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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 19.10.1993.

OA 103/93

NARESH CHAND MATHUR ... APPLICANT.

v/s.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).  
HON'BLE MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI K.S. SHARMA.

For the Respondents ... SHRI V.S. GURJAR.

PER HON'BLE MR. O.P. SHARMA, MEMBER (A).

The applicant, Naresh Chand Mathur, has filed this application u/s 19 of the Administrative Tribunals Act, 1985, praying that the applicant may be allowed to cross Efficiency Bar from 27.9.1983, thereby raising his pay from Rs.310/- to Rs.845/- by quashing the orders dated 15.4.85 (Annexure A-6), 27.1.86 (Annexure A-8) and 17.12.92 (Annexure A-1). He has further prayed that the arrears may be allowed from the due date alongwith interest @ 18%.

2. The learned counsel for the respondents has taken certain preliminary objections to the application, which may be dealt with first. He has argued that the application is time barred for the reason that the applicant has sought quashing of orders dated 15.4.85 (Annexure A-6) and 27.1.86 (Annexure A-8). The subject matter of the application is the respondents' refusal to grant crossing of Efficiency Bar (EB) to the applicant from 27.9.83, the date from which he

was originally due to cross EB. By letter dated 17.12.92 (Annexure A-1), the Department of Telecommunications, Govt. of India, conveyed that appeal preferred by the applicant on the subject of crossing of EB has been examined by the competent authority but it is regretted that it has been rejected. The final result of the examination of the applicant's appeal was conveyed by this letter. Thus, the applicant had a fresh cause of action from this date. If the relief <sup>claimed is</sup> reckoned from this date, the application is well within time. It is true that by this OA the applicant has also sought quashing of Annexures A-6 and A-8, which are of 1985 and 1986, but the earlier refusal has now crystallised in or merged with the refusal by communication dated 17.12.92 (Annexure A-1). We, therefore, reject the objection of the respondents regarding limitation.

3. The next objection taken by the learned counsel for the respondents is that the Hon'ble Supreme Court have held, in the case of the Administrator of Dadra and Nagar Haveli V/s. H.P. Vora (1993 (1) SLJ 27 SC), that the Tribunal cannot act as an Administrative Authority by calling upon the department to clear the Efficiency Bar of the applicant in that case and to grant increments and other monetary benefits arising from the crossing of the EB. It is accepted that the Tribunal cannot act as an Administrative Authority and sit in the chair of the Administrative Authorities to take decision on administrative matters including crossing of EB. But there is no bar placed by this judgement of the Hon'ble Supreme Court on directing the department to reconsider a matter and to take a decision on merits after ignoring the material which is irrelevant for considering the case of the applicant for crossing of EB. This objection is also therefore untenable.

4. We now come to the merits of the case. The applicant's case is that he was due to cross EB on 27.9.83 and a charge-sheet was served on him on 11.9.84. On or before the date on which the applicant was due to cross EB, no DPC was held but it was held later. The issue of the charge-sheet seems to have been influenced the respondents in not allowing the applicant to cross EB w.e.f. 27.9.83, although the charge-sheet was issued much later than the date on which he was due to cross EB. The matter rising out of the charge-sheet issued on 11.9.84 was also closed by Annexure A-17, which is order of exoneration dated 21.1.90. The learned counsel for the applicant has submitted that any development subsequent to the date on which the applicant was due to cross the EB cannot influence the judgement of the DPC in the matter of allowing the applicant to cross the EB. He has also drawn attention to Annexures A-15 and A-16, which are letters dated 21.12.88 and 16.1.90 from the Govt. of India, Department of Telecommunications, clarifying the position of crossing of EB with regard to the case of the applicant. The clarification is to the effect that where the holding of the DPC for crossing of EB is delayed due to some administrative reasons and the meeting is held after a lapse of some time, the records only upto the original date on which crossing of EB was due are to be taken into account. In Annexure A-15 it has further been clarified that in the applicant's case the DPC should have actually been held in July, 1983 when there was no disciplinary case pending against him. It has further been clarified in the said communication that he can be allowed crossing of EB if found fit on the basis of the records that would have been available upto July, 1983. Thus, according to the learned counsel for the applicant, the Department of Telecommunications have themselves accepted that denial of crossing of EB to the

applicant on the basis of disciplinary matter, which arose subsequently, was unjustified.

5. The respondents in their reply have referred to the disciplinary matters against the applicant. These culminated in the issue of two charge-sheets, one on 11.9.84 and the other on 22.4.85. It was because of these matters that the applicant was not considered fit by the DPC to cross EB on the date on which the DPC met for considering the case of the applicant, namely 24.8.84. The applicant's case was again considered by the DPC on 13.2.85 and once again the recommendations of the DPC were kept in a sealed cover. A further DPC was held on 24.1.86 and because of a minor penalty imposed on the applicant by order dated 3.10.85, the DPC did not find the applicant fit to cross EB w.e.f. 27.9.83.

6. We have heard the learned counsel for the parties and have perused the records. By the Govt. of India, Department of Personnel and Training' OM dated 12.1.88, a condition was prescribed that where ~~exist~~ serious vigilance matters are under examination, the sealed cover procedure should be adopted with regard to the promotions. The same procedure may presumably apply in the case of holding of the DPC for crossing of EB. But these instructions were operative from 12.1.88 and these could not be applicable to the applicant's case because he was due to cross EB on 27.9.83, and even the DPC met in 1984, 1985 and 1986, when these instructions were not operative on the date on which the applicant was due to cross the EB namely 27.9.83. No disciplinary proceedings were either pending or contemplated against the applicant on 27.9.83 because the charge-sheets were issued nearly one year later

or still later to the applicant. In the circumstances and in view of the clarifications given by the Department of Telecommunications themselves by Annexures A-15 and A-16, we hold that the respondents were not justified in denying crossing of EB to the applicant w.e.f. 27.9.83. We direct that the respondents shall convene a fresh DPC for considering the case of the applicant for crossing the EB w.e.f. 27.9.83, after ignoring the disciplinary matters which arose subsequently. The consideration of the case of the applicant for crossing of EB as on 27.9.83 shall be based on the material which was available till that date only. Necessary action to convene the DPC and grant consequential reliefs to the applicant, if due thereafter, shall be taken by the respondents within a period of four months from the date of receipt of a copy of this order.

7. The OA stands disposed of accordingly, with no order as to costs.

  
( O.P. SHARMA )  
MEMBER (A)

  
( GOPAL KRISHNA )  
MEMBER (J)