and non-crossing of E B along with other grievances. His case was considered and the same was rejected on the ground that there is no provision to send mercy petition to the Hon'ble President and the decision of Staff Adalat was communicated to the applicant vide letter dated 05.10.2011.

Aggrieved with this decision, the applicant filed OA No.322/2012 before the Hon'ble Tribunal on 26.07.2012 and the same was decided by order dated 14.08.2012. The Hon'ble Tribunal directed the applicant to file an appeal before the Appellate Authority, who shall dispose of within two months after being given the due opportunity to the applicant to appear in person.

The applicant preferred an appeal on 10.10.2012 before the appellate authority vide letter dated 02.11.2012 and the competent authority after giving due opportunity of hearing, rejected the appeal on 09.01.2013 (Annexure-A/1) and a copy of the decision was delivered to the applicant on 18.01.2013. Aggrieved with the rejection of the appeal, the applicant has filed the present OA.

9. In this case, one of the main contentions of the counsel for the applicant has been that in view of the appointment of the applicant in 1983 and his case coming under IV Central Pay Commission (CPC), the applicant should have been considered for two EB's as per Rule 270 of P&T Manual Vol.IV part 1 (Annexure-A/9) which provides that with regard first bar it should be considered whether he is fit for the work he has been doing and has general fitness for the duties required of him and in regard to the second bar it should be considered whether he has worked well and shown promise of being capable of filling a higher appointment. But the respondent department did not follow this rule and he was considered for only one EB that too regarding fitness for higher appointment. However, it is seen from Annexure-A/1 i.e. order of the Appellate Authority dated 09.01.2013, that there is only one EB in the pay scale of Rs.975-25-1150-EB-30-1160 which is the scale of the applicant and this scale has not been denied by the applicant any stage. It is noted that Rule 270 of P&T Volume IV Part I (Annexure-A/9) provides that " in the case of time-scales where only one efficiency bar has been prescribed, before an official is allowed to cross it, it should be considered whether he has worked well and is considered fit for holding more responsible appointment in the same cadre. Thus, the applicant has not been able to clearly establish why he should have been considered for 2 EB's, as

as per Rule 270 P&T Manual Vol.IV , Part I the individual not only has to work well but has to be fit for holding more responsible appointment. Thus, this contention of the counsel for the applicant is not found tenable.

10. Counsel for the applicant had also contended that the respondents did not hold the DPC for crossing EB as per the scheduled time as per instructions issued with regard to FR 25 (Annexure-A/4) i.e. in April, 1991 and have only said that the delay in holding of the DPC was due to administrative reasons and had the DPC been held on time, the applicant would have crossed the EB in the year 1991 itself because there were no adverse remarks against him at that time that would have prevented him from crossing the EB. As far as holding the DPC after April, 1991 is concerned, this has been admitted by the respondents that it was held in September, 1991 due to administrative reason. It is further noted that there are also directions of Government of India Instructions at para 2.5 (reference in Annexure-A/4) which lay down the procedure to be followed by the DPC in the event of DPC being convened after a gap of time following the date on which the Government servants became due to cross the EB. Thus, it cannot be accepted that merely on account of holding of the DPC after the prescribed schedule, that too on account of administrative reasons, the applicant has been deprived of crossing the EB.

11. As far as the reasons for not crossing the EB as per the DPC held in 1991 and later in 1992 are concerned, it is seen that as per the reply of the respondents and also the information furnished to the applicant under the Right to Information (as at Annexure-A/2), the results of the DPC held on 23.09.1991 were informed to the applicant vide SPO's Chittorgarh letter No.B2/-128/II dated 06.03.1992 (as admitted in the OA by the applicant also) and he was also communicated his adverse office record relating to penalty of censure dated 29.09.1989 and another penalty of censure dated 25.02.1991 vide letter dated 19.04.1990 and 24.04.1991. Para No.4 of Instructions of the respondent department dated 21.09.1987 (filed by the counsel for applicant as Annexure-A/3) provides that for consideration of EB crossing case, the totality of service record for the last 3/5 years of the officials are to be considered and the decision is not to be based purely on a single adverse entry or a single punishment order. In this case it is seen that there was a penalty of censure against the applicant on 25.05.1989 and another penalty of censure vide memo dated 25.02.1991. In this connection, it is also noted that the decision to consider the records of the applicant unsatisfactory on an overall basis and not allowing the crossing of the EB in the year 1991 was taken by the duly constituted DPC held on 23.09.1991 and the applicant was apprised of the same on 06th March, 1992. Though the DPC was held

after 6 months, reasons were also communicated and he was also informed about his adverse record. Further it is seen from the reply that the applicant had an appeal against the said communications which was rejected in the year 1992 itself; however after lapse of 13 years and 6 months, the applicant filed a revision petition on 31.03.2006, which was rejected on 06.09.2006. Thereafter mercy petition and also took the matter to the Staff Adalat and thereafter filed OA No.322/2013 decided on 14.08.2012. Thus, it is seen that his first appeal was already considered and rejected in the year 1992 itself. And further in the decision at Annexure A/1 which has been made in pursuance of order dated 14.08.2012 in OA No.322/2012, it has been mentioned that the applicant was given penalty of censure vide order dated 25.05.1989 and the period was treated as break in service and again in the year 1991 he was punished with the penalty of censure vide memo dated 25.02.1991 and the same was also communicated to the applicant on 24.04.1991. Therefore, it cannot be said that the view taken by the DPC holding the applicant's record as unsatisfactory was without any basis.

12. It was further strongly contended by the counsel for the applicant that the penalty of censure cannot be the basis of denial of EB because as per DoPT OM dated 16.06.1979 communicated in

reference being contained in the Department of Posts, Ministry of Communication & IT Communication letter dated 18th October, 2010 given during course of hearing by the counsel for applicant) it has been provided that the penalty of censure is not a bar for promotion, so how can it be a bar for crossing of EB. The reference of DoPT OM dated 16.02.1979 referred to by the applicant regarding censure not being a bar to promotion, cannot come to the rescue of the applicant, because the circular in which these has been quoted (i.e. OM dated 18th October, 2010) relates to MACP and not to EB.

13. As far as the order of the CAT, Calcutta Bench is concerned on which the counsel for the applicant has placed reliance, the Hon'ble Tribunal in the case of O.J.C. No.975/1979 (Dr. Smt. Susila Misra v. Union of India & Ors.) Decided on 16th April, 1986 held that while judging the suitability of an incumbent for crossing the efficiency bar on a particular date the authorities are entitled to consider only facts prior to that relevant date and taking into consideration certain facts occurring after that relevant date will amount to importing extraneous consideration. It is seen that even para 2.5 of the Government of India instructions regarding FR 25 (Annexure-A/4) makes such a provision and there is nothing on record to suggest that the DPC, though held on delayed date 23.09.1991 due to administrative reasons (though it

should have been held in April, 1991) considered any material subsequent to April, 1991.

14. Another issue has also been raised in the pleadings by the applicant regarding grant of EB in the year 1994 w.e.f. 01.07.1994 vide order dated 02.09.1994 (Annexure-A/8) and its benefits being delayed due to penalty order of the appellate authority dated 07.12.1993 (Annexure-A/7). In this context the respondents have clarified in the reply that as one increment has been withheld in the penalty order dated 07.12.1993 and the next date of increment is 01.07.1994 and EB was granted w.e.f. 01.07.1994 therefore order dated 02.09.1994 (Annexure-A/8) is in order as per instructions contained in the DOP&T letter dated 29.11.1975 (Annexure-R/2). From a perusal of Annexure-R/2 it appears that order dated 02.09.1994 in which it has been mentioned that the penalty order taking effect immediately after crossing EB is in accordance with Annexure-R/2 which contain Director General P&T's instructions dated 29th November, 1979 on the subject.

15. Counsel for applicant also alleged malafide against the then Superintendent at Chittorgarh, Shri S.C. Singhal. The Constitution of the DPC under Shri Singhal has not been challenged by the applicant and nothing has been brought on record to prove malice, nor has Shri ^{been made a party respondent by name. Therefore, it cannot}

be said action of Shri S.C. Singhal was based on malafide or that the DPC's held under his Chairmanship acted with prejudice or malice.

Thus, on the basis of the aforesaid analysis, it appears that no case is made out in favour of the applicant and the OA, lacking in merit is accordingly dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member

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