

S. K. Vaish

Vs

Union of India and Others

SLP (C) No. 19774 of 1996

(K. Ramaswamy, G. B. Pattanaik, Faizanuddin JJ)

11.09.1996

ORDER

1. Delay condoned.

2. This special leave petition has been filed against the order dated 15-2-1996 made in OA No. 978 of 1992 of the CAT, Principal Bench, New Delhi. The admitted position is that the petitioner after his promotion as Assistant Engineer in Telecom Engineering Service Group 'B' on 16-4-1979 was kept under suspension and disciplinary proceedings were initiated against him. On 30-6-1986, punishment was imposed by way of compulsory retirement. The same came to be challenged by way of an appeal. On appeal, the Department directed that the punishment be treated partly as suspension and partly as in service by proceedings dated 16-2-1989. When the petitioner challenged the same OA No. 1690 of 1990, by order dated 14-2-1992, the same was allowed and direction was given to treat him as on duty for all purposes including pay and allowances. After reinstatement, the petitioner retired from service on attaining superannuation on 31-5-1992. He had prior to that filed representation for crossing his efficiency bar. In the impugned order, the Tribunal has held that the DPC had considered his case for efficiency bar and found him not fit and, therefore, he is not entitled to the relief. Thus, this special leave petition.

3. It is contended by the learned counsel for the petitioner that when he was reinstated into service the efficiency bar was required to be considered after taking into account his subsequent record. What was stated was adverse entries for the years 1979-80, 1980-81, 1981-82. There was no reconsideration in the light of the direction issued by the Ministry in the letter dated 18-9-1991 in OM No. 7(28)/EIII/91 that all pending cases should be considered to bring the pending cases of the employee so as to bring them on a par with the scale of pay recommended by the 4th Pay Commission. The petitioner had given a representation but the same was not considered; even direction given to produce the record was not followed. Therefore, the Tribunal ought to have drawn adverse inference against the Government and should have directed that he was entitled to cross the efficacy bar. He also contended that the sealed cover procedure as is in vogue should have been adopted for crossing the efficiency bar and kept pending when the departmental enquiry was pending against him.

4. We find no force in the contention. The petitioner has not brought to our notice any circular issued by the Government and it is obviously incongruous for the reason that in the event of the petitioner's disciplinary proceedings becoming final, the exercise to consider the question of crossing the efficacy bar would be fruitless. It would be unnecessary to consider the case for efficiency bar. It would be only in the event of his being reinstated in the service that the question of consideration of his crossing the efficiency bar would arise. Therefore, the sealed cover procedure in

consideration of question of efficacy bar does not apply. It is seen that after the representation was made by the petitioner on 8-6-1990, the matter was referred for consideration by the DPC. The DPC had met on 21-1-1992 and considered the record of the petitioner. After reinstatement, he had hardly worked for three months. It would appear that for three successive years, there were adverse entries against the petitioner. Consequently, DPC as considering the record of the petitioner which was available, recommended that he was unfit to cross the efficiency bar. The same came to be informed to the petitioner vide letter dated 7-2-1992. The Tribunal also had accepted this position. Under these circumstances, we do not find any illegality in the order passed by the Tribunal warranting issue of notice.

5. The special leave petition is dismissed.