

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1147 of 1994.

Dated this Wednesday, the 11th day of August, 1999.

Vinayak Ganesh Pradhan, Applicant.

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

VERSUS

Union of India & Others, Respondents.

Shri M. I. Sethna alongwith Advocate for the
Shri V. D. Vadhavkar, Respondents.

CORAM: Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

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

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

R. G. Vaidyanatha

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Hon'ble Shri B. N. Bahadur, Member (A).

Vinayak Ganesh Pradhan,
Retired I.T.O.,
Resident of Sharda Sadan,
Fattealli Road,
opp.: Municipal School,
Dombivli (E)',
Pin - 421 201. ... Applicant.

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Dept. of Revenue,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Through his Secretary,
New Delhi.
3. The Chief Commissioner of Income-Tax
(Admin),
Aaykar Bhavan, Bombay - 400 020.
4. Pay & Accounts Officer,
Zonal Accounts Office,
Central Board of Direct Taxes,
Aaykar Bhavan,
Bombay - 400 020. ... Respondents.

(By Advocate Shri M. I. Sethna alongwith
Shri V. D. Vadhavkar).

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OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

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

2. Most of the facts are admitted in this case. The facts which are necessary for the disposal of this application are as follows :

The applicant was working as an Income-Tax Officer at Bombay at the relevant time. His Efficiency Bar was due on 25.08.1993. Subsequently, the applicant was suspended on 19.04.1984 and then a charge-sheet was issued against the applicant for certain misconduct. After holding the enquiry, the Disciplinary Authority passed the order of removal from service against the applicant by order dated 28.01.1987. The applicant challenged that order before this Tribunal in O.A. No. 26/88. That O.A. came to be allowed by this Tribunal by order dated 08.08.1991 only on the ground that copy of enquiry report had not been furnished to the applicant and then proceed further. Being aggrieved by that order, the administration went in appeal to the Supreme Court. The Supreme Court in Civil Appeal No. 3474 of 1993 by order dated 19.07.1993 partly allowed the appeal and converted the punishment of 'Removal from service' to one of 'Compulsory retirement'. It is stated by the Supreme Court that

the applicant should be deemed to have compulsorily retired w.e.f. 28.01.1987 with all post retiral benefits.

Applicant's grievance is, that in spite of compulsory retirement from service as ordered by the Supreme Court, the competent authority has not considered as to how the period of suspension till the date of compulsory retirement should be treated for the purpose of pay and allowance as qualifying period for pension etc.

The applicant's another grievance is that he should have been considered for crossing Efficiency Bar in 1983 when there was no pendency of criminal case or departmental charge-sheet and therefore, he wants a direction to the respondents to consider his case for crossing Efficiency Bar. The applicant also wants the benefit of Fourth Pay Commission Report with effect from 01.01.1986. He wants a direction that the period of suspension should be treated as period spent on duty for all purposes. He is entitled to yearly increment, salary, pension, etc.

3. The respondents in their reply, while admitting most of the facts, have pleaded that applicant is not entitled to the relief of crossing the Efficiency Bar in view of the contemplated disciplinary enquiry against him at that time. That the applicant is not entitled to the benefit of revised pay on the



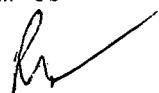
basis of Fourth Pay Commission Report with effect from 01.01.1986 since he was under suspension and came to be compulsorily retired on 28.01.1987. That the period of suspension has been treated as 'dies-non' and hence applicant is not entitled to any monetary benefit for the period of suspension.

5. After hearing both the sides we find that the competent authority has not considered the question and passed an appropriate order under F.R. 54. There are many sub-paras under F.R. 54 and it is for the competent authority to decide how the period of suspension from 19.04.1984 till the date of compulsory retirement i.e. 28.01.1987 should be treated. Even the Learned Counsel for the respondents showed some record in the file and Service Book wherein a specific order has been passed by the competent authority as to how this period should be treated. It is a duty which falls on the competent authority to decide as to how the period of suspension should be treated either for the purpose of pay and allowance as qualifying period of pension or for any other purpose. Since no such order is available, we cannot ourselves for the first time consider as to how this period should be treated. It is for the competent authority to apply his mind to the facts and circumstances of the case and pass appropriate order as to how this period should be treated and for what purpose. All those questions are left open for being decided by the competent authority. The competent authority will also decide at the same time whether applicant is entitled to any benefit of the revised pay scale of pay from 01.01.1986 on the basis of Fourth Pay Commission.

6. The next grievance of the applicant is about crossing of the Efficiency Bar. The due date for crossing the Efficiency Bar was 25.08.1983. According to rules, the D.P.C. must be held prior to that date and then decide whether the applicant was suitable for crossing the Efficiency Bar or not. The only reason given by the administration is, that in view of the contemplated disciplinary enquiry, applicant's case for crossing efficiency bar was not considered. Obviously, the administration wants to rely on the Government circular regarding Sealed Cover Procedure. As pointed out by the Supreme Court in Union of India V/s. K. V. Jankiraman [1991 (2) Scale SC 423], sealed cover procedure can be adopted only if there is pending departmental charge-sheet or pending criminal case or when the applicant is under suspension. If these things do not exist, then sealed cover procedure cannot be adopted. Here, the respondents have not even adopted the sealed cover procedure in view of contemplated disciplinary enquiry. In such a situation we may adopt the rule of Deemed Sealed Cover Procedure. But in view of the fact that no charge-sheet was pending as on 25.08.1993 and the applicant was not under suspension, even the Deemed Sealed Cover Procedure cannot be followed in his case. The only explanation to this rule is, if the administration had taken a conscious decision for instituting a disciplinary enquiry against the applicant prior to 25.08.1983, then of course, the applicant's case may fall under the Sealed Cover Procedure Rule. But on that matter there is no material before us.



7. The Learned Counsel for the respondents contended that the claim of the applicant for claiming the benefit of crossing Efficiency Bar is barred by limitation and delay. No specific plea is taken in the reply on this point. It is true that the present O.A. is filed in 1994 and the claim relates to crossing of Efficiency Bar in 1983. As far as limitation is concerned, we find that six months later the applicant was kept under suspension and a charge-sheet was issued. Then ultimately, the applicant was removed from service. Naturally, the applicant could not have approached this Tribunal for getting the relief of crossing the Efficiency Bar in view of the order passed in the disciplinary case. It is only when the matter went to the Supreme Court, the punishment was altered to one of compulsory retirement. Hence, in the facts and circumstances of the case, there is some explanation about the delay and therefore, the delay can be condoned but further delay certainly comes in the way of applicant getting arrears of monetary benefits. Even in the case of continuous cause of action for which there is no limitation at all as observed by the Supreme Court in M. R. Gupta's case reported in 1995 (5) SCC 628, the Supreme Court itself has observed that limitation may apply for arrears, though not for fixing of pay. Therefore, in the present circumstances, though we are inclined to consider the claim of the applicant for crossing the Efficiency Bar, we are firm in our opinion that applicant should not get any arrears but in case he is found suitable for crossing the efficiency bar, his pay has to be notionally fixed by granting increments, which will help him to get revised pension and not arrears of monetary benefit.



8. In the facts and circumstances of the case, we direct the administration to hold a review D.P.C. and consider whether as on 25.08.1983 the applicant was fit and suitable for crossing the efficiency bar. The administration may also consider whether any conscious decision about taking disciplinary action was taken prior to 25.08.1983. If such a conscious decision had been taken, then there is no question of considering the applicant for crossing the efficiency bar. However, if there is no such conscious decision, then applicant's case should be considered on merits whether he is entitled to cross efficiency bar. In case he is found suitable for crossing the efficiency bar, then notionally his pay may be fixed by granting increments as per rules but it will only be for the purpose of fixing revised pension and not for any arrears of monetary benefit.

9. In the result, the O.A. is disposed of subject to the above observations. We give liberty to the applicant to give a detailed representation to the competent authority mentioning all the facts and the reliefs he wants and then the competent authority shall apply his mind to the representation and facts of the case and in the light of the observations made in this order and pass appropriate order as per rules.

In the circumstances of the case, liberty to the applicant to make representation within four weeks from today.



Then the competent authority shall pass an order within three months from the date of receipt of representation. Needless to say that if any adverse order is passed by the competent authority, the applicant can challenge the same according to law. No order as to costs.

Bahadur

(B. N. BAHADUR)

MEMBER (A).

Vaidyanatha

(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

CP 31/2000 IN
ORIGINAL APPLICATION NO:1147/94

TRIBUNAL'S ORDER

DATED:8.6.2001

Shri P.A. Prabhakaran counsel for the applicant. Shri M.I. Sethna with Shri V.D. Vadhavkar counsel for the respondents.

This C.P. has been filed on the ground that Shri B.Mishra and Shri W.Hasan had wilfully disobeyed the order dated 11.8.1999 by not disposing of the representation within the time they should have. Although an order was passed by this Tribunal on 11.8.1999 whereby the applicant was allowed to make representation, According to applicant he made representation on 18.10.1999, which date is being disputed by the respondents. The applicant states that the respondents have wilfully disobeyed the order by not disposing of the representation within the time allowed. The applicant filed this C.P. on 9.6.2000 on which notice was issued on 25.8.2000. It is not disputed now that the representation was partly disposed of on 29.3.2000 and final order was passed on 16.8.2000. Shri Prabhakaran appearing for applicant has also stated that the applicant

B. *Shrivastava*

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does not want to press this application. Here, we would like to observe that once notice is issued then the contempt matter is ~~is~~ between the contemner and the Tribunal but in this case we would not like to proceed further as on perusal of the application and the reply we are satisfied that there is substantial compliance of the order passed by this Tribunal. Hence, the notice is liable to be dis-charged. The notice issued to the respondents is dis-charged. No order as to costs.

B.N.Bahadur

(B.N.Bahadur)
M(A)

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