

(36)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.44/93

Date of Order: 25.6.93

BETWEEN :

M.Sitanna Naidu

.. Applicant.

A N D

1. Post Master General,  
Vijayawada Region,  
Vijayawada - 520 002.

2. Superintendent of Post  
Offices, Machilipatnam Division,  
Machilipatnam - 521 001.

.. Respondents.

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Counsel for the Applicant

.. Mr.TPV.SubbaRayudu

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM:

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

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28/09/93

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Order of the Single Member Bench delivered by  
Hon'ble Shri T. Chandrasekhara Reddy, Member(Judl.)

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This is an application filed under Section 19 of the Administrative Tribunals Act, to direct the respondents to restore the efficiency bar from the original date 1.11.1988 with all consequential benefits of pay and allowances and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief are as follows:

3. The applicant was Sub-Postmaster at Machilipatnam. He retired from service on 28.2.1991. The pay scale of the applicant was Rs.1400-40-1800-EB-50-2300.

4. In a departmental enquiry, the applicant was imposed with the penalty of withholding one ~~x~~ increment for six months without cumulative effect from 1.11.1988 on which date also, the applicant was to be considered to cross the efficiency bar. The Departmental Promotion Committee met in 1988, and did not recommend the case of the applicant, due to the penalty order that had been passed against the applicant. The DPC met for a second time on 23.6.1990 and allowed the applicant to cross Efficiency Bar w.e.f. 1.5.1990. It is the grievance of the applicant that the applicant should have been considered to cross the EB w.e.f. 1.11.1988, even though the said penalty order had been passed against him and that, his pay ought to have been raised to 1850 w.e.f. 1.11.1988 and that, he is entitled for all consequential benefits w.e.f. 1.5.1989 after he ~~was~~ allowed to cross the efficiency bar on 1.11.1988 and after the applicant underwent the said penalty that had been imposed on him.

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5. Under FR 25, a time schedule has been given for the D.P.C. for consideration of cases for crossing of the efficiency bar. In the case of the applicant, he admittedly, was due to cross efficiency bar on 1.11.1988 and as per the schedule, his case ~~xxxx~~ should have been considered by the D.P.C. in the month of October, 1988, by which date, the penalty order imposing punishment by postponing the increment without cumulative effect, had been passed. So, the DPC in the month of October, 1988, should have considered the case of the applicant to cross efficiency bar w.e.f. 1.11.1988 after taking into consideration, the required material including the penalty order passed on the applicant and if the applicant was found fit, the applicant should have been permitted to cross efficiency bar w.e.f. 1.11.1988. After thus permitting the applicant to cross efficiency bar w.e.f. 1.11.1988, the said penalty imposed on the applicant should have been enforced. A perusal of the DPC proceedings indicate that such a procedure had not been followed. As a matter of fact, the applicant had not been considered to cross efficiency bar w.e.f. 1.11.1988 merely due to the fact that the said penalty order had been imposed against him prior to 1.11.1988. In not considering the case of the applicant <sup>w.e.f. 1-11-88</sup> ~~not~~ to cross the EB due to the said penalty order that has been passed against him does not appear correct. In this context, we may refer to para 5 FR 25 Page 104 & 105 in Swamy's compilation of FRSR with the heading "when penalty of withholding of increment imposed while official held up at efficiency bar stage" which is as under:

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"It has been decided in consultation with the Department of Personnel and the Ministry of Finance that in the type of case referred to, the case of the Government servant for crossing the efficiency bar should be reviewed on a date immediately following the date of the order of penalty and if he is found fit to cross the efficiency bar, the stage at which he would draw pay above the efficiency bar should also be decided. Once it is done, five increments commencing from the date of next increment after being allowed to cross the efficiency bar can be withheld and the penalty thus enforced. In case he is not found fit to cross the efficiency bar from a date immediately after the conclusion of the disciplinary proceedings, his case should be reviewed with reference to every subsequent anniversary of the original due date until he is found fit to cross the efficiency bar. Thereafter the stage at which he should draw the pay above efficiency bar should also be decided and the penalty order enforced as explained above."

Further in a concrete case, it has also been illustrated under the same para as follows:

"An official was not allowed to cross the EB with effect from 1.2.1973, on account of the pendency of disciplinary proceedings. As a result of the disciplinary proceedings, punishment order was issued on the 19th April, 1977, imposing the penalty of withholding of increment for a period of one year without cumulative effect. As a result of review of his case for crossing the efficiency bar, he was allowed to do so with effect from 1.2.1978, releasing the earlier increments. In this case, the proper course would be to fix the pay on 1.2.1978, giving the benefit of five earlier increments which were due on 1.2.1973; 1.2.1974; 1.2.1975; 1.2.1976; 1.2.1977; and the 6th increment which was due on 1.2.1978, should be withheld for one year. Thereafter, the withheld increment should be released with effect from 1.2.1979, in addition to the increment which was due on that date."

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So, the said paras under FR 25 also support the view, that the applicant should have been considered to cross the EB on 1.11.1988 and as this has not been done, this OA is liable to be allowed with appropriate directions to the respondents.

6. In the result, the respondents are directed to consider the case of the applicant to cross the EB w.e.f. 1.11.1988 in accordance with law after constituting the review DPC and if the applicant is found fit to cross the efficiency bar on 1.11.1988, to sanction all consequential benefits w.e.f. 1.11.1988 after enforcing the penalty that is imposed on the applicant. The arrears, if any for which the applicant may be entitled including the pensionary benefits shall be restricted for a period of one year prior to the filing of this OA i.e. 11.1.1992. The directions in this OA shall be complied by the respondents within a period of 4 months from the date of receipt of this order.

7. The parties shall bear their own costs.

T - Chandrasekhar  
(T.CHANDRASEKHARA REDDY)  
Member(Judl.)

Dated: 25th June, 1993

(Dictated in the Open court)

8/19/93  
Deputy Registrar(J)

sd/mvl  
To

1. The Postmaster General, Vijayawada Region, Vijayawada-2.
2. The Superintendent of Post Offices, Machilipatnam Division, Machilipatnam-1.
3. One copy to Mr.T.P.V.Subbarayudu, Advocate Block - 5x15 Flat-5, Krupa Apartments, Anand Bagh Safilguda Hyderabad.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTY ; MEMBER (AD)

AND

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

AND

THE HON'BLE MR. P. T. TIRUVENGADAM ; M(A)

Dated : 25-6-1993

ORDER/JUDGMENT:

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

in

O.A.No.

T.A.No.

(w.p.)

Admitted and Interim directions  
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/ Ordered

No order as to costs.

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Central Administrative Tribunal  
DESPATCH  
22 JUL 1993  
HYDERABAD BENCH.