

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No.1664/1996

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New Delhi this the 21st day of August, 1998

Hon'ble Shri S.P. Biswas, Member(A)

Dr. M.B. Singh
Sr. Ayurvedic Physician
ESIC Dispensary
Paharganj, New Delhi-55. Applicant

(By Shri R.K. Kamal, Advocate)

versus -

Director General
ESIC
ESIC Building,
Kotla Road, New Delhi-2 Respondents

(By Shri G.R. Nayyar, Advocate)

ORDER

The applicant, a Senior Ayurvedic Physician under the respondents, is aggrieved by A-1 and A-2 orders dated 15.2.94 and 25.5.93 respectively. By A-1, the order dated 25.5.93(A-2) containing the belated approval of crossing of Efficiency Bar (EB for short) by the applicant w.e.f. 1.2.88, has been allowed to remain unchanged. As per applicant, the increment was due to him from 1.2.87. Consequently, the applicant seeks to quash orders dated 25.5.93 and 15.2.94 and grant him all consequential benefits including refund of recoveries effected.

2. The brief background facts, necessary for the disposal of this original application, are here as under:-

The applicant was due to cross E.B. in the scale of Rs.2200-4000/- before the grant of increment w.e.f.

Q 1.2.87. Accordingly, his basic pay was raised from Rs.2800 to Rs.2900 w.e.f. 1.2.87 and he continued to get increments right upto 1993. He was shocked to receive the A-2 communication indicating that the Director General/Employees State Insurance Corporation (ESIC for short) had accorded approval to his crossing of E.B. w.e.f. 1.2.88 and not 1.2.87. Presuming that the date of crossing of E.B., as mentioned in the aforesaid order of D.G./ESIC, had a typographical error, the applicant sought necessary clarification through a representation dated 10.6.93. By the impugned order at A-1 the respondents communicated that the earlier order granting crossing of E.B., as in A-2 communication, was in order. In other words, the applicant, as decided by the respondents, would continue to get his increment only from 1.2.88 as confirmed.

3. The applicant has assailed A-1 and A-2 orders basically on two grounds. Firstly, since the respondents had granted increments from 1.2.87, the order of withdrawal of increments so given was violative of principle of natural justice. Secondly, belated withdrawal of the increment w.e.f. 1.2.87 with retrospective effect and recovery of arrears and that too without any prior warning, cannot be sustained in the eyes of law.

4. The respondents admit that the applicant was due to cross E.B. w.e.f. 1.2.87 and as per procedure for allowing the E.B., a duly constituted D.P.C. is convened to consider such cases after considering the work and conduct of the employees as reflected in their

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annual confidential reports (ACR for short). The D.P.C. approved the applicant's case of crossing the E.B. from 1.2.88 instead of 1.2.87 considering applicant's poor service record. The applicant, as per respondents, could not cross the E.B. in 1987 for one year because of an adverse entry in the C.R. for the year 1986. Before the D.P.C. could sit to consider applicant's case for E.B., the Accounts Unit of the office of Directorate (Medical) ESIC Scheme allowed the applicant to draw his increments from 1.2.87 through an oversight without any orders for the same as required under the rules. The applicant thus continued drawing his increments erroneously till the orders of the D.P.C. were conveyed vide orders dated 25.5.93, the respondents argued. The respondents concede that convening of the D.P.C. took some time. The amount withdrawn in excess had to be recovered by the Accounts Unit which had made the payment without any authority.

5. In the facts and circumstances of the case aforementioned, the only two issues fall for determination. They are as under:-

- (i) Whether the respondents were justified in holding the D.P.C. in the manner they have done in this case?
- (ii) Whether the respondents action in recovering the excess payment, without a formal prior notice, is sustainable in the eyes of law?

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6. The procedure to be following in holding the D.P.Cs are laid down in DOP&T O.M. No.29014/2/88-Ests. dated 30.3.89. The D.P.C. is required to make its recommendation to the competent authority to pass an order under FR 25 and the decision favouring crossing of E.B. will be that of the competent authority. In other words, the DPC on consideration of the relevant records is required to make necessary recommendations indicating the officials who could be given such increments on EB. The O.M. stipulates the following time schedule for considering of E.B. cases:-

Months during which the date of crossing the EB falls	Months in which EB cases should be considered by the DPC
January to March	January
April to July	April
August to October	July
November and December	October

According to the above time-schedule, EB cases falling during the months of January to March are cleared in January and cases falling during the months of April to July in the month of April. It would be necessary to get the confidential reports in respect of these persons for the immediately preceding year written on priority basis during the first fortnight of January/April itself so that the consideration of these cases is not delayed beyond the months of January and April. In respect of cases of EB becoming due during the months of August to December, it would not be necessary to obtain special

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reports as a matter of course for the incomplete portion of the year for which regular confidential reports are not yet due.

7. The said O.M. stipulates the course of action to be adopted when the D.P.C. is convened after a lapse of time. The steps to be taken in such cases will be as under:-

"In the event of DPC being convened after a gap of time following the date on which the Government servant became due to cross the EB, the Committee should consider only those Confidential Reports which it would have considered had the DPC been held as per the prescribed schedule. If the Government servant is found unfit to cross the bar from original due date, the same DPC can consider the report for subsequent year also, if available, to assess his suitability in the subsequent year."

8. In the present case, the DPC was due in 1987 for considering officials like the applicant herein to cross the E.B. but the same could be held after 6 years in 1993. This has not been disputed by the respondents. On the contrary, they admit that "convening of the DPC took time to consider the E.B. cases of the officers including that of the applicant". The respondents action, therefore, has been in violation of the instructions laid down on the subject.

9. I do not, however, find that the respondents have committed any irregularity in clearing applicant's E.B. w.e.f. 1.2.88. This is because the applicant was censured for a misconduct in 1986. This was immediately before the due date of crossing of applicant's E.B. This incident was also in the knowledge to the applicant.

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Therefore, it cannot be said that the respondents did not have any reason whatsoever in holding that the record of service was not satisfactory. The Tribunal cannot interfere in such circumstances and hold that the applicant was qualified to cross the E.B. w.e.f. 1.2.87 as is being claimed by the applicant.

10. The next question that falls for determination is whether the respondents could have effected the recoveries without affording an opportunity to show cause before resorting to actual recovery. The law is now well settled that an order to the detriment of an official cannot be made without affording him/her an opportunity of show cause against the proposed order. Affected persons must know the reasons for which the action has been taken. Authority is legion for this purpose and it is found in the case decided by the Hon'ble Supreme Court in State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors. (AIR 1967 SC 1269).

11. In the light of the discussions aforesaid, the O.A. is partly allowed with the following directions:-

(a) The respondents shall refund the recoveries effected within a period of 3 months from the date of receipt of a copy of this order.

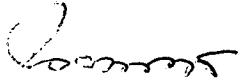
(b) If the respondents have a case for the recovery, the applicant should be put on notice, his

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explanations considered and the decision taken be communicated to the applicant before effecting subsequent recoveries.

12. The O.A. is disposed of as aforesaid. No costs.


(S.P. Biswas)
Member(A)

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