

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 402/1999

DATE OF DECISION: 3/01/2001

Shri Vithal Dhaku Kharat

Applicant.

Shri P.A.Prabhakaran

Advocate for
Applicant.

Versus

Union of India & 6 Ors.

Respondents.

Shri V.D.Vadhavkar for
Shri M.I.Sethna

Advocate for
Respondents.

CORAM:

Hon'ble Smt. Shanta Shastry Member(A)

1. To be referred to the Reporter or not? | No
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library. Yes

Shanta S.
(SHANTA SHAstry)
MEMBER(A)

abb

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:402/1999
DATED THE 3 DAY OF JAN.2001.**

CORAM: HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Shri Vithal Dhaku Kharat,
52/2135/VII, C.G.S.Colony,
Antop Hill,
Bombay - 400 037.

... Applicant

By Advocate Shri P.A.Prabhakaran

V/s.

- 1) Union of India,
Through Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
North Block, New Delhi.
- 2) Chairman,
Central Board of Excise
and Customs,
North Block, New Delhi.
- 3) Additional Collector (P&V),
(Now known as Additional
Commissioner) (P&V),
Central Excise, Mumbai-V,
Piramal Chambers, Jeejeebhoy Lane,
Lalbaug, Parel, Mumbai - 400 012.
- 4) Deputy Collector (P&E),
Central Excise, Mumbai-II,
Piramal Chambers, Jeejeebhoy Lane,
Lalbaug, Parel, Mumbai - 400 012.
- 5) Additional Commissioner (P&V),
(Known as Additional Collector),
Central Excise, Mumbai - II,
Jeejeebhoy Lane, Lalbaug,
Parel, Mumbai - 400 012.
- 6) Assistant Commissioner,
Central Excise,
Division-IX, Mumbai - II,
(Kandivali Division now),
Takshashila Building, 4th Floor,
Goregaon (East), Mumbai - 400 062.
- 7) Assistant Commissioner (Prev),
Central Excise, Mumbai - II,
Piramal Chambers, Jeejeebhoy Lane,
Lalbaug, Parel,
Mumbai - 400 012. ... Respondents

By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna

...2.

:2:
(ORDER)

Per Smt. Shanta Shastry, Member(A).

The applicant has sought several reliefs in terms of para 8 of this OA. In a nut shell the major reliefs claimed are the quashing of the adverse ACR of the year 1986-87, allowing to cross the E.B. from 1/11/1988 by quashing the rejection orders of not allowing the same and consequential release of the increments upto 1/1/1996, payment of arrears thereof and interest on the same and proper pay fixation.

2. The brief facts are:-

The applicant is working as a Driver in the office of the Assistant Collector (Prev) Central Excise, Bombay - II. He is also the president of the Central Excise and Customs Commissionerate, class III Drivers' Association.

3. Adverse remarks in the A.C.R for the year 1988-87 were communicated vide letter dated 16/3/88 to the applicant with advise to represent against the same within six weeks, if necessary. The applicant in turn wrote to the Deputy Commissioner on 21/4/88 asking for the names of the reporting and reviewing officers and the documentary evidence for the adverse A.C.R. The applicant was informed on 5th May 1988 that there is no provision under the existing rules to furnish the names of the Reporting/Reviewing/Countersigning Officers and the request cannot be acceded to.

4. Thereafter the applicant was due for crossing of efficiency bar on 1/11/1989. The applicant was informed on 9/3/1989 that he was not yet fit to cross the Efficiency Bar and his increment was withheld for a period of one year from 1/11/1988 and it would have the effect of postponing of future

increments. He was advised to appeal if so desired. The applicant made a representation on 27/3/1989 to the Secretary, Central Board of Excise and Customs. His representation was rejected on 17/7/90. He appealed again on 10/10/1996. He was then informed vide impugned orders dated 30th December 1996 and 8th May 1997 that periodical review in respect of crossing of efficiency bar by the applicant was carried out but due to pending disciplinary proceedings against him the findings of the OPC were kept in sealed cover.

5. From 1988 to 1996 four cases of disciplinary proceedings were initiated against the applicant as follows:-

4/8/1988 - Charge sheet was issued on charge of unauthorised absence.

31/8/1988 - A second charge sheet for making allegations against superior officers of fabricating the advance rewards was issued.

5/9/1991 - A Third charge sheet issued- case remitted for further enquiry on 21/2/1995 OA No.751/95 filed in the Tribunal.

6/10/1994 - A fourth charge sheet was issued.

The latter two charge sheets were issued after the withholding of crossing of E.B. on 1/11/1988 upto 1/11/1989.

No increments were released upto 1/1/1996 when his pay was refixed vide order dated 23/10/1997 at Rs.3,575/- as per recommendation of the 5th Pay Commission.

6. The applicant had also filed OA No.254/88 regarding circular relating to shift duty. It was disposed off by the Tribunal on 24/6/1998 holding that the main prayer of quashing of circular dated 3/2/1988 having been granted by withdrawing the circular on 16/9/88, the prayer had become infructuous.

7. The applicant's contention is that his record was throughout very good. During the calender year 1986, his services had been highly commended, he was awarded the highest reward for seizure. He was reported as a very disciplined and obedient worker and the commendation letter was kept in his ACR file. During 1987 he detected tax fraud of Rs.34 lakhs. There cannot be any deterioration in his ACRs, it only shows bias against the applicant. As president of the Drivers' Association he had tried to highlight the corrupt practices of the officers. He was not advised either verbally or in writing about his shortcomings though the respondents claim to have done the same. He had worked under different officers during the relevant period he therefore wanted to know their names. But he was not furnished the same though more than a decade had passed. He could not therefore approach the Tribunal also as his representation was pending.

8. In regard to the crossing of E.B. on 1/11/88 the applicant submits that the DPC for crossing of E.B. due on 1/11/1988 should have been held in October 1988 as has been held by the Supreme Court in the case of State of Maharashtra V/s. Uttamrao Rayala Nikam. Further, he has relied on (1994)26 ATC 905, M.H.Mahendra V/s. Union of India OA-915/93 reported in 1996(1)AISLJ 510 CAT, Maqsood Maqbool Hassan Nayazi V/s. Chief Commissioner of Income Tax Bombay 1944(1)SLJ(CAT)276, Gajey Singh Sharma V/s. Union of India (1988) ATC 720. The DPC took place on 22/11/1988. Though charge sheet was issued already, the DPC, instead of keeping his case in sealed cover found him unfit to cross the Efficiency Bar. Thus the disciplinary proceedings had nothing to do with the crossing of Efficiency Bar on 1/11/1988.

Further since the representation against the adverse ACR was pending therefore his ACR hence should not have been taken into consideration while considering the proposal for crossing of E.B. The applicant finds support for this in the order dated 26/6/1995 of the Mumbai Bench of the Tribunal in OA-276/90 in Shobha Joshi v/s. Station Director, All India Radio. The applicant argues that since the E.B. crossing was withheld only for one year, he was entitled for subsequent increment on 1/11/1989 and thereafter. But the respondents failed to consider the same. Atleast his case should have been reviewed annually by holding DPC on the relevant dates upto 1/11/1998. But no such DPC seem to have been held. The applicant is aggrieved that he has been wrongly denied the crossing of E.B. and the consequential release of increments.

9. The pay fixation was done wrongly as it is based on the withholding of the crossing of E.B. from 1/11/1988.

10. The respondents have opposed the reliefs sought. The learned counsel for the respondents has raised the preliminary pleas of plural reliefs being sought and the OA being barred by limitation as the same is filed after almost a decade.

11. The adverse remarks in the ACR pertained to the year 1986-87. The applicant had received commendation letter for 1985-86 on 31/3/1986. Though the applicant was rewarded for his outstanding work in detection of fraud his performance as driver was assessed in the ACR which was considered to be poor in certain respects. The applicant was given a chance to represent against the same but he only asked for names of reporting/reviewing officers and documentary evidence without opposing the adverse remarks. Even after informing him on

5/5/1988 that the names could not be furnished he kept quiet for 11years without even representing or reminding. Agitating the issue after such a long lapse of time cannot help him. The issue has become dead after such a long lapse of time. The learned counsel relies on the judgement in the case of All India Loco Running Staff Association Deharadun and Ors. V/s. Union of India & Ors in OA No.1563/91 1999(2)CAT 521 which again relied on State of Punjab V/s Guruderv Singh AIR 1991 SC 2219 wherein the Hon'ble Supreme Court held that limitation period of three years starts from the date of passing the dismissal order. If a suit is filed after three years it would be barred by limitation. Similar view has been taken in Ratan Chandra Samantha and Others V/s. Union of India & Ors 1994 SCC(L&S) 182. Delay in itself deprives a person of his remedy available in law. In the absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. Here the OA is thus time barred as the cause of action arose first on 10/3/1988 and then on 5/5/1988 and therefore deserves to be dismissed.

12. In regard to the crossing of the E.B., the learned counsel submits that the respondents action is as per rules. The ACR of 1986-87 was taken into consideration in the DPC held on 12/12/1988. By that time in the absence of any representation against the Adverse ACR pending, the ACR had become final and confirmed. In view of pending disciplinary proceedings the applicant could not be allowed to cross the E.B. The increments were allowed after the implementation of the recommendation of the Pay Commission as EB stage was abolished. The case for crossing of EB was reviewed from time to time in the DPC held on

7/6/90, 21/1/92, 20/1/94, 27/2/96, 15/4/97 and 30/4/98 by following proper procedure.

13. His pay was also fixed at Rs.3575/- from 1/1/1996. He was also given next two increments. However, his pay was reduced by one stage for a period of one year w.e.f. 1/11/1998 as a result of order passed on 17/11/1998 in a disciplinary case. The error in fixation of pay was rectified, the pay was refixed and the arrears were disbursed to the applicant.

14. The applicants' allegations that because of his being rewarded for outstanding work jealousy was created and therefore his ACR was spoiled deliberately has no basis. Applicant's good performance has been acknowledged and he has been rewarded. That is in its place but the other aspect of his performance need to be taken into account also. It is the overall performance which matters.

15. The respondents therefore feel that the applicant's case has no merits and needs to be dismissed.

16. I have heard the learned counsel for the applicant as well as respondents and have given careful consideration to pleadings.

17. First, coming to the point of multiple reliefs prayed for I do find that the applicant has sought too many reliefs. Normally it is not permissible to entertain too many reliefs if they are independent of each other. In the present case, the two major reliefs, are of quashing the adverse ACR and the other the crossing of the E.B. The rest of the reliefs stem from the main issue of crossing of E.B. The learned counsel for the applicant has demonstrated that even the withholding of crossing of E.B. was flowing from the adverse ACR and thus the

reliefs are related. The respondents have also admitted in their written reply that the ACR of 1986-87 was considered in the DPC held on 22/12/1988 to consider the crossing of E.B. by applicant. I therefore am inclined to proceed with the prayers.

18. On the ground of limitation, the applicant has filed an application for condonation of delay. But reasons given are not satisfactory. Therefore the delay in filing the OA for expunging of adverse remarks after 11 years without any representation against the same cannot be condoned. This aspect is well covered in the judgements cited by the respondents. If the applicant chose to sleep over his rights for an inordinately long period he cannot expect to get any assistance from the Court. On this ground itself the prayer for quashing of the adverse remarks in the ACR deserves to be dismissed. Even on merits there is no case as the applicant has failed to make out any case. No convincing arguments have been put forth to counter the adverse remarks except to say that he had received commendation certificates for work extraneous to his duty as a driver. His past performance cannot be a ground for expunging adverse remarks for a subsequent year.

19. In regard to the crossing of E.B., I note that a DPC was held and the applicant was not found fit to cross the E.B. Thereafter DPCs were held at regular intervals and due to pending disciplinary proceeding, the DPC recommendations had to be kept in sealed covers. This action of the respondents is well in accordance with the rules and cannot be faulted. This being so I am unable to grant the reliefs prayed for. The rest of reliefs

are also rejected as they are stemming from the main relief of crossing of E.B.

20. In the facts and circumstances of the case, the OA is dismissed as being devoid of merit. I however do not order any costs.

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(SHANTA SHAstry)
MEMBER (A)