

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 372/89

Transfer Application No: ----

DATE OF DECISION 9.3.1993

A.G. Harisinghani Petitioner

Mr. M.A. Mahalle Advocate for the Petitioners

Versus

Chairman, CBDT, New Delhi and Ors. Respondent

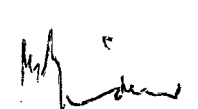
Mr. V.M. Bendre for Mr. P.M. Pradhan for respondents No. 1 to 3  
Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. Priolkar, Member(A)

The Hon'ble Shri V.D. Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(M.Y. PRIOLKAR)  
M(A.)

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NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.372/89

A.G.Harisinghani,  
107, Swapana Nagar 2/B,  
Purshotam Parekh Marg,  
Virar(West),  
PIN 401 303.

.. Applicant

-versus-

1. Chairman,  
Central Board of Direct  
Taxes,  
Ministry of Finance,  
Govt. of India,  
North Block,  
New Delhi.
2. Chief Commissioner of  
Income-tax(Administration),  
Aayakar Bhavan, M.K.Road,  
Bombay - 400 020.
3. Dy.Commissioner of Income-Tax,  
(Administration-I),  
Aayakar Bhavan, M.K.Road,  
Bombay - 400 020.
4. Shri Padmakar G.Dhakras
5. Smt.Smita B.Chhatrapati
6. Shri Shantaram G.Surve
7. Shri Krishna B.Murlidharkumar
8. Shri Ganpat P.Choudhari
9. Smt.Shobhana S.Sule
10. Smt.Sheela S.Bhujale  
All working as Supervisors  
under the Control of Dy.  
Commissioner of Income Tax  
Admn.I, M.K.Road,  
Bombay - 400 020.

.. Respondents

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)

Hon'ble Shri V.D.Deshmukh, Member (J)

Appearances:

1. Mr.M.A.Mahalle  
Advocate for the  
Applicant.
2. Mr.V.M.Bendre for  
Mr.P.M.Pradhan  
Counsel for respon-  
dents No.1 to 3.

-: 2 :-

JUDGMENT:  
(Per M.Y.Priolkar, Member)

Date: 9-3-1993

The grievance of the applicant in this case is two fold: firstly, he was allowed to cross the efficiency bar in the grade of Head Clerk only from 1-8-1983 instead of the correct date of 1-8-1982, and secondly, he has been superseded by Respondents No.4 to 10 in the promotion to the post of Supervisor Grade-II.

2. According to the applicant, respondent No.3 passed an order allowing the applicant to cross the efficiency bar(E.B.) with effect from 1-8-1981. The applicant himself then brought to his notice that the due date for crossing the E.B. was 1-8-1982. Thereafter, by the impugned order dt. 2-9-1985, respondent No.2 passed an order allowing the applicant to cross the E.B. from 1-8-1983, which according to the applicant was another mistake committed. According to the respondents, the D.P.C. held for the purpose had approved of the applicant's crossing ~~crossing~~ the E.B. on 1-2-1981 on the basis of the proposal sent by the concerned officer but after it was found that the correct date was 1-2-1982, a revised proposal to that effect was later submitted, but the D.P.C. found the applicant unfit to cross E.B. on 1-8-1982 as his confidential report for 1981-82 contained adverse remarks which were sustained by the Commissioner of Income Tax, even after a representation by the applicant. His case was again reviewed by the D.P.C. when he was allowed to cross the E.B. on 1-8-1983. We have, perused the relevant record which confirms the respondents' statements.

3. The learned counsel for the applicant argued that the impugned order dtd.2.9.1985 was illegal on two counts: firstly, the D.P.C. meeting for considering the applicant's case for crossing the E.B. from 1-8-1982 should have been held in the month of July,1982 as per the time schedule prescribed for this purpose in Deptt.of Personnel circular dt. 18-10-1976, also incorporated as Note below FR 25, but this was not done. Secondly, an opportunity of being heard should have been given to the applicant before holding him up at ~~E.B.~~ E.B. on 1-8-1982 but this was also not done.

4. No doubt, it was an irregularity not to have held the D.P.C. meeting in accordance with the time schedule prescribed in administrative instructions but in our view, it will not amount to illegality or have the effect of vitiating the decision taken only on this ground. We have no reason to disbelieve the statement of the respondents that the delay was due to a genuine error committed by the drawing and disbrusing officer initially by sending proposals showing the due date for crossing the E.B. as 1-2-1981. Further, the learned counsel could not show how the applicant has been prejudiced by this delay in holding the DPC meeting. Even if the meeting had been held in July,1982 as required, the C.R. for 1981-82 containing the adverse remark which has become final would have been considered which had eventually led to withholding of the E.B. for one year.

5. For his contention that an opportunity of hearing should have been given, the learned counsel relied on para 16 of the Supreme Court

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judgment in the case of O.P.Gupta v. Union of India, 1988(1)SLJ 121, which is extracted below:

"16. It must follow that when a prejudicial order is made in terms of FR 25 to deprive the government servant like the appellant of his increments above the stage of efficiency bar retrospective<sup>ly</sup> after his retirement, the government has the duty to hear the concerned government servant before any order is made against him. There~~is~~ has to be as laid down in M.Gopala Krishna Naidu's case an objective consideration and assessment of all the relevant facts and circumstances."

In the case of M.Gopala Krishna Naidu(1968)1 SCR 355, the Supreme Court was considering an order passed under FR 54 which deals with emoluments payable on re-instatement after suspension. It was held that FR 54 contemplates a duty to act in accordance with the basic concept of justice and fair play. The authority therefore had to afford a reasonable opportunity to the government servant if clauses 3 and 5 of FR 54 were to be applied, since he would be adversely affected thereby. In taking this view, the Supreme Court relied on its earlier decision in the case of State of Orissa v. Dr.(Miss)Binapani Devi and Ors. (1967)2 SCR 625 in which it was held that an

order fixing the date of birth of the government servant concerned there and declaring that she should be deemed to have retired on a particular date on the basis of the date so determined without giving an opportunity to show cause against the action proposed was invalid on the ground that the determination was ~~in~~ violative of the principles of natural justice.

6. The facts are easily distinguishable in the instant case before us from those in the case of O.P.Gupta(supra). The petitioner in that case was kept under suspension for 11 years and his disciplinary case was not finalised for 20 years. The decision to enforce the bar under FR 25 against him was taken long after his retirement with a view to cause him financial loss. None of these features exists in the case presently before us. Admittedly, there was an adverse remark in the present applicant's C.R. for 1981-82 on the basis of which he was not allowed by the DPC to cross the E.B. on 1-8-82. In the subsequent annual review, he was cleared to cross the E.B. from 1-8-1983 and a communication to this effect was sent to him on 2-9-1985. There was no abnormal delay in the present case or a retrospective decision long after retirement as in the case of O.P.Gupta. It is also significant to note that in Union of India v. J.N.Sinha 1971(1) SCR 791, it has been held that rules of natural justice are not attracted in an order of compulsory retirement although it was contended in that case relying

on the decision in State of Orissa v. Dr. Binapani Devi (supra) that in cases of compulsory retirement also, the principles of natural justice required an opportunity to be given to the government servant to show cause against the proposed action. In fact in a recent judgment dated 19-2-92 in the case of Baikunth Nath Das v. Chief District Medical Officer, Baripada, II (1992) CSJ/SC/1 a three Judges Bench of the Supreme Court has held that principles of natural justice have no place in the context of an order of compulsory retirement and further that such an order, unless it is perverse, is not liable to be quashed by a Court merely on showing that while passing it, uncommunicated adverse remarks were also taken into consideration. The Supreme Court has observed in O.P. Gupta's case that while withholding of increment at the efficiency bar is not normally by way of punishment, in that particular case since the High Court had quashed the departmental proceedings which were pending for over 20 years with little or no progress as being wholly invalid or unfair, the subsequent departmental order to withhold increment at the efficiency bar could be only by way of penalty. In the present case, however, taking the totality of circumstances into account, and particularly the fact that there was an adverse remark in the applicant's C.R. for 1981-82 which had become final, we are of the view that the decision to withhold his increment at the efficiency bar on 1-8-1982 cannot be termed

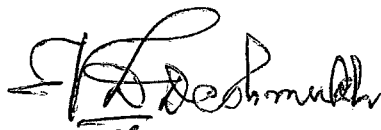
as perverse or by way of punishment.


7. Regarding the grievance of the applicant about his supersession by Respondents 4 to 10 in promotion to the post of Supervisor Gr.II it is admitted by the learned counsel for the official respondents that promotions to these posts were made purely on the basis of seniority and respondents 4 to 10 were promoted earlier as they were confirmed earlier by the DPC in its meeting held on 24-3-1983 when the applicant was found unfit for confirmation and under general principles of seniority, confirmed officials of each cadre are ranked senior to persons who are officiating in the cadre. In the case of Direct Recruits Class II Engineering Officers' Association and Others. v. State of Maharashtra and others (AIR 1990 SC 1607), a Constitution Bench of the Supreme Court has, however, held that once an incumbent is appointed to a post according to rules, his seniority is to be counted from the date of his appointment and not according to the date of his confirmation. It is not in dispute that the applicant's appointment to the post of Head Clerk was in accordance with rules. He is, therefore, entitled to seniority from the date of continuous officiation in the post. The department had, therefore, acted wrongly in treating respondents 4 to 10 as senior to the applicant and, on that basis, promoting them earlier to the applicant to the post of



Supervisor Gr.II.

8. On the basis of the foregoing discussion, the application succeeds only in part. We see no justification to interfere with the decision of the departmental authorities to permit the applicant to cross the E.B. only w.e.f. 1-8-1983. The respondents are, however, directed to promote the applicant to the post of Supervisor Grade II from the date when his juniors respondents No.4 to 10 were so promoted, namely from 17-9-1985 instead of from 28-5-1987. The applicant will also be entitled to consequential benefits including arrears of back wages. There will be no order as to costs.

  
(V.D.DESHMUKH)  
Member(J)

  
(M.Y.PRIOLKAR)  
Member(A)