

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 291/97

15-4-99  
Date of Decision:

A.G.Vaidya

Applicant.

Shri B.Ranganathan

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Bawej, Member (A)

Hon'ble Shri.

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

*D.S.BAWAJA*  
(D.S.BAWAJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 291/97

this the 15th day of April 1999

CORAM : Hon'ble Shri D.S.Bawaja, Member (A)

A.G. VAIDYA  
Sr.Chargeman,  
Naval Armament Dept.  
Trombay.

By Advocate Shri B.Ranganathan

... Applicant

V/S.

1. Union of India through  
the Secretary,  
Ministry of Defence,  
Govt. of India, New Delhi.
2. General Manager,  
Naval Armament Depot,  
Trombay, Mumbai.
3. Deputy General Manager,  
Naval Armament Depot,  
Trombay, Mumbai.

By Advocate Shri V.S.Masurkar

... Respondents

O R D E R

(Per: Shri D.S.Bawaja, Member (A))

This application has been filed by the applicant on being aggrieved for non-grant of the increments as due on 1.7.1991 at the stage of Efficiency Bar and thereafter the increments in subsequent years.

2. The applicant while working as Chargeman in Naval Armament Depot, Trombay was not granted the increments from May, 1990 onwards and the respondents had also directed the recovery of Rs.5,392/- alleging excess payment of the increments to the applicant as the increments were not due on account of some dispute with regard to leave periods.

The applicant challenged this matter through OA.NO. 346/92. This OA. was decided on 24.7.1994 with the direction to the respondents to release annual increments from 1990 onwards. The applicant was allowed the increment as due on 12.7.1990 in pursuance of the order dated 24.7.1994 but was not allowed next increment which was due at the stage of Efficiency Bar. The applicant represented for the same and he was advised as per order dated 6.10.1994 that on account of adverse remarks in his Annual Confidential Reports for the years 1992-93 and 1993-94, he has been not found eligible to cross Efficiency Bar. The applicant again represented on 5.12.1994 and his representation was replied vide order dated 10.1.1995 stating that the case of the applicant was considered by the Departmental Promotion Committee (DPC) and DPC has recommended to enforce Efficiency Bar. The applicant was not satisfied with this reply and therefore sent a notice through his Advocate but there was no response to this notice. As per letter dated 29.6.1995 the applicant was advised remarks from Annual Confidential Report for the year 1994-95. Thereafter, as per letter dated 15.5.1996, the applicant was again advised remarks from Annual Confidential Report for the year 1995-96 with the same allegation that the applicant is indifferent in his work and irregular in attendance. The applicant however represented against these adverse remarks stating that these remarks have been conveyed based on the vindictive attitude of the respondents on account that he had agitated the matter through OA.NO.346/92. Since his representations did not result in any redressal of his grievances, the applicant has filed the present OA. on 7.3.1997.

3. The applicant has sought the reliefs advancing the following grounds :- (a) The applicant was due for crossing Efficiency Bar on 1.7.1991 and the case of the applicant was not considered at the appropriate time as provided in F.R.-25 and his case has been considered in 1994 only and the reports of the relevant years have not been taken into consideration as is clear from the reply from the respondents dated 6.10.1995. (b) The applicant had not been conveyed any adverse remarks for the reports of the relevant years which were required to be considered in 1991 and therefore the applicant was entitled to cross Efficiency Bar. (c) The applicant has been deprived of Efficiency Bar even in subsequent years also and adverse remarks have been made in the Annual Confidential Reports in the various years solely on account of prejudice and bias against the applicant on account of having approached the Tribunal through OA. for redressal of his grievance earlier.

4. The respondents have contested the claim of the applicant through the written statement. The respondents submit that in pursuance of the order of the Tribunal dated 29.7.1994, the increment as due on 12.7.1990 was allowed raising the pay of the applicant from Rs.1760/- to Rs.1800/-. However, at Rs.1800/- the applicant was to cross Efficiency Bar. The case of the applicant for crossing the Efficiency Bar and granting of increment from 12.7.1991 was considered by DPC and the DPC did not find the applicant

fit for crossing the Efficiency Bar. The respondents refute the contention of the applicant and state that DPC had considered the reports of the years 1988, 1989 and 1990-91 while considering the case for crossing Efficiency Bar in 1991 and not subsequent reports as alleged by the applicant. With regard to the letter dated 6.10.1994, the respondents have contended that reference to the adverse remarks in the reports of 1992-93 and 1993-94 was only made with a view to make the applicant aware of his performance so that he can improve upon his working. As regards DPC for the delay in holding consideration of the case of the applicant for crossing of Efficiency Bar as per the time schedule laid down in F.R.25, the respondents have explained that the same could not be considered on account of the pendency of OA.NO. 346/92. The applicant was not granted the increments from 1990 onwards because of some periods being not counted for qualifying service for which the matter was agitated through the OA. under reference. The matter of crossing the Efficiency Bar was considered after the OA.NO. 346/92 was decided and the intimation had been given to the applicant as per letter dated 6.4.1994 conveying the recommendations of the DPC. In view of this, the respondents contend that there is no delay on the part of the respondents. As regards subsequent enforcement of the Efficiency Bar to 1991, the respondents have submitted that the applicant had been given adverse remarks in the confidential reports which have been conveyed to him and therefore DPC had not considered him fit for crossing the Efficiency Bar.

The respondents have also added that the DPC has been considering the applicant for crossing of Efficiency Bar every year taking into consideration the reports of the relevant years as per the rules. Based on the averments made in the written statement, the respondents contend that the action taken for enforcement of Efficiency Bar in case of the applicant is in accordance with the rules and therefore the application lacks merit and deserves to be dismissed. The respondents also oppose the application on the plea of being attracted by the principles of resjudicata.

5. The applicant has filed rejoinder reply controverting the submissions of the respondents and reiterating his grounds taken in the original application.

6. The respondents have also filed supplementary written statement in reply to the rejoinder of the applicant reiterating their earlier submissions in the written statement.

7. I have heard the arguments of Shri B.Ranganathan, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents. The respondents were directed to produce the original record of DPC proceedings as well as the Annual Confidential Reports of the relevant years. These records were produced during the hearing and the same have been carefully gone into.

8. Before deliberating on merits on the issue agitated through this OA., I will deal with the plea of the OA. being hit by principles of res-judicata first. The respondents have stated that the applicant has earlier filed OA.NO.426/92 for the same reliefs for

non-grant of increment from 1990 onwards and therefore a fresh OA. cannot be filed for agitating the same issue. The applicant has, however, contested this contention. On consideration of the order dated 29.7.1994 in OA.NO. 426/92 and the reliefs prayed for in the present OA., I am unable to accept the objection raised by the applicant. The issue earlier agitated through OA.NO.426/92 was concerning with-holding of increments from 1990 onwards due to the fact that earlier increments had been wrongly allowed. The matter with regard to holding of increment at Efficiency Bar had not been agitated. In the order there is no mention with regard to Efficiency Bar which was due in 1991. This issue has been cropped only after the respondents have implemented the direction in the order dated 29.7.1994 when the applicant was to be granted increments from 1990 onwards. With these facts in focus, the contention of the respondents that the application is hit by principles of res-judicata is not sustainable.

9. It is admitted fact that Efficiency Bar was enforced at the stage of Rs.1800/- in the scale of Rs.1400-2300 when due in July,1991. The applicant has challenged this enforcement on several grounds as have been detailed earlier above. The first ground of challenge is that the respondents have not acted as per the provisions of F.R.25 in following the time schedule in holding DPC for considering the case of the applicant for crossing of Efficiency Bar and decision for enforcement of Efficiency Bar has been only conveyed in 1994

after several years. The applicant has made this contention mainly on the ground that the DPC has considered his case only in 1994 and therefore the Annual Confidential Reports of the relevant years would have been considered <sup>only</sup> if DPC had taken up the matter at the appropriate time in 1990-91. The respondents have contested this stating that the consideration of the case of the applicant by DPC for crossing of Efficiency Bar could be taken up only in 1994 after the decision in OA.NO. 426/92. After careful consideration of the facts of the case, I am inclined to endorse the submission of the respondents. It is noted that applicant was aggrieved by non-grant of increments from 1990 onwards and for recovery of certain amount which was <sup>alleged to be paid excess</sup> due to wrongly granting of increments. It is understood that there was some dispute with regard to certain periods of leave for counting as qualifying service for earning increment and therefore the dates of the increments of the applicant had been re-determined. The applicant had challenged this action of the respondents through OA.NO. 426/92. Through the order dated 29.7.1994 in this OA., a direction was given to the respondents to grant the increment from 1990 onwards to the applicant. Since the respondents had decided to with-hold the increments earlier, the case of the applicant could be considered for grant of increment and crossing of Efficiency Bar due in July, 1991 only after the matter was decided in favour of the applicant. Keeping these facts in view, the respondents could consider the case of the applicant for crossing the Efficiency Bar only after the order dated 29.7.1994. From the material brought on record, it is noted that after this decision

the case of the applicant had been considered by the DPC and the applicant has been informed of the recommendations of the DPC as per letter dated 6.10.1994. In the background of these facts, the contention raised by the applicant that provisions of F.R. 25 have been violated does not have any merit.

10. The second ground taken by the applicant is that the case of the applicant for crossing Efficiency Bar has not been considered taking into account the Annual Confidential Report of the relevant years. The applicant submits that since he was due to cross Efficiency Bar from July, 1991, the Annual Confidential Report of the earlier three years, i.e. 1988, 1989 and 1990-91 should have been taken into account. But as clear from the letter dated 6.10.1994, the Annual Confidential Reports of the years 1992-93 and 1993-94 have been taken into account. The respondents have denied this and have stated that the reports of the relevant years have only been taken into account. As indicated earlier, the respondents have made available the proceedings of the DPC as well as the Annual Confidential Reports of the relevant years. On going through the DPC proceedings, I find that the submission made by the respondents is factual and for the Efficiency Bar due on 12.7.1991, the reports of the years 1988, 1989 and 1990-91 have been considered by the DPC. Though the contention of the applicant that letter dated 6.10.1994 indicates/adverse entries in the reports of 1992-93 and 1993-94 based on which he has not been allowed to cross Efficiency Bar may appear to have some

substance but the perusal of the DPC proceedings brings out that the DPC had considered the relevant <sup>only</sup> Annual Confidential Reports/while considering the case with reference to Efficiency Bar being due on 12.7.1991. Therefore the contention of the applicant is not tenable.

11. The applicant has also taken a stand that even for the subsequent years, the applicant had been denied crossing of Efficiency Bar. On going through the DPC proceedings, it is noted that the applicant had been regularly considered by the DPC for crossing Efficiency Bar on the subsequent years also right upto 12.7.1996 but the DPC has not found him fit to cross the Efficiency Bar. From the material brought on record, it is noted that the adverse entries have been conveyed to the applicant for the years 1992-93 onwards and the applicant has also brought on record some of the adverse entries conveyed to him. The applicant has also made <sup>that he had represented</sup> some averments/against the adverse entries. But he has <sup>ons being</sup> not made any submission as to representati/considered by the competent authority and whether any final orders have been passed and advised to the applicant. In the absence of any such averments, I am not going to the aspect with reference to conveying of adverse remarks. <sup>of adverse reports</sup> Further, this issue/is not under challenge and therefore <sup>being</sup> no opinion is/expressed with regard to the fitness of the applicant to cross the Efficiency Bar for the subsequent years.

12. The counsel for the applicant strongly pleaded during the hearing that no adverse remarks had been conveyed for the years 1988, 1989 and 1990-91 and therefore the applicant was entitled to cross the Efficiency Bar. On going through the Annual Confidential Reports made available by the respondents, it is noted that adverse remarks had been conveyed to the applicant for the year 1988 which had been received by him. The learned counsel for the applicant during the hearing was asked to explain his statement that no adverse remarks conveyed for the three relevant years. The counsel for the applicant had sought time to check-up the factual position with the applicant and on the next date of hearing the counsel for the applicant has stated that applicant is not in a position to make any specific denial with regard to conveying of the adverse remarks for the report of the year 1988. On going through the proceedings of DPC, it is noted that on consideration of the reports of three relevant years, the applicant has been assessed as 'Average' and therefore not found fit for crossing of Efficiency Bar. When this fact was disclosed to the counsel for the applicant, he argued that since no <sup>adverse</sup> remarks were conveyed to him even average assessment cannot be taken as adverse and operate detrimental for crossing Efficiency Bar. After careful consideration of the proceedings of the DPC, I am not inclined to find any force in the argument of the applicant. It is for the DPC to consider as to the fitness of the applicant based on the assessment of the report of the committee, even if no adverse remarks had been conveyed. In the present case, the

applicant had been issued adverse remarks for the year 1988. Fitness or otherwise based on the Confidential Reports is within the competence of the DPC and a judicial review of such an assessment cannot be done ~~done~~ until and unless it is challenged on the ground that it is not based on the entries in the confidential reports or the DPC has acted in a malafide manner. There are no such averments to this effect. I, therefore, do not find any reasons to interfere with the assessment of the DPC and substitute my own findings by re-assessing the Annual Confidential Reports.

13. The counsel for the applicant also strongly pleaded that the adverse remarks in the Annual Confidential Reports for the various years are mainly motivated on account of irregular attendance of the applicant. Though the applicant admits that he has been irregular in attendance, but he submits that the leave has been sanctioned for the relevant periods. He further argued that if he was irregular in attendance, disciplinary action could be taken against him. But no adverse remarks can be made in the Annual Confidential Reports for irregular attendance. Further, he submitted that at no time he was advised that his irregular attendance for which leave had been sanctioned will reflect in his Annual Confidential Reports. These arguments of the applicant have no substance or force as the applicant has been made aware of his irregular attendance, as will be clear from some of the adverse remarks brought on record. It is for the competent authority to assess

the performance of the applicant and how far the irregular attendance of the applicant is affecting his working. The applicant has been conveyed the adverse remarks and it is for him to make a representation against the ~~same~~ to the competent authority explaining his position for consideration. No interference can be done through a judicial review by taking a view that irregular attendance cannot be a basis for adverse remarks in the Annual Confidential Report.

14. In the result of the above discussion, I find no merit in the OA, and the same is accordingly dismissed. No order as to costs.

*D. S. Baweja*  
(D.S. BAWEJA)  
MEMBER (A)

mrj.