

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH AT HYDERABAD

O.A.No.46 of 1987.

Date of Order : _____

M.V.Ramana Reddy

...Applicant

Versus

1. Collector of Central Excise,
CLS Buildings, Nampally Station Road, Hyd.
2. Central Board of Excise & Customs,
represented by its Secretary,
North Block, New Delhi.
3. Union of India represented by its
Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

...Respondents

Counsel for the Applicant : Shri V.Jogayya Sarma

Counsel for the Respondents : Shri E.Madan Mohan Rao

CORAM:

HONOURABLE SHRI D.SURYA RAO : MEMBER (JUDL)(I)

HONOURABLE SHRI D.K.CHAKRAVORTHY : MEMBER (ADMN)

(Judgment of the Bench dictated by Hon'ble
Shri D.Surya Rao, Member (Judl)).

This is an application filed by retired a
retired superintendent of Central Excise, Nampally Station
Road, Hyderabad, seeking a direction that he should be allowed
to cross the Efficiency Bar in the scale of pay of Rs.650-30-
740-35-810-E8-35-880-40-1000-E8-40-1200 with effect from
7-1-1973 and to grant all consequential benefits of fixation
of salary from 7-1-1973 including the retirement benefits.

The details of the case briefly as follows:-

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2. The applicant joined Central Excise Department as Sub-Inspector of Central Excise in the year 1943. He was promoted as Inspector with effect from 29.08.1957 and confirmed as such on 24.02.1961. Further he was promoted as Superintendent of Central Excise Class-II on 6.1.1968 and confirmed as such on 22.1.1974. Between 1971 and 1975 two disciplinary cases were under investigation. The first enquiry resulted in the issue of a charge sheet on 19.09.1973. The applicant was due for an increment on 7.1.1973 raising his pay in the category of Inspector from Rs.810/- to Rs.845/-. He was not allowed to draw the increment due to pendency of investigation. He was never allowed to cross the efficiency bar. The applicant states that the investigation ended in his favour and he was fully exonerated in the year 1977. He further states that the confirmation which was due and kept in a sealed cover by the Departmental Promotion Committee was opened and he was given confirmation with effect from 22.1.1974. This was communicated to him by a letter dt. 30.9.1977. Despite being exonerated in the investigation and enquiry he was not allowed to cross the efficiency bar. The applicant filed an appeal with the Central Board of Excise & Customs,

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New Delhi on 06-12-1978 against his not being allowed to cross the efficiency bar and consequential benefits. No orders were passed on his appeal. In the year 1980 he filed a writ petition No.5700 of 1980 on the file of the High Court of Andhra Pradesh seeking the following directions (a) to allow him to cross the efficiency bar with effect from 07-01-1973 (b) consequential benefits of fixation of salary from 07-01-1973 and (c) other reliefs.

3. In the said writ petition respondents admitted that the proceedings has ended in his favour but contended that further disciplinary proceedings were initiated on 26-12-1975 which ended in an order of punishment depriving him from the promotion for three years. The applicant states that the respondents over looked the fact that on the date on which the applicant is to cross the efficiency bar viz., 07-01-1973, there was no adverse order against him.

4. It is contended that the Honourable Single Judge felt that the applicant had retired voluntarily on 31-07-1979 and the relief prayed for by the applicant is merely a money claim. Consequently the High Court held that it cannot entertain the money suit and dismissed the same. It was however observed the applicant was not precluded from pursuing any other remedy by way of a suit provided such a remedy is available. The applicant preferred a writ appeal against the order of the Single Judge. The writ appeal was dismissed by an order dated 06-08-1985. He states that after 06-08-1985 he

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could not move the court for a money claim as he was a patient suffering from a severe Heart Attack and he was not informed by his family about the dismissal of his writ appeal till the last week of December, 1986. On being informed, he took legal advice and filed the present application since after passing of the Administrative Tribunals Act, 1985 a suit in the Civil court would not lie.

5. On behalf of the respondents a counter has been filed. A preliminary objection taken is that after the disposal of the writ petition No. 5700/80 on 15-6-83 the applicant was at liberty to file a money suit immediately thereafter. Instead he choose to file writ appeal after two years later. The High Court dismissed the writ appeal on 06-08-1985. Therefore it is contended that there is a delay of $3\frac{1}{2}$ years in filing the present application. Even if the High Court's order dt. 06-08-1985 in the writ appeal is taken into consideration, over a year and half thereafter has lapsed before the applicant approach^{ed} the Tribunal. It is contended that it is improbable that the applicant has not been informed about the writ appeal of the High court. So far as the merits it is admitted that the applicant was not allowed to cross the efficiency bar and to draw the increment raising his pay from Rs. 810/- to Rs. 845/- due to the pendency of disciplinary proceedings. It is also admitted that the applicant's confirmation as superintendent was considered in January, 1974 but deferred due to the pendency of the same disciplinary proceedings. Subsequently he was confirmed as superintendent by an order dt. 30-9-77. 

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and it is ^{however} sought to be contended that the confirmation was erroneous ~~wherein the man was completely exonerated~~ because at the time of issue of the confirmation another disciplinary proceedings was pending and he was not completely exonerated in the 2nd disciplinary action. Further it is stated that the confirmation of the applicant as Superintendent does not mean that he should be allowed to cross the efficiency bar. ~~The statements and processes to be followed in the matter of crossing of efficiency bar~~ Under the instruction of Ministry of Finance O.M.No.I(II)E.III(A/67) a Government servant against whom disciplinary proceedings are pending may not be allowed to cross the efficiency bar till the conclusion of the disciplinary proceedings. In these circumstances the applicant was not allowed to cross the efficiency bar till 1978. In the 2nd disciplinary action he was awarded a censure. The D.P.C. held in 1978 to consider his case for crossing of efficiency bar did not find him fit for crossing the efficiency bar even by 1-1-1978.

6. We have heard the learned counsel for the applicant Shri V.Jogayya Sarma and the learned standing counsel Shri E.Madan Mohan Rao on behalf of the department. ~~Next~~ We will take-up the first question i.e. regarding limitation. ^{The} ~~Applicant was asked~~ to explain as to why he did not file a money suit immediately after the dismissal of the writ petition in the High Court. ^{has} ~~He stated~~ that he

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filed a writ appeal which was pending till 1985. After the disposal of a Writ Appeal on 06-08-1985 he could not move the court because he was seriously suffering due to heart attack. The fact~~TM~~ of the applicant suffering from a heart attack is not denied and all that is stated is that it is improbable that he had no knowledge of the dismissal of the writ appeal. In the circumstances and facts as narrated viz., that he was ailing due to a severe heart condition and since this plea is ~~not~~ specifically rebutted, we are of the view that this is a fit case for condoning the delay so far as the limitation is concerned.

7. We will now take-up the merits of the applicant viz., whether he is entitled to a direction that he should have been permitted to cross the efficiency bar in the scale of Rs.650 - Rs.1200 with effect from 07-01-1973 at the stage from Rs.810 to Rs.835/-. The reason for not allowing him to cross the efficiency bar as disclosed in the counter is that prior to 7-1-1973 an investigation into his conduct was going on and that certain charges were framed against which subsequently gave rise to the issue of a memo dated 19-9-1973. From these facts it is clear that on 7-1-73 there was no charge memo pending against the applicant. According to the Full Bench decision of the Tribunal reported in 1987(3) ATC 174 (Venkat Reddy Vs. Union of India) an employee cannot be denied promotion/right to cross the efficiency bar merely ~~on~~ on the ground of pendency of disciplinary proceedings.

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It was incumbent that a charge memo should have issued on or before the date on which he was due for promotion/right to cross the efficiency bar. Hence merely on the ground that an investigation was in progress it was not competent on the part of the respondent to deny the applicant a right to cross the efficiency bar.

8. In any event it is an admitted fact that the charge memo issued on 19-09-1973 resulted in the exoneration of the applicant. The defence in the counter is that the exoneration took place in the year 1977 and that in the meanwhile on 26-12-1975 a second charge memo issued to the applicant was pending and, therefore, the applicant's case for crossing the efficiency bar in 1973 was not taken up. Obviously in 1975 the commencement of these proceedings/or any punishment imposed as a consequence thereof cannot be a ground to deny the applicant his right to cross the efficiency bar in the year 1973. The question whether the applicant is entitled to cross the efficiency bar in 1973 cannot be linked to or connected with charges framed long thereafter. It follows that the reasons adduced for denying the applicant his right to cross the efficiency bar in 1973 are wholly untenable. He was entitled to be treated as having crossed the efficiency bar raising his pay from Rs.810/- to Rs.835/- with effect from 07-01-1973. In regard to consequential benefits, the applicant is entitled to



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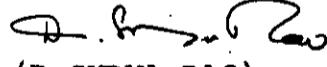
1. The Collector of Central Excise, CLS Buildings, Nampally Station Road, Hyderabad.
2. The Secretary, Central Board of Excise & Customs, North Block, New Delhi.
3. The Secretary, (Union of India) Ministry of Finance, Department of Revenue, North Block, New Delhi.
4. One copy to Mr. V. Jagayya Sarma, Advocate, 5-1-896/6, Putli Bowli, Hyderabad-500 195.
5. One copy to Mr. E. Madan Mohan Rao, Addl. CGSC, CAT, Hyderabad.
6. One copy to Hon'ble Mr. D. K. Chakravorty: Member: (A), CAT, Hyd.
7. One spare copy.

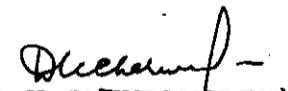
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Ans
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draw all further increments till he reaches the pay stage of Rs.1000/-. Thereafter we find that at the stage raising his pay from Rs.1,000/- to Rs.1,040/-, the applicant is liable to cross the efficiency bar once again. The respondents are directed to look into the records and determine whether he is entitled to cross the efficiency bar at this stage and, if eligible, to grant the increments due thereafter. The applicant is thus entitled to arrears of salary consequent to grant of increments from 7.1.1973 to the date on which he reaches the pay stage of Rs.1,000/-. He will be entitled to arrears thereafter if found fit to cross the efficiency bar after review of his case by the Department as directed above. He is also entitled to all consequential retirement benefits including arrears thereof. The review and the calculations of arrears due are directed to be completed within two months of the date of receipt of this order. With these directions, the application is allowed. There will be no order as to costs.


(D. SURYA RAO)
Member (Judl.)


(D. K. CHAKRAVORTY)
Member (Admn.)

Dated: 29th November, 1989.


DEPUTY REGISTRAR

6/14/89