

Central Administrative Tribunal  
Principal Bench

OA-2028/95

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New Delhi, the 4th <sup>Sept</sup> August, 1996.

Hon'ble Shri R.K. Ahooja, M(A)

Shri D.D. Sharma,  
TGT(Gen)  
Govt. Boys' Secondary School,  
West Jyoti Nagar,  
Delhi.110094.

Applicant.

By Advocate:O.P. Kalshian)

vs

1. Chief Secretary,  
Govt. of NCT Delhi  
Old Secretariat,  
Delhi.110054.

2. The Director of Education,  
Govt. of NCT Delhi,  
Old Secretariat,  
Delhi.110054.

3. The Dy. Director of Education,  
Directorate of Education,  
Distt. East Rani Garden,  
Delhi.110031.

Respondents

By Advocate:Girish Kathpalia.

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

The applicant is working as TGT(Gen.)  
under the Directorate of Education, NCT Govt. of  
Delhi and presently employed in the Govt. Boys'  
Secondary School, West Jyoti Nagar, Delhi.110094.

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He was due to cross EB in the scale of Rs.1640-60-2600-75-2750 -EB-75-2900 w.e.f. 1.1.1993. The case was recommended by the DPC held on 28.3.94 but to-date no orders on the recommendation of the DPC have been passed. The applicant alleges that as a result of inaction and lethargy on the part of the respondents he has been put to a loss of Rs.20,000/- by way of no increment apart from being subject to harassment and mental torture. He has come to the Tribunal for seeking directions to the respondents for crossing the EB due on 1.1.93 and payment of arrears along with DA and HRA thereon.

2. The respondents in reply stated that on the basis of a complaint, a regular Departmental Enquiry was instituted against the applicant under Rule 14 CCS(CCA) Rules 1965 for submitting bogus claim of LTC. The respondents submitted that since the aforesaid LTC issue could not be decided by the time, the DPC became due the Vigilance report was given in favour of the applicant. However, the LTC issue was concluded as soon as the EB case file reached the authorities and as a result the vigilance clearance given earlier was treated as null and void. As a result of the Enquiry, the applicant was ordered to be censured by the Disciplinary Authority and directed to refund the amount of LTC. The respondents

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also submitted that since the applicant used pressure tactics to get the EB crossed, he was again chargesheeted under Rule 16 of CCS(CCA) Rules. For the reasons he cannot be allowed to cross the EB.

3. I have heard the learned counsel on both sides. Sh. OP Kalsbhan, learned counsel for the applicant pointed out that disciplinary case relating to LTC pertaining to 1982. He, however pointed out that the receipt was in the name of a difference Travel Agent and ultimately the applicant was awarded penalty of censure. Further-more, this fact of penalty had been taken into account while giving the vigilance report dated 18.11.93. The penalty of censure vide Memo No.2076 ( Annexure A9) was issued on 15.7.1993 while crossing of EB had become due on 1.1.1993. The learned counsel-cited the number of judgements of this Tribunal that starting of Disciplinary Enquiry and imposition of penalty after the date on which the Govt. official is due to cross EB has no bearing. Thus, in *MH Mahendra vs Union of India* ( AISLJ III 1996 (1) 510, Bombay Bench of Central Administrative Tribunal held that in case no DPC is held in time and there was no case pending at that time, the DPC was to be held and Govt. official entitled to cross EB should be allowed

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to cross EB on the due date. Another Bench of CAT at Calcutta has similarly in Lakshman Ch. Das vs UOI and others ( ATJ 1996(2) 54 ) held that Disciplinary Proceedings initiated on/or after the date of crossing EB is not required to be considered for the purpose of crossing EB or promotion. Likewise in Kumar Rajni Bajan vs. Lt. Governor (ATJ 1992 (1) 582 ), it was found that when there was no adverse entry communicated during the three years prior to the date of crossing the EB, withholding of EB by DPC was not justified. The learned counsel cited the case of State of Maharashtra vs Uttamraorayala Nikam (1994(26) ATC 905 ) in which it is held that stopping of crossing of EB was arbitrary and unjust when wholesome procedure of yearly meticulous exercise of duty was not undertaken by the respondents. The learned counsel also argued that the time schedules are fixed for considering the cases of EB under FR 25 and if this time schedule is ignored then as held in Maqsood Maqbook Hasan Neyazi vs Chief Commissioner of Income Tax (Admn) Bombay and Others (AISLJ III 1994(1) 276) where the time schedule is not adhered, the claim of the applicant cannot be ignored and EB withheld on the basis of subsequent DPC.



4. I have considered the arguments of the learned counsel on both sides. In brief, the arguments of the applicant's counsel is that Memorandum of Censure which has been issued on 15.7.93 had no bearing on EB due to be crossed on 1.1.93. Annexure A7 which is an Enquiry Report, however, shows that Enquiry Officer was appointed on 16.1.90 and after the charges were framed against the applicant. The Enquiry Officer, however, in his report held that charges had not been established. However, the Disciplinary Authority vide order dt.29.9.92 did not agree with the Enquiry Officer. The penalty of censure which was then imposed on the applicant related to LTC from 6.6.83 to 29.6.83. Subsequently, relating to another LTC claim pertaining to period 8.6.82 to 29.6.82 another show cause notice was issued on 15.7.93.
5. It is clear that penalty of censure had been imposed on the applicant on 29.9.92 and subsequently, a show cause notice was issued on 15.7.93 for two different LTC claims. The imposition of penalty of censure debars the applicant for consideration of promotion etc. for a period of six months. Clearly the applicant was not eligible to cross EB due on 1.1.93.

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due to be  
case was/considered on 1.1.94 by which time  
another disciplinary proceedings against  
him was initiated. For this reason he was  
not allowed to cross EB on 1.1.94 till the  
disposal of the second enquiry and issue  
of vigilance clearance. In these circumstances,  
the applicant cannot be given the benefit of  
decisions which the learned counsel has cited,  
since if the DPC has been held on due date  
in 1993, the applicant would not have been  
eligible in view of the imposition of penalty  
of censure. The subsequent consideration of  
crossing EB will also depend on the disposal  
of the case against him on the basis of  
proceedings under Rule 16 vide show cause  
notice dt. 15.7.93. In these circumstances,  
the respondents are within their right  
to withhold the EB.

In the facts and circumstances of  
case, the application deserves to be dismissed  
and I decide accordingly. No order as to costs.

*R.K. Ahuja*  
( R.K. Ahuja )  
Member (A)