

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No.146/86

Shri Nagesh Bhatt Shiralgi,
28, Kanara House,
II Floor, Mogul Lane,
Mahim, Bombay - 400 016.

.. Applicant
(Original Plaintiff)

V/s

The Union of India through the
Regional Director,
Regional Meteorological Centre,
Colaba, Bombay-5.

.. Respondent
(Original Defendant)

Coram: Hon'ble Vice-Chairman B.C. Gadgil,

Hon'ble Member J.G. Rajadhyaksha.

Appearances :

- 1) Mr. Baldota for the Applicant.
- 2) Mr. M.I. Sethna for Respondents.

Tribunal's Judgment:

(Per Member J.G. Rajadhyaksha)

Dated : 31.10.1986

Transferred Application No.146/86 was originally Writ Petition No.1229/1982 filed in the Bombay High Court by the present applicant (Original Writ Petitioner) on 16.6.1982.

The facts in brief are that the Applicant joined service in the Meteorological Department in 1945, was confirmed in 1947; earned his promotion in 1961, and was confirmed in the post of Professional Assistant in 1971. Thereafter, he officiated as Assistant Meteorologist, occasionally, after 1974, and thereafter became Assistant Meteorologist. He retired on 31.7.82 from service. In the meanwhile, in 1978 a departmental enquiry was started against him, resulting in reduction of his pay by two stages.

This penalty was inflicted on him in 1979 and was confirmed in 1981 by the appellate authority, as well as again in 1982, when his second petition was treated as review and rejected.

The dispute raised by the applicant is that he was due to earn an increment in the scale of Asstt.Meteorologist on 1-2-1977. The scale is : Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200. It is the petitioner's contention that his case for crossing of Efficiency Bar for the second time in the scale at Rs.1000/- should have been processed much in advance of the due date i.e. 1.2.1977, and in any case he should have received a communication of its processing by the Department. He never received any such communication.

On or about 19.7.1978 departmental proceeding were started against him on receipt of a complaint dated 13.1.1977. The departmental enquiry was concluded on 11.7.79 with imposition of a penalty of reduction by two stages in the Time Scale of Pay of Asstt.Meteorologist for a period of two years with effect from 1.7.79 on the applicant. This reduction would have cumulative effect, without earning any increment during the penalty period. The applicant appealed to the President of India on 22.9.79. The appeal succeeded partially, inasmuch as the penalty was made effective from 11.7.79 instead of from 1.7.79. The penalty was, however, upheld. The applicant again submitted a petition to the President. This was treated as a review application and was disposed of accordingly, the result being that the order dated 5.5.81 confirming the penalty imposed on the applicant

was not interfered with by the President. The Writ Petition did no challenge the penalty imposed upon the applicant, as applicant had a mind to file a separate petition in that matter. What he challenged in the Writ Petition, and, therefore, in this application is the failure of the Department to release his increment after crossing the E.B. on 1.2.1977. What he pleades for therefore, is an order permitting him to cross the E.B. as on 1.2.1977 and draw all further increments and difference of pay that may be due. His claim also is that the arbitrary omission to decide the question of the applicant's crossing the E.B. in accordance with the relevant circular/memoranda violated applicant's Fundamental Rights under Article 14 and 16 of the Constitution of India. It is his contention that the disciplinary proceedings against him have no relevance to the question of crossing the E.B. on 1.2.77, as there was no disciplinary action initiated or pending against him on that date.

We have heard the learned advocates for the applicant Mr. Baldota and Miss R.V. Sondur as well as the learned counsel for the Respondents Mr. M.I. Sethna. They took us through all available records, as well as Compilations, Fundamental Rules and Civil Services Regulations, Central Civil Service (CCS) Rules as are relevant to this dispute. The contention of the learned advocates for the applicant is that the applicant reached the stage of Rs.1000/- in the scale on 1.2.1976 therefore on 1.2.77 he was due to cross the second E.B. in the scale. A proposal in this respect was submitted to the D.P.C. by the Regional Director of Meteorology on 2.11.76. Until the applicant

retired from service, no decision had been communicated to him, either way, on the question of crossing of E.B. On 19.7.1978, the applicant received a Charge-sheet on certain grounds with which the Departmental Proceedings were started against him. On 11.7.79, a penalty of reduction of pay in the scale by two stages was imposed upon him. The charge pertains to a complaint filed on 13.1.77 by some disgruntled subordinates of the department, alleging that there was some misappropriation of funds inasmuch as the applicant ostensibly paid O.T. allowance to certain members of the staff when it was not due and shared the spoils with them. Later, the applicant has been allowed to cross E.B. on 11.7.81 and this decision was communicated to him by the Director General of Meteorology after the applicant retired. In May 1981, the appeal filed by the applicant to the President was rejected. On 13.3.1982, the second appeal which was treated as review application was also rejected.

The applicant's case is that if the penalty had to be imposed at all, it should be on the pay that could be fixed after the applicant crossed the E.B. as on 1.2.77. It is strongly urged that on the date due for crossing the E.B. the departmental enquiry had not even been contemplated and even if it was, the D.P.C. which should have and must have considered the question of the applicant's crossing of E.B. in January 1977 could not have been aware of a complaint dated 13.1.77. The questions that arise according to Mr. Baldota are whether the D.P.C. met at all ? and if so when ? Further, whether it considered the applicant's case for processing of the E.B. and took

a conscious decision against it ? and in any case, why there was no communication of the decision to the applicant as contemplated by various instructions issued by the Government of India from time to time ? It is, therefore, the applicant's view that there was no decision at all to stop the applicant from crossing the E.B. and, therefore, he is entitled to cross the E.B. on 1.2.77 when it was due.

The learned counsel for the Respondents, in his reply, stressed the point that not once until filing of the W.P. in the High Court has the applicant i.e. the Original Petitioner, made any representation whatsoever against enforcing the E.B. The very fact that his increment was not released to him by the authority should have led him to understand that the E.B. had been enforced against him, and he could not claim further increments nor would the increments be released by audit. The reason also is very clear. There was a complaint dated 13.1.77 which brought about immediately thereafter the investigations into the allegations. As officer was deputed for spot enquiry on 5.2.77 to Goa. It is a fact admitted even by the applicant that the enquiry culminated into a penalty being imposed upon him and it is significant to note that the applicant had pleaded guilty to the charge. The crux of the question, therefore, is when should the applicant be considered as due to cross the E.B. as a result of the departmental enquiry which was initiated against him at the time that he was due to cross the second E.B? Shri Sethna refers to the Fundamental Rules 24 and 25. The Fundamental Rule 24 is quite clear inasmuch as it says that "an increment will be earned by a Government Servant as a

matter of course, unless it is specifically withheld." This refers to ordinary increments, not involving the crossing of E.B. Art.25 deals with the question of crossing of E.B. Here again, it is significant to note that the Third Pay Commission observed that crossing of E.B. had become much too easy and it recommended that the E.B. should not be allowed to be crossed as a routine matter but a conscious decision had to be taken in the matter after considering the conduct and performance of the officer concerned. The record of performance upto the date on which the E.B. has to be crossed, is required to be taken into account. It is very clear that since there was a complaint against the applicant on 13.1.77, his conduct was not above board on the date on which he was due to cross the E.B. and, therefore, the E.B. could be enforced against him on 1.2.1977. The release of increment or crossing of E.B. could be deferred to a suitable time that might be decided by the authorities. Mr. Sethna also drew our attention to various administrative instructions to which Shri Baldota also had referred to the effect that if the departmental proceedings are pending against an officer who was due to cross E.B., the crossing of E.B. would be retrospective in effect if the delinquent was fully exonerated. In any other case, it is for the authority to decide, taking into account the penalty and the effect thereof, as to when the delinquent should be allowed to cross the E.B. In other words, deferring this question of crossing the E.B. is something which the interpretation of F.R.25 contemplates. Shri Sethna further pointed out that in case a regular departmental enquiry is not pending,

but only investigations into the conduct of an alleged delinquent officer are ordered, even then the effect would be the same, namely that the question of crossing the E.B. would be taken into consideration only after the investigation is completed and its results known. In other words, if the investigations led to prosecution or departmental action and imposition of penalty, the results that were discussed earlier would ensue as a rule. In case the investigations failed to bring out any delinquency on the part of the officer, it might be possible to release his increment and allow him to cross E.B. with retrospective effect, taking into account the date on which it was due to be crossed. It was argued by Shri Sethna that the applicant does not make a grievance about the Departmental Promotion Committee (D.P.C.) except referring to in it Clause(a) of para (B) of the application; nor does he make a grievance of non-communication of the decision of the D.P.C. until 1982. The holding of the Departmental Promotion Committee is not really relevant. Whenever it might meet, depending upon the facts of the case, the decision taken by the authorities on the recommendations of the D.P.C. could even be retrospective. There is definitely an order dated 11.7.79 reducing the pay of the applicant by two stages for two years and the DPC's meeting and making a recommendation or otherwise really makes no difference to the situation. In reply, Shri Baldota pointed out that as far as the complaint dated 13.1.77 was concerned even according to Shri Sethna's arguments, investigations were started on 5.2.77 i.e. after the applicant was due to cross E.B.

Having heard the extensive arguments, we have now to examine and decide whether the applicant's claim has any merit which deserves interference at our hands. We would go first to the Fundamental Rules. The F.R. 24 is not so relevant to the matter in hand as F.R.25 is. The rule reads as follows :-

"F.R.25: Where an E.B. is prescribed in Time Scale, the increment next above the Bar shall not be given to a Government Servant without the specific sanction of the authority empowered to with-hold increments under Rule 24 or all relevant disciplinary rules applicable to a Government Servant or of any other authority whom the President, may be a general or special order, authorise in this behalf".

This leads us to understand that crossing of E.B. is not a matter of right nor is it an automatic process like an ordinary annual increment. An authority i.e. either the Appointing Authority or the Disciplinary Authority, shall have to take a conscious decision to allow a Government Servant to cross E.B. We would, therefore, feel inclined to agree that if the authority decides that a particular Government Servant should cross the E.B. there should be a positive order in that behalf. Conversely, if the DPC recommends enforcing of E.B. then, strictly speaking, there seems to be no necessity of communicating that decision to the officer concerned. The fact that there is no positive order, the fact that the increment has not been released and that he has not been authorised higher pay is by itself adequate communication to the concerned officer that he has not yet been allowed to cross

the E.B. True, that administrative instructions issued from time to time bring out the point that there is no uniform practice in the matter of communication of decision on E.B. where they are enforced. It has, therefore, been suggested in the administrative orders that a suitable communication or an intimation should be given to the Officer concerned. Failure to implement this administrative order would not by itself vitiate any decision taken by the authority on the recommendations of the DPC to enforce E.B. At the worst, it could be called administrative failure which does not necessarily vitiate the statutory action of the authority concerned. On the admission of the Learned Advocate for the applicant, it is noted that the applicant had been allowed to cross E.B. with effect from 11.7.81. A reference to the CCS(CCA) rules shows that reduction to a lower stage in the Time Scale of Pay for a specified period is a major penalty. The order enforcing such penalty is also expected to indicate clearly whether or not the Government Servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay. Though a copy of the original order inflicting the penalty on the applicant is not available, it is seen from the reply that the Director General of Meteorology enforced on the petitioner the penalty of reduction of pay by two stages in the Time Scale of Pay of Asstt. Meteorologist for a period of two years with effect from 1.7.79

with cumulative effect, without earning increments during the penalty period. This order is dated 11.7.1979. It would, therefore, appear that permission granted to the applicant to cross the E.B. with effect from 11.7.81 is a necessary statutory sequel in terms of Rule 25 to the punishment imposed upon him, reducing his pay in the Time Scale prior to his crossing the second E.B. After taking into account all aspects of the case, we are convinced that enforcing the E.B. against the applicant was a consequence of departmental action which was contemplated and taken against him. It is clear that the departmental action culminated in imposition of the penalty. Whether that is challenged separately or not, the fact remains that today, as things stand, the applicant stood punished by reduction of his pay in the Time Scale for a specified period. Since at the time of crossing the E.B. the overall performance including the conduct of the applicant seems to have been taken into account by the Appointing/Disciplinary Authority, we do not see any reason to find fault with the action taken to enforce E.B. Since we also find that E.B. had been allowed to be crossed after the period of penalty is over, there seems to be no violation of CCS(CCA) Rules or F.Rules in any way whatsoever. In the result, the applicant cannot succeed and we will hold that the enforcement of E.B. with effect from 1.2.77 until the departmental proceedings were over and until the period of penalty effective from 11.7.79 was

over is within the rights conferred upon the authorities by the F.R. & CCS(CCA) Rules read together. The application of the applicant is, therefore, dismissed. There will be no order as to costs.

B.C. Gadgil

(B.C. GADGIL)
VICE-CHAIRMAN.

31/09/86

(J.G. RAJADHYAKSHA)
MEMBER.