

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(2)

O.A.915/93

_____ the 16/11 1995

Hon'ble Shri N.K.Verma, Member(A)

M.H.Mahendra,
Senior Examiner of Trade Marks,
Trade Marks Registry,
Old C.G.O. Building,
101, M.K.Road,
Bombay - 400 020.

(By Advocate Mr.M.A.Mahalle)

.. Applicant

-versus-

1. Union of India
through
Secretary to Govt.,
Ministry of Industry,
Department of Industrial
Development,
Udyog Bhavan,
New Delhi - 110 001.

2. Controller General of Patents,
Designs and Trade Marks,
Old C.G.O. Building,
101, Maharshi Karve Road,
Bombay - 400 020.

.. Respondents

(BY advocate Mr.Suresh Kumar)

O R D E R

(Per N.K.Verma, Member(A))

The applicant in this case was appointed in 1976 as an Assistant Examiner of Trade Marks in the Trade Marks Registry, Bombay and subsequently was promoted as Senior Examiner of Trade Marks, Group 'A' in December, 1981. While working in the grade of Senior Examiner of Trade Marks he was due to cross the Efficiency Bar on 1-12-1985 in the pre-revised scale of Rs.700-40-900-EB-40-1100-50-1300 and in the

revised scale of Rs.2200-75-2800-EB-100-4000 which had fallen due to him on 1-12-1986. This crossing of the E.B. was denied to the applicant merely on account of in-action on the part of the respondents and also a deliberate attempt to harass him. The applicant made several representations for grant of efficiency bar which fell due on 1-12-85 and also on 1-12-1986 to which he was replied by the respondents on 19-12-1986 that a disciplinary proceeding was contemplated against the applicant and hence his E.B. could not be processed. The applicant was also placed under suspension w.e.f. 24-12-86 as disciplinary proceedings were contemplated against him by the department. He was served with a chargesheet under Rule 14 on 8-1-87. This chargesheet resulted in a minor penalty of withholding of increment for two years without any cumulative effect. The applicant's suspension was also revoked on 10-2-89 and the period spent under suspension was ordered to be treated as on duty. In the meantime the applicant had filed O.A. 3/88 in this Bench of the Tribunal for directions to the respondents to allow the increments which became due to him on 1-12-85 and 1-12-86. The applicant moved another O.A. 239/89 regarding the penalty of withholding of increments for two years. While these two O.As. were pending disposal in the Tribunal the applicant was allowed to

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cross E.B. with effect from 3-1-90 under the orders of the respondents. However, the O.A. 3/88 was dismissed on 29-8-91 as the Bench found that in view of the enquiry in contemplation the action of the respondents in not holding a DPC for recommending crossing of E.B. could not be interfered with. Subsequently the O.A. 239/89 was also remitted back for further enquiries on the ground that the enquiry report as envisaged in Ramzan Khan's case was not served on the applicant. As a sequel to these two orders the respondents on 21-9-92, Annexure-A, cancelled the order allowing him to cross the E.B. w.e.f. 3-1-90 in the pre-revised and revised scale of pay. They also cancelled the order of penalty dt. 10-2-89 with the intention of restarting a disciplinary proceeding from the stage of furnishing a copy of the inquiry report in the light of Tribunal's judgment. It was said in the said order that the notional pay, as communicated to him in the statement of fixation of pay dt. 19-2-90, will continue to be paid drawn till the disciplinary proceedings are completed and the review of his case for crossing E.B. in the pre-revised and revised scale of pay is done in due course. As a result of this order the minor penalty matter was processed further and the applicant was punished again on 15-3-1993 by

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imposing a penalty of withholding one increment in the scale of pay of Rs.2,200-4,000 for a period of two years without cumulative effect. As per another order dt. 14-7-93 the matter regarding consideration for crossing of his E.B. at the stage of Rs.900/- in the old scale of pay of Rs.700-1300 and also at the stage of Rs.2800/- in the revised scale of pay of Rs.2,200-4000 had to be processed by DPC. By order dated 6-10-1993 the DPC decided ^{him} to permit ~~to~~ to cross E.B. in the pre-revised and revised scale of pay w.e.f. 8-9-93. However, he was allowed to draw the notional increment from 1-12-90 to 1-12-92 which was paid to him ~~him~~ although the order dated 6-10-93 clearly stated that the E.B. shall be payable from 8-9-93. The applicant therefore has now come up with a prayer to quash the order dt. 21-9-92 by which the question of decision regarding crossing of E.B. was left to be decided after the completion of disciplinary proceedings and by which the crossing of E.B. already permitted earlier on 3-1-90 was cancelled. The applicant has now prayed that the respondents may be directed to allow the applicant to cross E.B. w.e.f. 1-12-85 retrospectively or in the alternative to allow to cross E.B. on 1-12-86 in the revised scale of pay. The applicant has also sought payment of all the arrears after the recalculation of claims.

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2. During the course of arguments Mr. Mahalle learned counsel for the applicant brought to my notice that FR 25 lays down the time schedule for holding DPCs for crossing E.B. According to this for E.B. falling during the months of November and December the DPC has to be held in October itself. This rule also enjoins that in case a decision to enforce a bar against a Govt. servant crossing the E.B. the government servant should be informed of the decision after having considered his case at the appropriate time. It also says that cases of all officers held up at ^{an} E.B. should be reviewed annually with a view to determine whether the quality of their work has improved and, generally, whether the defects for which they were stopped at the bar have been remedied, to an extent sufficient to warrant the removal of the bar. Mr. Mahalle reiterated that no such efforts to hold DPC was resorted ^{to} by respondent department and the case of the applicant was delayed for no reason beyond December '85 when the first E.B. fell due in the pre-revised scale and again in December '86 when the second EB fell due. The delay in considering the case of the applicant for crossing the EB is entirely omission on the part of the respondents for which the applicant cannot be penalised. The applicant was suspended only on 24-12-86 much after the date of second E.B. came due on 1-12-86 and the chargesheet was issued on 8-1-87. Therefore

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his case for crossing the E.B. had to be considered and ~~appears~~ ^{orders} issued ~~much~~ before the order of suspension and chargesheet came to be issued.

In support of the averment, Shri Mahalle brought to notice judgment of Supreme Court in the case of State of Maharashtra and others vs. Uttamrao Rayala Nikam, (1994) 26 ATC 905 decided on 10-9-1993. In this case Hon'ble Supreme Court has decided that "This SLP was filed against an order of Maharashtra Administrative Tribunal at Nasik dated October 1, 1992. The order stopping crossing of efficiency bar to reach his scale of pay Rs. 2800-4000 was quashed. The Tribunal found that the respondent reached the efficiency bar on October 1, 1982. Earlier he was compulsorily retired but by order of the court he remained in service. Under the rules made by the Government, the process should be made well in advance and record should be considered and a positive order should be made by the competent authority to pass an order stopping giving the increment due to the efficiency bar. Till September 1984, no order has been passed by the competent authority. The Reporting Officer in 1984 found the record of the respondent satisfactory and also recommended for his promotion. Yet the Supervisory Officer appears to have recorded that he cannot be promoted. On that basis, he passed an order on September 14, 1984 stopping the efficiency bar by which time he had already

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passed three years which he would have been entitled to in the normal course. Rules also postulate that every year they should consider and repeat the exercise. The reason is obvious. The officer due to efforts would improve his efficiency of service to earn his increments. So stoppage of increment is not an all time and permanent stagnant block for the rest of the career. So wholesome procedure of yearly meticulous exercise of duty was envisaged under the rules but flagrantly violated and for inexplicable reasons the exercise was not done. Therefore, the Tribunal has rightly pointed out that stopping of crossing the efficiency bar is arbitrary and we hold it unjust and unfair." Mr. Mahalle also brought to my notice the judgment of this Tribunal in the case of Magsood Magboole Hasan Neyazi vs. Chief Commissioner of Income Tax (Administration) Bombay & Ors., 1994(1)SLJ(CAT)276 where similar relief has been given. Learned counsel also reiterated his earlier submission that the DPC records if held in 1985 or subsequently should be produced before the court if any positive recommendation was made for the applicant to cross E.B. and, if not, crossing of E.B. would become due on the date i.e. 1-12-85 and 1-12-1986.

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3. Mr. Mahalle also submitted that it is wrong to say that disciplinary proceedings were already initiated against the applicant on 1-12-85 or even on 1-12-86 when the two EBs were to be crossed by the applicant. If at all, there was a mere contemplation

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of initiating of a chargesheet which cannot be termed as being the first step or initiation of a disciplinary enquiry against the applicant. The disciplinary enquiry started only in January '87 which is much later than the date of crossing of EB.

4. Mr. Suresh Kumar learned counsel for the respondents in his argument brought to my notice that the question regarding initiation of disciplinary proceedings was already settled in the judgment given in O.A. 3/88 by this Bench wherein it was stated that in view of the contemplation of the chargesheet against the officer the question of holding a DPC did not arise. Even if the DPC would have been held, the result would be the same as effect of contemplation of chargesheet would have postponed the implementation of the EB orders. As for the point made in Supreme Court's decision in Janaki Raman's case, that a disciplinary enquiry can be held to have been initiated only when a charge is framed against an officer and the same is issued to him, this judgment cannot be operated retrospectively as Janaki Raman's case was decided only in January '93 whereas the judgment of the Bench was delivered in August '91. Mr. Sureshkumar very vehemently argued that the question regarding payment of the EB arrears w.e.f.

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1-12-85 was duly considered and rejected by the then Bench and therefore it is hit by the principles of constructive res-judicata and therefore cannot be agitated afresh before this Bench. He further stressed that even though the DPC decided that his E.B. should be effective only from 8-9-93 the department has not taken any action to recover the increments paid ^{for the period} ~~in~~ 1-12-90 to 1-12-92. The department itself feels that some injustice has been perpetrated on the applicant by remitting the case for further enquiries under the orders of the Tribunal by furnishing a copy of the enquiry report and thereby the period of penalty has been extended unnecessarily by another two years.

In view of the hardships caused to the applicant the department has not considered recovery of the E.B. increments drawn and paid to the applicant earlier. However, as per the DPC proceedings dt. 3-1-1990 he was allowed to cross the same w.e.f. 3-1-90. This DPC meeting was held after having sought clarifications from the Govt. of India, Ministry of Industry which had categorically stated that the applicant's case is to be considered by DPC to assess ^{his} suitability to cross E.B. in the pre-revised scale of Rs.700-1300 on 1-12-1985.

Based on the findings of the DPC, his pay may be fixed/refixed in the revised pay scale of Rs.2200-4000 w.e.f. 1-1-1986. The Ministry also clarified that

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if the EB ^{due} ~~becomes~~ subsequently in the revised scale the same will have to be considered by the DPC independently. This was the letter issued under No.A-32018/16/86-E.IV dt. 17-11-1989. Yet the DPC totally ignored the advice of the Ministry and recommended crossing of the EB w.e.f. 3-1-90 i.e. the date when the DPC was held ignoring the claim of the applicant from 1-12-85 and 1-12-1986 when it had become due. Then again the respondents cancelled the order regarding EB dt 3-1-90 by their order dated 26-6-1992 when the order of this Tribunal regarding remitting the disciplinary proceedings for a denovo enquiry from the stage of supply of enquiry report was passed on 13-2-1992. When the final order regarding disciplinary proceedings was passed on 15-3-93 imposing upon him withholding of increments for two years without cumulative effect the department allowed the applicant to draw notional/increment from 1-12-1990 and paid the same but issued an order to cross the EB in old and revised scale of pay w.e.f. 8-9-93.

5. Mr.Mahalle brought me back to FR 25 which lays down that:

"Where an efficiency bar is prescribed in a 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 withhold increments under Rule 24 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may by general or special order, authorise in this behalf."

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The emphasise here is as also ruled by the Supreme Court in the case of State of Maharashtra and Ors. vs. Uttamrao Rayala Nikam. Unless there is a specific sanction for the bar of the E.B. or withholding increment under Rule 24 by disciplinary authority, the EB shall become due to the employee. FR 24 also lays down as below:

"An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the Central Government or by any authority to whom the Central Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments."

In view of this clear provision of FR Shri Mahalle insisted that the DPC proceedings of October '85 whereby a specific recommendation had been made by the respondents to withhold the payment of increment must be produced by the respondents. In case there was no specific sanction of the authority to withhold the increment the same will be payable to him as and when he crosses the stage of EB. Even if there was a lapse of time in convening the DPC as per the note 2.5 under FR 25, the DPC should consider only those Confidential Reports which it would have considered had the DPC been held as per the prescribed schedule.

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The applicant became due for crossing of the EB in the pre-revised scale on 1-12-1985 and on the revised scale on 1-12-1986. On these two days if the DPC had been held as per the time schedule provided in para 2.2 of FR 25 in October '85 and October '86 the committee would not have been able to recommend stoppage of EB as on these particular dates there was no contemplation of any departmental action against the applicant. Rule 2.5 again states that "if the Govt. servant is found unfit to cross the bar from original due date, the same DPC can consider the report for subsequent year also, if available, to assess his suitability in the subsequent year." In any case if there was a contemplation of a departmental enquiry against the applicant at the time when the DPC meeting was held it should have followed the sealed cover procedure instead of just not bothering to convene a DPC as was done by the respondents in this case.

Shri Mahalle also refuted the constructive res-judicata as have been referred by the respondents and very exhaustively argued by the learned counsel for the respondents. The O.A. No.3/88 was based on the prayer for direction to the respondents to pass necessary orders under FR 25 for allowing him to cross E.B. on 1-12-85 and again on 1-12-86. That prayer was not related to any cause of action based on ^{an impugned} ~~the~~ order. The present O.A. is directed against the impugned order at Annexure A-I by which the directions have been given for convening a DPC to consider crossing of EB

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in the old scale of pay and also in the revised scale of pay and subsequent order dated 6th October '93 by which his date for crossing of Both the EB from 1-12-85 and 1-12-86 has been fixed as effective from 8-9-93.

Mr. Mahalle also pointed out that in the reply given ^{to the respondent} by the respondents the question of res-judicata has not been raised and this cannot be made a ground for contesting the case now.

6. I have given serious consideration for the averments, pleadings and arguments of the learned counsel for both the sides. I have also examined minutes of the DPC held on 3-1-90 by which the applicant was allowed to cross EB w.e.f. the same date. There is also a note prepared by the office regarding this matter which brings to light many of the omissions and commissions of the respondents. It is an admitted fact that the applicant became due for crossing of EB in pre-revised scale on 1-12-85 and again on the revised scale on 1-12-86. On these two dates the applicant had not been suspended nor was there any initiation of disciplinary proceedings against him. As per the provision of FR 25 and the time schedule given therein the DPC for crossing the EB should have been held in October '85 and October '86 respectively ~~otherwise~~ ^{by} convening a meeting or even ^{by} circulation of papers. If that exercise had been done in time, the question of postponing the effect of EB to a latter date would not have arisen. But the respondents did not apply their minds to this problem even when the applicant had been making repeated request for

crossing of his EB in February '86 followed by reminders on 29th August '86, 10th October '86 and finally on 11th December '86. All this time the applicant was being informed that his case is under consideration and subsequently on 19-12-86 he was placed under suspension and question of his crossing the EB thus got relegated to the background on the plea that there was a contemplation of disciplinary proceeding against him. The chargesheet of the disciplinary proceeding was actually issued to him only on 8-1-87. The question therefore arises whether there was a initiation of disciplinary proceedings on the dates on which the applicant was due to cross his EB in the pre-revised scale of pay and in the revised scale of pay on 1-12-85 and 1-12-86 respectively. During the course of arguments learned counsel for the respondents Mr. Suresh Kumar reiterated that contemplation for issuing a chargesheet on the applicant was already available on these dates and hence there was no question of giving him the benefit of crossing the EB on those dates. He also submitted that this fact was also brought to the notice ~~before~~^{of} the Tribunal in O.A. 3/88 and it was satisfied that there was contemplation of disciplinary proceedings.

7. I am not impressed with this submission at all as the learned Supreme Court in the case of

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Delhi Development Authority vs. H.C.Khurana, (1993) 24 ATC 763 had emphasised on the stage when a decision has been taken to initiate the disciplinary proceedings. In para 13 of the said judgment it has been said 'to deny the said benefit (of promotion), they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee.' The word 'issued' used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the chargesheet leaving no doubt that the decision had been taken." Earlier in para 9 of the same judgment, DDA vs. H.C.Khurana, the apex court observed as below:

"The question now, is: What is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary proceedings' ? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the chargesheet, since issue of the ~~xxxx~~ chargesheet is a consequence of the decision to initiate disciplinary proceedings. Framing the chargesheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings.".....

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The Supreme Court has also held that the decision to

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initiate disciplinary proceedings is same as initiation and initiation becomes complete only if the decision to hold departmental enquiry is communicated or in the process of transmission of the communication. The facts ~~and~~ circumstances in O.A. 3/88 were entirely different from what had emerged now. In 1991 when the judgment was delivered this Bench held a view that contemplation of a departmental proceeding was good enough to indicate that a departmental proceeding had been initiated. The bench also held the view that in case the applicant had apprehension of the department granting him EB he could have represented the matter before the department again and ~~xxx~~ obtained a decision in the matter in accordance with the law. Since he ~~did~~ not want to do so the Bench felt that there was no ground for the Tribunal to interfere regarding holding of DPC and the application was therefore rejected. With the decision of the Hon'ble Apex Court in the case of U.O.I. v. K.V.Jankiraman and later in the case of DDA v. H.C.Khurana the issue regarding initiation of chargesheet and disciplinary proceeding has been settled conclusively. Accordingly, disciplinary proceeding is supposed to have commenced or initiated only when a communication to that respect is despatched, by the competent authority. In the instant case that communication was sent only on 8-1-87 and it can be said that there was no initiation of disciplinary proceedings before that date and if the DPC was convened to

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examine the suitability of the applicant to cross EB the decision would have been in his favour. Since no such decision was taken in October '85 or in October '86 to deny him the crossing of EB it will be presumed that the applicant had right to earn the next stage of increment after crossing the EB from the dates when it became due in the pre-revised scale and revised scale. The Supreme Court judgment quoted by the learned counsel for the applicant in the case of State of Maharashtra vs. Uttamrao Rayala Nikam, dt. 10th September, 1993 squarely applies in this case. The subsequent decision of this very bench in the case of Maqsood Maqbool Hasan Neyazi v. Chief Commissioner of Income Tax (Administration) Bombay & Ors. 1994 (1) SLJ (CAT) 276, decided on 11-11-1993 also holds good. In that judgment the order given in the case of Gajey Singh Sharma v. U.O.I. (1988) 8 ATC 720 was cited wherein it was held that: "Having not rejected his case for stopping the efficiency bar and now conveying it to the applicant under F.R. 25(3), the order of the DPC withholding the efficiency bar ~~xxx~~ retrospectively will not be equitable. It is only fair that the applicant should be deemed to have crossed the efficiency bar when it was due, namely, 1-1-1974 and he will also be eligible to all financial reliefs in consequence thereof."

8. A perusal of the file of the EB in connection with the applicant's case also indicates that the DPC proceedings was wholly on

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incorrect lines inasmuch as they considered the confidential reports along with special report on the officer's performance for the period 1-4-89 to 31-12-89 and not upto the period when he was due to cross EB on 1-12-85. Even when the DPC found nothing wrong with the ACRs they allowed him to cross the efficiency bar in the pre-revised and revised scale w.e.f. 3-1-1990 without giving any reason why the EB should not be allowed to him on the date when he became due to cross. The subsequent decision to cancel the order regarding crossing of EB w.e.f. 3-1-90 by an order dt. 21-9-92 was again totally irregular as no such order could have been passed even in the light of the decision of the CAT ^{Threshing} ~~questioning~~ the penalty with a liberty to initiate a fresh enquiry in ~~xxxxx~~ regard to O.A. 3/88 in which this Tribunal had only rejected the applicant's application for interfering it by giving a direction to allow the increments which was due to him on 1-12-85 and 1-12-86. The refusal of the Tribunal to interfere did not mean that the order for crossing of EB already conveyed to the applicant by respondent had to be cancelled, and the matter kept open till the finalisation of the disciplinary case against him. As a matter of fact there is a Govt. of India decision which is reproduced below :

"(18) When penalty of withholding of increment imposed while official held up at efficiency bar stage - Recently a case has come to the notice in which a Government servant became due to cross efficiency bar in October, 1970, but was not found fit to cross the bar.



In the meantime, he was placed under suspension and he could not, therefore, be allowed to cross efficiency bar while under suspension in October, 1971 and October, 1972. The disciplinary proceedings against him ended with the imposition of penalty of withholding of increments for five years as per the punishment order issued in December, 1972. A question has been raised as to how the penalty can be enforced and the pay of the Government servant regulated.

It has been decided in consultation with the Department of Personnel and the Ministry of Finance that in the type of case referred to, the case of the Government servant for crossing the efficiency bar should be reviewed on a date immediately following the date of the order of penalty and if he is found fit to cross the efficiency bar, the stage at which he would draw pay above the efficiency bar should also be decided. Once it is done, five increments commencing from the date of next increment after being allowed to cross the efficiency bar can be withheld and the penalty thus enforced. In case he is not found fit to cross the efficiency bar from a date immediately after the conclusion of the disciplinary proceedings, his case should be reviewed with reference to every subsequent anniversary of the original due date until he is found fit to cross the efficiency bar. Thereafter, the stage at which ~~xxx~~ he should draw the pay above the efficiency bar should also be decided and the penalty order enforced as explained above.

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(D.G.P&T Letter No.6/13/72-Disc.II/Disc.I dt. 9th February, 1973) "

For a proper appreciation of this ruling the details of the following concrete case will be helpful:-

An official was not allowed to cross the EB with effect from 1-2-1973, on account of the pendency of disciplinary proceedings. As a result of the disciplinary proceedings, punishment order was issued on the 19th April, 1977, imposing the penalty of withholding of increment for a period of one year without cumulative effect. As a result of review of his case for crossing the EB he was allowed to do so with effect from 1-2-1978, releasing the earlier increments. In this case, the proper course would be to fix the pay on 1-2-1978, giving the benefit of five earlier increments which were due on 1-2-1973, 1-2-1974, 1-2-1975, 1-2-1976, 1-2-1977 and the sixth increment which was due on 1-2-1978, should be withheld for one year. Thereafter, the withheld increment should be released with effect from 1-2-1979 in addition to the increment which was due on that date.

(D.G.P&T Letter No.153/21/78-Disc.II dt. the 29th November, 1979)

In the light of this even if the applicant's case for penalty was decided in February '89 the crossing of EB should have been regulated with reference to the Ministry of Personnel clarification as quoted above and his EB should have been fixed with reference to the dates on which it became due to him and the actual implementation adjusted against the number of years during which it had been kept suspended because of the currency of the penalty. But the respondents on the other hand took advantage of the O.A. 239/89

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regarding the penalty by which the matter had been remitted by the Tribunal for a fresh enquiry from the stage of supply of copy of enquiry report. The question of crossing of EB was unnecessarily linked up with the finalisation of the penalty as the sealed cover procedure could have been adopted by the respondents had they so desired to give the benefit of crossing of EB from a particular date. There was only one DPC proceeding held on 3-1-90 and there was no subsequent DPC to suggest a new date of effect of crossing of the EB. Respondents went on changing the orders at their will under the cover of Tribunal's order which had nothing to do with the crossing of EB as such. While the Memorandum dt. 3-9-1993 at Annexure A-2(11) speaks of the need for recommendations of a DPC for fixation of the applicant's pay and payment arrears, no DPC was perhaps held and the order dated 6-10-1993 indicates the decision of the competent authority to allow him to cross the EB w.e.f. 8-9-1993 without assigning any reasons for barring the EB from the dates they became due. The minutes of DPC proceedings dt. 8-9-1993 was not submitted for the perusal of the Tribunal. Hence a reasonable presumption has to be held that no DPC proceedings were held.

9. Having given the consideration to various pros and cons of the case I have no doubt in my mind that the respondents wilfully delayed the action regarding holding the DPC to recommend permission to the applicant to cross the EB on 1-12-85 in the

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pre-revised scale and on 1-12-86 in the revised scale. Even when they had issued an order effective from 3-1-90 on the basis of a DPC recommendation, respondents themselves cancelled the same under the cover of decision contained in O.A. 3/88 which had indicated only court's refusal to interfere in this matter. The postponement of holding of DPC till the disciplinary proceedings were completed was also wholly unwarranted, arbitrary and indicates intentions of harassing the applicant.

10. The O.A. thus succeeds. It is hereby ordered that the applicant shall be permitted to cross EB as it fell due to him on 1-12-85 in pre-revised and 1-12-86 on revised scale of pay. His pay shall now be fixed taking those dates into consideration and all the arrears shall be paid with interest @ 12% p.a. within four months of the date of receipt of this order. However, this interest amount to the extent of Rs.1,000/- shall be recovered from the pay of respondent No.2 by whose acts of omission and commission this unnecessary litigation has gone on for such a long time and who went out of his way to ensure that the question of decision in regard to crossing of EB was withheld on one ground or the other.

11. Orders accordingly.

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Member(A)

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