

13.02.2009

OA No. 349/2006 with MA 227/2006

Mr. Vinod Goyal, Proxy counsel for
Mr. Virendra Lodha, Counsel for applicant.
Mr. S.S. Hassan, Counsel for respondents.

Heard in part. Adjourn to 16.02.2009.

B.L.K.
(B.L.KHATRI)
MEMBER (A)

AHQ

16.02.2009

Mr. Vinod Goyal, Proxy Counsel for
Mr. Virendra Lodha, Counsel for applicant
Mr. S.S. Hassan, Counsel for respondents

Heard learned Counsel for the parties.
Order Reserved.

0005.50.00

OA No. 349/2006 with MA 227/2006

B.L.K.
(B.L.Khatri)
M (A)

19.2.09

Mr. Vinod Goyal, Proxy counsel for
Mr. Virendra Lodha, Counsel for applicant.
None present for respondents.

order pronounced in the
list if on 13.02.2009.

open court today.

(B.L.KHATRI)
MEMBER (A)

AHQ

B.L.K.
18.2.09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 19th day of February, 2009

ORIGINAL APPLICATION NO. 349/2006

With

MISC. APPLICATION NO. 227/2006

CORAM:

HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

K.L. Lodwal son of Late Shri Ratan Lal, aged about 61 years, resident of E-510, Ranjeet Nagar, Bharatpur. (Retired from the post of Dy. Director, National Saving Institute, Rajasthan, Jaipur)

.....APPLICANT

(By Advocate: Mr. Vinod Goyal proxy to Mr. Virendra Lodha)

VERSUS

1. Union of India through its Additional Secretary, Government of India, Ministry of Finance, Department of Economics Affairs, New Delhi.
2. The National Saving Commissioner, 4th Floor, CGO Complex, A-Block, Seminary Hills, Nagpur.
3. Regional Director, National Saving Institute, 4th Floor, C-Block, Vitt. Bhawan, Rajasthan, Jaipur.

.....RESPONDENTS

(By Advocate: Mr. S.S. Hassan)

ORDER

PER HON'BLE MR. B.L. KHATRI

The applicant has filed MA No. 227/2006 for condonation of delay. During the course of hearing, learned counsel for the applicant had submitted that claim of the benefits of the Increment gave recurring cause of action to the applicant. Therefore, delay in filing this OA may be condoned. For this purpose, he relied upon the following cases:-

- (i) M.R. Gupta vs. Union of India & Others
1995 (5) SLR 221
- (ii) Union of India & Others vs. Tarsem Singh
2008(2) SCC (L&S) 765

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2. Learned counsel for the respondents vehemently opposed the MA for condonation of delay in filing the OA. He submitted that applicant was due to cross the Efficiency Bar on 01.03.1992 whereas the OA has been filed in 2006 after a delay of 14 years. No reasonable cause had been given in the MA for filing the OA at this belated stage. Therefore, OA as well MA deserves to be dismissed.

3. I have heard the learned counsel for the parties. The learned counsel for the applicant had placed reliance on the judgement of the Apex Court. In the case of M.R. Gupta (supra), the applicant's grievance was that his pay fixation was not in accordance with the rules. It was held by the Apex Court that this is a continuing wrong against him, which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. The application was not treated as time barred since it was based on recurring cause of action.

4. Similarly, it was also held in the case of Union of India vs. Tarsem Singh that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy. Therefore, having regard to the fact of the case and the judgements of the Hon'ble Apex court, delay is condoned. The Misc. Application No. 227/2006 is allowed.

5. The applicant has filed this OA against the order dated 14.05.2005 (Annexure A/1) whereby he was informed that since he was awarded major penalty, he could not be given the benefit of crossing of Efficiency Bar, which was kept in sealed cover. The brief facts of the case are that the applicant was promoted as Deputy Regional Director on 31.05.1989 in the pre-revised pay scale of Rs.2000-60-2300-EB-75-3200 and his pay was fixed at Rs.2180/- w.e.f. 31.03.1989. The applicant continued to draw regular increments upto 31.03.1991 in the aforesaid pay scale and his basic pay reached

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the stage at Rs.2300/- in this grade. After the stage of 2300 the next increment was to be given after crossing Efficiency Bar on 01.03.1992.

6. Learned counsel for the applicant contended that the applicant should have been allowed to cross Efficiency Bar w.e.f. 01.03.1992 by the DPC. As per order dated 06.08.2004 (Annexure A/7), he was placed under suspension for the period w.e.f. 17.03.1994 to 28.02.1996 and charge sheet was served on 12.06.1995 and major penalty was imposed vide order dated 22.02.2000 (Annexure A/4). The DPC should have been held in the month of January/April 1992. AT that time applicant was neither placed under suspension nor any charge sheet was served upon him nor was any penalty imposed upon him. Thus he was eligible to cross Efficiency Bar w.e.f. 01.03.1992.

7. Notice of this application was given to the respondents. Learned counsel for the respondents had relied on the reply filed by the respondents. He vehemently contended that since the applicant was placed under suspension, charge sheet was issued to him and penalty was imposed, no order could have been passed for crossing the Efficiency Bar.

8. I have heard the learned counsel for the parties and perused the facts and also the rules & case law on the subject. Brief facts of the case are that the applicant was to be allowed to cross Efficiency Bar w.e.f. 01.03.1992 in the DPC to be held in the month of January/April, 1992 as per Section of crossing Efficiency Bar (Section VI Chapter 51 of Swamy's Complete Manual on Establishment and Administration Sixth Edition).

9. The respondents were specifically requested vide order dated 22.01.2009 to apprise this Bench of the facts of this case and the date of DPC through which the case of the applicant with other employees was considered for crossing the Efficiency Bar. Learned counsel for the respondents was allowed to place ^{on record} the letter dated 02.02.2009 alongwith with letter dated 09.09.1993. As per this letter, ^{the} following

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officers were allowed to cross the Efficiency Bar against the due date of crossing of Efficiency Bar.

Sl. No.	Name of Dy. Regional Director	Due date of crossing EB
1.	Shri B.P. Sinha, DRD Bihar	01.06.1992
2.	Shri B.P. Singh, DRD Bihar	01.06.1992
3.	Shri N. Mukherjee, DRD Calcutta	01.01.1993
4.	Shri A. Biswas, DRD Calcutta	01.03.1993
5.	Shri Yogeshwar Sharma, DRD Delhi	01.03.1993
6.	Shri G. Mahato, DRD Allahabad	01.04.1993
7.	Shri C. Niranjana, DRD Orissa	01.05.1993
8.	Shri C. Chakaraborty, DRD Nagpur	01.05.1993
9.	Shri A. Saralah, DRD A.P.	01.05.1993

10. It is, therefore, presumed that the name of the applicant was also considered before passing the order dated 09.09.1993. On this day, the applicant was neither placed under suspension nor any charge sheet was issued or penalty was imposed. For this purpose, learned counsel for the applicant had rightly placed reliance on the case of Union of India & Others vs. K.V. Jankiraman & Others, 1993 SCC (L&S) 387. In this case, it was held that sealed cover procedure can be adopted only after the date of issuance of charge memo/charge sheet, that being the date from which disciplinary proceedings can be taken to have been initiated. The sealed cover procedure can also be adopted where the employee is placed under suspension.

11. After having considered the facts of the case and legal position, I direct the respondents to allow the applicant to cross the Efficiency Bar. If his name was withheld only because of reasons discussed in this order, then he should be allowed to cross Efficiency Bar. In case his name was not considered for crossing Efficiency Bar, his name should be ^{considered} ordered and order of crossing Efficiency Bar w.e.f. 01.01.1992 should be issued as per procedure/rules on the subject. In case the fresh DPC is to be held, the applicant's ACR should also be considered as per Section VI Chapter 51 of Swamy's Complete Manual on Establishment and Administration Sixth Edition, Para 5 of which reads as under:-

"(5) When DPC convened after lapse of time. - In the event of DPC being convened after a gap of time following the date on

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which the Government servant became due to cross the EB, the Committee should consider only those Confidential Reports which it would have considered had the DPC been held as per the prescribed schedule. If the Government servant is found unfit to cross the bar from original due date, the same DPC can consider the report for subsequent year also, if available, to assess his suitability in the subsequent year."

12. With these directions, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)

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