

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.684/2001

Date of Decision: 26.06.2002

Shri V.G. Pradhan.

Applicant(s)

Shri P.A. Prabhakaran.

Advocate for applicants

Versus

Union of India & others

... Respondents

Shri V.G. Rege.

Advocate for Respondents

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✓
- (3) Library ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 684/2001

THIS THE 26TH DAY OF JUNE, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT
HON'BLE SMT. SHANTA SHASTRY .

VICE
CHAIRMAN
MEMBER (A)

Shri V.G. Pradhan,
Sharda Sadan
Fattelalli Road, Opp.
Municipal School, Dombvili (E)
Dist. Thane-421 201.

... Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. Union of India through
The Secretary, Department of
Revenue, Ministry of Finance,
North Block,
New Delhi-110 001.
2. The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi-110 001.
3. The Chief Commissioner of
Income-tax, Mumbai, 3rd Floor,
Aavakar Bhavan, M.K. Road,
Mumbai-400 020.
4. The Commissioner of Income-Tax,
City-1, Mumbai
3rd Floor, Aavakar Bhavan,
M.K. Road, Mumbai-400 020. ... Respondents

By Advocate Shri V.G. Rege.

ORDER
Hon'ble Smt. Shanta Shastry. Member (A)

The applicant has approached this Tribunal
aggrieved by the order dated 16.8.2000 issued by the
Chief Commissioner of Income Tax under Rule 54 (b) of
the Fundamental Rules.

M

...2.

2. The applicant had approached this Tribunal in OA No.1147/94 seeking several reliefs, one of them being to allow him to cross the Efficiency Bar (EB) in 1983. The Tribunal while disposing of the aforesaid OA, in para 8 directed the administration to hold the review DPC and to consider whether as on 25.8.1983 the applicant was fit and suitable for crossing the EB. It was further directed that the administration may also consider whether any conscious decision about taking disciplinary action was taken prior to 25.8.1983 and if such a conscious decision had been taken, then there was no question of considering the applicant for crossing the EB. However, if there is no such conscious decision, then the applicant's case be considered on merits whether he is entitled to cross EB. In case found suitable for crossing the EB, then notionally his pay may be fixed by granting increments as per rule, but it will only be for the purpose of re-fixing the pension and not for any monetary benefits. Liberty was given to the applicant to give a detailed representation to the competent authority mentioning all the facts and the reliefs he wanted and then the competent authority was to apply its mind and pass appropriate order as per rule."

3. It is, in pursuance of this order dated 11th August, 1999 in OA No.1147/94 that the impugned order dated 29th March, 2000 has been passed by the

respondents and the applicant has not been allowed to cross the EB on 25.8.1983. In this order, it has been pointed out that a review DPC was held to consider the suitability of the applicant with regard to the crossing of the EB on 25.8.1983. The DPC meeting was held on 14.8.2000 and the DPC observed that a conscious decision to initiate major penalty proceedings against the applicant was taken by the department as early as in March, 1983 and the CVC concurred with the proposal of the Directorate of Inspection (Vigilance) New Delhi vide its note dated 21.7.1983. Since all these actions had been taken prior to 25.8.1983 the applicant was not found fit to cross EB on 25.8.1983 when it was due.

4. The applicant has contended that no DPC had been held in 1983 for considering the case of the applicant for crossing the EB, no sealed cover procedure has also been adopted. The finding of the DPC held in August, 2000 that conscious decision had been taken to initiate proceedings is not borne out of records. A proposal or letter of approval from the Vigilance Department cannot be construed to be a conscious decision. A decision recording of the firm intention to issue memo under Rule 14 duly authenticated by the competent authority had to be there. In fact, there was no decision until 19.4.1984 when the applicant was placed under suspension in contemplation of the issue of a memo under Rule 14 of the CCS (CCA) Rules, 1965.

Since the respondents have not held the DPC at all, the directions in the earlier OA that the applicant is not entitled for arrears do not hold good in this OA. According to the applicant, suspension is not a punishment, one remains in service and is entitled to all benefits of service even though he is not expected to work. He is entitled to annual increments, which are due in the usual course, unless withheld by a specific order. Stoppage of annual increment is itself a minor penalty under the Rules. the applicant has relied on an order of this Tribunal in OA No.1583/99 dated 13.11.2000 of the Principal Bench. so also on the following other judgments.

- i) Ganga Raju Vs. DRMS, SC Railways (1993) 23 ATC 543 (hyd). Swamynews 1583/95 Maheshchandra N Ratanchand Vs. Food Corporation of India.
- ii) Kan Singh Vs. State of Rajasthan & Others (High Court of Rajasthan) 1989 (59) FLR 662 1989 (1) CLR 138.
- iii) Maqsood Maqbool Hasan Nayezi Vs. Chief Commissioner of Income Tax (Bombay) 1994 (1) SLJ CAT 276.
- iv) FR 53 (1)(ii)(a)-P L Singh Vs. UOI - (1990) 14 ATC 52 (Ahmd) (1989) 10 ATC 808 Rule 4
- v) Sambasiva Rao Vs. UOI (1993) 23 ATC 592 B.P. Laxman (1994) 28 ATC
- vi) (1995) 31 ATC 621 - P Xavier Vs. Chief Personnel Office and Another (OA No. 1497/93 (Hyderabad decided on 28.6.95)

5. The applicant has also submitted that the respondents did not follow the procedure for clearing

officer for crossing of EB in terms of Government of India Order No.1 under FR 25. A certain procedure has been prescribed so that all the preliminary action and decisions are taken prior to the due date of crossing of the EB. The respondents were, therefore, duty bound to decide the entitlement of applicant to cross the EB due, as on 01.8.1982 either by convening the proper Departmental Promotion Committee or by circulation. This was not done. No orders were issued before 31.8.1982 either denying or granting the crossing of the EB. It is only after the direction of the Tribunal in the order dated 16.8.1999 that the impugned order was issued denying the crossing of the EB. Since the applicant was placed under suspension on 19.4.1984 the earliest date that a conscious decision had been taken to issue charge would be 19.4.1984.

6. The learned counsel for the applicant has produced copies of some judgments in support of his case. A judgment is cited by the applicant in the matter of State of Maharashtra Vs. Uttamrao Rayala Nikam (1994) 26 ATC 905. In this case no yearly assessment as required by rules was made. The respondent had reached the EB on October 1 1982 but till September, 1984 no order was passed by the competent authority. In September, 1984 the Reporting Officer found the record of the applicant to be satisfactory and recommended his promotion. The supervisory officer took

a contrary decision and stopped the EB. The Tribunal held that the stopping of EB was arbitrary, unjust and unfair and quashed and set aside the order of competent authority. Further, in Delhi Development Authority Vs. H.C. Khurana's (AIR 1993 SC 1488) case the charge sheet, though ready, could not be served on the Government servant as he was on leave and in between in the intervening period the DPC was held and because of the charge sheet and the earlier decision to initiate disciplinary proceedings, sealed cover procedure was adopted. The Supreme Court held that "the issue of charge sheet means its despatch to the Government servant and this action is complete, the moment steps are taken for the purpose, by framing the charge sheet and despatching it to the Government servant, the further fact of its actual service on the Government servant not being a necessary part of its requirement and therefore, merely because the charge sheet could not be actually served on the Government servant, the DPC's adopting the sealed cover procedure could not be held to be illegal." The applicant has further relied on O.P. Gupta Vs. Union of India & Others 1988 (1) AISLJ 121. The petitioner therein was kept under suspension for 11 years and his case was finalised after 20 years. The High Court had therefore, quashed the proceedings and the penalty imposed. Thereafter, the petitioner was not allowed to cross EB though there was no basis for such decision. It was held that it is against justice and

fair practice and violated principles of natural justice. Applicant further submits that a view^{was} taken in M.H. Mahendra Vs. Union of India through Secretary to Government & Others 1996 91) AISLJ 510 in OA No.915/93. The applicant was due to cross EB with effect from 11.02.1985 and 1986, but no action was taken to hold DPC. Later a departmental inquiry was started against him and penalty was imposed. He was allowed to cross EB with effect from 01.3.1990. It was held that since no DPC was held in time, since no case was pending in 1985 or 1986 he was entitled to cross EB from due date. Also DPC held in 1991 could have considered record upto 1985/1986 only and allowed from due date. EB cannot be withheld for events that may occur after the due date of crossing.

7. The learned counsel for the respondents on the other hand submits that as directed by this Tribunal, the respondents have decided the representation of the applicant though received belatedly^{ly}. The only action to be taken by the respondents as per the observation made by the Tribunal in their order was to consider whether any conscious decision about taking disciplinary action was taken prior to 25.8.1983 and if such a conscious decision had been taken then, there was no question of considering the applicant for crossing EB as on 25.8.1983. The respondents submit that as the record shows a conscious decision had already been taken to

initiate disciplinary proceedings for major penalty against the applicant much prior to 25.8.1983 as per the relevant orders of the government the applicant cannot be allowed to cross the EB as on 25.8.1983 and thus, they have complied with the directions of this Tribunal. Nothing, therefore, survives and the OA deserves to be dismissed.

8. We have heard the learned counsel for the applicant as well as for the respondents and have given our careful consideration to the pleadings. The applicant's arguments that the respondents have not followed the procedure in regard to clearing officers for crossing of the EB i.e. they had not taken advance action to clear the applicant for EB and there was no sealed cover procedure, are not maintainable. In our considered view, the applicant had claimed the relief of crossing of EB as on 25.8.1983 in OA 1147/94. The Tribunal had already gone into the details and was also aware that the applicant had not been considered for crossing of EB on the due date. The only direction the Tribunal gave in the order dated 11.8.1999 was to consider the applicant to cross EB if there was no conscious decision about taking disciplinary action prior to 25.8.1983 and if a conscious decision had been taken then, there was no question of considering the applicant for crossing the EB. It is now seen from the averments made by the respondents that such a conscious

decision was taken prior to 25.8.1983 and therefore, the respondents rightly did not clear the applicant for crossing EB as on 25.5.1983. The applicant requested that this statement of the respondents be confirmed from the records. We have perused the record and find that the respondents' averment is based on the actual record.

9. The applicant has cited certain judgments. We have perused the same. We find that the facts in these judgments are different than the case of the applicant. For example in the case of State of Maharashtra Vs. Uttaramrao Rayal Nikam a contrary decision was taken by the supervisory officer. In the applicant's case he was not considered for crossing of EB because there was a conscious decision to initiate disciplinary action against the applicant. There was no question of disciplinary matter in the judgment referred to. In the case of Delhi Development Authority Vs. S.C. Khurana AIR 1993 SC 1489 the charge sheet could not be served on the respondent and therefore, the respondent was treated to have been free from any disciplinary action on the date when he was due for crossing the EB. That is not the case here. In the present case, though the applicant was suspended later than the due date of crossing of EB, a decision to initiate disciplinary action had already been taken prior to the due date of crossing of EB and therefore, the applicant could not have been considered for crossing of EB. In O.P.

Gupta's case, there was no basis for not allowing the applicant to cross the EB as even the High Court had quashed the disciplinary proceedings and the penalty imposed on the applicant. This judgment also does not support the applicant's case. Here, the applicant was imposed penalty of removal and later on it was converted to compulsory retirement. In M.H. Mahendra (supra), the disciplinary action was initiated after the applicant had become due to cross the EB after the applicant became entitled to cross EB i.e. all these judgments are therefore distinguishable and cannot come to the aid of the applicant.

10. In the facts and circumstances of the case therefore, the applicant has no case. The OA therefore, fails and is dismissed without any order as to costs.

Shanta S
(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan

26/6/22
~~Order/Judgement despatched~~
~~to Applicant/Respondent (s)~~
03/7/22
h