

Central Arbitration Tribunal
L.C.C. Bench

Cause Title (A. 15/8) of 1993

Name of the Parties : R. N. Srinivasan ... Applicant

versus

Deputy Accountant General & Respondents.

Part A - C

| Sl. No. | Description of documents | Date |
|---------|--------------------------|--------------|
| 1. | Check List | A 1 - A 2 |
| 2. | Order Sheet | A 3 - A 7/ |
| 3. | Judgement (23/6/93) | A 8 - A 11/ |
| 4. | Petition Copy | A 12 - A 14/ |
| 5. | Annexure | |
| 6. | Power | A 15 - |
| 7. | Counter Affidavit | A 16 - A 72 |
| 8. | Rejoinder Affidavit | |

B - file

R.B.D. - B-132

C - file C 132 - 146

Clerk said that the file will be

available on 29/3/93

He has got information, may come after 29/3/93
and then the case will come to the attention of the
Court of Justice.

Sc (15)

(22) 22/12/2022 E-B SINGLE MEMBER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 915 of 1988

APPLICANT (s) B. N. Srivastava

RESPONDENT(s) Sr. Deputy Accountant General (F&A) c/o

Accountant General (A&E) II, U.P. Allahabad

42 others.

| Particulars to be examined | Endorsement as to result of Examination |
|---|--|
| 1. Is the appeal competent ? | Y |
| 2. (a) Is the application in the prescribed form ? | Y |
| (b) Is the application in paper book form ? | Y |
| (c) Have six complete sets of the application been filed ? | 5 sets filed. |
| 3. (a) Is the appeal in time ? | Y |
| (b) If not, by how many days it is beyond time ? | — |
| (c) Has sufficient cause for not making the application in time, been filed ? | — |
| 4. Has the document of authorisation, Vakalat-nama been filed ? | Y [Court fee stamp for B.3=50/- with 019022] |
| 5. Is the application accompanied by B.D./Postal Order for Rs. 50/- | Y [019022] D.R. 21.7.00 for B.50/- |
| 6. Has the certified copy/copies of the order (s) against which the application is made been filed ? | Y |
| 7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ? | Y |
| (b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? | Y |

Particulars to be ExaminedEndorsement as to result of Examination

42 (c) Are the documents referred to in (a) above neatly typed in double space ?

48

8. Has the index of documents been filed and paging done properly ?

Index filed but paging has not been done.

9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?

48

10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?

No.

11. Are the application/duplicate copy/spare copies signed ?

Only 1st Copy Signed.

12. Are extra copies of the application with Annexures filed ?

48

(a) Identical with the original ?

48

(b) Defective ?

-

(c) Wanting in Annexures

Nos...../Pages Nos.. ?

-

13. Have file size envelopes bearing full addresses, of the respondents been filed ?

48

14. Are the given addresses, the registered addresses ?

48

15. Do the names of the parties stated in the copies tally with those indicated in the application ?

48

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?

No.

17. Are the facts of the case mentioned in item No. 6 of the application ?

48

(a) Concise ?

48

(b) Under distinct heads ?

48

(c) Numbered consecutively ?

48

(d) Typed in double space on one side of the paper ?

48

18. Have the particulars for interim order prayed for indicated with reasons ?

No.

19. Whether all the remedies have been exhausted.

48

Dec 22. 8.89

218

Submitted by
Shashank
26-2-2000

OPPER STREET
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALIAHABAD

..... O.R. No. 915 of 1980

..... Vs.

| Sl. No. of order | Date of order | ORDERS WITH SIGNATURE | Office Notes as to action (if any) taken on order |
|------------------|---------------|---|---|
| | 22-8-88 | <p><u>Not before Single Bench for admission on 26.8.88</u></p> <p><i>Red</i></p> | |
| | 26-8-88 | <p><u>Hon D.S. Misra - A.M</u></p> <p>NO one is present for the Applicant.</p> <p>The Case is Ad Solved.</p> <p><i>AM</i></p> | |
| | 2-9-88 | <p><u>8132171 8132172</u></p> <p>Give 3rd no (132171) to 3132173 (132172)</p> <p><i>AM</i></p> <p><i>2-9-88</i></p> | |

Not before Single Bench for admission on 2-9-88 before the applicant

AM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW. (P.M.)

O.A./L.A. No. 915 1988

B. N. Srivastava

Applicant(s)

Versus

U.O.C.

Respondent(s)

| Sl. No. | Date | Orders |
|---------|----------|---|
| | 23.11.88 | Hon. D.S. Misra, A.M. Hon. G.S. Sharma, J.M. |
| | | On the request of learned Counsel for the applicant, the case is adjourned to 23.12.88 for adjournment. |
| | | Om. (P.M.) Am |
| | 23.11.88 | |
| | 23/12/88 | No sitting. Adjourned to 27/12/88 for adjournment. |
| | | 23/12 |
| | 27/12/88 | No sitting. Adjourned to 24.1.89 for adjournment. |
| | | 27/12 |
| | 24/12/88 | Hon. D.S. Misra, A.M. Hon. G.S. Sharma, J.M. |
| | | On the request of the learned Counsel for the applicant, the case is adjourned to 13.1.89. for adjournment. |
| | | Om. (P.M.) Am |

Hon' Mr. Justice K. Nath, V.C.

Hon' Mr. K.J. Raman, A.M.

4/7/89

Shri M. Dubey, learned counsel for the applicant is present.

Notices by registered post were sent to the Op.Ps. on 12-4-89. No reply has been filed; no appearance has been made on their behalf.

Shri V.K. Chaudhary, learned counsel says that he will obtain necessary instructions from the Op.Ps. and will arrange to file counter within four weeks to which the applicant may file rejoinder within one week thereafter. List the case for final hearing on 18-8-89. It is made clear that in case no counter affidavit is filed within the stipulated period, the case will be disposed of ex-parte on the date fixed.

KJC
A.M.

DR
V.C.

(sns)

10.7.89

No. Letter. Ady. to 26.9.89.
Both the counsel are present

26/9/89

Hon. Justice K. Nath, V.C.

Hon. K. Obayya, A.M.

Complaint is filed on behalf of ~~Opposite~~ ^{Applicant} parties with the request to ~~cancel~~ ^{cancel} the order of proceeding ex-parte. The application contains sufficient reasons, hence the order to proceed ex-parte is recalled and the counter is taken on record. The applicant may file rejoinder within three weeks and list for final hearing on 28-11-89.

DR
- As due
Court's order
no reply has been received
so far.

Submitted for ex-parte
hearing

25/9

DR
A.M.

DR
V.C.

20.11.89

No. Letter. Ady. to 21-2-90.
Both parties are present

R.A. filed to court

11

20/11/89

915/90

(P)

13.3.90 Hon. Mr. D.K. Agarwal, J.M
Hon. Mr. K. Obayya, A.M

On the request of both the parties,
the case is adjourned to 9.7.90

A.M

Def
J.M

OR
S.P.M
L
1/8

9.7.90. No sitting Adi. 5/9. J.M

5-9-90 No sitting Adi to 30/X/90

5.11.90

Dir to Melody, Adjourned to
17.12.90 J.M

17.12.90

No sitting Adi to 18.2.91.

18.2.91

No sitting Adi to 30.5.91.

30.5.91
J.M

No Sittings. Adj to 13.8.91
J.M

13.8.91

Hon. Mr. Justice L. Mathew
Hon. Mr. K. Obayya A.M

On the request of learned
Council for the App. Court. Case
is adjourned to 25.9.91 for a
final hearing.

S

A.M

(P)

ve

25.9.91

No Sittings adj to 16.11.91
S

16.11.91

No Sittings adj to 9.12.91
S

(AP)

D.A. No. 915 of 1988

Date
23/4/92

Hon'ble Mr. S.N. Prasad, J.M

case called out. The learned counsel for the applicant Sri M. Dubey has sought adjournment. This is an old case and requires speedy disposal. This is noteworthy that on 13.4.92 also counsel for the applicant had sought adjournment which was allowed. List this case for hearing on 24.4.92. No further adjournment will be granted as this is an old case and requires speedy disposal.

3

J.M

Date
24/4/92

Hon'ble Mr. S.N. Prasad, J.M

case called out. The counsel for the parties have sought adjournment. List this case for hearing on 13.5.92.

3

J.M

13.5.92

Hon'ble Mr. S.N. Prasad, J.M

Adjournment, application of Sri M. Dubey, Ad. allowed. P. 121 up. Turn over

3
J.M

THE CENTRAL ADMINISTRATIVE TRIBUNAL-LUCKNOW BENCH

LUCKNOW.

O.A. No. 915 of 1988.

Sri B.N. Srivastava..... Applicant.

Versus

The Union of India & others..... Respondents.

Hon'ble Mr.Justice U.C.Srivastava- V.C.
Hon'ble Mr. K. Obayya - A.M.

(By Hon'ble Mr.Justice U.C.Srivastava-V.C.)

The applicant who was working in the office of the Executive Engineer, Construction Division, Public Works Department Allahabad as Divisional ~~Accountant~~ Accountant and now retired from service, who was due to cross the Efficiency Bar (EB) at the stage of Rs. 640/- in the scale of Rs. 425-700, before 1.1.1975, no order was passed either before that date or immediately thereafter, but it transpires that his case was forwarded and duly recommended by the Executive Engineer Construction Division, Public Works Department in time and confidential reports were also good enough to cross the Efficiency Bar as per allegations made by the applicant who has averred that there has never been adverse comments whatsoever against him. The applicant retired from service in 1979, but even thereafter he ~~has~~ continued to make representation and after representations, but ~~the~~ he could not get any relief from any quarter. The applicant approached this Tribunal.

2. The respondents have resisted the claim of the applicant stating that the applicant's case was submitted for the first time on 6.12.74 but it was differed for want of C.R. of 1973-74 vide ~~committees~~ order dated 6.1.1975. According to them there were certain complaints against him regarding the non-

payment of arrears of House Rent which prevented the D.P.C. of 1975 for deciding his case for crossing the efficiency Bar and C.R. of the year 1974-75 i.e. from 1.4.75 to 28.10.75 contained some adverse remarks. The applicant's assertion is that his adverse remarks were not communicated to him and he never got any opportunity to meet the same.

3. According to the respondents that order infact was passed and he was intimated vide order dated 13.7.76 that he was found unfit to cross the Efficiency Bar and the various representations were replied vide letter dated 28.10.78.

4. The factual position is thus quite clear that no formal order was passed before with holding the increment, although it was incumbent on the respondent to do so. This itself vitiates the order of the stoppage of increments. Even the C.R. of the applicant for the year 1973-74 was not available the applicant was not responsible for the same. It was the duty of the department to find it out and in case of the department's failure to procure the same the benefit of the same was to given to the applicant and the applicant could not have been deprived of crossing Efficiency Bar because of the act of negligence or carelessness on the part of the respondents; It appears that all the respondents have stated to justify their action on the ground that there were certain adverse remarks against the applicant given to him in subsequent period. The applicant was due to cross the Efficiency Bar on 1.1.75 and the adverse remarks were between the period April, 75 to September 1975. It is now settled legal position that uncommunicated adverse remarks cannot be held against a person unless he gets an opportunity

AHO

to meet the same and even his representation was also not disposed of by that date and also not considered. The applicant was to cross the E.B. on 1.1.75 and no adverse entry was made by that time and as such the respondents were bound to allow to cross the Efficiency Bar and by a letter ~~the~~ adverse entry ~~and~~ he could not have been deprived from his right. In this connection a reference may be made with the observations by Hon'ble Supreme Court in the case of Padam Singh Zina Versus U.O.I. & others ~~and~~ 1974 I S.L.R. page 594. The Supreme Court held that the order preventing crossing the Efficiency Bar should be passed either before the appointed date or thereafter shortly. In this case the order was not passed earlier or shortly thereafter as has been indicated earlier. The applicant was due to cross Efficiency Bar 1.12.75 and the action to cross the E.B. was initiated in the year 1976 and by this time an adverse entry has been made in the C.R. which was taken into account by the DPC who found him unfit to cross the Efficiency Bar. Although the DPC did not recommend, but no order was passed by the Competent Authority. The Tribunal took the view that there are series of irregularity in the action and the order withholding the DPC on E.B. was set-aside. The same position arises in this case also and accordingly this application deserves to be allowed and the order withholding the applicant's Efficiency Bar is quashed and the respondents are directed to allow the applicant to cross the Efficiency Bar w.e.f. 1.1.1975. The arrears now accrued to the applicant on account of crossing Efficiency Bar on due date shall also be paid to the applicant within a period of three months.

(DPS)

and any consequential benefit may also be allowed
to him within this period. No order as to the costs

Abdul Majid
Member (A)

Abdul Majid
Vice Chairman.

Dt: June 23, 1992.
(DPS)

iv) The Account Officer by his letter dated 19.9.79

A-8

in reply to applicant's representation dated 14.5.79 intimated that the Accountant General after careful consideration of the applicant's case had ordered that he did not find any reason to interfere with the decision of the appropriate authority declaring him ~~un-fit~~ to cross the Efficiency Bar. This intimation was vague, evasive and indefinite besides being wrong and malicious, as it did not convey to the applicant the reasons why his case was not considered before or immediately after 1.1.75 and ~~had~~ he was not found fit to cross the EB and how the Accounts Officer was ~~the~~ the appropriate authority who was not the appointing authority of the applicant.

~~considered to be~~

v) The applicant submitted a further representation

A-9

dated 4.10.79 to the Accountant General U.P.II Allahabad, stating therein that the applicant had sought for justice as there was nothing adverse against him prior to 1.1.75 and his CR was satisfactory. There was therefore, no reason not to allow the applicant to cross the EB with effect from 1.1.75. The Accounts Officer, however, by his letter dated 14.1.80 intimated that the case was reviewed by the Accountant General, but no change in the order already passed was deemed necessary by him. The applicant was not satisfied with this reply and therefore, he submitted another representation dated

A-10

A-11 6.3.80 to the A.G., U.P., Allahabad requesting him to intimate the reasons for withholding his EB due on 1.1.75. No reply has been received by the applicant so far, to this representation.

vi) That the applicant being aggrieved by the evasive,

A-12

vague and indefinite replies of the Accounts Officer and silence of the A.G.U.P., Allahabad, preferred an appeal dated 3.10.80 to the Comptroller ~~or~~ Auditor General of India, New Delhi, respondent no. 2, seeking his intervention in the matter to ensure justice to the applicant by allowing him to cross EB from 1.1.75 at stage of Rs. 640/- in the scale of Rs. 425/700 with all consequential benefits.

Dr. Srinivasa

vii) It was after sending a number of reminders, A-13 last dated 26.3.87, that the Senior Deputy Accountant General (P&A) by his letter dated 27.7.87 in reply to the appeal made to the A-16 Comptroller & Auditor General of India, New Delhi, intimated that the appeal preferred by the applicant had been rejected by the competent authority and there is no scope for reconsideration of his case or redressal of his grievance at the belated stage.

viii) The applicant sent a Regd. A/D notice dated A-17 1.9.87 to the respondents, through his Counsel followed by reminder dated 15.11.87 to consider A-18 his case objectively and allow him to cross the EB at the stage of Rs. 640/- in the scale of Rs. 425/700 w.e.f. 1.1.75 with all consequential benefits alongwith cost of the notice of Rs. 200/- but the applicant did not receive any reply from the respondents. However, the Assistant Accountant General, WMI (A) by his letter dated A-19 29.12.87 intimated that there is no justification for reconsideration of the applicant's case at this belated stage.

ix) The applicant had been pursuing his case for crossing of EB at the stage of Rs. 640/- in the scale of Rs. 425/700 w.e.f. 1.1.75. No adverse comments was ever made against the applicant prior to 1.1.75 and he was arbitrarily and maliciously withheld at the EB stage without any rhyme or reason and no order withholding him at the EB stage was communicated to him before or immediately after 1.1.75. His representations and appeal were also not properly considered.

x) The applicant has no alternative but to submit this application before this Tribunal for justice and redressal of his grievance.

7. Details of remedies exhausted :

The applicant declares that he has availed all the remedies available to him under the relevant service rules etc.

i) Representation dated 26.5.78 (Annexure A-1)
ii) 14.8.78 (Annexure A-2)
iii) 14.9.78 (Annexure A-3)

Ram Srivastava

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- iv) Representation dated 14.5.79 (Annexure A-4)
- v) 2.6.79 (Annexure A-5)
- vi) Accounts Officer letter of 13.6.79 (Annex. A-6)
- vii) 28.10.78 (Annex. A-7)
- viii) 19.9.79 (Annex. A-8)
- ix) Representation dated 4.10.79 (Annexure A-9)
- x) Accounts Officer letter of 14.1.80 (Annex. A-10)
- xi) Representation dated 6.3.80 (Annexure A-11)
- xii) Appeal dated 3.10.80 (Annexure A-12)
- xiii) Reminder dated 24.3.87 (Annexure A-13)
- xiv) 3.6.87 (Annexure A-14)
- xv) Administrative Office 0/0
The Comptroller & Auditor General
of India, New Delhi letter of 15.4.87 (Annex. A-15)
- xvi) Sr. Dy. Accountant General (F&A)
Letter dated 27.7.87 (Annexure A-16)
- xvii) Notice dated 1.9.87 (Annexure A-17)
- xviii) Reminder dated 15.11.87 (Annexure A-18)
- xix) Asstt. Accountant General WMI(A)
letter dated 29.12.87 (Annexure A-19)

8. Matter not previously filed or pending with any other

Court :

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

9. Reliefs sought :

In view of the facts mentioned in para 6 above, the applicant prays for the following reliefs :-

i) The respondents be directed to allow the applicant to cross EB (Efficiency Bar) at the stage of Rs. 640/- in the scale of Rs. 425/700 with effect from 1.1.75 with all consequential benefits and interest @ 10% per annum on the amount withheld by them.

ii) Cost of Rs. 200/- in respect of the notice sent to them under Regd. A/D post be allowed in favour of the applicant and against the respondents.

iii) Cost of the case be allowed in favour of the applicant as against the respondents.

Bm Srivastava

I
A9

iv) Any other relief deemed just and proper in the circumstances of the case be allowed in favour of the applicant.

10. Interim order, if any prayed for :-

No interim order is prayed for.

11. The case be listed for hearing on 30.5.88.

12. Particulars of postal order in respect of the application :-

a) Number of Indian Post Order (s) DD 019022
b) Name of the Issuing Post Office Ulbagh, Lucknow
c) Date of issue of Postal order(s) 21.7.88
d) Post office at which payable - GPO Allahabad

13. List of enclosures :

i) Annexures A-1 to A-19
ii) Postal order for Rs. 50/-
iii) Vakalatnama.

VERIFICATION

I, B.N.Srivastava, s/o Late Shri ~~Maloo~~ Lall Srivastava, aged 68 years Retired Divisional Accountant o/o Executive Engineer, Public Works Department, Allahabad, resident of 17A Hashimpur, Allahabad, do hereby verify that the contents of paras 1 to 8 and 10 to 13 are true to my personal knowledge ~~and~~ para 9 believed to be true on legal advice ~~and~~ and that I have not suppressed any material fact.

B.N.Srivastava
Signature of the
applicant

Dated 30-6-88
26.7.88

Place Lucknow

To

The Registrar

8
APR

Annexure A-1

To

The Accountant General
Uttar Pradesh
Allahabad

Bir

I beg to submit that my efficiency
Bar case was submitted to you in 1974 duly recommen-
ded by Executive Engineer, Construction Division,
Public Works Department, Allahabad and the same
should have been considered and passed on 1.1.75
i.e. due date but it was considered in October, 1977
when I retired on 31.10.77. If the efficiency bar
case was considered in time instead of Oct. 77 there
is ^{about} 2 years I ~~should~~ ^{should} not have been put to such
a heavy financial loss at the time of retirement
because all my previous reports were good and efficiency
bar case should have been allowed to be ceased
on 1.1.75.

It is requested that my efficiency bar case
may kindly be looked into again and the same may kindly
be allowed from 1.1.75 for which act of kindness I
shall remain grateful to you.

Yours faithfully

(B.N.Srivastava)
Retd. Divisional Accountant
17A Hashimpur
Allahabad

Dated : 26.5.78

B.N. Srivastava

Enclosed True copy
B.N. Srivastava

ANNEXURE No.2.

9

AB21

To

The Accountant General,
Uttar Pradesh II, Allahabad.

Sir,

Sir,

Most humbly and respectfully I beg to refer your letter No. WMI/MB/1 Vol II/1984 dated 22.7.78 and request you kindly to intimate why my E.B. case was not considered in 1975 when it was due on 1.1.75 and the E.B. case was forwarded duly recommended by the then Ex. Eng. Constn. Dn. P.W.D. Alld. well in time and all the confidential reports were good enough to cross the E.B. It was considered only in October 1977 when I retired from service. As the matter is pending for the last about 4 years it is requested that the case may kindly be considered at an early date and eff. bar may be allowed to cross to avoid unnecessary correspondence with higher authorities and litigation for justice.

Yours faithfully,

Sd/- B.N. Srivastava
17 A, Hashimpur,
Allahabad.

Dated 14.8.78.

Allesléd

TRUE COPY

Bon Srinivastava

11 R23

Annexure A-4

To

The Accountant General II
(W.M.I. Section)
U.P. Allahabad

Sir

Most humbly and respectfully I beg to state that I retired as Divisional Accountant from Tube-well Division - Muzaffarnagar in October, 1977. My pension and gratuity was calculated on the old rates of pay, D.A., Now the Comptroller and Auditor General of India has been pleased to merge dearness allowance for pension purposes from September, 1977. It is therefore, requested that my pension and gratuity may kindly be fixed at the revised rates so that I may get my pension and gratuity at the enhanced rates.

Yours faithfully

Sd. B.N. Srivastava
Retd. Divisional Acctt.
17A Hashimpur
Allahabad

13th May 1979
14th

B.N. Srivastava

All is set
True copy

M. Dubey
Advocate
4th Floor, Law 11
Ganesha Ganj, Lucknow.

To,

The Accountant General II
U. P. Allahabad

Subject: Efficiency Bar due on 1.1.75

Sir

Inviting reference to my long correspondence resting with letter no. nil dated 14th May 1979 on the above subject I request you kindly to intimate me the reasons for not allowing efficiency bar due on 1.1.75 in view of the fact that I get very good entries in my confidential reports throughout my whole service of 35 years and there seems no justification to withhold my efficiency bar. This unjustified action of yours has put me to heavy financial loss in pension and gratuity.

In view of the above facts I request you kindly to allow me the efficiency bar due on 1.1.75 or give reasons for withholding the same so that I may take shelter of the higher authorities.

Yours faithfully

Sd. B.N.Srivastava
Retd; Divl. Acctt.
17-A Hashimpur
Allahabad

2.6.79

Copy forwarded to the Comptroller and Auditor General of India, New Delhi for information.

Sd. B.N.Srivastava

B.N. Srivastava

Alleged
me to pay
in my

M. Dubey, Advocate
4th Lane, Nawa-iya
Ganeshganj, Lucknow.

13
Annexure A-6
D25

No. W.M.-I/EB/Vol.II/290
OFFICE OF THE ACCOUNTANT GENERAL
Uttar Pradesh II

Allahabad : 13.6.79

From

The Accountant General
Uttar Pradesh, II

To

Shri Bishun Narain Srivastava
Retired Divisional Accountant
17A Hashimpur, Allahabad.

With reference to his letter dated June/79 regarding
the crossing of efficiency for at the stage of
Rs. 640/- with effect from 1.1.75 Shri Srivastava
is informed that necessary reply of the above
subject was communicated to him under this office.
letter no. W.M. -I/EB/Vol.II/3706 -28.10.78.

However a copy of the same is enclosed for nearly
reference.

Yours faithfully

Sd. K. Pande
Accounts Officer

Encl : Letter no. W.M.I/3706
dated 28.10.78

*Attested
True copy
W.M.*

B.N. Srivastava

*M. Dubey, Advocate
4th fl. no. 304
Ganesha, Lucknow*

14
Annexure A-7
A26

No. WM -I/EB/Vol.II/3706
OFFICE OF THE ACCOUNTANT GENERAL
Uttar Pradesh - II

Allahabad : 28 October 1978

From

The Accountant General
Uttar Pradesh

To

Shri Bisun Narain Srivastava
Retired Divisional Accountant
17A Hashimpur
Allahabad

With reference to his letter no. dated 14.8.78 and 14.8.78 regarding the crossing of efficiency bar at the stage of Rs. 640/- with effect from 1.1.75 Sri Srivastava is informed that his efficiency bar case was finally considered on 5th October 78 but he has not been found fit to cross the efficiency bar on an assessment of his performance and service records.

Sd. A.L.Maheshwari
Accounts Officer

Bisun Srivastava

Delivered
True copy
Under
M. D. S. Advocate
S. S. Advocate

15
127

Annexure A-5

Office of the Accountant General
Uttar Pradesh II

No. WM-I/EB/Vol.II/3184 Dated : Allahabad :
19.9.79

From

The Accountant General
Uttar Pradesh
Post Box no. 15
WM-I Section

To

Sri Bishun Narain Srivastava,
Retired Divisional Accountant
17A Hashimpur
Allahabad

Sir

With reference to his representation dated 14.5.79 addressed to the Accountant General and copy endorsed to the C.A.G. regarding the crossing of efficiency bar at the state of Rs. 640/- with effect from 1.1.75. Sri Srivastava is informed that the Accountant General, after careful consideration of his case, has ordered that he did not find any reason to interfere with the decision of the appropriate authority declaring him unfit to cross the efficiency bar.

Sd. K.Banda
Accountas Officer

*Merited
true copy*

W.M.D.

*M. Dubey, Advocate
4th Lane, Nainiya
Goroshganj, Lucknow.*

Bsn Srivastava

Shri S.T. Kenghe
Accountant General,
U.P. II Allahabad.

Sir,

W.r. to letter No. WM.I/EB/Vol.II/3184 dated 19.9.79 I most humbly and respectfully beg to state that I do not want any interference from you in the decision of the appropriate authority declaring me unfit to cross the efficiency bar but demand justice from you being higher authority to consider the case on justified grounds. If any of my annual confidential report prior to the due date of crossing efficiency bar that is January 1, 1975 is unsatisfactory and adverse remarks communicated to me I will never request you to consider the case and allow me to cross the efficiency bar but if it is withheld for no reasons of any adverse remarks or otherwise causing in unfavourable decision of appropriate authority I have every right to appeal for justice against such baseless and prejudiced decisions and request you kindly to restore all the subsequent annual increments after allowing to cross the efficiency bar from January 1, 1975. It is for your kind information that not a single report was adverse and unsatisfactory to withhold efficiency bar due on January 1, 1975. It is rather unjustified to keep the efficiency bar pending for years to come waiting for some adverse remarks in future annual confidential reports and then withhold efficiency bar and annual increments from back date thus denying justice and causing heavy financial loss in monthly emoluments pension and gratuity etc.

In view of the above facts I pray your kind honour to review my case and if there is nothing adverse against me prior to due date of crossing efficiency bar the same may kindly be allowed for which I shall ever remain grateful to you.

Yours faithfully,

4.10.1979.

Sd/- B.N. Srivastava.

Copy to Comptroller & Auditor General of India,
New Delhi for information and necessary
action.

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TRUE COPY

B.N. Srivastava

M. Dubey, Advocate
4th Lane, Chhatriya
Ganeshganj, Lucknow.

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Annexure A-10

No. W.M.E/EB/5008

Office of the Accountant General
Uttar Pradesh II

Allahabad : 14.1.80

From

The Accountant General
Uttar Pradesh, II

To

Shri Bishan Narain Srivastava,
Retired Divisional Accountant,
17-A Hashimpur
Allahabad

Sir

With reference to your letter dated 4.10.79 to A.G., I am to state that your efficiency bar case was reviewed by the Accountant General in the light of what you had stated in the letter under reference but no change in the order already passed by the appropriate authority (for holding you At E.B.Stage) was deemed necessary by him.

The C.A.G. of India who was apprised of the facts and proceedings of your case has also upheld the order in question.

Yours faithfully

Sd. K-Pande
Accounts Officer

From Srivastava

Attested
True copy
M. Dubey

M. Dubey, Advocate
4th Lane, Gomti
Ganeshpuri, Lucknow.

(under certificate of posting)

Shri S.T. Kenghe,
Accountant General II,
U.P. Allahabad.

Sir,

Kindly refer to your letter No. WM I/EB/5008 dated 14.1.88 in reply to my letter dated 4.10.79 in which I had requested your kind honour that my efficiency bar due on 1.1.75 has been withheld for no valid reasons or any adverse remarks in my confidential reports so communicated to me and should therefore be restored and all the subsequent ANNUAL INCREMENTS be allowed so that I may not be put to any financial loss without any fault for which the above punishment has been awarded to me. If however there are any such adverse remarks in my confidential reports prior to 1.1.75 or so on which grounds efficiency bar has been withheld I may kindly be intimated all such remarks to justify the above action but I regret that you have not given any such justification for withholding the efficiency bar except that the case has been reviewed by the Accountant General and no change in the order already passed was deemed necessary by him. I feel that the above reply is not sufficient to justify the punishment and one who is punished for some fault should be intimated with all the facts on the basis of which punishment has been awarded and action so taken by the authorities is justified.

In view of the above as already requested in my previous letters reasons for withholding the efficiency bar due on 1.1.75 may kindly be intimated for which I requesting the authorities for the last about 3 years but I am sorry no reply on the above subject is given and thus justice is delayed and denied to me.

An early reply is requested for which I shall be grateful to you.

Thanks,

Yours faithfully,

6.3.1980.

Sd/- B.N. Srivastava
Retd. Divisional Accountant,
17A Hashimpur Allahabad.

Copy forwarded to Shri Gyan Prakash, Comptroller and Auditor General of India, New Delhi with the request that your kind honour may kindly restore the withheld efficiency bar due on 1.1.75 for which act of kindness I shall ever remain grateful to you.

6.3.80.

Sd/- B.N. Srivastava
Retd. Divisional Accountant.

—
J. M. Srivastava
TRUE COPY

B. N. Srivastava

M. Dubey, Advocate
4th Lane, Nawaiya
Ganeshganj, Lucknow.

To,

The Controller & Auditor General of India
NEW DELHI

Subject : Appeal against the orders passed by the Accounts Officer, O/o Accountant General Uttar Pradesh, Allahabad, under his letter no. WM-1/38 Vol.II/1290 dated 13.6.79 enclosing therewith a copy of his order no. WM-1/EB/Vol.II/3184 dated the his order no. WM-1/ 3706 dated the 28.10.78 and WM-1/EB/Vol.II/3184 dated 19.9.79 and 14.1.80 not allowing the appellant to cross the EB at the stage of Rs;640/- w.e.f. 1.1.75.

Respected Sir,

The humble appellant statesas under:-

1. That the appellant who is a retired Divisional Accountant residing at 17A Hashimpur, Allahabad and at times at 17A Rajendra Nagar, Lucknow. was due to cross the EB on 1.1.1975 at the stage of Rs. 640/- in the scale of Rs. 425/700.
2. That no order was passed either before 1.1.1975 or immediately thereafter although the case was forwarded duly recommended by the then Executive Engineer, Construction Division, Public Works Department, Allahabad well in time and all the confidential reports were good enough to cross the EB. There had never been any adverse comment against the petitioner.
3. That the petitioner retired in October1977 and till then no order was passed in the matter of his crossing the EB from due date of 1.1.1975 and when he was not allowed crossing of Eb even after retirement, he preferre d representations dated 26.5.78 and 14.8.78 followed by reminders dated 14.9.78, 14.5.79 and 2.6.1979,. There after the Accounts Officer O/o the Accountant General, Uttar Pradesh, Allahabad intimated by his letterdated 13.6.79 that necessary reply on the above subject was communicated to the petitioner under his office letter no. WM-1/EB/Vol.II/ 3706 dated 28.10.78, which was never received by the

Dr. S. S. Tava

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A/S

petitioner. However a copy of the same was enclosed which revealed that the petitioner's EB case was finally considered on 5th October, 1978 but the petitioner was not found fit to cross the EB on an assessment of his performance and service records. It may be pointed out here that the Accounts Officer is neither the competent authority to take a decision in the EB case of the petitioner, nor did he clarify why the petitioner's case was not considered and a decision not taken prior to 1.1.1979. ~~or~~ for immediately thereafter, when he was due to cross the EB and what were the circumstances under which a contrary decision was taken in October, 1978, about four years after the due date of EB. True copies of the said letters dated 13.6.79 and 28.10.78 are Annexures 1&2.

4. That the appellant pointed out in his representation dated 2.6.79 that it was unjust to withhold EB and not to have allowed it from the due date of 1.1.75 in view of the good entries at his credit. The appellant further requested to allow the EB from 1.1.75 the due date or give reasons for withholding the same to enable the appellant to approach the higher authorities. A true copy of this representation dated 2.6.79 is Annexure 3. But the Accounts Officer did not apply his mind objectively to the issue and did not give reasons for withholding ~~the~~ the EB.

5. That the Accounts Officer by his letter dated 19.9.79 in response to the appellant's representation dated 14.5.79 intimated that the Accountant General after careful consideration of his case had ordered that he did not find any reason to interfere with the decision of the appropriate authority declaring him

Dr. Srinivasan

unfit to cross the efficiency bar. This intimation was vague and indefinite besides being wrong and malicious as it why did not convey to the appellant the reasons as to why his case was not considered in 1975 and how he was not found fit to cross the EB when there was nothing adverse against and how the Accounts Officer, who was not the appointing authority of the appellant, was considered as appropriate authority. A true copy of the letter dated 19.9.79 is Annexure 4 and a true copy of the representation dated 14.5.79 is Annexure 5.

6. That the appellant submitted a further representation dated 4.10.79 to the Accountant General U.P.II, Allahabad stating therein that the appellant had sought for justice and objective consideration of this case on justified ground as the appellant's confidential reports prior to 1.1.1975, the due date of EB, were satisfactory and no adverse remark was communicated to him. A copy of this representation was also endorsed to the C.A.G. for ensuring justice in the matter. A true copy of the representation dated 4.10.79 is Annexure 6. The Accounts Officer by his letter dated 14.1.80 intimated that the case was reviewed by the Accountant General but no change in the order already passed was deemed necessary by him. He further intimated that the Controller and Accountant General of India was apprised of the facts and proceedings of the appellant's case, also upheld the order in question. A true copy of the reply dated 14.1.80 is Annexure 7.

7. That the appellant was not satisfied with the above cited reply and submitted another representation dated 6.3.1980 to the Accountant General U.P, Allahabad requesting him to intimate the reasons for withholding the EB due on, 1.1.1975 for which he had been requesting

Ram Srivastava

for the last over 3 years. No reply to this representation has been received by the appellant so far, despite reminder dated 21.5.80 and 28.7.80.

8. That the appellant aggrieved with the vague, indefinite and unjust replies of the Accounts Officer and in attention on the part of the Accountant General, U.P. Allahabad, the appellant appeals on the following, amongst the ground :-

- i) That the appellant's EB was due on 1.1.75 at the stage of Rs. 640/- and no order was passed before or immediately thereafter causing prejudice to the appellant.
- ii) That the Accounts Officer is not the competent authority to consider the case of the petitioner and convey his orders.
- iii) That the work and conduct of the appellant had all along been satisfactory and there was nothing adverse against him and as such it was malicious, prejudicial and arbitrary to stop him at the EB without passing and spraking orders.
- iv) That the appellant was fit to cross the EB on 1.1.1975 and he was arbitrarily and prejudicially stopped at the EB without any order.
- v) Because the action of the Accounts Officer and the Accountant General U.P. Allahabad in not allowing the appellant to cross the EB on 1.1.1975 is unjust, arbitrary and malicious.
- vi) Because the Accounts Officer and the Accountant General have not intimated to the appellant despite his representations, the reasons for not allowing the

Om Srinivasan

appellant to cross the EB on 1.1.1975 when his work and conduct had all through been satisfactory and blotless and no adverse report was ever communicated to him.

vii) Because the appellant had put in years of unblemished and satisfactory service and his case deserves an objective, thorough and sympathetic consideration.

viii) Because the appellant has been put to a permanent recurring financial loss due to non crossing of EB on 1.1.1975 in the matter of his gratuity, leave encashment, pension, which could not be done without a show cause notice and a speaking order.

ix) Because the action on the part of the Accounts Officer and Accountant General, U.P. is unjust, improper and without justification.

It, is, therefore, most respectfully prayed that your honour may kindly intervene in the matter to ensure justice to the appellant, allowing him to cross EB from 1.1.1975 at the stage of Rs. 640/- in the scale of Rs. 425/700 with all consequential benefits.

The appellant shall ever remain grateful for favour of kind indulgence and prompt favourable orders.

Lucknow.
Dated 3.10.1980

Appellant
Sd. B.N. Srivatava
173 Rajendra Nagar

B.N. Srivatava

Merkin Type copy

W.D.
M. Dubey, Advocate
4th Lane, Navaiya
Ganeshgari, Lucknow.

Annexure A-13

To,

The Controller & Auditor General of India
NEW DELHI

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PPB

Subject: Appeal against the orders passed by the
Accounts Officer, O/o Accountant General
Uttar Pradesh, Allahabad, under his
letter no. WM-1/38 Vol. II/1290 dated
13.6.79, enclosing therewith a copy of
his order no. WM-1/3706 dated the 28.10.78
and WM-1/EB/Vol.II/3184 dated 19.9.79
and 14.1.80 not allowing the appellant
to cross the EB at the stage of Rs.640/-
w.e.f. 1.1.75.

Respected Sir,

Kindly refer to my appeal dated the 3.10.1980
on the above subject, followed by subsequent reminders
last being dated 19.1.87 and favour me with your
early decision in the matter. A copy of the appeal
is enclosed for ready reference.

The case has already been abnormally delayed
and it would be appreciated if I am favoured with your
decision without any further delay.

I shall ever remain grateful for favour of
your prompt reply.

Appellant

(B.N.Srivastava)
173 Rajendra Nagar
Lucknow

Lucknow :

26.3.1987.

B.N.Srivastava

Allesed
True copy
M. Dubal
4th Class Officer
Ganesha Bldg, Lucknow.

M. Dubal
4th Class Officer
Ganesha Bldg, Lucknow.

To

The Comptroler and Auditor General of India,
New Delhi.

Subject: Appeal against the orders passed by the Accounts
Officer C/O Accountant General Uttar Pradesh, ~~AL~~
Allahabad under his letter No. W.H.I/38/Vol. II/1290
dated 13.6.79 enclosing therewith a copy of his
order No. WM I/3706 dated 28.10.78 and W.M.I/EB/Vol.II
3184 dated 19.9.79 and 14.1.80 not allowing the
appellant to cross the EB at the stage to Rs.640/-
w.e.f 1.1.75.

Respected Sir,

Kinly refer to my appeal dated 26.3.87 on the
above subject and favour me with our early decision in the
matter.

The case has already been delayed and therefore
I request you to favour me with your early decision for
which a ct of kindness I shall ever remain grateful to you.

Yours faithfully,

Allahabad
3.6.1987.

Sd/- B.N. Srivastava,
17-A Hashimpur,
Allahabad

B.N. Srivastava

M. Dubey
TRUE COPY

M. Dubey, Advocate
4th Floor, Saway
Gaushganj, Lucknow.

Office of the Comptroller and
Auditor General of India.
New Delhi - 110002

Dated: 15 Apr 1987

From

The Comptroller and Auditor General of India,
New Delhi - 110002

To

Shri B.N. Srivastava,
173, Rajendra Nagar, Lucknow.

Subject: Appeal against the orders passed by the A.O. o/o the AG U.P. Allahabad, under his letter No. Won-1/38-Vol.II 1290 dated 13.6.78, enclosing therewith a copy of his order No. WM-1/3706 dated 28.10.78 and WM-1/EB/Vol.II/ 3184 dated 19.9.79 and 14.1.80 not allowing the appellant to cross the EB at the stage of Rs.640/- w.e.f 1.1.75.

Sir,

I am to refer to your representation dated 26.3.87 on the subject cited above and to state that the grievances put forth therein are being examined in consultation with the concerned Accountant General. You may therefore await a further communication from this office in that regard.

Yours faithfully,

Sd/- illegible,
Assistant Administrative
Officer (N)

— *Mesla*

TRUE COPY

Bn Srivastava

M. Dubey
M. Dubey, Advocate
4th Lane, Nawaiya
Ganeshganj, Lucknow.

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ABG

Office of the Accountant General (A&E) II, U.P. Allahabad

Regd.

No. W.M.1(A)/BNS/EB/335

Date 27.7.87

To,

Shri B.N. Srivastava
Retired Divisional Accountant
R/V 173, Rajendra Nagar,
Lucknow.

Subject : Appeal against not allowing to cross E.B. at
the stage of Rs.640/- w.e.f. 1.1.75.

Sir,

Please refer to your letter dated 26.3.87 on the subject noted above and addressed to the Comptroller & Auditor General of India, New Delhi. In this connection I am directed to intimate that the appeal preferred in your letter under reference has been rejected by the competent authority. The D.P.C. had not found him fit to cross E.B. (due on 1.1.75) even as late as on 14.10.77 and as a sequel to the award of penalty of withholding of increment for 2 years with cumulative effect (in the disciplinary proceedings initiated against him in May, 1975, there is no scope for reconsideration of his case or redressal of his grievance at this belated stage.

Yours faithfully,

Sd/- A.K. Maitra
(A.K. MAITRA)
Senior Deputy Accountant General (E&A)

Bn Srivastava

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Verma

M. Dubey, Advocate
4th Lane, Nawaiya
Gorakhpur, Lucknow.

(Notice Regd. A.D.)

From : BN Srivastava,
Retd. Divisional Accountant
r/o 173 Rajendra Nagar, Lucknow.

Through: M. Dubey, Advocate,
4th Lane Mawaiya Ganeshganj,
Lucknow (Phone : 45021)

To: The Senior Deputy Accountant General (F&A)
Office of the Accountant General (A&E) II
Uttar Pradesh, Allahabad

The Comptroller and Auditor General of India
New Delhi.

The Secretary
Ministry of Finance, Government of India
New Delhi.

Sir

Under instructions from my client Shri B.N. Srivastava
abovenamed, I have to state as under :

1. That my aforesaid client Shri B.N. Srivastava who is a retired Divisional Accountant was due to cross the EB on 1.1.1975 at the stage of Rs. 640/- in the scale of Rs. 425/700; but no order was passed either before 1.1.1975 or immediately thereafter, although his case was forwarded duly recommended by the then Executive Engineer, Construction Division, Public Works Department Allahabad, under whom my client was working, well in time and all the confidential reports were good enough to entitle him to cross the EB on 1.1.75. There had never been any adverse comment against him.

2. That my client retired in October 1977 and till then no order was passed in the matter of his crossing the EB from due date viz. 1.1.1975. Consequently my client preferred representations dated 26.5.78 and 16.8.78 followed by reminders dated 14.9.78, 14.5.79 and 2.6.1979. Thereafter the Accounts Officer c/o the Accountant General, Uttar Pradesh, Allahabad by his letter dated 13.6.1979 intimated that necessary reply in the matter was communicated to my client vide letter dated 28.10.78. This letter dated 28.10.78 was not received earlier and a copy of the same was enclosed with the letter dated 13.6.79 only; which revealed that my client's EB case was finally considered on 5th October, 1978 but he was not found fit to cross the EB on an assessment of his performance and service records. But the Accounts Officer is neither the competent authority to take a decision in the EB case, nor did he clarify why no decision was taken in my client's case at the appropriate time when the EB was due on 1.1.1975, while a decision should have been taken prior to 1.1.75 or immediately thereafter. There was no justification to consider the case on 28.10.78 after a delay of about four years.

3. That my client submitted representation dated 2.6.79 stating therein that it was unjust to withhold EB from the due date viz. 1.1.75 when he had good entries at his credit and requested to allow the EB from 1.1.75 or give reasons for withholding the same to approach higher authorities. But no reply to the representation dated 2.6.79 was received by my client.

4. That my client in reply to his representation dated 14.5.79 was informed by the Accounts Officer by his letter Dated 19.9.79 that the Accountant General after careful consideration of my client's case had ordered that he did not find any reason to interfere with the decision of the appropriate authority declaring him unfit to cross the EB. This intimation was vague, indefinite, malicious and evasive as it did not clarify why the

Pr. Srivastava

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case was not considered before or immediately after 1.7.75 as required under the rules and how he was not considered fit when there was nothing adverse against him and how the Accounts Officer who was not the appointing authority of my client, was considered as appropriate authority.

5. That my client submitted a further representation dated 4.10.79 to the Accountant General, U.P. II Allahabad, stating therein that he had sought for justice and objective consideration of his case on justified ground as his confidential report prior to 1.1.75 were satisfactory and no adverse remark whatsoever was ever communicated to him. In reply the Accounts Officer intimated by his letter dated 14.1.80 that the case was reviewed by the Accountant General but no change in the order already passed was deemed necessary. My client being not satisfied with the said reply submitted another representation dated 6.3.80 to the Accountant General, U.P., Allahabad soliciting him to intimate the reasons for withholding the EB on 1.1.75 for which he had been writing for the last over 3 years. No reply to this representation was received by my client, despite his sending reminders dated 21.5.80 and 28.7.80.

6. That my client submitted a detailed representation/ appeal dated 3.10.80 to the addressee No. 2 requesting him to restore justice to him and allow him to cross EB from 1.1.75 at the stage of Rs.640/- in the scale of Rs.425/700 with all consequential benefits. As he did not get any reply, he submitted reminders dated 19.1.87, 26.3.87 and 3.6.87.

7. That the addressee no. 2 by his letter dated 15.4.87 intimated to my client that the grievances put forth by him were being examined in consultation with the A.G. and my client might await a further communication from his office. But strangely enough instead of getting a reply from the addressee no. 2 my client has received a reply no. WM-1(1)/BNS/EB/335 dated 27.7.87 intimating by the addressee no. 1 that the appeal preferred by my client has been rejected by the competent authority. The DPC had not found fit to cross EB (due on 1.1.75) even as late as on 14.10.77 and as a sequel to the award of penalty of withholding of increment for two years with cumulative effect (in the disciplinary proceedings initiated against him in May 1975, there is no scope for reconsideration of his case or redressal of his grievance at this belated stage.)

8. That the reply given by the addressee no. 1 in his letter dated 27.7.87 is perverse, wrong, illegal and arbitrary. My client has not received any order withholding his increment for two years with cumulative effect nor any such order could be passed without a show cause notice and holding enquiry and affording my client reasonable opportunity of defending himself which were never done. The particulars of the so called order and the circumstances under which it was passed have also not been elucidated. It is to be pointed out that according to G.I.C.S. (Department of Finance) office order No. 40/1/75 ESTS (M) dated 31.12.83 (incorporated as GI order no. 3 below FR 25) the cases of Govt. Servants for crossing the efficiency bar in the time scale of pay are required to be considered at the appropriate time and in case the decision is to enforce a bar against the Govt. servant, he should be informed of the decision. But this provision has not been complied with in my client's case. Further in terms of provisions contained in paragraph 22 of Section 6 of Chapter V of CPWD Manual Vol. J, 1975 Edition consideration of suitability for crossing EB should be withheld only where the due date for crossing the bar falls during the pendency of the disciplinary proceeding and not otherwise.

9. That the withholding of my client at the EB on 1.1.1975 at the stage of Rs.640/- in the scale of Rs.425/700 is unjust, arbitrary, malicious and against the cannons of justice, and my client has un-necessarily been harassed without any justification, rhyme or reason.

You are, therefore, served with this notice with the request that my client's case be given immediate objective consideration, justice be restored to him and he may be allowed

Prn Srinivas

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to cross the EB at the stage of Rs.640/- in the scale of Rs.425
700 w.e.f. 1.1.1975, the due date and all arrears bepaid to
him with interest @ 18% per annum and Rs.200/- as the cost
of this notice within two months, failing which my client
shall be constrained to seek legal remedy against all of
you as respondents at your cost, expense and responsibility.

Yours faithfully,

Lucknow
Dated 1.9.87.

Sd/- M. Dubey,
(M. DUBEY)
Advocate.

M. Dubey
TRUE COPY

Om Srivastava

M. Dubey
M. Dubey, Advocate
4th Lane, Nawaiya
Gawesganj, Lucknow.

NOTICE

From : B.N. Srivastava, Retd. Divisional Accountant,
r/o 173 Rajendra Nagar, Lucknow.

Through: M. Dubey, Advocate, 4th lane, Nawaiya Ganeshganj,
Lucknow, Phone No. 45021.

To: (1) The Senior Deputy Accountant General (G&A),
Office of the Accountant General (A&E) II,
Uttar Pradesh, Allahabad.
(2) The Comptroller and Auditor General of India,
New Delhi.

Sir,

This is to state that under instructions of my client
Shri B.N. Srivastava, above named, I sent a notice registered
A.D., dated 1.9.87 detailing therein his grievance regarding
withholding his EB on 1.1.1975 at the stage of Rs.640/- in the
scale of Rs.425/470, without any notice or justification and
requesting you that he may be allowed to cross the EB at the
stage of Rs.640/- w.e.f 1.1.75 in the scale of Rs.425/700 and
all arrears be paid to him with interest at 18% per annum and
Rs.200/- as cost of the notice within two months, failing
which my client would seek legal remedy at your cost and
responsibility. No reply has so far been received by my client
or by me though more than two months have passed.

I am, therefore, to request you to satisfy the
grievance of my client immediately and send a reply within
a fortnight positively, failing which my client shall have
no alternative but to seek legal remedy at your cost and
responsibility.

Yours faithfully,

Lucknow
15.11.1987.

Sd/- M. Dubey,
(M. DUBEY)
Advocate.

Bon Srivastava

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TRUE COPY

M. Dubey, Advocate
4th Lane, Nawaiya
Ganeshganj Lucknow.

Office of the Accountant General (A&E) II, U.P. Allahabad

No. W.M.I(A)/BNS/E.B./4016

Dated 29.12.87

To,

Shri B.N. Srivastava,
Retd. Emergency Divisional Accountant,
R/O 173, Rajendra Nagar,
Lucknow.

Subject: Notice against not allowing to cross E.B. at
the stage of Rs.640/- from 1.1.75.

With reference to his counsel's notice dated 15.11.87
on the subject noted above he is hereby informed that there
is no justification for reconsideration of his case at this
belated stage. He has already been informed to this effect
he may vide our letter No. W.M.I(A)/BNS/EB/335 dated 17.7.87.

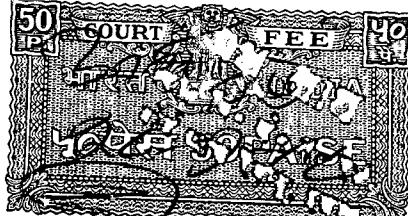
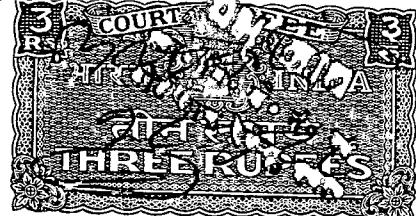
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Assistant Accountant General/
W.M.I(A)

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TRUE COPY

B.N. Srivastava

H. Dubey
H. Dubey, Advocate
4th Lane, Nawaiya
Ganeshganj, Lucknow.



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[वादी] अपीलाट

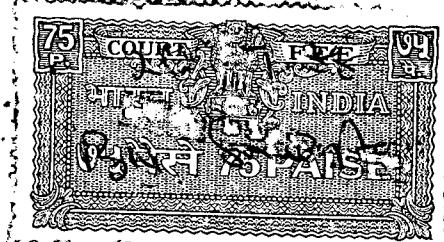
श्री

[रेस्पांडेंट]

Central Judicature Commission Tribunal

B. N. Srivastava Allahabad

का वकालतनामा



वनाम

B. N. Srivastava
वादी (अपीलाट) 1/2

109 & others

प्रतिवादी (रेस्पांडेंट)

नं० मुकद्दमा

सन्

पेशी की ता०

१६५५ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री B. Solomon Adw. High Court
Ludhiana and M. Dubey Advocate 4th Lane Nawaiya
Ganeshganj Lucknow

महोदय
एडवोकेट

| | | |
|--------------|-----------|------|
| नाम अदालत | नाम फरीदन | वनाम |
| मुकद्दमा नं० | | |

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रूपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रूपया जमा करें या हमारी विपक्षी (फरीदसानी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्सेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर B. N. Srivastava

साक्षी (गवाह) —————— साक्षी (गवाह) ——————

दिनांक 20 महीना 7 सन् १६५५ ई०

स्वीकृत B. Solomon Adw

M. Dubey Adw
M. Dubey, Advocate
4th Lane, Nawaiya
Ganeshganj, Lucknow.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW
C.A. No. 915 of 1983

File

R. N. Srivastava

... Applicant

-vs-

Union of India and others

.. Respondents

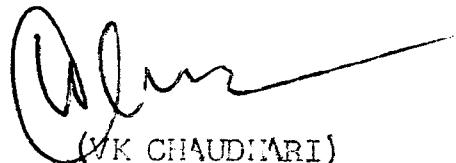
REBELLATION FOR RECALLING THE ORDER
DATED 4.7.1989.

The Respondents in the above noted case begs to submit as under:-

1. That the Respondents could not file their counter affidavit / reply on the date fixed ie. 1.8.1989 due to the reason that although the counter affidavit was ready by that time but enclosures to the counter affidavit were not properly arranged.
2. That a copy of the counter affidavit has been served on 7.8.1989 to the learned Counsel of the applicant, but the same was not duly corrected.
3. That the Respondents are filing their counter affidavit today ie. the 26th September 1989, which may be taken on record in the interest of justice after recalling the order dated 4.7.1989.
4. It is, therefore, most respectfully prayed

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that the order dated 4.7.1989 for hearing the case ex-
parte may very kindly be recalled and the accompanying
counter affidavit be taken on record and decide the case
on merits after considering the case of the respondents.



(VK CHAUDHARY)

Addl. Standing Counsel for Central Govt
Counsel for 6 Respondents.

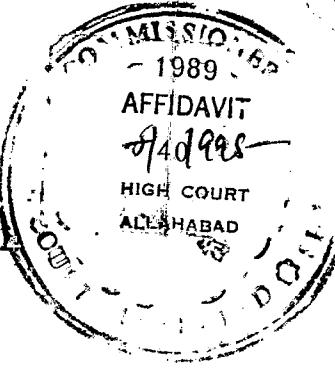
Lucknow,

Dated: 26-9-1989.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A.No. 915 of 1988



B.N. Srivastava

... Applicant

-vs-

Union of India & Others

... Respondent

REPLY ON BEHALF OF RESPONDENT.

I, Santakumar Mishra of
aged about 37 years, son of Santakumar Mishra
posted as Sr. Deputy Accountant General (works)
in the office of Accountant General (A&E) II, U.P.
Allahabad do hereby solemnly affirmed and state
as under :-

1. That the deponent is Respondent no. in the above noted application and have been authorised to file this reply on behalf of all the Respondent.
2. That the deponent has read and understood the contents of the application filed by the applicant as well as the facts deposed to herein under in reply thereof.
3. That the contents of para, 1, 2 and 3(i) to 3(iii) of the application need no comments.
4. That the contents of para 3(iv) of the application are incorrect as stated, hence denied and in reply it is submitted that the applicant retired Divisional Accountant was due to cross the E.B. at the stage of Rs. 640/- with effect from 1-1-1975. His case was initially received from the Executive Engineer, Construction Division, P.W.D., Allahabad on 20-11-1974.



Santakumar

(Contd....2/-)

His case was submitted for consideration for the first time on 6.12.74, and it was deferred for want of C.R. of 73-74 vide Committee's order dated 6.1.75. The E.B. case of an employee is decided mainly on his performance in the previous year. In this case, C.R. for the year 1973-74 was wanting. The applicant contention that his performance was satisfactory is not acceptable because there were complaints of serious professional lapses on his part which the petitioner has not brought to the notice of the Hon'ble Tribunal. The Competent Authority therefore, quite justifiably paid due heed to it and therefore could not decide the case in his favour in 1975 particularly in the absence of C.R. for the crucial year 1973-74.

It is incorrect to say that no order was passed on his E.B. case in reply to the applicant's representation before his retirement. The applicant was intimated vide office letter No. W.M.I/E.B./Vol.II/2083 dated 13.7.76 that he was found unfit to cross his E.B. His representations dated 11.11.1976, 16.6.77, 26.5.78 and 14.8.78 and reminders dated 14.9.78, 14.5.79 were received in the office of the deponent and replied to vide letters dated 19.11.76, 12.7.77, 20.6.78, 4.7.78, 28.10.78 and 11.6.79. Vide letter No. W.M.I/E.B./Vol.II/3706 dated 28.10.78 communicated to the applicant, the decision of the committee under the signature of the A.O. after it was seen by the then Sr. Deputy Accountant General (W&A). ~~True copies of letters dated 13.7.76, 19.11.76, 12.7.77, 20.6.78, 4.7.78, 28.10.78 and 11.6.79 are being enclosed herewith as Annexure C-1 to C-6 to the affidavit.~~

5. That the contents of para 4 & 5 of the application need no comments.
6. That in reply to the contents of para 6(i) of the application it is submitted that the applicant was due to cross

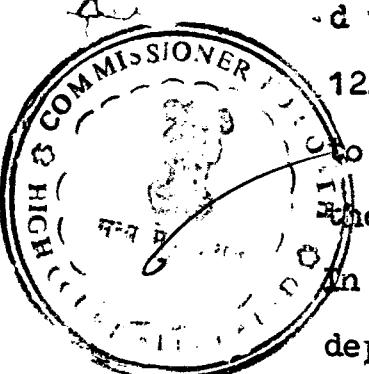
[Signature]

(Contd.....3/-)

the Efficiency Bar on 1.1.75. He was informed about the final decision vide letter No. W.M.I/E.B./Vol.II/2083 dated 14.7.1976.

Although there were no adverse C.Rs. prior to 1.1.75, his C.R. for the crucial year 1973-74 was wanting. Moreover, there were complaints against him regarding non-payment of arrears of house rent, all this prevented the D.P.C. of 1975 from deciding his case for crossing the Efficiency Bar. C.Rs. of the applicant for the period 74-75 and from 1.4.75 to 28.10.75 had adverse remarks. The Competent Authority which considered his case came to the conclusion that he was not fit to be permitted to cross the E.B., at this stage of Rs. 640/-after due consideration of the performance of the petitioner.

7. That the contents of para 6(ii) of the application are incorrect hence denied, and in reply it is submitted that the applicant was informed vide office letter No. W.M.I/E.B./Vol.II/2083 dated 13.7.76 that he was found unfit to cross the E.B. His representations dated 16.6.77, 11.11.76, 26.5.78 and 14.8.78 and reminders dated 14.9.79 and 14.5.79 were received in the office of the answering deponent and replied to him vide letter dated 10.11.76, 12.7.77, 20.6.78, 4.7.78, 12.10.79 and 11.6.79. Vide letter dated 28.10.78 communicated to the applicant, the decision of the Competent Authority under the signature of the A.O. after it was seen by the Sr.D.A.G. (W&A) In reply to his representation dated 6.3.80, the answering deponent had replied vide letter No. W.M.I/E.B./9159 dated 19.3.80 informing him that his performance during the relevant period was not upto the mark and also that he had not acquired the general level of efficiency required for crossing the E.B. and hence he was not allowed to cross the E.B. on due date. The case was not considered by the Accounts Officer but was considered by the Competent Authority. The Accounts Officer only



conveyed the decision. Copy of letter D-28-10-78 is being enclosed as Annexure C-1 to this affidavit.

8. In reply to para 6(iii) it is submitted that his representation dated 2.6.79 does not seem to have been received in the concerned section in the office of the answering deponent.

9. That the contents of para 6(iv) of the application are incorrect as stated, hence denied and in reply it is submitted that the applicant was not found fit by the relevant committee to cross the Efficiency Bar on due date. Letter No. W.M.I/E.B./Vol.II/3184 dated 19.9.79 was not an intimation for the first time indicating that he had not been allowed to cross the E.B. but was an intimation indicating rejection of his representation and there was nothing vague or malicious in that letter. The letter had the approval of then Sr. Deputy Accountant General (W&A) Before issue. Copy of said letter D-19.9.79 is being enclosed as Annexure C-2 to this affidavit.

The case of the applicant was, moreover referred to the competent authority a number of times in 1975, 76, 77 and 78 and only then was the case closed after careful review of his performance and the complaint against him. Moreover, it may be mentioned that as a result of pending disciplinary cases against him a penalty of stoppage of two increments with commulative effect was imposed on him in 1977, for a specific failure. This penalty was non-effective only because he was not found fit to cross Efficiency Bar earlier. Thus the applicant escaped punishment for a proven lapses which was found fully worthy of penalty. The action of the Competent Authority in the matter was not arbitrary or malicious but upon adverse remarks in the C.R.'s and on the recommendation of the D.P.C.



10. That in reply to the contents of para 6(v) of the application it is submitted that an adequate reply was given to his representation dated 6.3.80 vide letter No.

W.M.I/E.B./9159 dated 19.3.80 informing him that his performance during the relevant period was not upto the mark and also that he had not acquired the general level of efficiency required for crossing the efficiency Bar and hence he was not allowed to cross the E.B. on due date.

10. That in reply to the contents of para 6(vii) of the application it is submitted that the decision of the C.A.G. Office was communicated vide letter dated 17.7.87 issued to the applicant by the Office of the deponent.

12. That the contents of para 6(viii) of the application are incorrect as stated hence denied and in reply it is submitted that his case was referred to competent authority number of times and the decision was conveyed to the applicant repeatedly, as mentioned in comments given in para 6(ii) above. Moreover, each time the Competent Authority despite prolonged deliberation, could not find him fit for crossing E.B. Therefore, as his case was considered objectively several times by independent and impartial committees, hence, it was felt that there is no justification for reconsideration as was rightly pointed out in office letter dated 29-12-87 addressed to the applicant.

13. That the contents of para 6(ix) of the application are incorrect as stated, hence denied and in reply it is submitted that the applicant had complaints against him which were under investigation His C.R. for the crucial year 1973-74 was also wanting and hence his case was deferred in 1975 as required by rules. Subsequently, on his representation, he was informed of the latest decision, vide office letter dated 13.7.76 Successive D.P.C.'s did not find him fit to cross the Efficiency Bar,

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(Contd...6/-)

his case was reconsidered a number of times and as many replies were sent to the applicant. He is not justified at all in claiming that his representation and appeal were not properly considered by the answering opp. party.

14. That in reply to the contents of para 6(x) of the application it is submitted that the applicant has, inspite of the facts brought out approached the Hon'ble Tribunal for reconsideration of his case that has been examined in detail the office of the deponent several times and even after the results of the case have been communicated to the applicant, unequivocally and repeatedly.

15. That in reply to the contents of para 7 of the application it is submitted that the reliefs sought by the applicant are not tenable ⁱⁿ the eyes of law.

16. That it is pertinent to mention that the application moved by the applicant is barred by time. The cause of action arose to the applicant for this claim on 15-7-76 when he was informed the decision. Repeated representations and their reply are not of any use for counting the period of limitation. The application is very much belated and is liable to be dismissed on this score.

17. That, in the light of judgment of C.A.T. dated 17-3-89 (Annexure 2) in O.A. No. 901/88 in the case of Shri. K. D. Atre Vs. Accountant General (Audit), Nagpur, it is submitted before the Hon'ble Tribunal that at every stage the case has been decided by the Departmental Promotion Committee and their recommendation as such do not necessitate re-consideration as being adequate and unassailable. ^{Copy of} Judgment along with covering letter is being enclosed as Annexure C-3 to the aforesaid.

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18. That in view of the facts, reasons and circumstances stated above, the application filed by the applicant is liable to be dismissed with costs to the Opposite Parties.

Deputy
Deponent.

Verification.

I the above named deponent do hereby verify that the contents of para 1 to 2 of this reply are true to my personal knowledge and those of paras 3 to 15 are believed by me are true on the basis of official records and information gathered and those of paras 16 to 17 are believed to be true on the basis of legal advice. No part of this is false and nothing material has been concealed.

Deputy
Deponent.

Allahabad.

Dated : 31st July a. - 8-60 for 8

I identify the above deponent who is known to me and has signed before me.

CENTRAL GOVT. STANDING COUNSEL.

Allahabad,

Dated 31.7.1989

W.M.H.
clerk
to Smt. N. B. LINGH.
Sr. Standing Counsel
for Central Govt
High Court
Allahabad.

Deputy

Annexure E-1

Annexure A-7

Re. 151 - I/EB/Vol. II/3706

OFFICE OF THE ACCOUNTANT GENERAL
Uttar Pradesh - II

Allahabad : 28 October 1978

From

The Accountant General
Uttar Pradesh

To

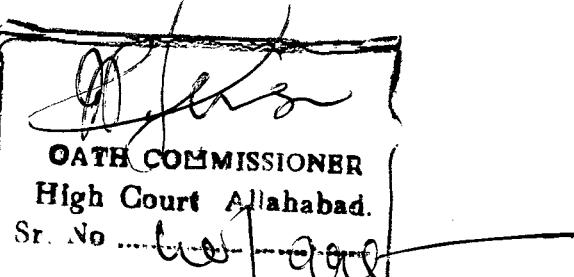
Shri Bismill Haq Srivastava
Retired Divisional Accountant
17A Hoshiarpur
Allahabad

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With reference to his letter no. dated 14.8.78 and 14.8.78 regarding the crossing of efficiency bar at the stage of Rs. 640/- with effect from 1.1.75 Sri Srivastava is informed that his efficiency bar case was finally considered on 5th October 78 but he has not been found fit to cross the efficiency bar on an assessment of his performance and service records.

Sd. A.L. Shahabuddin
Accounts Officer

Sameer



B.M.S.

Annexure C-2

Fig 6

Annexure A

15

Office of the Accountant General
Uttar Pradesh II

No. WN-I/EB/Vol.II/3184 Dated : A labhabad :
12.9.79

From

The Accountant General
Uttar Pradesh
Post Box no. 15
M.L.I. Section

To

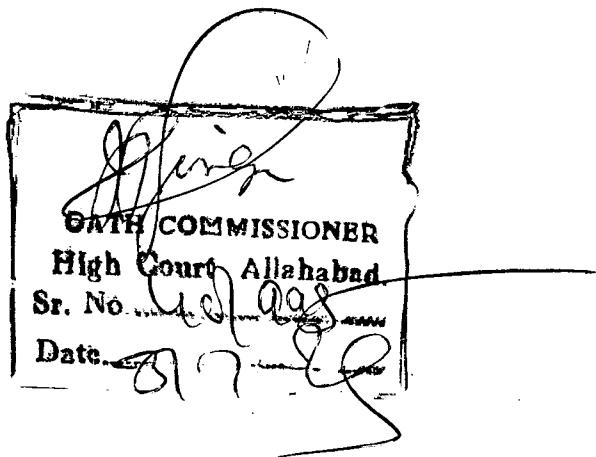
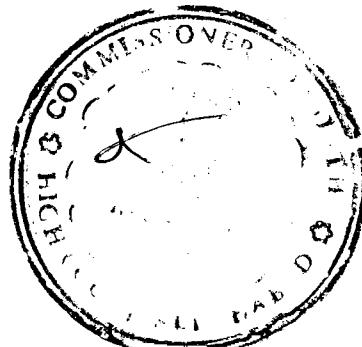
Sri Bishun Narain Srivastava,
Retired Divisional Accountant
17A Hashimpur
Allahabad

Sir

With reference to his representation dated 14.5.79 addressed to the Accountant General and copy endorsed to the C.A.G. regarding the crossing of efficiency bar at the state of Rs. 640/- with effect from 1.1.75. Sri Srivastava is informed that the Accountant General, after careful consideration of his case, has ordered that he did not find any reason to interfere with the decision of the appropriate authority declaring him unfit to cross the efficiency bar.

Sd. Janda
Accountant Officer

Seamus



C-3 अ.प्रमाणी (क) विद्युतीकृत राज्य विभाग
ANEXURB=S. A. G. P. G General Telex

डायरी संख्या : S.O.3 दिनांक 3-7-89
Diary No. Dated |

Circular No. 2-LC/89

No. 517-LC/13-89

Office of the Comptroller &
Auditor General of India,
New Delhi.

Dated :-

27 JUN 1989

To

All Heads of offices
(As per mailing list except overseas offices)

Sub:- Judgement dated 17.3.1989 passed by the Central
Administrative Tribunal, New Bombay Bench in the
case of Shri K.D. Atre Vs. Accountant General (Audit)
Nagpur and Others - Tribunal does not sit in appeal
against the recommendations of the D.P.C.

36/6 Sir,

I am directed to forward herewith a copy of the
Judgement passed by the C.A.T. New Bombay Bench in the O.A.
No. 901/88-Shri K.D. Atre Vs. Accountant General (Audit) *SD/ADW/2*
Nagpur and Others, wherein the Tribunal while declining
to admit the application has held as follows:-

It is well established that this tribunal does
not sit in appeal against the recommendations of
the D.P.C. We, therefore, hold that this application
is not worth admitting and hence reject the same
summarily with no orders as to costs.

The above principle reiterated by the Tribunal is
well settled on the basis of various judgements of the
Supreme Court. It is requested that this decision may be
kept in view and quoted while defending similar cases, if filed.

Yours faithfully,

D.Bhardwaj
(D.Bhardwaj)
Administrative Officer
(Legal)

Dated:-



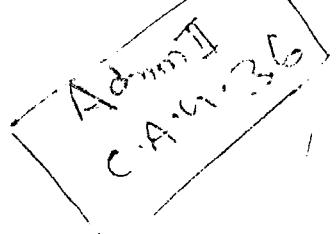
Encl :- As above.

No. 518-LC/13-89

Copy forwarded with enclosure to :-

1. Director (Staff)
2. A.C. (P)
3. A.C. (N)
4. J.D. (P)
5. A.O. (N)
6. A.O. (Legal-I)
7. A.O. (Legal-II)

D.Bhardwaj
(D.Bhardwaj)
Administrative Officer
(Legal)



Seenu

Respondent No.1 and requested that he being senior to the applicant should be granted the post of Welfare Assistant. Since he was senior, the applicant did not object to the appointment of Shri Somkumar as Welfare Assistant. Therefore, the applicant came to be designated as Senior Auditor. The said Somkumar retired in 1988.

Thereafter, on 30.6.1988 some candidates were invited for personal interview for the post of Welfare Assistant. No procedure for holding any interview for the post was prescribed. As the applicant was senior most and also having served the organisation as Welfare Assistant, he was entitled to be appointed to the post of Welfare Assistant directly. But to avoid any litigation and dispute, he appeared for the interview along with Respondent No.3, Shri V.G.Abale. After the interview, Respondent No. 3 was selected as Welfare Assistant.

On 30.11.1988 the applicant has filed the present application praying that Respondent Nos. 1 & 2 be directed to appoint him to the post of Welfare Assistant from the date on which Respondent No.3 has been appointed to that post. He has also prayed for consequential benefits.

2. By order dated 10.1.1989 we had issued notices to respondents regarding admission hearing. Accordingly, they have appeared and filed their written reply.

3. It is asserted in the reply of the respondents that the applicant was never appointed to the post of Welfare Assistant as that post was not filled in upto 6.3.1985. According to them, the post of Welfare Assistant is an ex-cadre post and recruitment to that post is governed by the Recruitment Rules, 1988. But before these rules, there were guidelines for selection to that post. What is more important is assertion of the respondents that the DPC in its meeting dated 4.7.1984 had recommended one Shri S.W.Sahastrabuddhe for the post of Welfare Assistant. Again on 11.2.1985 the DPC recommended Shri P.M.Somkumar. The next DPC was held on 30.6.1988 and it recommended the name of Shri Abale. It is pointed out that all these DPCs have considered the case of the applicant.

[Signature]

| | |
|----------------------|--------|
| DATE COMMISSIONED : | |
| High Court Allahabad | |
| Sr. No. | 401995 |
| Date..... 31.7.85 | |



In the Central Administrative Tribunal,
Circuit Bench, Lucknow, ^{AS}
C.M. No 352/UP (1),
O.A. No. 915 of 1988

B. N. Srivastava - - - Appellant
Versus
U.O.S. and others - - - Respondents

FF. 21.2.89.

The humble appellant respectfully states
as under:-

(1) That he could not file his rejoinder affidavit in time due to unavoidable reasons.
(2) Now he is filing the rejoinder affidavit now and it would be expedient in the interest of justice that the same be accepted and taken on record.

It is, therefore, most respectfully
prayed that the rejoinder affidavit being
filed herewith, be accepted and taken
on record.

M. Dukher

MDW

Counsel for Appellant

Lucknow
7.12.89.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW

O.A. No. 915 of 1988

B.N. Srivastava Applicant
Versus
Union of India and others Respondents

REJOINDER AFFIDAVIT

I, B.N. Srivastava, aged about 68 years son of late
Shri Maikoo Lal Srivastava, resident of House No. 173,
Rajendra Nagar, Lucknow do hereby state on oath as under:-

1. That the deponent is the applicant in the above noted case and he is fully conversant with the facts of the case deposed to in this rejoinder affidavit. The deponent has read the counter affidavit filed by the respondents, understood its contents and is replying to the same.
2. That the contents of paras 1, 2 and 3 of the counter affidavit need no reply.
3. That in reply to the contents of para 4, it is stated that the respondents have not denied the deponent's averment that no order was communicated to the deponent either before or immediately after 1.1.1975, the due date of crossing the E.B. The deponent's case for E.B. was required to be considered in time, but it was not considered at all and is stated to have been deferred on the flimsy ground of want of C.R. for the year 1973-74. It was the responsibility of the respondents to have collected

N Srivastava

all the relevant records in advance to decide the E.B. falling due on 1.1.1975 and in case it was decided to withhold the E.B., the order of withholding should have been communicated before or immediately after 1.1.1975. But ~~the~~ this was not done by the respondents. It is emphatically denied that there were complaints of serious professional lapses on the part of the deponent. The allegation is vague and indefinite besides being false. The applicant was never informed of any complaint against him and during his long service of over 35 years, not even a single adverse comment was ever communicated to him. It is wrong to say that the competent authority quite justifiably paid due heed to it and could not decide the case in applicant's favour in 1975 particularly in the absence of C.R. for the year 1973-74. There was no complaint against the deponent and it was the duty of the respondents to have procured the C.R. for the year 1973-74 in time to decide the E.B. due on 1.1.75 and not to defer the matter to harass the deponent and cause him undue injury.

The G.I. C.S (Department of Personnel) O.M. No. 40/1/73 Estt (A) dated the 31st December 1973 incorporated in R.R. & S.R. Rules Parts I & II under F.R. 25 lays down that the cases of Government servants for crossing the efficiency bar in the time scale of pay should be considered at the appropriate time and in case the decision is to enforce the bar against the Govt. servant, he should be informed of the decision. In Padam Singh Jhina versus Union of India (1974) 1 SLR 594(SC), it has been held that

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R. N. Sinha

"In fairness to the public servant the order preventing him from crossing the efficiency bar should be passed either before the appointed date or shortly thereafter. In S. Chandra Shekharan versus District Officer Madras Telephones and others, 1972, ILLJ 54(56) it has been held that "FR 25 explicitly says that the Government servant is not entitled to the increment above the efficiency bar without the specific sanction of the authority empowered to withhold his increment. The expression 'specific sanction of the authority' is significant. It is not possible to infer such specific sanction merely from the fact that an order stopping the concerned government servant from crossing the efficiency bar was not passed and communicated to him. In order to enable the government servant to prefer an appeal to the high authorities the order must be communicated to him. Because it is not a punishment under CCS(CCA) Rules 1965, it does not follow that the government servant would be kept in ignorance of the order passed on the file.". It was obligatory on the part of the respondents to communicate the order in respect of his E.B. before or immediately after 1.1.1975, the due date. But ~~xxx~~ arbitrarily and maliciously it was not done.

It is denied that the deponent was informed vide letter dated 13.7.76 that he was found unfit to cross his E.B. It is further denied that the deponent's representations dated 11.11.76, 16.6.77, 26.5.78 and 14.8.78 and reminders dated 14.9.78 and 14.5.79 were replied as alleged. It was only in June 1979, when

By Govt

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the Accounts Officer (Shri K. Pande) Office of the Accountant General Uttar Pradesh II, Allahabad by his letter dated 13.6.79, replied that necessary reply regarding crossing of efficiency bar at the stage of Rs.640/- with effect from 1.1.75 was communicated to the deponent under his office letter dated 28.10.78 and a copy of which was also enclosed with the said letter. Copies of these letters are annexed as Annexures Nos. A-6 and A-7 to the application. No other letter was received prior to June 13, 1979 and the respondents are put to strict proof of their delivery to the deponent.

The rest of the contents of this para under reply are denied and those of para 3(iv) of the application are re-asserted.

4. That the contents of paras 5 need no reply.

5. That the contents of para 6 of the counter affidavit are denied as stated and the contents of para 6(1) of the application are reiterated. It is incorrect to say that the deponent was informed about the final decision vide letter dated 14.7.1976. This alleged letter was never received by the deponent.

It may be stated that the respondents have admitted that there was no adverse C.Rs prior to 1.1.75 and they have not denied the averments made in para 4(i) of the application that the deponent's case was forwarded duly recommended by the Executive Engineer concerned well in time and there had never been any adverse comment, whatsoever, against the

Bally Givva/tehna

applicant and in view of this there was no justification for not allowing the deponent to cross the E. from 1.1.75. The rest of the contents of para und reply are denied and those of para 6(1) of the application are reiterated. The allegation of arrears of house rent is wholly false as there was no case of non-payment of arrears of house rent by the deponent. The deponent was never informed of any such alleged non-payment of arrears of house rent, nor any notice was ever served on him, nor any demand was made from him. No adverse remarks for the period 1974-75 nor the period from 1.4.75 to 28.10.75 was ever communicated to the deponent. The same could not, therefore, be acted upon as no uncommunicated adverse remark is to be taken cognisance of while deciding promotion or other beneficiary benefits. Moreover, the alleged adverse C.R. 1.4.75 to 28.10.75 has no relevancy to the deponent's E.B. due on 1.1.75. The respondents are under obligation to place the entire records before this Hon'ble Tribunal for perusal and to see how the deponent has been prejudiced by the respondents.

6. That in reply to the contents of para 7 of the counter affidavit it is stated that no letters dated 13.7.76, 10.11.76, 12.7.77, 20.6.78, 4.7.78, 12.10.79 and 11.6.79 as alleged to have been sent, were received by the deponent and as such the contention of the respondents is denied. It was only the letter dated 13.6.79 which was received by the deponent and along with that letter a copy of the letter dated 28.10.78 was also received for the first time. Copies of

M. Srinivasan.

these letters are Annexures A-6 and A-7 to the application. A perusal of these letters would reveal that no communication was sent to the applicant earlier. The replies contained in these letters are vague and indefinite as they do not indicate the nature of authority by which the deponent's case was considered and what deficiency, if any, was found in him prior to 1.1.1975 as not to allow him to cross the E.B. This was essential to afford an opportunity of submitting an effective appeal. The deponent submitted a number of representations regarding crossing of his E.B. with effect from 1.1.1975 and it was only in June 79 as already stated when he was given a reply that necessary reply on the subject was communicated by letter dated 28.10.78. A copy of this letter dated 28.10.78 was also enclosed therewith, and ~~thus~~ this letter dated 28.10.1978 simply indicated that the case of the deponent for E.B. was finally considered on 5.10.78 but he had not been considered fit to cross the E.B. on assessment of his performance and service records. No specific reason was given and it was also not intimated why his case had not been considered on the basis of record as on 1.1.1975 and what were the deficiencies against him. The deponent submitted further representations and requested the authorities to intimate if there was anything adverse against him prior to 1.1.1975, the due date of E.B. but no specific reply was ever given to him as to what was the material against the deponent prior to 1.1.1975, so as not to allow him to cross the E.B. from 1.1.1975. The rest of the contents of the para under reply are denied and those of para 6(ii) of the

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application are reiterated. No letter dated 19.3.80 as alleged by the respondents to have been sent in reply to letter dated 6.3.80 was received by the deponent. None of the replies received by the deponent ever indicated that his case was considered by the competent authority. The particulars of the authority who considered the case of the deponent have also not been disclosed even now. The reply is, therefore, vague, indefinite and evasive and as such denied.

7. In reply to the contents of para 8, it is stated that while sending a reply to the representation of June 79 by the Accounts Office, Office of the Accountant General Uttar Pradesh II, Allahabad by his letter dated 13.6.79, the particulars of the representation were not mentioned and it has not been clarified whether the said letter of June 79 was a copy of representation dated 2.6.79. The deponent did not send any other letter except dated 2.6.79 in June 1979. The contention of its non-receipt, therefore, does not hold good.
8. That the contents of para 9 are denied as stated and the contents of para 6(iv) of the application are re-asserted. The letter dated 19.9.1979 is not a proper reply to the representation dated 14.5.1979 (Annexure A-4 to the application). Moreover, the letter dated 19.9.79 did not disclose how the deponent was not considered fit to cross the E.B. due on 1.1.1975. The reply dated 19.9.79 is vague, indefinite and cryptic. It also does not disclose the appropriate authority by whom and when the E.B. case of contd...8

B.M. Sinha A.M.

the deponent was considered, nor it has been made clear in the para under reply. It is denied that there was complaint against the deponent and disciplinary action was taken against him. It is also denied that a penalty of stoppage of his increments with cumulative effect was imposed on the deponent in 1977 for a specific failure. No such order was ever communicated to the deponent. The respondents have preferred not to disclose as to what the specific failure was there on the part of the deponent, when the penalty was imposed and when the alleged order was served on the deponent. The respondents are put to a strict proof of their contention. It is further stated that no adverse remark was ever communicated to the deponent, whose work, conduct and performance was always satisfactory and there was absolutely no basis or reason not to allow the deponent to cross E.B. with effect from 1.1.1975. The respondents are under obligation to place the entire record before this Hon'ble Tribunal for perusal and scrutiny.

9. That the contents of para 10 are denied as stated and those of para 6(v) of the application are re-stated. No letter dated 19.3.80, as alleged was ever received by the deponent and the same is denied. As no reply to the various representations and last one dated 6.3.80 was received by the deponent, he submitted his appeal to the Controller and Auditor General of India New Delhi on 3.10.80 (Annexure A-12 to the application)

Ram Chandra

10. That no reply to para 6(vi) of the application has been given. The contents thereof are, therefore, taken to be admitted. In reply to contents of para 11, it is stated that by letter dated 27.7.87 (Annexure A-16) and not dated 17.7.87 the deponent was informed that his appeal had been rejected by the competent authority. This letter was issued by the Senior Deputy Accountant General, respondent No. 1, and he did not disclose who the competent authority was who rejected the appeal. Earlier to this it was intimated by the office of the respondent No. 2, the Comptroller and Auditor General of India, New Delhi by letter dated 15.4.87 (Annexure A-15) that the grievances put forth by the deponent in his appeal were being examined and the deponent might await a further communication from that office. This promised communication has not been received so far from that office. However, on receipt of the reply dated 27.7.87, a notice under section 80 C.P.C. was sent to the respondents by the deponent's counsel on 1.9.87 which was followed by reminder dated 16.11.87 and thereupon the deponent was informed by the Asstt. Accountant General Allahabad by his letter dated 29.11.87 that there was no justification for reconsideration of his case. None of the authorities disclosed the reasons for not allowing the deponent to cross E.B. due on 1.1.75 and consequently he had no alternative but to prefer the instant application before this Hon'ble Tribunal.

R.N. Girija Devi

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11. That the contents of para 12 of the counter affidavit are vague, indefinite and evasive and they are denied in view of submissions made in the pre-paras and the contents of para 6(viii) of the application are re-asserted.
12. That in reply to the contents of para 13 of the counter affidavit it is stated that the deponent was due to cross his E.B. on 1.1.75 and no cogent reasons have been given for not allowing him to cross the E.B. from 1.1.75. The want of C.R. for the year 1973-74 cannot be a ground for not allowing the deponent to cross the E.B. No adverse C.R. was ever communicated to the deponent and the deponent was never informed of any complaint said to have been made against him, nor the deponent was ever made aware of if there was anything adverse against him prior to 1.1.75 so as not to enable him to have the E.B. crossed and the alleged letter dated 13.7.76 was not delivered to him. The deponent pressed in his representations to allow him to cross the E.B. or at least to inform him the circumstances under which he was not allowed to cross E.B. on 1.1.75 but no speaking order was passed nor communicated to the deponent. The contents of para 13 are denied as stated and the contents of para 6(ix) of the application are reiterated.
13. That the contents of para 14 of the counter affidavit are denied as stated. The deponent had to approach this Hon'ble Tribunal when his just claim was not settled by the respondents and no reply was given by them as to the reasons why he was not allowed to cross his E.B. due on 1.1.75. The facts of the case

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have been stated in his application and also in the pre-paras. The contents of para 6(x) of the application are re-asserted.

14. That the contents of para 15 of the counter affidavit are evasive and not pertinent to the para 7 of the application. They are denied and the contents of para 7 of the application are re-stated. The reliefs sought by the deponent are cogent and based on sound footing and they are tenable.
15. That in reply to the contents of para 16 of the counter affidavit, it is stated that the contention made by the respondents that the application is barred by time is wrong and misconceived and the same is denied. The alleged letter dated 13.7.76 was never received by the deponent. The deponent had been making representations and it was only in June 79 and September 1979 that a reply was received in the matter and when his further representation dated 4.10.79 could not bring any fruitful result and a cryptic reply was given by letter dated 14.1.80, the deponent preferred a further representation dated 6.3.80 to the Accountant General II, U.P., Allahabad for intimating the reasons for holding the E.B. due on 1.1.75 and when no reply was received thereto, the deponent submitted an appeal dated 3.10.80 to the respondent no. 2. It was intimated by the office of the respondent No. 2 vide letter dated 15.4.87 that the grievance of the deponent was being examined and a further communication from that office might be awaited. No further reply was received from that

By: Gurwaran

office and instead the respondent No.1 intimated vide his letter dated 27.7.87 that there was no scope for reconsideration of the case. The deponent sent notices through his counsel on 1.9.87 and 15.11.87 to which the Assistant Accountant General WMI(A) office of the Accountant General (A&E) II, U.P., Allahabad by his letter dated 29.12.87 replied that there was no justification for reconsideration of his case and he had already been informed by letter dated 17.7.87. It may be stated that this letter was dated 27.7.87 and not 17.7.87. The deponent approached this Hon'ble Tribunal within one year of rejection of his appeal by order dated 27.7.87 and the claim cannot be termed as time-barred. The claim is within time, cogent, sustainable and liable to be decreed with costs.

16. That the contents of para 17 are denied. The contents of Annexure C-3 as filed by the respondents are not relevant to the case of the deponent. The deponent's case is that his case was not considered with respect to his performance before 1.1.75 and reasons for not allowing him to cross the E.B. was never communicated to him and he was wrongly, arbitrarily and maliciously withheld at the E.B.
17. That the contents of para 18 of the counter affidavit are denied. In view of the facts and circumstances

Ram Singh

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of the case, the application of the deponent is liable to be allowed with costs.

Lucknow :

Dated : 7.12.1989

R.M. Srivastava

DEPONENT

VERIFICATION

I, the above named deponent, do hereby verify that the contents of paras 1 to 13 are true to my knowledge and those of paras 14 to 17 are believed by me to be true. No part of it is false and nothing material has been concealed. So help me God.

Signed and verified this 7th day of December 1989
at Lucknow.

Lucknow :

Dated : 7.12.1989

R.M. Srivastava

DEPONENT

I identify the deponent who has signed
before me.

M. Dubey
(M. DUBEY)
Advocate.

In The Central Administrative Tribunal,
Circuit Bench, Lucknow,
C.M. No. 352/88(1).
OA No 915 d/s 1988

B. N. Srivastava - - - - - Applicant
Hos and others - - - - - Verses
- - - - - Respondents

The humble applicant respectfully states
as under:-

(1) That he could not file his rejoinder affidavit in time due to unavoidable reasons.

(2) That he is filing the rejoinder affidavit now and it would be expedient in the interest of justice that the same be accepted and taken on record.

It is, therefore, most respectfully
prayed that the rejoinder affidavit being
filed here will be accepted and taken
on record.

Lucknow
7.12.89.

M. Dikshy
Adv
Counsel for Applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW

O.A. No. 915 of 1988

B.N. Srivastava

...

... Applicant

Versus

Union of India and others

...

... Respondents

REJOINDER AFFIDAVIT

I, B.N. Srivastava, aged about 68 years son of late Shri Maikoo Lal Srivastava, resident of House No. 173, Rajendra Nagar, Lucknow do hereby state on oath as under:-

1. That the deponent is the applicant in the above noted case and he is fully conversant with the facts of the case deposed to in this rejoinder affidavit. The deponent has read the counter affidavit filed by the respondents, understood its contents and is replying to the same.
2. That the contents of paras 1, 2 and 3 of the counter affidavit need no reply.
3. That in reply to the contents of para 4, it is stated that the respondents have not denied the deponent's averment that no order was communicated to the deponent either before or immediately after 1.1.1975, the due date of crossing the E.B. The deponent's case for E.B. was required to be considered in time, but it was not considered at all and is stated to have been deferred on the flimsy ground of want of C.R. for the year 1973-74. It was the responsibility of the respondents to have collected

S. Srivastava

all the relevant records in advance to decide the E.B. falling due on 1.1.1975 and in case it was decided to withhold the E.B., the order of withholding should have been communicated before or immediately after 1.1.1975. But tho this was not done by the respondents. It is emphatically denied that there were complaints of serious professional lapses on the part of the deponent. The allegation is vague and indefinite besides being false. The applicant was never informed of any complaint against him and during his long service of over 35 years, not even a single adverse comment was ever communicated to him. It is wrong to say that the competent authority quite justifiably paid due heed to it and could not decide the case in applicant's favour in 1975 particularly in the absence of C.R. for the year 1973-74. There was no complaint against the deponent and it was the duty of the respondents to have procured the C.R. for the year 1973-74 in time to decide the E.B. due on 1.1.75 and not to defer the matter to harass the deponent and cause him undue injury.

The G.I. C.S (Department of Personnel) O.M. No. 40/1/73 Estt (A) dated the 31st December 1973 incorporated in R.R. & S.R. Rules Parts I & II under F.R. 25 lays down that the cases of Government servants for crossing the efficiency bar in the time scale of pay should be considered at the appropriate time and in case the decision is to enforce the bar against the Govt. servant, he should be informed of the decision. In Padam Singh Jhina versus Union of India (1974) 1 SLR 594(SC), it has been held that

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"In fairness to the public servant the order preventing him from crossing the efficiency bar should be passed either before the appointed date or shortly thereafter." In S. Chandra Shekharan versus District Officer Madras Telephones and others, 1972, ILLJ 54(56)(Md Mad) it has been held that "FR 25 explicitly says that the Government servant is not entitled to the increment above the efficiency bar without the specific sanction of the authority empowered to withhold his increment. The expression 'specific sanction of the authority' is significant. It is not possible to infer such specific sanction merely from the fact that an order stopping the concerned government servant from crossing the efficiency bar was not passed and communicated to him. In order to enable the government servant to prefer an appeal to the high authorities the order must be communicated to him. Because it is not a punishment under CCS(CCA) Rules 1965, it does not follow that the government servant would be kept in ignorance of the order passed on the file." It was obligatory on the part of the respondents to communicate the order in respect of his E.B. before or immediately after 1.1.1975, the due date. But ~~exhibit~~ arbitrarily and maliciously it was not done.

It is denied that the deponent was informed vide letter dated 13.7.76 that he was found unfit to cross his E.B. It is further denied that the deponent's representations dated 11.11.76, 16.6.77, 26.5.78 and 14.8.78 and reminders dated 14.9.78 and 14.5.79 were replied as alleged. It was only in June 1979, when

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the Accounts Officer (Shri K. Pande) Office of the Accountant General Uttar Pradesh II, Allahabad by his letter dated 13.6.79, replied that necessary reply regarding crossing of efficiency bar at the stage of Rs.640/- with effect from 1.1.75 was communicated to the deponent under his office letter dated 28.10.78 and a copy of which was also enclosed with the said letter. Copies of these letters are annexed as Annexures Nos. A-6 and A-7 to the application. No other letter was received prior to June 13, 1979 and the respondents are put to strict proof of their delivery to the deponent.

The rest of the contents of this para under reply are denied and those of para 3(iv) of the application are re-asserted.

4. That the contents of paras 5 need no reply.
5. That the contents of para 6 of the counter affidavit are denied as stated and the contents of para 6(1) of the application are reiterated. It is incorrect to say that the deponent was informed about the final decision vide letter dated 14.7.1976. This alleged letter was never received by the deponent.

It may be stated that the respondents have admitted that there was no adverse C.Rs prior to 1.1.75 and they have not denied the averments made in para 4(i) of the application that the deponent's case was forwarded duly recommended by the Executive Engineer concerned well in time and there had never been any adverse comment, whatsoever, against the

applicant and in view of this there was no justification for not allowing the deponent to cross the E.B. from 1.1.75. The rest of the contents of para under reply are denied and those of para 6(1) of the application are reiterated. The allegation of arrears of house rent is wholly false as there was no case of non-payment of arrears of house rent by the deponent. The deponent was never informed of any such alleged non-payment of arrears of house rent, nor any notice was ever served on him, nor any demand was made from him. No adverse remarks for the period 1974-75 nor for the period from 1.4.75 to 28.10.75 was ever communicated to the deponent. The same could not, therefore, be acted upon as no uncommunicated adverse remark is to be taken cognisance of while deciding promotion or other beneficiary benefits. Moreover, the alleged adverse C.R. 1.4.75 to 28.10.75 has no relevancy to the deponent's E.B. due on 1.1.75. The respondents are under obligation to place the entire records before this Hon'ble Tribunal for perusal and to see how the deponent has been prejudiced by the respondents.

6. That in reply to the contents of para 7 of the counter affidavit it is stated that no letters dated 13.7.76, 10.11.76, 12.7.77, 20.6.78, 4.7.78, 12.10.79 and 11.6.79 as alleged to have been sent, were received by the deponent and as such the contention of the respondents is denied. It was only the letter dated 13.6.79 which was received by the deponent and along with that letter a copy of the letter dated 28.10.78 was also received for the first time. Copies of

these letters are Annexures A-6 and A-7 to the application. A perusal of these letters would reveal that no communication was sent to the applicant earlier. The replies contained in these letters are vague and indefinite as they do not indicate the nature of authority by which the deponent's case was considered and what deficiency, if any, was found in him prior to 1.1.75 as not to allow him to cross the E.B. This was essential to afford an opportunity of submitting an effective appeal. The deponent submitted a number of representations regarding crossing of his E.B. with effect from 1.1.1975 and it was only in June 79 as already stated when he was given a reply that necessary reply on the subject was communicated by letter dated 28.10.78. A copy of this letter dated 28.10.78 was also enclosed therewith, and thus this letter dated 28.10.1978 simply indicated that the case of the deponent for E.B. was finally considered on 5.10.78 but he had not been considered fit to cross the E.B. on assessment of his performance and service records. No specific reason was given and it was also not intimated why his case had not been considered on the basis of record as on 1.1.1975 and what were the deficiencies against him. The deponent submitted further representations and requested the authorities to intimate if there was anything adverse against him prior to 1.1.1975, the due date of E.B. but no specific reply was ever given to him as to what was the material against the deponent prior to 1.1.1975, so as not to allow him to cross the E.B. from 1.1.1975. The rest of the contents of the para under reply are denied and those of para 6(ii) of the

application are reiterated. No letter dated 19.3.80 as alleged by the respondents to have been sent in reply to letter dated 6.3.80 was received by the deponent. None of the replies received by the deponent ever indicated that his case was considered by the competent authority. The particulars of the authority who considered the case of the deponent have also not been disclosed even now. The reply is, therefore, vague, indefinite and evasive and as such denied.

7. In reply to the contents of para 8, it is stated that while sending a reply to the representation of June 79 by the Accounts Office, Office of the Accountant General Uttar Pradesh II, Allahabad by his letter dated 13.6.79, the particulars of the representation were not mentioned and it has not been clarified whether the said letter of June 79 was a copy of representation dated 2.6.79. The deponent did not send any other letter except dated 2.6.79 in June 1979. The contention of its non-receipt, therefore, does not hold good.

8. That the contents of para 9 are denied as stated and the contents of para 6(iv) of the application are re-asserted. The letter dated 19.9.1979 is not a proper reply to the representation dated 14.5.1979 (Annexure A-4 to the application). Moreover, the letter dated 19.9.79 did not disclose how the deponent was not considered fit to cross the E.B. due on 1.1.1975. The reply dated 19.9.79 is vague, indefinite and cryptic. It also does not disclose the appropriate authority by whom and when the E.B. case of contd...8

the deponent was considered, nor it has been made clear in the para under reply. It is denied that there was complaint against the deponent and disciplinary action was taken against him. It is also denied that a penalty of stoppage of his increments with cumulative effect was imposed on the deponent in 1977 for a specific failure. No such order was ever communicated to the deponent. The respondents have preferred not to disclose as to what the specific failure was there on the part of the deponent, when the penalty was imposed and when the alleged order was served on the deponent. The respondents are put to a strict proof of their contention. It is further stated that no adverse remark was ever communicated to the deponent, whose work, conduct and performance was always satisfactory and there was absolutely no basis or reason not to allow the deponent to cross E.B. with effect from 1.1.1975. The respondents are under obligation to place the entire record before this Hon'ble Tribunal for perusal and scrutiny.

9. That the contents of para 10 are denied as stated and those of para 6(v) of the application are re-stated. No letter dated 19.3.80, as alleged was ever received by the deponent and the same is denied. As no reply to the various representations and last one dated 6.3.80 was received by the deponent, he submitted his appeal to the Controller and Auditor General of India New Delhi on 3.10.80 (Annexure A-12 to the application)

By Sivayogi

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10. That no reply to para 6(vi) of the application has been given. The contents thereof are, therefore, taken to be admitted. In reply to contents of para 11, it is stated that by letter dated 27.7.87 (Annexure A-16) and not dated 17.7.87 the deponent was informed that his appeal had been rejected by the competent authority. This letter was issued by the Senior Deputy Accountant General, respondent No. 1, and he did not disclose who the competent authority was who rejected the appeal. Earlier to this it was intimated by the office of the respondent No. 2, the Comptroller and Auditor General of India, New Delhi by letter dated 15.4.87 (Annexure A-15) that the grievances put forth by the deponent in his appeal were being examined and the deponent might await a further communication from that office. This promised communication has not been received so far from that office. However, on receipt of the reply dated 27.7.87, a notice under section 80 C.P.C. was sent to the respondents by the deponent's counsel on 1.9.87 which was followed by reminder dated 16.11.87 and thereupon the deponent was informed by the Asstt. Accountant General Allahabad by his letter dated 29.11.87 that there was no justification for reconsideration of his case. None of the authorities disclosed the reasons for not allowing the deponent to cross E.B. due on 1.1.75 and consequently he had no alternative but to prefer the instant application before this Hon'ble Tribunal.

11. That the contents of para 12 of the counter affidavit are vague, indefinite and evasive and they are denied in view of submissions made in the pre-paras and the contents of para 6(viii) of the application are re-asserted.
12. That in reply to the contents of para 13 of the counter affidavit it is stated that the deponent was due to cross his E.B. on 1.1.75 and no cogent reasons have been given for not allowing him to cross the E.B. from 1.1.75. The want of C.R. for the year 1973-74 cannot be a ground for not allowing the deponent to cross the E.B. No adverse C.R. was ever communicated to the deponent and the deponent was never informed of any complaint said to have been made against him, nor the deponent was ever made aware of if there was anything adverse against him prior to 1.1.75 so as not to enable him to have the E.B. crossed and the alleged letter dated 13.7.76 was not delivered to him. The deponent pressed in his representations to allow him to cross the E.B. or at least to inform him the circumstances under which he was not allowed to cross E.B. on 1.1.75 but no speaking order was passed nor communicated to the deponent. The contents of para 13 are denied as stated and the contents of para 6(ix) of the application are reiterated.
13. That the contents of para 14 of the counter affidavit are denied as stated. The deponent had to approach this Hon'ble Tribunal when his just claim was not settled by the respondents and no reply was given by them as to the reasons why he was not allowed to cross his E.B. due on 1.1.75. The facts of the case

have been state in his application and also in the pre-paras. The contents of para 6(x) of the application are re-asserted.

14. That the contents of para 15 of the counter affidavit are evasive and not pertinent to the para 7 of the application. They are denied and the contents of para 7 of the application are re-stated. The reliefs sought by the deponent are cogent and based on sound footing and they are tenable.
15. That in reply to the contents of para 16 of the counter affidavit, it is stated that the contention made by the respondents that the application is barred by time is wrong and misconceived and the same is denied. The alleged letter dated 13.7.76 was never received by the deponent. The deponent had been making representations and it was only in June 79 and September 1979 that a reply was received in the matter and when his further representation dated 4.10.79 could not being any fruitful result and a cryptic reply was given by letter dated 14.1.80, the deponent preferred a further representation dated 6.3.80 to the Accountant General II, U.P., Allahabad for intimating the reasons for holding the E.B. due on 1.1.75 and when no reply was received thereto, the deponent submitted an appeal dated 3.10.80 to the respondent no. 2. It was intimated by the office of the respondent No. 2 vide letter dated 15.4.87 that the grievance of the deponent was being examined and a further communication from that office might be awaited. No further reply was received from that

office and instead the respondent No.1 intimated vide his letter dated 27.7.87 that there was no scope for reconsideration of the case. The deponent sent notices through his counsel on 1.9.87 and 15.11.87 to which the Assistant Accountant General WMI(A) office of the Accountant General (A&E) II, U.P., Allahabad by his letter dated 29.12.87 replied that there was no justification for reconsideration of his case and he had already been informed by letter dated 17.7.87. It may be stated that this letter was dated 27.7.87 and not 17.7.87. The deponent approached this Hon'ble Tribunal within one year of rejection of his appeal by order dated 27.7.87 and the claim cannot be termed as time-barred. The claim is within time, cogent, sustainable and liable to be decreed with costs!

16. That the contents of para 17 are denied. The contents of Annexure C-3 as filed by the respondents are not relevant to the case of the deponent. The deponent's case is that his case was not considered with respect to his performance before 1.1.75 and reasons for not allowing him to cross the E.B. was never communicated to him and he was wrongly, arbitrarily and maliciously withheld at the E.B.
17. That the contents of para 18 of the counter affidavit are denied. In view of the facts and circumstances

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18. That in view of the facts, reasons and circumstances stated above, the application filed by the applicant is liable to be dismissed with costs to the Opposite Parties.

Deponent.

Verification.

I the above named deponent do hereby verify that the contents of para 1 to 2 of this reply are true to my personal knowledge and those of paras 3 to 15 are believed by me are true on the basis of official records and information gathered and those of paras 16 to 17 are believed to be true on the basis of legal advice. No part of this is false and nothing material has been concealed.

Deponent.

Allahabad.

Dated :

I identify the above deponent who is known to me and has signed before me.


CENTRAL GOVT. STANDING COUNSEL.

Allahabad,

Dated:

Annexure C-3

S. No. A/C & G.P. G. General/Telex
क्रमांक संख्या : S.C.B. (नोट) 3-7-89
Diary No. | Dated |

Circular No. 2-LC/89

No. 517-LC/13-89

Office of the Comptroller &
Auditor General of India,
New Delhi.

Dated :-

27 JUN 1989

To

All Heads of offices
(As per mailing list except overseas offices)

Sub:- Judgement dated 17.3.1989 passed by the Central
Administrative Tribunal, New Bombay Bench in the
case of Shri K.D. Atre Vs. Accountant General (Audit)
Nagpur and Others - Tribunal does not sit in appeal
against the recommendations of the D.P.C.

Up to 30/6/89
Sir,
I am directed to forward herewith a copy of the
judgement passed by the C.A.T. New Bombay Bench in the O.A.
No. 901/88-Shri K.D. Atre Vs. Accountant General (Audit)
Nagpur and Others, wherein the Tribunal while declining
to admit the application has held as follows:-

Do/10/89
AGC-II
It is well established that this tribunal does
not sit in appeal against the recommendations of
the D.P.C. We, therefore, hold that this application
is not worth admitting and hence reject the same
summarily with no orders as to costs.

CPG
17/6/89
The above principle reiterated by the Tribunal is
well settled on the basis of various judgements of the
Supreme Court. It is requested that this decision may be
kept in view and quoted while defending similar cases, if filed.

Yours faithfully,

D. Bhardwaj
(D. Bhardwaj)
Administrative Officer
(Legal)

Encl :- As above.

No. 518-LC/13-89

Dated:-

Copy forwarded with enclosure to :-

1. Director (Staff)
2. A.C. (P)
3. A.C. (N)
4. J.D. (P)
5. A.O. (N)
6. A.O. (Legal-I)
7. A.O. (Legal-II)

Admin II
C.A. 17.3.89

D. Bhardwaj
(D. Bhardwaj)
Administrative Officer
(Legal)

TS

Respondent No.1 and requested that he being senior to the applicant should be granted the post of Welfare Assistant. Since he was senior, the applicant did not object to the appointment of Shri Somkumar as Welfare Assistant. Therefore, the applicant came to be designated as Senior Auditor. The said Somkumar retired in 1988. Thereafter, on 30.6.1988 some candidates were invited for personal interview for the post of Welfare Assistant. No procedure for holding any interview for the post was prescribed. As the applicant was senior most and also having served the organisation as Welfare Assistant, he was entitled to be appointed to the post of Welfare Assistant directly. But to avoid any litigation and dispute, he appeared for the interview along with Respondent No.3, Shri V.G.Abale. After the interview, Respondent No. 3 was selected as Welfare Assistant. On 30.11.1988 the applicant has filed the present application praying that Respondent Nos. 1 & 2 be directed to appoint him to the post of Welfare Assistant from the date on which Respondent No.3 has been appointed to that post. He has also prayed for consequential benefits.

2. By order dated 10.1.1989 we had issued notices to respondents regarding admission hearing. Accordingly, they have appeared and filed their written reply.

3. It is asserted in the reply of the respondents that the applicant was never appointed to the post of Welfare Assistant as that post was not filled in upto 6.3.1985. According to them, the post of Welfare Assistant is an ex-cadre post and recruitment to that post is governed by the Recruitment Rules, 1988. But before these rules, there were guidelines for selection to that post. What is more important is assertion of the respondents that the DPC in its meeting dated 4.7.1984 had recommended one Shri S.W.Sahastrabuddhe for the post of Welfare Assistant. Again on 11.2.1985, the DPC recommended Shri P.M.Somkumar. The next DPC was held on 30.6.1988 and it recommended the name of Shri Abale. It is pointed out that all these DPCs have considered the case of the applicant.

TC

2137

To

The Bench Secretary

CAT. Circuit Bench, Lucknow.

Kindly request the Hon'ble Bench
to adjourn the following cases
for some other date as I am
out of station due to some
personal work & oblige.

Objection

1. Smt. Parvati vs. Volsen ²¹ (V.K. Chandhni)

Address
23/9/89

2. Kunj Behnital vs. Volsen

3. B.N. Srivastava vs. Volsen

4. Heeralal Kureel vs. Volsen

5. Vishnu Nath Singh vs. S.P.O. Khan

SK
e134
Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

No. CAT/CB/LKO/ 1142 to 1144

Dated : 12.4.89

Registration No. 915 of 1938

B.N. Srivastava

Applicant

Versus

Union of India.

Respondent's

To

- (1) The senior Deputy Accountant General (F&A) office of the Accountant General (A&G) II, Allahabad U.P.
- (2) The Comptroller and Auditor General of India, New Delhi.
- (3) The U.O.I. through Secretary, Ministry of Finance, Govt of India, New Delhi.

Please take notice that the applicant above named has presented an application a copy whereof is enclosed herewith which has been registered in this Tribunal and the Tribunal has fixed 24 day of 5 1938 for

If no appearance is made on your behalf by your pleader or by some one duly authorised to act and plead on your in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 12 day of 4 1938.

DS Dinesh
For DEPUTY REGISTRAR

dinesh/

enclosing copy of
order dated on
11.4.89

Reel three copies of
application as per instruction
of Sr. D. A. (F&A) Jn. of Reg. 103.

Chk
Addressed

P135

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

O.A.NO.915/88

Shri B.N.Srivastava

...

Applicant

-Vs-

Union of India

...

Respondents

Date.10.3.1989.

Hon'ble Justice Mr. Kamleshwar Nath, V.C.,

Hon'ble Member Mr. Ajay Johri, A.M.,

Heard.

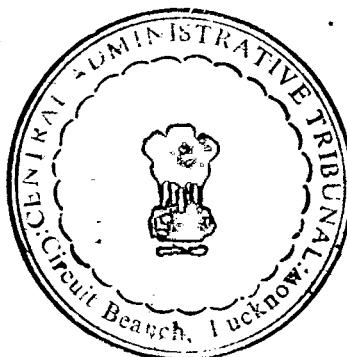
Admit. Issue notices to respondents to file reply by 7.4.1989 to which rejoinder may be filed by 13.4.89. List for hearing on 17-4-1989. On which date the respondents shall produce the record relating to the applicant's case.

Sd-

A.M.

Sd-

V.C.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

O.A.NO.915/88

Shri B.N.Srivastava

...

Applicant

VS-

Union of India

...

Respondents.

Date.10.3.1989.

Hon'ble Justice Mr. Kamleshwar Nath, V.C.,
Hon'ble Member Mr. Ajay Johri, A.M.,

Heard.

Admit. Issue notices to respondents to file reply
by 10.4.1989 to which rejoinder may be filed by 13.4.89
List for hearing on 17-4-1989. On which date the
respondents shall produce the record relating to
the applicant's case.

Sd-
A.M.

Sd-
V.C.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

O.A.NO.915/88

Shri D.N.Srivastava

...

Applicant

c/o

Union of India

...

Respondents.

Date. 10.3.1989.

Hon'ble Justice Mr. Kailashwar Nath, V.C.,

Hon'ble Member Mr. Ajay Joshi, A.M.,

Heard.

Admit. Issue notices to respondents to file reply
by 8.4.1989 to which rejoinder may be filed by 13.4.89
List for hearing on 17.4.1989. On which date the
respondents shall produce the record relating to
the applicant's case.

Sd/-
A.M.

Sd/-
V.C.



C.P.D.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

O.A.NO.915/88

Shri B.N.Srivastava ... Applicant
-v/s-
Union of India ... Respondents.

Date. 10.3.1989.

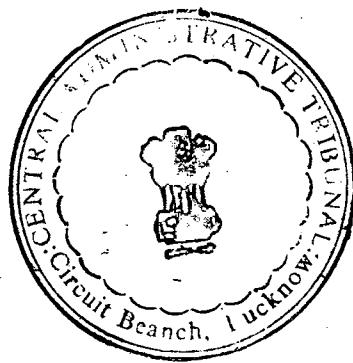
Hon'ble Justice Mr. Kamlashwar Nath, V.C.,
Hon'ble Member Mr. Ajay John, A.M.

Heard.

Admit. Issue notices to respondents to file reply
by 7.4.1989 to which rejoinder may be filed by 13.4.89
List for hearing on 17-4-1989. On which date the
respondents shall produce the record relating to
the applicant's case.

Sd/
A.M.

Sd/
V.C.



Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

Dated : 13. 3. 1989.

Registration No. 915 of 1938.

R. N. Sivashanu.

Applicant

Union of India.

Respondent's

TO

① The senior Deputy Accountant General (F&A),
Office of the Accountant General (A&E) II,
Uttar Pradesh.

ALLAHABAD.

Please take notice that the applicant above named has presented an application a copy whereof is enclosed herewith which has been registered in this Tribunal and the Tribunal has fixed 17 day of 4 1939 for hearing.

If no appearance is made on your behalf, your pleader or by some one duly authorised to Act and plead on your in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal
this 13 day of 3 1999.

For DEPUTY REGISTRAR

dinesh ✓

**Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow**

enclosing a
copy of order
dated 10-3-1989.

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

No. CAT/CB/LKO/

Dated : 13.3.1989.

Registration No. 915 of 1988.

B.N. Srivastava

Applicant

Versus

Union of India.

Respondent's

To

(2) The Comptroller and Auditor General of India,
New Delhi

Please take notice that the applicant above named has presented an application a copy whereof is enclosed herewith which has been registered in this Tribunal and the Tribunal has fixed 17 day of 4 1989 for hearing.

If no appearance is made on your behalf by your pleader or by some one duly authorised to Act and plead on your in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 13 day of 3 1989

For DEPUTY REGISTRAR

dinesh/

Encl. A copy of
order dated 10.3.89

Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

No. CAT/CB/LKO/

Dated : 13.3.89.

Registration No. 915 of 1988.

B. N Srivastava Applicant

Versus

Union of India Respondent's

TO

③ The union of India, through the Secretary
Ministry of Finance, Govt of India.

NEW DELHI.

Please take notice that the applicant above named has presented an application a copy whereof is enclosed herewith which has been registered in this Tribunal and the Tribunal has fixed 17 day of 3 1989 for hearing.

If no appearance is made on your behalf, your pleader or by some one duly authorised to Act and plead on your in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 13 day of 3 1989

For DEPUTY REGISTRAR

dinesh/

Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

No. CAT/CB/LKO/

Dated : 13/3/89

Registration No. 915 of 1988

B. N. Srivastava Applicant

Versus

Union Of India

Respondent's

To
① The senior Deputy, Accountant General (F&A)
office of the Accountant General (A&G) JL,
U.P. Allahabad.

② The Comptroller and Auditor General of India,
New Delhi.

③ Union of India, through the Secretary,
Ministry of Finance, Govt of India,
New Delhi.

Please take notice that the applicant above
named has presented an application a copy whereof is enclosed
herewith which has been registered in this Tribunal and the
Tribunal has fixed 17 day of 4 1989 for hearing.

If no appearance is made on your behalf, your
pleader or by some one duly authorised to Act and plead on
your in the said application, it will be heard and decided in
your absence.

Given under my hand and the seal of the Tribunal
this 13 day of 3 1989.

For DEPUTY REGISTRAR

dinesh/

Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

High Court of Justice - Delhi

Humble Beggar Hts

Draw. 915/20 pm

B. N. Sivastava U.O.9.

Sir

I am going to
out of station today.

I am not ~~able~~ ^{able} to
attend the Hon'ble Court
the case was adjourned
some other day.

Yours

Sivam

Cancelled for today

Dated

24:4.92

the Bench Secretary

C. A. T

replies

Sir,

With respect to his
last slip to adjourn the case,
G.A. 915/88, P.N. Sir Vastorao V.
Nug listed today for hearing
for at least two weeks, as
I have been asking for the
last over 2 months and am
in now in a position to
conclude the case.

Yours truly
M. Dutien
P.W.

23/5/92

£146

the Bench Secretary

CAT

Wenham

Sir,

Under ^{the} request his
Lordship to adjourn the Case
SL- M- 915/88 B.N. Singers
vs No 9 ordered to be listed
today, as I have been ill
for the last 2 months and am
unable to conduct it for
at least two weeks.

Also the aforesaid Case M/23
listed for 23.6.92 and
the defendant has begged for
its adjournment for two weeks
owing to his long illness
Thanking you!

21/6/92

Yours faithfully

M. Durkee
Adv