

(30)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A. No. 465/90.

Date of Judgment 27/12/1991.

Mohammad Zahur

.. Applicant

Vs.

1. The Telecom. Dist.
Engineer,
Warangal-506050.
2. The Chief General Manager,
Telecommunications, A.P.,
Hyderabad-500001.
3. The Director-General,
Telecommunications,
representing Union of India,
New Delhi-110001. .. Respondents

Counsel for the Applicant : Shri C. Suryanarayana

Counsel for the Respondents: Shri N.R. Devaraj, Addl. CGSC

CORAM:

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

Hon'ble Shri T. Chandrasekhar Reddy : Member(J)

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

This application has been filed by Shri Mohammad Zahur under section 19 of the Administrative Tribunals Act, 1985 against the Telecom. Dist. Engineer, Warangal-506050 and 2 others, seeking a direction from the Tribunal to declare that he is entitled to cross the Efficiency Bar (E.B. for short) from the stage of Rs.1150/- p.m. to the stage of Rs.1180/- p.m. in the scale of Rs.975-25-1150-EB-30-1660 w.e.f. 1.4.89.

Arrears of salary, confirmation, protection of seniority etc., are also sought for notwithstanding the institution of disciplinary proceedings initiated in January, 1990 under rule 14 of the C.C.S. (C.C.A.) Rules, 1965.

2. The applicant was appointed as a Telecom. Office Assistant from 1.4.81. However, his services were terminated by an order dated 17.11.84. The termination order was challenged through

W.P.No.68/85 in the High Court of Andhra Pradesh and the same was dealt with as T.A.No.839/86 by this Tribunal. The judgment in that T.A. was delivered on 15.4.88. While setting aside the order of termination dated 17.11.84 this Bench directed that the applicant should be reinstated to duty and that he would be entitled to all consequential benefits such as treatment of the period between the date of termination and the date of reinstatement as duty. Subsequently, by an order dated 10.5.88 the applicant was reinstated w.e.f. 4.5.88. Not content with the action of the respondents the applicant filed M.A.No.339/88 in the said T.A. and this Bench passed an order dated 5.8.88 in the M.A. (A.4) granting six weeks' time to the respondents to comply with the order of the Tribunal in the T.A. While so, by his letter dated 10.5.89 (A.6) the applicant represented to the 1st respondent that he was due to cross the E.B. from the Rs.1150/- stage to the Rs.1180/- stage w.e.f. 1.4.89. He gave a reminder on 8.12.89 (A.7). The applicant did not get any response. The 1st respondent has now instituted a disciplinary case against the applicant under rule 14 of the C.C.S.(C.C.A.) Rules, 1965 vide his memo dated 12.12.89 and served on the applicant on 29.1.90. It is alleged that on the ^{given in} plea of this charge-sheet the consequential benefits ~~to~~ ⁱⁿ the judgment of this Tribunal in its order dated 15.4.88 are being withheld. Hence, he has filed this application with a prayer that he be allowed to cross the E.B. w.e.f. 1.4.89 and also for orders on confirmation, protection of seniority etc.

3. The respondents have filed a counter affidavit and oppose the application. It is admitted that he was due to cross the E.B. w.e.f. 1.4.89 but since a charge-sheet had been issued on 25.1.90 on the charge that he obtained the job by fraudulent means, the applicant could not be permitted to cross the E.B. from the due date. They have followed the sealed cover procedure as contemplated under F.R.25. It is also stated

that the confirmation case of the applicant is under process and the same could not be completed for want of the C.R. file which had to be re-built pertaining to the period prior to termination of his service from 17.11.84.

4. We have examined the case and heard the learned counsels for the applicant and the respondents. From the application it is seen that consequent to the judgment of this Tribunal in the T.A. the applicant ~~has~~ got all the benefits except crossing of E.B. and confirmation. Regarding crossing of E.B. it is an admitted fact that he was due to cross E.B. on 1.4.88 F.R.25 deals with granting of E.B. The rule states that the increment next above the bar shall not be given to a Govt. servant without the specific sanction of the authority empowered to withhold increments under rule 24 (i.e., the authority competent to withhold increments) or the relevant disciplinary rules applicable to the Govt. servant or of another authority whom the President may, by general or special order, authorise in this behalf. Govt. of India's Order (1) under the rule lays down the procedure for consideration of cases for crossing of E.B. According to this, the case for crossing of E.B. should be considered by a committee which shall be the same as the Departmental Promotion Committee confirmation of Govt. servants. The order further states that the Committee should meet every quarter in advance (emphasis supplied) to decide the E.B. cases. This is with a view to ensure that persons eligible to cross E.B. are allowed to do so if found fit well in time without any delay.

5. In this case, we find that the Committee obviously did not meet before 25.1.90 on which date a charge-sheet had been given to the applicant so much so on the date they met they had before them a charge-sheet dated 25.1.89 and they had to take recourse to the sealed cover proce

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as enjoined in F.R.25. At the relevant point of time there was no charge-sheet against the applicant and if the respondents had convened a D.P.C. meeting as required under F.R.25 the applicant's case would not have led to the sealed cover procedure. The Hon'ble Supreme Court had observed in the case of Padam Singh Jhina Vs. Union of India [1974(1) SLR 595]

"Our attention has not been invited to any service rule governing the crossing of efficiency bar and requiring that an order in this behalf must precede the date on which the public servant is to cross the efficiency bar. 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."

That judgment was dated 14.8.67 at which point of time the instruction of the Dept. of Personnel & Training O.M.No.29014/2/88-Ests(A) dated 30.3.89 [G.O.I. Instruction (1)] requiring D.P.Cs for efficiency bar ^{to} should be conducted well in advance of the due dates, was ^{not} available. In the face of the observations of the Hon'ble Supreme Court and the order dated 30.3.89 we realise that the respondents have badly failed to conduct a D.P.C. at the appropriate time in which case the need for sealed cover procedure could have been obviated. Under these circumstances, we have to hold that the applicant was in the free at the relevant time without any charge-sheet whatsoever and, therefore, direct the respondents to open the sealed cover and, if found fit, the applicant should be allowed to cross the efficiency bar w.e.f. 1.4.89. This direction should be carried out within two months of receipt of this order. In the event of his being allowed to cross the efficiency bar he should also be paid all arrears before the stipulated date.

6. As regards the other prayer relating to confirmation, it will depend on the outcome of the charge-sheet. We are, therefore, not inclined to interfere in this case in view of

the pendency of the charge-sheet and things should be allowed to take their own course in accordance with the rules and procedures of the Department.

7. The application is thus disposed of with no order as to costs.

R.Balasubramanian

(R.Balasubramanian)
Member(A).

T.Chandrasekhar Reddy

(T.Chandrasekhar Reddy)
Member(J).

Dated 27th December, 1991.

Dy. Registrar (Judl.)

83/18/91

Copy to:-

1. The Telecom, District Engineer, Warangal-506050.
2. The Chief General Manager, Telecommunications, A.P., Hyderabad-500001.
3. The Director- General, Telecommunications, representing Union of India, New Delhi-110001.
4. One copy to Shri. C.Suryanaryana Advocate, 1-2-593/50, Sri Nilayam, Sri Sri Marg, Gagan Mahal, Hyd-bad-500029.
5. One copy to Shri. N.R.Devraj, Addl.CGSC CAT, Hyd-bad.
6. One spare copy.
7. Copy to All Reporter(s) as per standard list of CAT, Hyd
Rsm/-

3/1/91
TYPED BY

O. A. 465/90
COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

To be typed
AND

THE HON'BLE MR.

Name of V.C.

AND

M(J)

THE HON'BLE MR. R. BALASURRAMANTAN: M(A)

AND

THE HON'BLE MR. T. Chandra Sekhre Reddy M(J)

DATED: 27/12/1991

ORDER/ JUDGMENT:

M.A./R.A./C.R. No.

O.A.No.

in
465/90

T.A. No.

(W.P. No.)

Admitted and Interim directions
Issued. Central Administrative Tribunal
DESPATCH
13492

Allowd.

Disposed of with directions

Hyderabad Bench.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

Order as to costs.

pvm

*Q. 31
31/12/91*