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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

C.A. No. 474 of 1989.
T.A. No. -

DATE OF DECISION:-

Hyderabad

Between:-

P. Singa Rao - - - - - Petitioner(s)
Shri Duba Mohan Rao, - - - - - Advocate for the
Advocate. - - - - - petitioner(s)

Versus

The Commissioner of Incometax, - - - - - Respondent.
Andhra Pradesh-I, Hyderabad & another
Shri M. Suryanarayana Murthy, - - - - - Advocate for the
Advocate. - - - - - Respondent(s)

CORAM:

THE HON'BLE MR. J. Narasimha Murthy : Member (Judl).

THE HON'BLE MR. R. Balasubramanian : Member (Admn).

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunals ?
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)


HJNM
M(J)


HRBS
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.474 of 1989.

Date of Judgment 24-4-1990

P.Singa Rao

.. Applicant

Versus

The Commissioner of
Incometax,
Andhra Pradesh-I,
Hyderabad
& another

.. Respondents

Counsel for the Applicant : Shri Duba Mohan Rao,
Advocate.

Counsel for the Respondents : Shri M.Suryanarayana Murthy
Advocate.

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member (Judl).

Hon'ble Shri R.Balasubramanian : Member (Admn).

I Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn) I

This is an application filed under section 19

of the Administrative Tribunals Act by Shri P.Singa Rao
against the Commissioner of Incometax, Andhra Pradesh-I,
Hyderabad and another.

2. The applicant joined the Incometax Department
in May, 1971 as Upper Division Clerk and had gradually
risen to the post of Incometax Officer. He retired
from service on superannuation on 31.8.84. The
applicant was confirmed as Incometax Officer with effect
from 1.12.83 by an order dated 18.2.84. The applicant
contends that he was due to cross efficiency bar

from 1.4.82 (In the order dated 19.6.87 which denied him the crossing of efficiency bar the date is indicated as 1.12.84. Obviously this is wrong because the official retired from service on 31.8.84 itself. Later, in the counter the respondent stated that the date he was due to cross efficiency bar was 1.4.83 and not 1.4.82 as claimed by the applicant). He was served a charge-memo dated 29.8.84 which ultimately resulted in a major penalty of withholding his entire pension. Shri P. Singa Rao had filed a separate O.A.No.509/87 before this Tribunal.

3. The applicant is aggrieved that the orders preventing him from crossing efficiency bar were issued only in June, 1987 much after his retirement and in respect of the date 1.4.83. He is also aggrieved that his representations had been disposed of in a cursory manner. He has prayed that he be allowed to cross efficiency bar from 1.4.82.

4. The respondents have opposed the prayer. As stated in the previous para, they had contended that he was due to cross efficiency bar from 1.4.83 and not from 1.4.82. Though the applicant was confirmed with effect from 1.12.83 by an order dated 18.2.84 they could not grant him the efficiency bar with effect from 1.4.83 because the D.P.C. that considered his case for crossing the efficiency bar from 1.4.83 was held only on 22.1.85 by which time he had already retired and the major penalty

proceedings were pending against him. His case for crossing the efficiency bar was again reviewed on 8.4.86 and the proceedings were kept in a sealed cover. On 1.6.87 the D.P.C. again reviewed the applicant's case and this time they opened the sealed cover and found that the applicant could not be allowed to cross the efficiency bar as the disciplinary proceedings had been finalised. They have therefore opposed the prayer.

5. We find contradictions initially about the date on which he was due to cross efficiency bar. Ignoring the date wrongly mentioned as 1.12.84, the contention between the applicant and the respondent is that the former claims that he was due to cross efficiency bar from 1.4.82 while the latter contends that it should be only from 1.4.83. We find from the D.O. letter C.R.No.36(4)Admn/87-88 dated 11.1.88 from the Inspecting Asst. Commissioner of Incometax, Vijaywada to the Inspecting Asst. Commissioner of Incometax(Vigilance), Hyderabad that the applicant was due to cross the stage of Rs.1,000/- on 1.4.83. We have examined the D.P.C. records. We find from the minutes of the D.P.C. meeting held on 22.1.85 that Shri P.Singa Rao was due to cross efficiency bar from 1.4.84. This date is repeated in the subsequent review held on 8.4.86 as well as the review of 1.6.87. In the last review held on 1.6.87 it had been remarked:

"Sealed cover is opened. Not fit as the charges against him have been found proved on enquiry under Rule 14 of the CCS(CCA) Rules and the entire pension has been withheld."

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From the foregoing remark it is seen that he was not considered fit on account of the major penalty inflicted on him. It can therefore be presumed that he was otherwise fit. It is also to be borne in mind in this context that he was confirmed in the grade of Incometax Officer with effect from 1.12.83, a date later than the one on which he was due to cross the efficiency bar i.e., 1.4.83. We are also surprised at the leisurely manner in which the Department had been conducting D.P.Cs for efficiency bar. According to the instructions on the subject contained in Govt. of India, Department of Personnel's O.M.No.29014/1/76-Ett(A) dated 18.10.76, D.P.Cs for crossing efficiency bar must be held regularly every year in the months of January, April, July and October covering the corresponding ^{quarters} ~~periods~~. The purpose of that order is that the D.P.Cs should be held before the officers or staff are due to cross efficiency bar. The Hon'ble Supreme Court had also remarked:

"In fairness to a public servant, it is true, the order preventing him from crossing the efficiency bar should be passed either before the appointed date, or shortly thereafter [para 4 of the judgment reported vide S.L. Vol.10 1974(1) P.595].

/R

Here is a case where the applicant was due to cross efficiency bar on 1.4.83 and the first sitting of the DPC itself was on 22.1.85 after the date of his retirement. The delay on the part of the Department is quite bad.

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Nb

6. The major penalty case against which the applicant had filed another O.A. No. 509/87 has also been settled now. The applicant had succeeded in that O.A. and the punishment order had been set aside.

7. In view of the above, we feel that the official should be allowed to cross ^{the} efficiency bar with effect from 1.4.83. All consequential benefits that flow from such crossing of efficiency bar are also due to the applicant.

8. In the result the application succeeds with no order as to costs. The benefits conferred on the applicant by this judgment should be made available to him within a period of three months from the date of this order.

MS
(J. NARASIMHA MURTHY)

Member (Judl).

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn.)

Dated

24th April 90

Per *D. R. Rao*
DEPUTY REGISTRAR (J) 304/4/2

TO:

1. The Commissioner of Income-Tax, Andhra Pradesh-I, 7th floor, Aayakar Bhawan, Basheer Bagh, Hyderabad.
2. The Secretary, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. One copy to Mr. Duba Mohan Rao, Advocate, 69/3-RT, Vijayanagar colony, Hyderabad.
4. One copy to Mr. M. Suryanarayana Murthy, Advocate, SC for Income TAX, CAT., Hyderabad.
5. One copy to Hon'ble Mr. R. Balasubramanian: Member: (A), CAT., Hyd.
6. One spare copy.

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Subba Rao
3/14/90