

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 18<sup>th</sup> November, 2009*  
*Judgment Delivered on: 20<sup>th</sup> November, 2009*

+ **WP(C) 5903/2007**

H/C YOGESH SINGH ..... Petitioner  
Through: Mr.V.S.Tomar, Advocate.

versus

DIRECTOR GENERAL, CISF & ORS. .... Respondents  
Through: Ms.Barkha Babbar, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**PRADEEP NANDRAJOG, J.**

1. Holding the substantive rank of a Head Constable under Central Industrial Security Force (CISF), punishment of 'Censure' was awarded to the petitioner in the year 1988. The next year i.e. in the year 1989, the petitioner became eligible to be considered for clearing the efficiency bar. The Departmental

Promotion Committee (DPC) considered the service record of the petitioner as also of other persons who were eligible to be considered for crossing the efficiency bar and noted that his service record revealed his being graded as 'Average' in the years 1986, 1987 and 1989. It was noted that for the year 1988 his ACR reading was 'Good'. Further noting that vide order dated 14.6.1986 and order dated 31.12.1988 two penalties of censure were inflicted upon the petitioner, he was declared not fit for being cleared to cross the efficiency bar.

2. The next year i.e. in the year 1990 similar exercise was conducted and noting that for the next year i.e. the year 1990 he was still graded as 'Average' he was declared, once again, unfit to clear the efficiency bar.

3. The petitioner cleared the efficiency bar in the year 1991 and started receiving the pay as per relevant rule applicable.

4. In the year 2003, the petitioner took up the issue of pay fixation and claimed that once he had cleared the efficiency bar, he was entitled to be placed in the next higher grade with increments with effect from the year 1989 i.e. the year when he became eligible to be considered for clearing the efficiency bar. The petitioner made a representation dated 26.2.2003 and in so doing predicated a claim under an office memorandum dated 18.9.1991 issued under the CCS (Revised Pay) Rules 1986. The

memorandum threw light on the manner of operation of efficiency bars. It reads as under:-

“The undersigned is directed to say that Note-1 below Rule 8 of Central Civil Services (Revised Pay) Rules 1986 provides that wherever the pay has been fixed in terms of the above rules efficiency bar will become operative only with reference to such bar(s) in the revised scale, irrespective of whether a Govt. Servant had crossed or not crossed or had been held up at the efficiency Bar in the existing scale. In this connection, provisions of this Ministry’s office memorandum No.7 (63)/E III/87 dated 27<sup>th</sup> May 1988 are also relevant. The Staff side in the National Council (JCM) have pointed out that the application of the above provisions has caused hardship to the govt. servants (i) who prior to 1.1.86 were held up at efficiency bar in the pre-revised scale and (ii) where increment was due at efficiency bar stage on 1.1.86.

2. The matter has been examined and the President is not pleased to decide the cases of all Govt. servants who were held up at efficiency bar in the pre-revised scales of pay prior to 1.1.86 may be laced before respective DPCs for review in terms of guidelines contained in Department of Personnel and Training O.M. No.29014/88-estt. (A) dated 30<sup>th</sup> March 1989. If the DPC recommends the Govt. Servant is fit to cross efficiency Bar, necessary increment(s) may be released in accordance with due process of rules, viz., the benefits of withheld increment(s) may be allowed from the date Govt. Servant is found fit to cross efficiency bar.

3. The President has further been pleased to decide that in cases where the increment was due at efficiency bar stage on 1.1.86, the incensement may be released with any review in the pre-revised scale and then the pay fix in the revised scale under Central Civil Services (Revised Pay) Rules 1986.

4. In so far as the person serving in the Indian Audit and Accounts departments are concerned these orders may be issued in consultation with the Comptroller and Auditor General of India.”

5. The Accounts Officer CISF, vide letter dated 3.4.1992, recommended that the pay of the petitioner be re-fixed by granting him the pay in the next higher grade with effect from the year 1989.

6. Needless to state, if on clearing the efficiency bar in the year 1991 the petitioner was required to be paid the pay in the next grade with effect from the year 1989 he would have got the benefit of two increments in the year 1989 and the year 1990. If not to be granted the said benefit, his pay in the next higher grade in the year 1991 was to be fixed in the minimum of the next higher grade, of course, existing pay had to be protected.

7. Considering the representation of the petitioner as also the recommendation of the Accounts Officer, the Commandant CISF, vide letter dated 17.6.2003 rejected the request and informed the petitioner as under:-

“Reference your office letter No.E-12019B/CISF/DHEP/P.F./ADM-3/646 dated 04.03.2003.

2. In this connection, it is to inform that No.822120074 HC/GD Yogesh Singh was awarded Censure during the year 1986 and 1988 for sleeping on duty and gross act of misconduct, dereliction and negligence in duty respectively. The said individual was maintaining bad record of service as a result he was not found fit to cross efficiency bar in the rank of constable during the year 1989 & 1990. As such, he was declared fit to cross EB during the year 1991 by the DPC but his case was not considered for fixation in the higher stage by the competent authority. Thus, his pay was not fixed at the higher stage in the light of FR-56 sub para 2.6. At this belated stage, the

question of review of DPC proceeding for crossing of EB in respect of the above Head Constable, does not arise. The individual may be informed above facts accordingly.

3. The service document and all enclosures in respect of HC/GD Yogesh Singh received vide letter under reference are returned herewith for further necessary action please.

4. This has the approval of DIG/WZ.”

8. The petitioner kept quiet for two years. On 30.7.2006 he got issued a legal notice through his lawyer demanding the benefit of two increments. The lawyer’s notice was refuted by the respondents vide their letter dated 11.12.2006. Instant petition was thereafter filed in the year 2007.

9. Needless to state, claim of the petitioner is based on the office memorandum dated 18.9.1991.

10. As per the respondents, the petitioner is not entitled to the benefit as claimed by him for the reason he cleared efficiency bar in the year 1991 i.e. on 1.1.1991 when the DPC met and that on the issue of increments in the next above the bar in the prescribed timescale, FR 25 was applicable. FR-25 reads as under:-

“FR-25. 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 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may, by general or special order, authorize in this behalf.”

11. It may be noted that FR-25 was on the Statute Book till the year 1997 when it was deleted with the promulgation of the CCS (Revised Pay) Rules 1997.

12. Needless to state, the claim of the petitioner was with respect to the year 1991 when the fundamental right in question was in force.

13. According to the respondents it is apparent from the language of FR-25 that where an efficiency bar is prescribed in a timescale, the increment next above, the bar is not a matter of right and is not to be given unless there is a specific information of the authority empowered to withhold the increments.

14. With respect to the relevant record it is pleaded by the respondents that since the petitioner has raised the claim at a very late stage and after the old record up to the year 1998 was weeded out by the Board of Officers on 3.1.2003, as per the order of the Commandant (Annexure R-1), the respondent is unable to produce the decisions taken on the file.

15. Needless to state, the respondents also opposed the writ petition on account of inordinate delay and laches. It was urged by learned counsel for the respondents that a claim which ought to have been raised in the year 1991 was raised for the first time on 6.2.2003 and the result was that in the interregnum the relevant record, as noted above, was weeded

out in the year 1998, thereby rendering it a handicap to the respondent to effectively defend the case.

16. It may be noted that the petitioner has referred to the case of Constable Ajit Singh and Constable Shashi Kumar who were granted the benefit claimed by the petitioner. In respect thereof, the respondents have explained that the service profile of Constable Ajit Singh and Constable Shashi Kumar was different inasmuch as Constable Ajit Singh had only one grading of 'Average', he had two gradings of 'Good' and two gradings of 'Very Good'. Constable Shashi Kumar had two gradings of 'Average', one grading of 'Good' and two gradings of 'Very Good' when their cases were considered in the year 1994 and the year 1992 respectively for clearing the efficiency bar. It was pleaded that the competent authority passed orders qua said two officers in terms of FR 25 to grant them the benefit of pay in the scale next above the bar.

17. On the rival pleadings of the parties three issues need to be decided. Firstly, is the claim of the petitioner that he has been discriminated, with reference to Constable Ajit Singh and Constable Shashi Kumar justified? Secondly, what is the effect of the petitioner raising a belated claim and lastly whether the petitioner is entitled to the relief claimed for in the teeth of FR 25?

18. On the first issue suffice would it be to state that the claim of each person who clears the efficiency bar at a later date but is to be granted benefit of the pay in the scale next above the bar with effect from the date he became eligible to be considered for clearing the efficiency bar has to be adjudicated with reference to the service record of the claimant and unless it is shown that there is complete identity in the service profiles of the two officers, no claim for discrimination can be raised.

19. With reference to the ACR gradings of the petitioner and the two officers with whom petitioner claims parity, it is apparent that the service profile of the petitioner is much inferior. Thus, the petitioner cannot claim any parity with the two officers.

20. Pertaining to the claim predicated under the office memorandum dated 18.9.1991, it may be noted at the outset that the claim was raised very belatedly in the year 2003 and in the interregnum the relevant record was weeded out in the year 2003. The relevant record was the deliberations taken at the Departmental Promotion Committee meetings held in the year 1989 and 1990 as also the year 1991 and the decision taken in the year 1991 not to grant the benefit to the petitioner of being granted the benefit of the increments in the next grade for the two previous years. Thus, it is apparent that the respondents

have been put to a handicap by the belated filing of the writ petition and this must factor into our decision.

21. FR 25 was in existence till it was removed from the Statute Book in the year 1997. The issue raised by the petitioner came into birth in the year 1991 and therefore the same needs resolution in terms of FR 25.

22. Suffice would it be to state that in terms of FR 25 where an efficiency bar is prescribed in a timescale, the increment next above the bar has not to be given to a government servant without the specific sanction of the authority empowered to withhold the increments under Rule 24 or the relevant disciplinary rules. In other words, those who earn clearance of efficiency bar at later points of time, having been found unfit at a prior point of time do not have an automatic right to be granted the benefit as contemplated by the office memorandum dated 18.9.1991. To this extent, the claim of the petitioner must fail.

23. Now, the decision taken in the year 1991 not to grant the benefit as contemplated by the office memorandum dated 18.9.1991, has not been challenged by the petitioner and we cannot even call upon the respondents to do so for the reason relevant record was weeded out in the year 2003 as per Annexure R-1. As per said decision record up to the year 1998

was weeded out. Thus, even on said count the petition must fail.

24. The writ petition is dismissed.

25. No costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(SURESH KAIT)**  
**JUDGE**

November 20, 2009  
Dharmender