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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

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ORIGINAL APPLICATION NO. 287/92

DATE OF JUDGEMENT: 31-3-1993.

Between

K. Ananda Rao

.. Applicant

and

1. Director General (Telecommunications)  
New Delhi. 1.

2. The General Manager,  
Hyderabad Telecom District  
Hyderabad  
Suryalok Complex, Gunfoundary  
Hyderabad

.. Respondents.

Counsel for the Applicant

: Mr JV Lakshmana Rao

Counsel for the Respondents

: Mr NR Devraj, Sr. CGSC

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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JUDGEMENT

This is an application filed under Section 19 of the Central Administrative Tribunals Act, to direct the respondents to expunge the adverse entries that are made in the ACR of the applicant pertaining to the years 1980-81 and 1981-82/1984-85 and further direct the respondents to sanction EB increment from 1.5.1984 and pay arrears due from 1.5.84 and also direct the respondents to cancel the order dated 25.10.88 for recovery of alleged excess payment and further to direct the respondents to refund the amounts that are already recovered.

2. The facts giving rise to this OA in brief, may be stated as follows:

3. The applicant was originally appointed as Engineering Supervisor (Telegraphs) in Telecommunications Department with effect from 17.7.1966. He was promoted as Assistant Engineering on passing the relevant examination that was held in the year 1974 and had been working as Assistant Engineer with effect from 1.5.78.

4. For the years 1980-81 and 1981-82, certain adverse remarks were communicated to the applicant by the 2nd respondent vide his letter dated 16.4.85. An appeal to the 2nd respondent was preferred by the applicant to expunge the said adverse remarks that were entered in the ACRs pertaining to the period 1980-82.

5. The applicant was due for EB increment on 1.5.84. According to the applicant, the EB increment due on 1.5.84 along with allowances and the increment of 1.5.85 was sanctioned after a delay of more than 12 months. The appeal of the applicant to expunge the adverse entries recorded for the years 1980-81 and 1981-82 that was sent to the Director General (Telecomms.), New Delhi was disposed on 19.3.90 by rejecting the same after a delay of more than 10 years. According to the applicant, the said rejection order was not communicated to him and he had noticed of the said rejection order of the appellate authority only on 3.2.92 during the course of hearing of OA 716/89 that was filed by the applicant before this Tribunal. A sum of Rs.340/- per month was ordered to be recovered vide letter No.PS/Misc/88-89 Dated 25-10-88 by the respondents from the salary of the applicant on the ground that the applicant by mistake had been sanctioned EB increment w.e.f. 1.5.84. According to the applicant, the EB increment that fell due on 1/5/84

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had been sanctioned to him along with allowances and so the said recovery order dated 25.10.88 is ~~arbitrary~~ arbitrary and illegal. According to the applicant, the adverse remarks for the period 1980-81 and 1981-82 cannot be sustained. So, the present OA is filed by the applicant for expunging the adverse remarks and for cancelling the letter of the respondents dated 25.10.88 effecting recovery of alleged excess payment as already indicated above.

6. Counter is filed by the respondents opposing this OA.

7. It is not in dispute that certain adverse remarks entered in the ACR of the applicant for the periods 1980-81 and 1981-82 and the same had been communicated to the applicant. It is also not in dispute prior to 1984 that the applicant had preferred an appeal for expunging the said adverse remarks to the Director General (Telecom) New Delhi. It is the plea of the applicant that the rejection order dated 19.3.90 passed by the appellate authority i.e. Director General (Telecom) New Delhi refusing to expunge the adverse remarks was not communicated to him and that, he had knowledge of the same only on 3.2.92 during the course of hearing of the OA 716/89, that was filed by the applicant before this Tribunal. The said OA 716/89 was filed by the applicant against the respondents herein to set aside the order dated 25.10.88 for recovery of alleged excess payment and further to direct the respondents to sanction EB increment of Rs.35 that became due to the applicant w.e.f. 1.5.84.

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8. While hearing the said OA716/89, it became evident that the order dated 19.3.90 had been passed by the competent authority i.e. Director General(Telecom)New Delhi informing the applicant that his appeal for expunging the adverse remarks in the ACRs pertaining to the periods 1980-81 and 1981-82 was considered and the same had been rejected. In view of the orders dated 19.3.90, the said OA was dismissed as infructuous after giving certain directions. It is only after disposal of the said OA that the present OA is filed for the said reliefs.

9. One of the arguments advanced on behalf of the respondents is that the relief to expunge the adverse remarks cannot be entertained as the said relief has already become time-barred. But, according to the learned counsel for the applicant, the <sup>present</sup> OA is well within time, as the applicant had knowledge of the said orders dated 19.3.90 passed by the Director General (Telecom)New Delhi, rejecting the appeal of the applicant ~~only on 3.2.92~~ when OA 716/89 filed by the applicant was taken up for hearing. To ascertain the truth or otherwise of the statement made by the applicant that he had knowledge of the said rejection order on 3.2.92, we have perused the file relating to the applicant. The perusal of the file indicates that the said order dated 19.3.90 passed by the Director General(Telecom)New Delhi had been communicated to the applicant on 3.4.90 under ~~xxxxxx~~ clear acknowledgement of the applicant. So, even though the applicant had been communicated the orders of the respondent dated 19.3.90 on 3.4.90, the applicant had not chosen to ~~xxxxxx~~ approach this Tribunal within time. As a matter of fact, under Section 21 of the Administrative Tribunals Act,

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the applicant should have approached this Tribunal within one year from 3.4.90 as against the rejection order of the respondents dated 19.3.90<sup>refusing</sup> to expunge the adverse remarks. So, the applicant should have approached this Tribunal before 3.4.91 questioning the said order of the Appellate Authority. Admittedly, this OA is filed on 19.3.92. There is more than one year delay on the part of the applicant in approaching this Tribunal questioning the order of rejection passed by the respondents<sup>refusing</sup> to expunge the adverse remarks. So, in view of this position, there can be least difficulty to hold that the present OA is barred by time, and hence, the prayer of the applicant for expunging the adverse remarks has got to be rejected.

10. The record discloses that the Departmental Promotion Committee had met on 5.3.84 to consider the case of the applicant for release of EB increment that became due to the applicant on 1.5.84. Even though the Departmental Promotion Committee met on 5.3.84, the Committee decided to keep the case of the applicant pending for release of EB increment as the applicant had preferred an appeal against the adverse entries in the ACR pertaining to the periods 1980-81 and 1981-82 to the Director General (Telecom) New Delhi and the same was pending. So, no orders had been passed by the respondents with regard to release of EB increment that became due to the applicant on 1.5.84. According to the applicant, certain adverse remarks had also been recorded in the ACRs of the applicant for the period 1984-85 and the same has no relevance to the present case since the applicant had been permitted to cross the EB with effect from 1.5.85. As we had not dealt in this OA,

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the validity of the adverse remarks that are <sup>recorded</sup> as against the applicant for the year 1984-85, the applicant will be at liberty to file a fresh OA questioning the validity of the adverse remarks for the year 1984-85, if so advised on the same cause of action the present OA is filed.

11. A perusal of the record ~~also~~ discloses that the case of the applicant had been again reviewed by the Departmental Promotion Committee on 6.6.85 and the Committee permitted the applicant to draw EB increment w.e.f. 1.5.85. Due to oversight, the EB from 1.5.84 had also been drawn w.e.f. 1.5.85, thus resulting overpayment to the applicant amounting to Rs.6,791/-. Since the audit had pointed out this overpayment, the same had been ordered to be recovered from the applicant at the rate of Rs.340/- per month and the last instalment being Rs.331/-. As the <sup>that had become due to the applicant on</sup> case of the release of increment at the EB stage 1.5.84 ~~for the applicant~~ was kept pending, since the appeal submitted by the applicant in respect of adverse entries in the ACRs for the period 1980-81 and 1981-82 was ~~also~~ pending with Department of Telecom, New Delhi, the applicant had not been informed that the EB due on 1.5.84 had been released to him. ~~xxxxx~~ As already pointed out, the EB increment that actually became due to the applicant on 1.5.84 had been released to him w.e.f. 1.5.85. So, in view of this position, we are unable to agree with the contention of the learned counsel for the applicant that the EB increment in favour of the applicant should be deemed to have been released w.e.f. 1.5.84.

12. We may repeat when the Departmental promotion Committee met on 5.3.84, no decision was taken with regard to release of EB increment that fell due to the applicant on 1.5.84. As a matter of fact, till today also, a decision had not been taken to release the EB increment that became due to the applicant on 1.5.84. So, we have no hesitation

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to come to the conclusion that the increment that has been released on 1.5.85 to the applicant with effect from 1.5.84 is purely due to oversight and this has resulted in overpayment and hence, the applicant is liable to refund the excess payment. So the action of the respondents to recover the said overpayment of Rs.6,791, salary of from the applicant as per their letter dated 25.10.88 is certainly valid and the said action of the respondents is liable to be confirmed.

13. Even though we have held that the adverse remarks of the applicant in his ACRs pertaining to the periods 1980-81 and 1981-82 are not liable to be expunged, in view of the fact that the release of EB increment that was due to the applicant as on 1.5.84, had not been considered by the Departmental Promotion Committee a direction is liable to be given to the respondents to consider the case of the applicant for release of EB increment that became due on 1.5.84 and take appropriate decision.

14. In the result, the relief the applicant seeks for expunging the adverse remarks entered in the ACRs for the periods 1980-81 and 1981-82 is hereby rejected. The prayer of the applicant to cancel the order dated 25.10.88 for recovery of the amount is also dismissed. But the respondents are hereby directed to consider the case of the applicant for release of EB increment that fell due on 1.5.84 in accordance with rules and regulations and pass appropriate orders. The consideration

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of the applicant's case for release of EB increment to be complied by the respondents within 3 months from the date of communication of this order. The interim orders dated 16.4.92 to stay recovery of excess payment from the applicant by the respondents is hereby vacated. OA is disposed of accordingly. Parties shall bear their own costs.

T - Chandrasekhara Reddy  
(T.CHANDRASEKHARA REDDY)  
Member(Judl.)

Dated: 31-3-1993

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31/3/93  
Deputy Registrar (J)

To

1. The Director General (Telecommunications), New Delhi.
2. The General Manager, Hyderabad Telecom Dist, Hyderabad  
Suryalok Complex, Gunfoundry, Hyderabad.
3. One copy to Mr. J.V. Lakshmana Rao, Advocate  
Flat No. 301, Balaji Towers, New Bakaram, Hyderabad.
4. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd.
5. One spare copy.

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TYPED BY  COMPARED BY  
CHECKED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

AND

THE HON'BLE MR. R. BALASUBRAMANIAN :  
MEMBER (ADMN)

AND

THE HON'BLE MR. T. CHANDRASEKHAR  
REDDY : MEMBER (JUDL)

DATED: 31 - 3 - 1993

ORDER/JUDGMENT

R.P./-C.P/M.A. No.

in

O.A. No. 287/92

T.A. No.

(W.P. No

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Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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