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SH. S.K. VAISH

v.

UNION OF INDIA AND ORS.

SEPTEMBER 11, 1996

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[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAİK, JJ.]

Service Law :

C *Efficiency Bar—Crossing of—Employee kept under suspension and disciplinary proceedings initiated against him—Punishment of compulsory retirement imposed—On appeal, department directed that the punishment be treated partly as suspension and partly in service—Tribunal directing that the employee be treated as on duty for all purposes including pay and allowances—It also held that DPC had considered his case for efficiency bar and found him not fit and therefore the employee not entitled to cross efficiency*
D *bar—On appeal held, after reinstatement the employee had hardly worked for three months—For three successive years there were adverse entries against him—DPC recommended that he was unfit to cross efficiency bar—Tribunal accepted the position—Hence no interference called for.*

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 19774 of 1996.

From the Judgment and Order dated 15.2.96 of the Central Administrative Tribunal, Delhi in O.A. No. 978 of 1992.

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Sant Lal, Pradeep Kumar and B.S. Gupta for the Petitioner.

The following Order of the Court was delivered :

Delay condoned.

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This Special Leave Petition has been filed against the order dated February 15, 1996 made in O.A. No. 978/92 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 April 16, 1979 was kept under suspension and disciplinary proceedings were initiated against him. On June 30, 1986, punishment was imposed by way of compulsory retirement. The same came to be challenged by way of an

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appeal. On appeal, the Department directed that the punishment be treated partly as suspension and partly as in service by proceedings dated February 16, 1979. When the petitioner challenged the same in O.A. No. 1690/90, by order dated February 14, 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 May 31, 1992. He had prior to that filed representation for crossing his efficiency bar. In the impugned order, the Tribunal has held that the D.P.C. 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.

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 year 1979-80, 1980-81-1981-82. There was no reconsideration in the light of the direction issued by the Ministry in the letter dated September 18, 1991 in O.M. 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 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 efficiency bar. He also contended that the sealed cover procedure as is invogue should have been adopted for crossing the efficiency bar and kept pending when the departmental enquiry was pending against him.

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 efficiency 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 June 8, 1990,

- A the matter was referred for consideration by the D.P.C. D.P.C. had met on January 21, 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 efficiency bar.
- B The same came to be informed to the petitioner vide letter dated February 7, 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.
- C The special leave petition is dismissed.

G.N.

Petition dismissed.