

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 05.10.2004

OA 196/2003

M.M.Jain, Assistant Accounts Officer O/o Telecom District Manager,
Jhalawar (Raj.).

... Applicant

Versus

1. Union of India through Secretary, Department of Telecommunications, Sanchar Bhawan, New Delhi.
2. Chief General Manager Telecommunications, Rajasthan Circle, Jaipur.
3. Chief Accounts Officer O/o Chief General Manager Telecommunications, Rajasthan Circle, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.K.BHANDARI

For the Applicant

... Mr.C.B.Sharma

For the Respondents

... Mr.B.N.Sandu

ORDER

PER HON'BLE MR.A.K.BHANDARI

This application u/s 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant to seek following relief :

- "1) That the impugned order Ann.A/1 be quashed being violative of Article 14 and 16 of the Constitution of India and principles of natural justice.
- 2) That the respondents be directed by issuance of an appropriate order or direction to grant EB to the applicant from 1.4.93 in the grade of Rs.2000-3200 at the stage of Rs.2300/- to Rs.2375/- and refix the pay of the humble applicant with effect from 1.1.96 as per recommendations of the Vth Pay Commission."

2. Brief facts of the case, as stated by the applicant, are that he was appointed as Postal Clerk and after passing relevant examination in the year 1980 has been appointed as Junior Accounts Officer w.e.f. 2.9.81. He was further promoted as Assistant Accounts Officer w.e.f. 1.4.87. That no DPC was held to consider the case of applicant for crossing of Efficiency Bar (EB, for short) w.e.f. 1.4.93 in the pay scale of Rs.2000-60-2300-EB-75-3200 at the stage of Rs.2300/-. No DPC for the same post was held on 1.4.94 and 1.4.95 also and that his pay

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was held up at the stage of Rs.2300/- on 1.4.93. He made representation to the Chief Accounts Officer O/o Chief General Manager Telecommunications, Rajasthan, Jaipur, and was informed vide his letter dated 6.4.98 that due to pendency of a disciplinary case the applicant was not allowed to cross the EB on 1.4.93, 1.4.94 and 1.4.95. That the pay of applicant was fixed at Rs.7200/- on 1.1.96 as per recommendations of Fifth Pay Commission treating his pay as Rs.2300/- and without allowing crossing of EB (Ann.A/1). It is further stated that there was nothing adverse against the applicant on 1.4.93 and 1.4.94. Therefore, respondents have erred in not allowing crossing of EB and have erroneously stated that disciplinary case was pending, whereas virtually no such case was pending and there was nothing against the applicant in ACRs also. This can be checked from the ACRs. The applicant was however served with a charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 dated 21.1.95 pertaining to period from 1.1.89 to 30.9.92 (Ann.A/2). However, no disciplinary action was taken against him till 21.1.95 and, therefore, initial inquiry, if any, undergone between 1990 to 1995 cannot become a hinderance for consideration of clearing of EB in 1993 and 1994. The decision of Apex Court in case of Union of India v. K.V.Jankiraman is quoted as authority in this regard. For a long time applicant was given to understand that till charge-sheet dated 21.1.95 is pending, ~~he cannot be granted EB clearance~~ ^{therefore}, he cannot be granted EB clearance. Due to this reason he could not make any representation in this regard. That now when departmental action has been finalised by inflicting minor penalty vide order dated 9/11.4.2002 (Ann.A/3), a representation was submitted for allowing crossing of EB at the stage of Rs.2300/- in the relevant grade (Ann.A/4) but no reply has been received. Hence this OA.

3. In the grounds it is stated that in 1993-94 DPC to consider crossing of EB was not held but the respondents based their decision to not grant him the benefit of EB on extraneous considerations. That Tribunal may call the record of DPC to satisfy itself for this purpose.

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The judgement of Supreme Court in Union of India v. K.V.Jankiraman lays down the relevant principle that restrictions of this type could not be imposed when charge-sheet had not been served before the scrutiny. If DPC for consideration of EB was held for period ending 31.3.93, it would have perused ACRs upto 31.3.93 only, during which period there was neither an adverse ACR, as none was communicated to him, nor was there any charge-sheet of departmental action pending against him on the day. That applicant known that there is nothing adverse in the ACRs till years 1992, 1993 and 1994.

4. The respondents have submitted a detailed reply. They have raised preliminary objection of limitation inasmuch as fixation order dated 6.4.98 in revised pay scale w.e.f. 1.1.96 has been challenged, in this OA filed in year 2003 with a delay of more than four years. Preliminary objection regarding jurisdiction has also been raised because applicant is working in BSNL and till date no notification under Section-14 of CAT Act giving it jurisdiction over it has been issued.

5. In parawise reply it is denied that no DPC was held for considering crossing of EB in year 1993-94. As per normal procedure concerned SSAs send the cases for crossing EB to CGMT Office. However, applicant's case was not received in this office. Vide impugned order dated 6.4.98 representation of the applicant for drawal of annual increment under FR 26 (B) w.e.f. 1.4.96 onwards was considered under CCS (RP) Rules, 1997. However, because on 1.4.96 he was drawing the pay of Rs.2300/- in the old pay scale, he was given revised pay scale of Rs.6500-10500. Since under the Revised Pay Scale Rules there is no provision of EB, therefore, he was allowed to draw annual increment in year 1996, 1997 and 1998. That contention of applicant that vide order dated 6.4.98 (Ann.A/1) he was intimated regarding not allowing him crossing of EB in old scale due to pendency of DE is totally misconcieved and misleading. However, if applicant was so confident

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about his ACRs prior to 1.4.93, he should have raised the issued of not crossing EB at that time, and he should not be permitted to cover the delay in filing this OA. It is further stated that his representation which he submitted after finalisation of the DE was under consideration but his ACRs were sent to Department of Telecommunication, New Delhi, for DPC purposes in 1994. That correspondence was made with DOT for getting his ACRs back but the same were in the meantime sent to BSNL, and it is now reported that the required ACRs are not traceable. In proof of this, letter dated 16.7.2003 is annexed as Ann.R/1. It is further stated that applicant had represented in year 2002 asking for promotion as Accounts Officer w.e.f. 1994 at par with his junior Shri Liyaqat Ali who was promoted against 1.10.93 DPC vide order dated 15.2.94. The said representation was considered and it was intimated that contention of applicant was not correct that he could not be promoted at par with his junior for the reason that DPC adjudged him unfit because of disciplinary case initiated against him in year 1995, but it was because DPC found him unfit for promotion on the basis of their assessment. A letter in this regard dated 25.10.2002 is enclosed as Ann.R/2. The same factors should have come in way of the applicant for crossing EB even if his ACRs for that period had been available.

6. Replying to the grounds, it is stated that as on date ACRs of applicant prior to year 1993-94 are not available inspite of best efforts made by the respondents. At this belated stage, these grounds are not very relevant.

7. Applicant has submitted a rejoinder also. In the rejoinder preliminary objection of delay is replied by stating that fixation of pay is a recurring cause and he has been drawing less salary every month since 1.4.93. Refixation after 5th Pay Commission report and granting increments thereafter has not filled up gap or fulfilled the loss caused to him due to not considering his case for crossing EB on 1.4.93.

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Besides, he could file OA about it or approach CAT only when his grievance raised in his representation dated 22.7.2002 was not replied. Regarding preliminary objection of jurisdiction, it is stated that applicant is on deputation to the BSNL but he still holds his lien with the Department of Telecommunication and has not been absorbed in the BSNL till date. Besides, the present issue relates to the period prior to formation of BSNL on 1.10.2000. It is emphasised that respondents are duty bound to consider all matters relating to pay of their employees at the relevant time and that non-consideration of EB related matter at relevant time and keeping the applicant uninformed about it are gross mistakes on their part. On the basis of these mistakes giving wrong pay fixation under Fifth Pay Commission has increased his loss and the applicant is facing a recurring loss of Rs.500/- per month since 1993. It is also emphasised that respondents have themselves admitted that because of non-receipt of the applicant's case at Head Office the Headquarter did not consider applicant's EB case on 1.4.93, although DPC for EB purposes was held that year, which clearly shows mistake on part of the respondents. That for non-availability of confidential reports with respondents, the applicant cannot be punished by way of financial loss. Also, the DPC for promotion is not related to the present matter which is regarding crossing of EB. These two matters cannot be equated as different yardsticks or benchmark are followed for them. Neither letter dated 25.10.2002 (Ann.R/2) has been made available to him nor is it relevant as far as consideration of EB is concerned because the same is regarding consideration of promotion. It is also reiterated that there was no departmental action pending against him on 1.4.93 and 1.4.94.

8. In course of hearing on 9.8.2004 respondents were directed to produced minutes of DPC held on 1.10.93 and 1.10.94 in which applicant was adjudged unfit because the original ACRs are ^{reported} not traceable. Such record was produced by them on 16.9.2004, photo-copies of which were

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taken on record. On perusal, the facts stated by the respondents that the applicant was adjudged unfit for promotion in both the above DPCs was found correct. However, counsel for applicant raised objection that benchmark for consideration of EB is satisfactory unlike for consideration of promotion which is 'Good', therefore, on the basis of these minutes issue of crossing of EB cannot be decided. Counsel for respondents thereafter produced rules pertaining to EB. During hearing on 5.10.2004 respondents produced photo-copy of Section-VI Personnel Matters of Chapter-51, caption Efficiency Bar - Fundamental Rule 25 in Swamy's Establishment and Administration. But in these rule it is nowhere stated that the benchmark for crossing of EB is 'Good' or above. While arguing, counsel for applicant insisted that in view of decision of the Apex Court in Union of India v. K.V. Jankiraman, the disciplinary inquiry initiated in year 1995 or even the contemplation of it could not become a bar for crossing of EB in 1993-94 and that as per reply of the respondents there was no disciplinary inquiry against the applicant on 1.4.93 and 1.4.94, the dates on which consideration for crossing of EB for the preceding year should have been completed. Since adverse ACRs were not communicated and respondents have not controverted this contention of the applicant, there was no ground for not crossing the EB.

9. After careful consideration of all the arguments and available record, it is clear that on 1.4.93 and 1.4.94 there was no departmental inquiry pending against the applicant, as the only departmental inquiry initiated against him was vide charge-sheet dated 21.1.95. The respondents have also not denied the claim of the applicant that no adverse ACR was ever communicated to him for the period upto 1.4.93. In other words, the same was not 'Good' because he was denied promotion after consideration of ACRs upto 1.4.93 in the DPC held on 1.10.93 in which benchmark was 'Good' but he certainly did not have adverse ACRs against him on that date. Therefore, in the absence of adverse ACR or

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departmental inquiry pending against him on 1.4.93, and as per rules the respondents were bound to consider the cases of all employees for crossing of EB when it fell due. It is apparent that they have failed to do so in the case of the applicant. It is noticed in the rules shown to me by the respondents that if a government servant is not allowed to cross EB on due date, his case should be reviewed again next year and that such review should be done annually. In the case in hand, if the review of the case of the applicant was not done due to some reason on 1.4.93, it should have been done on 1.4.94, but the same has not been done in violation of the rules. Further, Rule 2(5) states that if due to some reason DPC for EB is being convened after a gap of time following the date on which Govt. servant became due to cross the EB, the committee should consider only those CRs which it would have considered had the DPC been held as per the prescribed schedule. In view of this rule, it is clear that in this case if due to some reason applicant's case was not considered on 1.4.93, this case could be reconsidered in later years on the basis of ACRs as on 1.4.93. But not doing this has resulted in recurrent financial loss to the applicant affecting even his pension, as brought out in representation dated 22.7.2002 which remains unanswered even to this day. In light of this rule also, respondents' objection about limitation deserves to be rejected.

10. In view of the foregoing, the OA is allowed and the order dated 5.4.98 (Ann.A/1) is quashed and set aside. The respondents are directed to consider applicant's case to cross EB w.e.f. 1.4.93 in grade of Rs.2000-3200 at the stage of Rs.2300/- to Rs.2375/- by treating his ACRs fit for crossing EB on that date and fix his pay w.e.f. 1.1.96 as per recommendations of the Fifth Pay Commission thereafter. It is, however, ordered that due to extant rules the applicant will be entitled for monetary benefits only w.e.f. 29.4.2002 i.e. the date one year prior to his filing this OA. No order as to costs.



(A.K.BHANDARI)

MEMBER (A)