(1984) 07 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6844 of 1980

Hari Om Prakash Agarwal APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 24-07-1984

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1984) AWC 454 Supp

Hon'ble Judges : V.K. Mehrotra, J;J.N. Dubey, J

Bench : Division Bench

Advocate : S.P. Srivastava and R.S. Misra, for the Appellant; K.K. Misra and R.S. Dhavan, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mehrotra, J.—Hari Om Prakash Agarwal, the Petitioner in this writ petition under Article 226 of the Constitution, has challenged the order passed by the Assistant Collector (Head quarters) Central Excise, Allahabad and affirmed by the Central Board of Excise and Customs, New Delhi to the effect that the Petitioner be permitted to cross the efficiency bar at the stage of Rs. 380/- per month with effect from May 1, 1978 and not with effect from the due date, namely, May 1, 1974.

2. The Petitioner was appointed as Lower Division Cleric in the Customs and Central Excise Department in the Allahabad Collectorate and was subsequently promoted as Stenographer. According to him, he was entitled to cross the efficiency bar after reaching the stage in the time scale of pay at Rs. 380/- per month at the rate of Rs. 12/- per month. His case should have been considered for being permitted to cross the efficiency bar prior to May 1, 1974 but the Respondents did not do so. On February 4, 197S the Petitioner was charge sheeted for an alleged breach of the Central Civil Services (Conduct) Rules, 1964, inasmuch as he made a wrong statement before the Superintendent (Vigilance), Central Excise, Allahabad that he had not written two post-cards,

dated 30-6-72 and 26-7-1972 addressed to one B.N. Saran, UDC C/O Assistant Collector, Central Excise, Bareilly .After inquiry it was found that the Petitioner had actually written those letters. By way of punishment for this lapse two increments of the Petitioner were stopped with cumulative effect but this punishment was modified by the board in an appeal by the Petitioner to that of the stoppage of two increments without cumulative effect. The order of the Board was communicated to the Petitioner by the Assistant Collector Head quarters Central Excise, Allahabad, by communication dated April 4, 1977 Annexure 2 to the writ petition.

3. The grievance of the Petitioner is that the Respondents were in error in directing that the Petitioner would be able to cross the efficiency bar with effect from May 1, 1978, firstly because it would have the effect of stoppage of his increments with cumulative effect for a period of four years which was contrary to the order passed by the Board and, secondly, that the Respondents were in error in taking the view that it: was not possible to direct the crossing of efficiency bar by the Petitioner with retrospective effect.

4. A counter affidavit has been filed in the writ petition by the Assistant Collector (Head quarters) Central Excise, Allahabad. It has been stated therein that the Petitioner''s case for crossing the efficiency bar was placed before the Departmental Promotion Committee on November 2, 1977 after the disciplinary proceedings against the Petitioner were finally decided on May 11, 1976 and the Departmental Promotion Committee found the Petitioner not yet fit for being permitted to cross to efficiency bar. The Petitioner''s case was again put up before the Departmental Promotion Committee in June, 1978 which found him fit and allowed the Petitioner to cross the efficiency bar with effect from May 1, 1978. It has also been pleaded that it was not possible to allow the Petitioner to cross the efficiency bar with retrospective effect from the due date as the Petitioner had not been completely exonerated in the disciplinary proceedings and reliance upon the decision of the Government of India made under Fundamental Rule 25 has been placed in this respect.

5. We have heard the learned Counsel for the parties and we are of opinion that the view taken by the Respondents is not tenable in law. The Fundamental Rules framed by the Government of India provide in Fundamental Rule 24 that an increment should ordinarily be drawn as a matter of course by a Government servant unless it is withheld. Fundamental Rule 25 lays down that where an efficiency bar is prescribed in a time scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority, empowered to withhold increments under Rule 24. Some decisions have been taken by the Government of India which have been complied in the form of notes under various Fundamental Rules. One such decision Note 8 under Fundamental Rule 25 as extracted in Swamy''s Compilation of the Fundamental Rules, 1977 Edn.) is to the effect that a Government servant against whom departmental proceedings are pending but who is due to cross the efficiency bar

prescribed in his time scale of pay, may not be allowed to cross the bar until after the conclusion of the proceedings. It has also been mentioned that if after the conclusion of the proceedings, the Government servant is completely exonerated he may be allowed to cross the efficiency bar with effect from the due date retrospectively, unless the competent authority decides other-wise. But, if the Government servant is not completely exonerated, his case for crossing the efficiency bar cannot be considered with retrospective effect from -the due date but can be considered only with effect from a date following the conclusion of the disciplinary/vigilance case, taking into account the outcome of such case.

6. The Petitioner has appended a copy of letter No. 290/14/1/76 Establishment (A) dated -October 18, 1976 of the Department of P & A R.O.P. as Annexure-1 to the writ petition which relates to the question of consideration of cases for crossing of the efficiency bar. In this letter it has been mentioned that the cases of Government servants eligible for crossing efficiency bar should be considered by a Departmental Promotion Committee on the basis of records of performance up to date available at the time of such consideration. The letter also mentions that with a view to avoid procedural delays it has been decided that screening of efficiency bar cases should be made according to the time schedule mentioned in the letter in a tabular form. In this table it has been mentioned that cases in which the due date for crossing efficiency bar falls within the months January to March should be examined by January by the Committee and likewise where the dates fall within the months April to July, August to October and November and December consideration should be made in the months April, July and October respectively.

7. The decisions taken by the Government of India under Fundamental Rule 25 and the one contained in the letter dated October 18, 1976 clearly indicate that cases of Government servants for crossing the efficiency bar should be considered at a time when the Government servant is about to cross the efficiency bar. The decision recorded at item No. 8 under Fundamental Rule 25 that where disciplinary proceedings are pending, the considerate on must be deferred must be read along with the requirement that the disciplinary proceeding should be pending against the Government servant at the time when consideration of his case for crossing the efficiency bar is to be made in due course. The fact that by inaction on the part of the authority which has to consider the case of a Government servant for crossing the efficiency bar, the Government servant''s case is not considered at its due time will not, in our opinion, entitle the competent authority to take into consideration'' the fact of the pendency of disciplinary proceedings against the Government servant initiated after the date on which the Government servant is due to cross the efficiency bar. We would like to make it clear that in case disciplinary proceedings are in contemplation against a Government servant when he is due to cross the efficiency bar it will be open to the competent authority to defer consideration of the case of the Government servant concerned for being allowed to cross the efficiency bar.

8. From the facts of the present case it is clear that on May 1, 1974 there was No. disciplinary proceeding pending against the Petitioner. There is nothing on the record before us to suggest that they were in contemplation either. In such a situation the Respondents could not justifiably take into consideration the disciplinary proceedings which were initiated against the Petitioner in the year 1975 or the decision arrived at in those proceedings for deciding whether the Petitioner should be permitted to cross the efficiency bar with effect from May 1, 1974 or not. Since the Respondents have failed to show that they Were entitled to take into consideration the pendency of the disciplinary proceedings and the final order passed therein against the Petitioner for deciding whether the Petitioner should be allowed to cross the efficiency bar at the stage of Rs, 380/- or not their decision is clearly vitiated in law.

9. We find sufficient force in the submission made on behalf of the Petitioner that by deciding to permit the Petitioner to cross the efficiency bar at the stage of Rs. 380/- with effect from May 1, 1978 the Respondents have, in fact, made the punishment of stoppage of two increments awarded to the Petitioner cumulative in nature even though that punishment was only of stoppage of two increments without cumulative effect according to the verdict of the Board. The Board, as the appellate authority, had reduced the punishment awarded to the Petitioner to the stoppage of two increments without cumulative effect. permitting the Petitioner to cross the efficiency bar only with effect from May 1, 1978 (and not from the due date May 1, 1974), un undoubtedly has the effect of visiting the Petitioner with punishment of stoppage of more than two increments, i.e. of four increments. This was not intended by the order of punishment itself.

10. In conclusion, we are of opinion that the decision, of the Respondents to permit the Petitioner to cross the efficiency bar at the stage of Rs. 380/- with effect from May 1, 1978 is manifestly erroneous and deserves to be set aside. We, therefore, quash Establishment Order No. 140/1978 dated the 24th July, 1978 (Annexure 3 to the writ petition) in so far as it relates to the Petitioner who has been mentioned at serial No. 6 in the chart contained in Annexure 3 to the writ petition: We also quash the order of the Board communicated to the Petitioner by letter No. C. No. II(9)37-Confl./79/2971 dated November 22, 1979 (Annexure 5 to the writ petition) and the one communicated through the letter C. No. II(9)37-Confl./79/1159 dated May 8, 1980, (Annexure 7 to the writ petition) and direct that the Petitioner''s case shall be reconsidered by the Respondents expeditiously in the light of the observations made by us above. The reconsideration shall be made by the competent authority within a period of three months from the date on which a certified copy of this judgment is placed before the Assistant Collector (Head quarters) Central Excise, Allahabad.

11. The Petitioner shall be entitled to his costs.