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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of Order: 22.11.2000

OA 29/96

G.S. Hada son of Shri Shubraham Singh Hada aged around 65 yrs. resident of 43, Goyal Bhawan, Vinod Nagar, Beawar retired from Inspector, Central Excise & Customs, Jaipur.

Applicant.

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Revenue (Customs & Central Excise) Govt. of India, New Delhi.
2. Commissioner, Customs and Central Excise, Near Statue Circle, New Central Revenue Building, Jaipur.

...Respondents.

Mr. P.P. Mathur, Proxy counsel for  
Mr. R.N. Mathur, Counsel for the applicant.  
Mr. S.S. Hassan, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)  
Hon'ble Mr. Gopal Singh, Member (Administrative)

ORDER

(HON'BLE MR. GOPAL SINGH, MEMBER (ADMINISTRATIVE))

In this application u/s 19 of the AT Act 1985, applicant, Shri G.S. Hada, has prayed for a direction to the respondents to calculate the pension of the applicant after taking into consideration the benefit of crossing Efficiency Bar w.e.f. 1.5.1979 and grants of increments thereafter with all consequential benefits. The applicant has also prayed for interest @ 18% per annum on delayed payments.

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2. The applicant's case is that while he was holding the post of Inspector, Customs & Central Excise, Govt. of India, penalty of compulsory retirement was imposed upon him w.e.f.

23.6.81. Prior to the penalty of compulsory retirement, another penalty of with-holding of three grade increments was imposed upon the applicant vide order dated 3.12.1980. Applicant has challenged the penalty of compulsory retirement in OA no. 583/86 decided on 27.4.1994. The penalty of compulsory retirement was set aside by this Tribunal and the applicant was treated to have retired on his normal date of superannuation. Applicant has also filed an OA against the penalty of with-holding of three grade increments. However, the said application was dismissed by the Tribunal vide its order dated 12.5.1994. The contention of the applicant is that he was to cross the Efficiency Bar on 1.5.1979 and he was imposed the penalty of with-holding of three grade increments vide order dated 3.12.1980. Therefore, the Efficiency Bar should have allowed to be crossed by the applicant w.e.f. the due date before implementing the said penalty. Applicant has also stated that this benefit is also provided as per provisions of CCS(CCA) Rules (extract at Annexure A-2).

3. In the counter, it has been stated by the respondents that the applicant has been treated in the service upto normal date of superannuation i.e. 31.1.1988 and has been given pensionary benefits by deeming the applicant to have remained in service upto 31.1.1988 as per the direction of the Tribunal. It has also been stated that the applicant's three increments which fell due on 1.5.1981, 1.5.1982 and 1.5.1983 as consequence of penalty imposed upon him were withheld. The applicant was not entitled to cross Efficiency Bar w.e.f. 1.5.1979. As a matter of fact that he was to cross Efficiency Bar on 1.5.1980. The case of the applicant for crossing the Efficiency Bar w.e.f. 1.5.1980

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alongwith others was considered by the Departmental Promotional Committee on 3.12.1980 and the Committee found the applicant not yet fit to cross the Efficiency Bar, since the applicant at that time was facing disciplinary proceedings, the findings of the DPC were kept in a sealed cover and ~~after~~ disciplinary proceedings were over, the sealed cover was opened where-upon the applicant was found 'not yet fit' for crossing Efficiency Bar w.e.f. 1.5.1980. The penalty of compulsory retirement imposed upon the applicant w.e.f. 23.6.1981 was set aside by the Tribunal vide its order dated 27.4.1994 passed in OA 583/86. Consequently, applicant's Efficiency Bar case was considered by the DPC which met on 27.12.1995 and the applicant was allowed to cross Efficiency Bar w.e.f. 1.5.1984 and accordingly all the benefits have been extended ~~to~~ the applicant. It has, therefore, been averred by the respondents that the application is devoid of any merit and deserves dismissal.

4. Applicant has based his claim of grant of crossing of Efficiency Bar and release of increments from back date after he had suffered the penalty of with-holding of three increments on DG P&T letters dated 9.2.1973 and 29.11.1979. We consider it appropriate to abstract the relevant letters.

"When penalty of withholding of increment imposed while official held up at efficiency bar stage - Recently a case has come to the notice in which a Government servant became due to cross efficiency bar in October, 1970, but was not found fit to cross the bar. In the meantime, he was placed under suspension and he could not, therefore, be allowed to cross efficiency bar while under suspension in October, 1971 and October, 1972. The disciplinary proceedings against him ended with the imposition of penalty of withholding of increments for five years as per the punishment order issued in December, 1972. A question has been raised as to how the penalty can be enforced and the pay of the Government servant regulated.

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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 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 the efficiency bar should also be decided and the penalty order enforced as explained above.

D.G., P&T, letter No. 6/13/72-Disc.II/Disc.I dated 9.2.1973

For a proper appreciation of this ruling the details of the following concrete case will be helpful:-

An official was not allowed to cross the EB with effect from 1.2.1973, on account of the pending of disciplinary proceedings. As a result of the disciplinary proceedings, punishment order was issued on the 19th April, 1979, 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 EB 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 sixth 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.

D.G., P&T., Letter No. 153/21/78-Disc. II dated 29.11.1979

5. In the instant case, applicant has been allowed to cross the Efficiency Bar w.e.f. 1.5.1984. He was not considered fit to cross Efficiency Bar when on the due date on 1.5.1980. On allowing the benefit of crossing the Efficiency Bar on 1.5.1984, all the increments withheld have been released w.e.f. 1.5.1984. We do not find any infirmity in the action of the respondents. Applicant contends that he should be allowed to cross Efficiency Bar w.e.f. 1.5.1979 (1.5.1980 ?) and subsequent increments on due date after he has suffered the penalty for

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three years. In fact he wants all the increments should be released to him w.e.f. the dates, these increments fell due. In case withheld increments are allowed from the date they fell due, the penalty of withholding of increments <sup>world</sup> ~~should~~ be nullified. The respondents have released the increments w.e.f. 1.5.1984 when the penalty was over.

6. In the light of above discussion, we do not find any merit in this application and the same deserves to be dismissed. The OA is accordingly dismissed with no order as to costs.

Gopal Singh

(GOPAL SINGH)  
MEMBER (A)

Sukh

(S.K. AGARWAL)  
MEMBER (J)