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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 624 OF 1992

Date of Decision :

29th Jan - 99

Clement Sahli Bara, Petitioner.

Shri P. A. Prabhakaran, Advocate for the Petitioner.

VERSUS

Union Of India & Others, Respondents.

Shri R. K. Shetty, Advocate for the Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

Repaired
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 624 OF 1992.

Dated the 29th day of January, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Clement Sahli Bara,
Building No. 189/1929,
4th Floor, C.G.S. Quarters,
Sector-VI, Antop Hill, Bombay-37.

Employed as U.D.C.-In-Charge,
O/o. the Director of Supplies
and Disposals, Bombay.

... Applicant

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. Union Of India through
The Secretary,
Ministry Of Commerce,
New Delhi.
2. Director General Of Supplies
and Disposals,
O/o. the Directorate of
Supplies & Disposals,
No. 1 Building, Parliament St.
New Delhi - 110 001.
3. Director of Supplies and
Disposals,
New C.G.O. Building,
New Marine Lines,
Bombay - 400 020.
4. Smt. D. K. Nair,
Superintendent,
O/o. the Director of
Supplies & Disposals,
New C.G.O. Building,
New Marine Lines,
Bombay - 400 020.
5. Shri S.B. Mirchandani,
Superintendent,
O/o. the Director of Supplies
& Disposals,
New C.G.O. Building,
New Marine Lines,
Bombay - 400 020.

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6. Shri M.T. Varadani,
Superintendent,
O/o. Director of Supplies
& Disposals, New C.G.O. Bldg.,
New Marine Lines,
Bombay - 400 020.

7. Shri M.S. Dias.

8. Shri M.H. Chavan.

9. Smt. R.A. Jayasinghani All C/o.
10. Shri R.S. Surati. Respondent
 No. 3. .. Respondents.

(By Advocate Shri R. K. Shetty).

: ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicant was working as U.D.C.-In-Charge in the department of Supplies and Disposals at Bombay. He belongs to Scheduled Tribe community. He was promoted as U.D.C. in 1975. A disciplinary enquiry was held against the applicant for absence and by order dated 13.02.1986 a penalty of reducing the pay by eight stages for a period of five years was passed. The applicant challenged that order in previous O.A. No. 151/90 which came to be rejected on the ground of limitation by order dated 18.07.1990. The competent Authority had passed an order dated 26.04.1989 treating that the unauthorised absence from 29.06.1981 to 30.11.1982 results in break in service. The applicant made a representation but it was rejected.

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Then he approached this Tribunal by filing O.A. No. 314/91. That O.A. was allowed by order dated 05.02.1992 with a direction to the competent authority to issue show cause notice and pass a fresh order according to law. Then the competent authority issued a show cause notice for which the applicant sent a reply and now the competent authority has again passed the order of "break in service" vide its order dated 25.03.1994. The applicant is challenging the legality and validity of this order dated 25.03.1994. Then the further grievance of the applicant is that, though he belonged to S/T community, he has not been given promotion at appropriate time as per the roster and as per reservation given to S/T candidates. Therefore, the applicant wants the whole thing to be re-opened and he should be given retrospective promotion from the date he was entitled, as per the roster. Then another grievance of the applicant is that he is not restored with the pay he was drawing after the expiry of period of penalty. The applicant has made number of allegations in the O.A. and he has prayed for number of reliefs. It is not necessary to mention all of them, since the applicant's counsel has confined the case to the three points mentioned above.

3. In the reply the respondents have justified the action taken by the competent authority by treating the period of absence as a break in service. As far as the allegation of the applicant that he is not restored to the original pay after the expiry of the penalty period is concerned, there is no specific averment in the reply except general denial. As far as the applicant's grievance about roster, the respondents have stated that applicant has been given the benefit of roster by

treating him as S/T candidates and given promotion from time to time.

4. Mr. P.A. Prabhakaran, the Learned Counsel for the applicant, at the time of arguments pressed only the following three points :

- (i) That the applicant is not given the benefit of 40 point roster and not given promotion as and when due and, therefore, the respondents may be directed to give him promotion as and when due with all consequential benefits.
- (ii) That the applicant is entitled to restoration of pay after the expiry of the penalty period and then he is entitled to the subsequent enhancement in the salary and the arrears of salary till now.
- (iii) That the order creating break in service dated 23.05.1994 is bad in law and liable to be set aside.

The Learned Counsel for the respondents, Shri R. K. Shetty, refuted the above contentions and argued that the applicant is not entitled to any of these three reliefs.

We will consider the above points one by one.

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5. POINT NO. 1

It is now brought to our notice that applicant had been promoted as a Superintendent during the pendency of the O.A. and he has also now retired from service having attained superannuation on 31.01.1998. Now, therefore, the applicant's claim for retrospective promotion is not for the purpose of actual promotion but only for getting some monetary benefits, since he has already retired from service during the pendency of the O.A.

Except making some bald allegations that applicant has not been given the roster benefit, he has not placed material facts for consideration. He must point out as to in which particular year there was promotion, how many vacancies were there for S/T candidates and who were selected, etc. This Tribunal cannot make a roving enquiry to find out as to in which year the promotions took place, how many candidates were there and how many SC/ST candidates were selected, etc. There is no definite allegation giving necessary particulars. On the other hand, the respondents have pointed out that the applicant has been given full benefit of roster point as per his turn and sometimes he has superseded the general candidates. The Learned Counsel for the respondents also placed before us the 40 point Roster Book which clearly shows that the respondents have been following the 40 point roster for granting promotion. In the document at Page 259 of the Paper Book, we find that the Assistant Director has stated that in all the seniority list, the applicant is shown as S/T candidate

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except in one year in 1990 by mistake the word 'Scheduled Tribe' against the name of the applicant had been omitted by a typographical error and this has been immediately rectified. Then it is clearly stated that applicant was promoted to the post of U.D.C. In-Charge against point no. 17 in the 40 Point Roster, which is meant for a S/T candidate. It is also stated that the applicant has superseded many U.D.Cs. belonging to general category by virtue of the roster point meant for S/T, which was given to the applicant.

Even the Learned Counsel for the applicant submitted that applicant has not been able to give the necessary particulars to claim retrospective promotion on the basis of roster points meant for S/T candidates. After having gone through the materials on record, we find that the applicant's grievance on this point cannot be accepted for want of better and actual particulars and facts & figures regarding number of vacancies, number of general candidates, number of SC/ST candidates and number of promotional posts, etc. Hence Point No. 1 is answered in the negative.

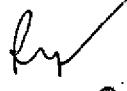
6. POINT NO. 2 :

We have already seen that the order of penalty dated 13.02.1986 has become final. The applicant unsuccessfully challenged it in the previous O.A. but it came to be rejected on the ground of limitation. But the applicant wants restoration of pay in pursuance of the penalty order dated 13.02.1986. The order may be found at page 234 of the Paper Book.

for

"It is therefore ordered that the pay of Shri Clement Bara be reduced by 8 stages from Rs. 416/- to Rs. 330/- (minimum of the scale) in the time scale of Rs. 330-10-380-EB-12-500-EB-15-560 for a period of 5 years with effect from 01.07.1983. It is further directed that Shri C. Bara will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increment of pay."

From the above order the applicant's basic pay was reduced by 8 stages of pay from Rs. 416 to 330 for a period of five years w.e.f. 01.07.1983. It further provides that during the period of five years the applicant will not earn any increment. Since the pay is reduced only for five years, it cannot be disputed that on the expiry of five years, the applicant should be restored to the original basic pay of Rs. 416.00 Even the Learned Counsel for the respondents did not dispute this point. Therefore, we hold that after the expiry of five years from 01.07.1983, namely-as on 01.07.1988, the applicant is entitled to be restored to the basic pay of Rs. 416.00 and other usual allowances as per rules. Once the pay is restored at Rs. 416.00 on 01.07.1988, the applicant will earn future increments from that date and further as and when the basic pay was increased due to subsequent Pay Commission Reports, the applicant is entitled to be fixed in the higher pay scales. The Learned Counsel for the respondents was not in a position to tell us whether this has already been done or not, though


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there is no specific denial in the reply. Even the Learned Counsel for the respondents fairly did not dispute that applicant is entitled to be restored to original pay and then entitled to get future increments and future increase in the salary from time to time as per rules. We, therefore, hold that applicant's pay should be restored to basic pay of Rs. 416/- as on 01.07.1988 and he is entitled to future increase in the basic pay. On that basis as and when the salaries were increased on the basis of subsequent Pay Commission Reports. We are giving this direction on the assumption that respondents have not restored the pay of Rs. 416.00 as on 01.07.1988. If the respondents have already restored the pay and granted the future increments and future increases in the pay, then nothing need be done by the respondents. Point No. 2 is answered accordingly.

7. POINT NO. 3

We have already seen that the applicant was absent for the period from 29.06.1981 to 30.11.1982. For this unauthorised absence, a departmental enquiry was initiated and penalty order dated 13.02.1986 was passed imposing a penalty of reduction in pay by eight stages for five years. The order dated 13.02.1986 has become final. But somehow, subsequently about three years later, the competent authority passes an order dated 26.04.1989 imposing a break in service for the period from 29.06.1981 to 30.11.1982. Why this step was taken and that too, three years after the termination of the disciplinary enquiry, is not borne out from the

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record. The consequence of this order is very serious. If this order is given effect to, then the entire service of the applicant from 1960 to 1981 gets extinguished. That means, by one stroke 21 years of service gets forfeited or extinguished due to unauthorised absence of the applicant for the period from 21.06.1981 to 30.11.1982.

We have seen, for the same unauthorised absence, a disciplinary enquiry has been held and a punishment has been imposed. But now, for the same period of absence, which was the subject matter of enquiry and for which the penalty has been imposed, three years later the competent authority passes an order of imposing break in service which forfeits 21 years of service of the applicant. In the facts and circumstances of the case, we find that the second order is in the nature of double jeopardy, which cannot be permitted in law. As a result of this order, the applicant's pension is almost reduced by 50% since 21 years of service do not count for pension. Therefore, the order in effect is in the nature of imposing one more penalty when an earlier penalty was already there on the applicant by reducing the pay by eight stages and for five years. Further, the order is also bad, since it is invoked suo-moto after a lapse of three years, from the conclusion of the departmental enquiry and the break in service is imposed seven years after the event, namely - the unauthorised absence.

Now coming to the rule, it is admitted that break in service is permissible under Fundamental Rule 17(A). In Swamy's Compilation of F.R.S.R. 1994 Edition,

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Taking the cumulative effect of all these considerations, we have reached the conclusion that the impugned order of break in service is not sustainable and liable to be quashed. We also add that the period of absence should be treated as "dies-non" and it cannot take away the earlier service from 1960 to 1981 as qualifying service for the purpose of pension.

10. Though we have referred to the above order for break in service as 26.04.1989, we must point out that this order was quashed by this Tribunal on the ground that it is passed without observing the principles of natural justice. Then subsequently, after giving show cause notice to the applicant, the authority has issued a fresh order dated 23.05.1994 imposing the break in service. There is no delay in passing the second order of break in service, since the delay was due to the intermission by the Tribunal and quashing of the first order. Therefore, we have confined our order about delay in passing the first order about break in service dated 26.04.1989 for the reasons already mentioned.

11. In the result, the application is allowed partly as follows :-

(i) The applicant is entitled to restoration of basic pay of Rs. 416.00 as on 01.07.1988 and entitled to future increments and future increase of salary from time to time. The respondents are directed to fix the basic pay of the applicant at Rs. 416.00 as on 01.08.1988 and grant consequent-
^{fixation of pension} benefits like future increase in salary, etc. unless they have already done it.

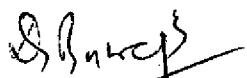
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(ii) The impugned order by the competent authority dated 23.05.1994 imposing 'break in service' for the period from 29.06.1981 to 30.11.1982 is quashed and set aside. It is declared that the period of absence from 29.06.1981 to 30.11.1982 shall be treated as 'dies-non'.

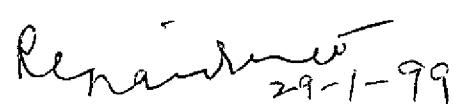
(iii) The applicant is entitled to fixation of pension afresh after taking into consideration the entire service of the applicant prior to 29.06.1981 and entire service after 30.11.1982 till the date of superannuation, namely - 31.01.1998 as qualifying service for the purpose of pension and on that basis refix the pension of the applicant and other retirement benefits.

(iv) The respondents are directed to comply with this direction within a period of three months from the date of receipt of a copy of this order.

(v) In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)

MEMBER (A).


29-1-99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

C.P.O. NO 30/99
J.W. in order a
20.9.99
SJS

30

20.9.99

As no DB is
available the
matter is fixed
for order on
1.10.99
MBS

20.9.99

As no DB is
available the
matter is adjourned
to 1.10.99 for
order.

MBS

Dated: 1.10.1999 (1)
Shri P. A. Prabhakar, Counsel

for the applicant.

Issue notice to the respondents
to show cause as to why contempt
proceedings should not be initiated
against them for non-compliance of the
order of the Tribunal.

List the case for orders
on 16.11.1999.

S.D.T.
(S. L. Jain)
M(J)

S. D. T.
(D. S. Barvegji)
M(J)

16/11/99-4

Notice issued to
Applicant/Respondents on
25/10/99
M

Recd. reply to
C.P. 30/99 from
Respondents on 7/12/99.

8/12

Both counsels present.
At the request of counsel
for respondents further 4
weeks time allowed for
filing reply. Adjourned for orders on

10/12/99

Signature
(S. L. Jain)
abp. M(J)

S. D. T.
(D. S. Barvegji)
M(J)

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Per Tribunal

10/12/99

Applicant in person by P.A. Prabhakaran

Advocate / Respondent by R.K. Shetty

Counsel. Ravi Shetty

The matter adjourned to 20/12/99
for orders

10/12/99
by Registrar

20.12.99

Sh. Prabhakaran for the applicant. Mr.
R.K. Shetty for Sh. R.K. Shetty for
respondents. On request of both sides, the
matter is adjourned to 20.12.99 for orders.

24.1.2000

S.L.Jain
M(J)

D.R. K. Shetty

MCA/

CP 30/99 in OA 624/92
Date : 24.1.2000

Mr.P.A. Prabhakaran, for
the applicant. Mr.Ravi Shetty,
Counsel for the Respondents.

Adjourned to 10.3.2000
to verify further development in
the matter.

SLJ *BB*
(S.L. Jain) (B.A. Bahadur)
M (J) M (A).

H.

OA 624/92 (1) Dated: 10.3.2000
None for the applicant.
Shri R.K. Shetty counsel for the
respondents.

Last opportunity is given
to the applicant. List the case
for orders on 7.4.2000.

SLJ
(S.L.Jain)
Member (J)

DRK
(D.S. Baweja)
Member (A)

PT 07.4.2000
as no DB in C-II
is available next of
Adjourned to
(7.4.2000)

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C.P.No.30/99
in
O.A.624/99

Date : 17.4.2000

Learned Counsel on both sides present and heard.

We have seen the reply filed and also the enclosure, which is office order No.682 dated 11.11.1999. Reply statement also states that the order has been implemented. Learned Counsel for the petitioner, Shri Prabhakaran states that he has not been able to contact his client despite of efforts and therefore cannot contradict or confirm the point made. Learned Counsel for the Respondents, Shri Shetty with the assistance of his officer shows us ^{copy of} ~~the communication~~ ^{sent} to Shri Bara dated 12.1.2000 from the Respondents regarding two cheques sent to him.

In view of the above position, we see that no contempt has been committed and hereby C.P.No.30/99 is rejected. Notices issued are hereby discharged.

(S.L. Jain)
Member (J)

B.N. Bahadur
(B.N. Bahadur)
Member (A)

(o)

H.

dt- 17/4/2000
order/Judgement despatched
to Applicant/Respondent(s)
on 17/5/2000

19/5/2000