

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No. OA-733 of 1995

(Date of decision 4.3.1997)

Baidya Nath Prasad Sinha,
S/of Shri Kailash Bihari,
Tax Recovery Officer II,
(Department of Income Tax),
4th Floor, Patna,
Resident of House No.17, Anandpuri,
Boring Road, P.S. Budha Colony, PATNA-800 001.

. Applicant

By Advocate: Shri S.N. Tiwary

Versus

1. The Union of India,
Through the Secretary,
Govt. of India, Ministry of Finance,
Department of Revenue, North Block,
NEW DELHI-110001
2. The Chairman,
Central Board of Direct Taxes,
North Block, NEW DELHI-110 001.
3. The Chief Commissioner of Income Tax (Administration),
Bihar, Central Revenue Building,
PATNA-800 001.
4. The Commissioner of Income Tax, Bihar
Central Revenue Building, Patna-800 001.
5. The Tax Recovery Officer I, (Income Tax Deptt.),
4th Floor, Alankar Place, Boring Road, PATNA-800 001.

..... Respondents

By Shri J.N. Pandey, Sr. Standing Counsel.

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Coram: Hon'ble Mr. Justice V. N. Mehrotra, V.C.

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to allow the applicant to cross efficiency bar at the stage of Rs.2300/- in the pay scale of Rs.2000-3500 from 1.2.1986 and allow consequential benefits including arrears of pay and allowances. Prayer has further been made that the respondents be directed to fix the pay of the applicant in the grade of Income Tax Inspector at the stage 2900/- instead of 2300/- from 6.11.1994 and also to fix the pay of the applicant on re-promotion to the grade of Income Tax Officer at the stage of Rs.3050/- from 28.4.1995.

2. The facts in brief are that the applicant was appointed as Inspector in the Income Tax Department with effect from 16.3.1970. He was promoted as Income Tax Officer on 10.2.1982 in the scale of 650-1200. The scale was revised to 2000-3500 with EB at the stage of 2300 with effect from 1.1.1986. The pay of the applicant was fixed at the stage of 2300 from 1.1.1986. This fixation of pay was done by the Department on 22.10.1986. The DPC for consideration of the cases of crossing of efficiency bar should have been convened well in advance but it did not meet during the period October to December, 1986 and the case of the applicant should have been considered in the year 1987 but it was not done. The persons junior to the applicant were allowed to cross efficiency bar vide memo dated 23.12.87 but the case of the applicant was not considered illegally and arbitrarily. The applicant was subjected to search by CBI, Patna on 11.10.1985 and an FIR (Rc/19/85) was lodged against him. The CBI, however, submitted

Final report in the case due to/sufficient evidence.
The final report was accepted by the Special Judge on 21.7.1989. No disciplinary inquiry was initiated against the applicant on the basis of the matter contained in FIR of Rc 19/85. It is asserted that having failed in Rc 19/85, after a lapse of four months the CBI filed another FIR by Rc 6/86 dated 21.2.1986 under Section 5(1) (e) of the Prevention of Corruption Act, 1947. In that case also the CBI submitted final report after investigation and the same was accepted by the Special Judge on 2.11.1987. It is alleged that when these Rcs could not be proceeded with in the court of law, the respondent No.4 issued memo of charges under Rule 14 of CCS(CCA) Rules, 1965 on 25.5.1988. It is asserted that mere filing of FIR cannot ^{stand} ~~stand~~ in the way of crossing of efficiency bar with effect from 1.2.1986. No case was pending against the applicant before 25.5.1988. It is alleged that in the disciplinary proceeding the applicant was punished with demotion to the cadre of Income Tax Inspector in the pay scale of Rs.1640-2900 by order dated 24.10.1994. The pay of the applicant on reversion to the cadre of Income Tax Inspector was fixed at Rs.2300/-. The applicant was re-promoted and re-appointed in the cadre of Income Tax Officer Grade 'B' vide order dated 27.4.1995 and his pay was fixed at the stage of Rs.2450/ from 28.4.1995.


3. It is asserted by the applicant that due to non-crossing of efficiency bar at the stage of Rs.2300/- with effect from 1.2.1986, his pay was fixed at Rs.2300/- in the cadre of Inspector of Income Tax though in case he had been permitted to cross efficiency bar at the due date i.e. on 1.2.1986, his pay in the grade of Income Tax

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Officer would have been fixed at Rs.3050/-. The applicant has asserted that as no disciplinary or judicial proceeding was pending against him before 1.2.1986, the respondent did not consider his case of crossing of efficiency bar on 1.2.1986. The applicant submitted representations dated 18.7.1987 and 4.9.1989 before the Chief Commissioner, Income Tax (Administration), Patna for allowing him to cross the efficiency bar at stage of Rs.2300/- from 1.2.1986 which was not acceded to vide letter dated 22.9.1989. It has further been asserted that when the aforesaid Rcs were dropped by the court the applicant submitted representation dated 23.11.1989 before the Chief Commissioner, Income Tax to permit him to cross the efficiency bar but no reply was received. He thereafter submitted another representation dated 16.9.1992 before the Chairman, Central Board of Direct Taxes, New Delhi through proper channel. This representation was, however, not forwarded to the Chairman but was disposed of by the Chief Commissioner, Income Tax (Administration), Patna vide letter dated 3.2.1993 rejecting his request. The applicant further submitted representations dated 10.6.1993 and 11.7.1995 before the Chief Commissioner, Income Tax, Patna but no reply was received.

4. The applicant asserts that a direction be issued to the respondents that he be permitted to cross efficiency bar and his pay should be properly fixed and he be allowed to draw arrears of pay.

5. On behalf of the respondents it has been asserted that due to the lodging of the FIRs and also the pendency of the departmental proceedings, sealed cover procedure was adopted by the DPC. It is further asserted that as in the departmental inquiry major penalty was imposed



on the applicant, so there was no question of opening the sealed cover and allowing the applicant to cross the efficiency bar from 1.2.1986. The respondents have strongly contended that the present OA was hopelessly barred by limitation and should be dismissed for this reason alone.

6. In the rejoinder, the applicant has asserted that he was due to cross the efficiency bar on 1.2.1986 and at that time no proceeding in the criminal court nor any departmental inquiry was pending hence the DPC could not adopt sealed cover procedure. It has further been asserted that as the applicant was losing his pay every month, the wrong was continuing one and so ~~the~~ the OA was within limitation.

7. I have heard the learned counsel for the parties and perused the material on record. I will first take up the plea of limitation which has been seriously raised on behalf of the respondents. As mentioned earlier, the applicant has claimed that his pay was fixed at Rs.2300/- in the scale of 2000-3500 with effect from 1.1.1986 and his next increment was due on 1.2.1986. He has asserted that the fixation of pay was done by the department on 22.10.1986. He has further claimed that DPC was not held during the period October-December, 1986 and in any case it should have been held in the year 1987. On behalf of the respondents it has been asserted that the DPC was held in December, 1987 and sealed cover procedure was adopted. The applicant asserts that his juniors were allowed to cross efficiency bar vide memo dated 23.12.1987 but his case was not considered illegally and arbitrarily. He has further asserted that he made representations on 18.7.1987 and 4.9.1989 before respondent No.3. However, those representations

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were not acceded to vide letter dated 22.9.1989 (Annexure-A/8, 8(b)). This letter contains the following order:

"Your petition for request of crossing efficiency bar has not been acceded to by the Chief Commissioner of Income Tax, Patna at the moment."

8. The applicant asserts that thereafter he submitted another representation before Respondent No.3 on 23.11.1989 but no reply was received. He thereafter submitted representations dated 16.9.1992, addressed to the Chairman, CBDT but the respondent no.3 rejected the same by letter dated 3.2.1993 Annexure-A/10(a). The applicant then asserts that he made further representations on 10.6.1993 and 11.7.1995 which were not replied to.

9. If the assertions by the applicant are closely scrutinised it is obvious that though according to him he was due to cross efficiency bar on 1.2.1986 he was not allowed to do so even when his juniors were permitted to cross the efficiency bar on 23.12.1987. It is also clear that as early as on 22.9.1989, the respondent no.3 did not allow his representation as per Annexure-A/8(b). When the applicant made further representation the same was rejected by letter dated 3.2.1993. Obviously the cause of action in the matter arose when the applicant was not allowed to cross the efficiency bar even on 23.12.1987 when his juniors allegedly were allowed to cross the same. In any case when his representations were by order dated 22.9.1989 rejected he could have moved the Central Administrative Tribunal for redressal of his grievances. Further when on 3.2.1993, another of his representation was categorically rejected, he should have sought redressal of his grievance within the period of limitation. The applicant however, filed this OA

as late as 5.12.1995 which appears to be clearly barred by limitation under section 21 of the Central Administrative Tribunals Act, 1985.

10. The learned counsel for the applicant has placed reliance on the decision in the case P.L.Shah v. Union of India AIR 1989 SC 985 in support of his contention that in such a case the bar of limitation cannot apply. In the case relied upon by the learned counsel the Govt. servant was suspended on account of filing of criminal proceeding against him. There was delay in conclusions of criminal proceedings. His subsistence allowance was reduced by the authority concerned due to alleged delay. The employee approached the Tribunal but his application was rejected on the ground of bar of limitation. The Hon'ble Supreme Court observed that the order reducing the subsistence allowance was liable to be reviewed from time to time but the authority concerned had not done so. It was on the facts of the case that it was held that the case was not barred by limitation. Obviously the facts in the present case are totally different.

11. The learned counsel for the applicant has then placed reliance on the decision in the case M.R.Gupta v. Union of India AIR 1996 SC 669. In that case the grievance of the employee was that his fixation of initial pay was not in accordance with the rules and so he was suffering loss every month and thus it was a continuing wrong. It was in these facts held that so long as employee is in service a fresh cause of action arises every month when he is paid monthly salary on the basis of a wrong computation made contrary to the rules. Even in this case the claim as regards the arrears of salary was directed to be considered after taking into consideration the bar of limitation.

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12. In the present case it is not alleged that the salary of the applicant had not been correctly fixed in accordance with the rules on 1.1.1986 or 1.2.1986. The contention is that the applicant should have been permitted to cross efficiency bar with effect from 1.2.1986 and had this been done, his salary would have been fixed at higher stage and he would have been entitled to get annual increments also. The cause of action thus is failure to allow the applicant to cross efficiency bar with effect from 1.2.1986. It cannot be said that there was recurring cause of action and the applicant would get a fresh cause of action every month so as to claim that respondents should be directed to allow him to cross efficiency bar with effect from 1.2.1986. In the circumstances the rulings relied upon by the learned counsel for the applicant are not applicable to the present case. The claim of the applicant is clearly barred by limitation and was liable to be dismissed on this ground alone. In these circumstances it is not necessary to consider the other assertions by the applicant on merits.

13. The applicant has also moved MA-25 of 1996 for condonation of delay in filing the OA. I have considered the assertions made in the MA but I do not find any sufficient ground for not filing the OA for such a long time even after the representations by the applicant had been rejected. The MA should therefore be dismissed.

14. In view of the above discussion MA-25 of 1996 is hereby rejected and OA No.733/of 1995 is dismissed being barred by limitation. No order as to costs.


4.3.1997
(V. N. MEHROTRA)
VICE-CHAIRMAN