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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 216 of 1992(L)

H.C. Joshi . . . . . Applicant

Versus

Union of India & Others . . . . . Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

( By Hon'ble Mr. Justice U.C. Srivastava, VC)

Pleadings are complete in this case. The case is being disposed of after hearing the applicant in person and Shri V.K. Chaudhary learned counsel for respondents. Admit.

2. The applicant was appointed as Lower Division Clerk in the Income-tax Department and thereafter promoted as Inspector. The applicant was given an adverse remark for the period of 16.8.1983 to 31st March, 1984. The Efficiency Bar which was due on 1.5.8 1984 was not relased vide order dated 6.4.1987. The applicant was compulsory retired . The applicant filed an application before this tribunal registered as O.A. 568 of 1987 which was decided by the tribunal vide orde dated 11.3.1991, which was allowed. It was only on the ground that a representation filed by the applicant against the adverse remarks which is still pending and without taking into consideration the order of compulosrily retirement was passed.

2. The result was that the applicant was re-instated back in service. As the applicant was retired the question of Efficiency Bar did not rise, but other

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During an intervening period the matter was subjudice, the D.P.C. meeting was held after 5 years from the due date. The D.P. C. held after the applicant's retirement was void. The respondents has not passed any orders in terms of Fundamental Rules 25 and no such order withholding of Efficiency Bar due from 1.5.1984 was passed and communicated to the applicat. D.P.C. meeting decided in this connection on 12.1.1990 that the applicant was not found fit to cross the efficiency. It is that order the applicant has challenged by this application.

3. In the counter-affidavit the respondents in clear and categorical language stated that the applicant representation dated 29.8.1984 against the adverse remarks was rejected as early as on 22.3.1985. It appears that the same was not communicated from the department. It was not brought to the notice of the tribunal earlier, when his case against compulsory retirement was pending that the representation has been disposed of much earlier before the order of compulsory retirement was passed. With the result that the applicant got benefit of the same. It is the sad commentary of working of income-tax department. It may be that someone deliberately withheld this information, that is why applicant could succeed.

4. So far as the Efficiency Bar is concerned it was due to applicant on 1.5.1984. Admittedly the order of permitting of the applicant from crossing of the Efficiency Bar was not passed. As it has been held in the Padam Singh Cheena Vs. Union of India & others(1974p.594)

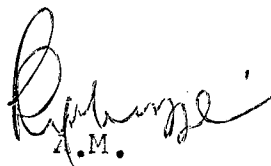
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" That the order preventing the Crossing ~~the~~ of the Efficiency Bar should be passed either before <sup>or</sup> an appointing date shortly thereafter."

Placing reliance of the said decision, ~~the~~ The Central Administrative Tribunal Madras Bench ~~in the case of~~ K.N. Ahmad Ali Vs. Secretary of tourism department New Delhi, decided on 2.6.1989, A.T. page 669) held that :  
"That no formal order was passed before the increment stoppage. <sup>was</sup> The stoppage of increment will be invalid and the applicant will be entitled to the arrears of increment."  
Categorically the same should be summarize, and Accordingly the respondents shall pay the arrears of the increment to the applicant ~~and~~ and as such this application is allowed and the respondents are directed to allow the applicant to cross the Efficiency Bar and pay the arrears within four months, unless the same is not <sup>any</sup> stopped in ~~other~~ proceedings. A copy of this order may also be sent to the Central Board of Taxes, which may thus <sup>will</sup> ~~inform~~ inform of the working of its department or taking <sup>any</sup> ~~necessary~~ necessary action in the matter. No order as to the costs.

  
A.M.

  
V.C.

Lucknow Dated 6.8.1992.

(RKA )