

LUCKNOW BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Misc.Application No. 2 of 1988

IN

O.A.No. 199 of 1987.

S.R.C. Agarwal

...

Applic

Vs.

Sri D.N.Bhatia, Superintending
Engineer, Telecom, Civil Circle, ...
Lucknow.

Respon

Hon'ble D.S.Misra, A.M.
Hon'ble G.S.Sharma, J.M.

(By Hon.D.S.Mi

This is a contempt application in O.A.No. 199 of 1987 in which final orders were passed by a division bench of this Tribunal on 19.1.1988. The applicant has alleged that the respondents has deliberately and wilfully disobeyed the said order and has not complied with the directions contained in that order. In the reply filed on behalf of the respondents it is stated that after observing certain formalities the case for crossing of efficiency bar of the applicant was put up before the departmental promotion committee on 23.3.1988 and the findings of the D.P.C. were kept in a sealed cover as per rules since disciplinary proceedings are pending against him and a charge sheet has already been served on him. On conclusion of the disciplinary proceedings, the result/findings of the D.P.C. will be disclosed. The applicant has already been informed about it



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vide letter dated 25.8.1988 copy Annexure C-3. The applicant filed a rejoinder in which it is stated that he was due to cross the efficiency bar as on 1.1.1983 and any subsequent event for which disciplinary action is taken cannot have retrospective effect.

2. We have heard the arguments of the learned counsel for the parties and have carefully perused the documents on record. On going through judgment dated 19.1.1988 it is noticed that in the reply filed by the respondents in O.A. No.199 of 1987 it was stated that some irregularities are alleged to have been committed by the applicant between 1977 ^{and} ~~to~~ 1982. Since these irregularities were under investigation the applicant was not permitted to cross the efficiency bar. Para-4 of the judgment dated 19.1.1988 reads as follows : "the efficiency bar was due on 1.1.1983. We do not know on what date the irregularities of the year 1977 to 1982 came to light. So far no charge sheet has been submitted nor any specific order has been passed in this connection. In view of the above the authorities are directed to pass proper order regarding crossing the efficiency bar." It is evident that the bench was not aware of the fact that a chargesheet had been served on the applicant. The respondents have explained that the enquiry into the allegations against the applicant took some time and a charge sheet was served on the applicant vide memo dated 3.7.1987 copy Annexure C-3. The learned counsel for the respondents also brought to our notice instructions contained in O.M. dated

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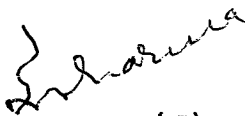
4th September, 1984 from the Ministry of Home Affairs to the D.G.P. & T. regarding delay in consideration of efficiency bar cases, copy Annexure C-1. Para-3 of the O.M. reads as follows : "At present in cases where departmental proceedings etc. are in progress, the Efficiency Bar case of the official concerned is not cleared till the proceedings are completed. It has been decided that if on the date of the actual DPC, the concerned Government servant is under suspension or disciplinary/criminal court proceedings against him are contemplated or pending, the findings of the DPC in regard to his crossing the Efficiency Bar stage should be placed in a sealed cover. The sealed cover should be opened after conclusion of the proceedings. If he is fully exonerated, the recommendations in in the sealed cover may be considered by the competent authority who may lift the bar retrospectively from the date recommended by the DPC. In that case, the Government servant will be entitled to the arrears of the increment(s). In case, however, the proceedings do not result in complete exonerated^{ion} of the Government servant, he cannot be allowed to cross the bar with retrospective effect. His case will be considered by the next DPC which meets after the final orders on the basis of the proceedings have been passed and the Committee will then consider him for crossing the bar from a prospective date. While doing so, the Committee take into account the order passed on the conclusion of the disciplinary proceedings." According to these instructions the findings of the DPC in regard to the crossing of efficiency bar should be placed in a sealed cover if on the date of actual DPC, the concerned gove

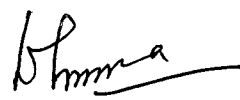
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servant is under suspension or disciplinary/criminal court proceedings against him are contemplated or pending. We are therefore of the opinion that the respondents are bound by these instructions. ^{pl} They have taken steps to arrange a meeting of the DPC to consider suitability of the applicant for the crossing of the efficiency bar but they are not in a position to disclose the result to the applicant. The learned counsel for the applicant contended that for delay and laches on the part of the respondents in not holding the DPC before 1.1.1983 or immediately after that date, as prescribed under the rules, the applicant should not suffer. On the other hand, the learned counsel for the respondents stated that Sri D.N. Bhatia, Superintending Engineer, Telecom, Civil Circle, Lucknow, who is alleged to have committed contempt of the court cannot be held responsible for any lapse on the part of the authorities, whose duties it was to consider the case of the applicant for crossing of efficiency bar on or about 1.1.1983.

3. We have considered the matter and we are of the opinion that on the facts and circumstances of the case there is no wilful disobedience on the part of the respondent to comply with the directions contained in the judgment dated 19.1.1988. Accordingly we discharge the notice and dismiss the application without any order as to costs.


MEMBER (J)


MEMBER (A).

March
Dt. ~~February~~ 2, 1989.