

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

(19)

O.A. No.
T.A. No.

2441/94

199

DATE OF DECISION 14.10.1996

Shri S.D. Misra **Petitioner**

Shri Gyan Prakash

Advocate for the Petitioner(s)

Versus

Union of India and Ors.

Respondent

Shri M.M. Sudan

Advocate for the Respondent

CORAM

The Hon'ble Mr.s. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr.

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal *X*

Lakshmi S.
(Smt. Lakshmi Swaminathan)
Member (J)

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Central Administrative Tribunal
Principal Bench.

O.A. 2441/94

New Delhi this the 14th day of October, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

S.D. Misra,
S/o late Shri H.R. Misra,
H.No. 190-P, Aaram Bagh,
Chitra Gupta Road,
Paharganj,
New Delhi.

...Applicant.

By Advocate Shri Gyan Prakash.

Versus

1. Union of India, through
Secretary,
Ministry of Personnel & Training,
Public Grievances and Pensions,
North Block,
New Delhi-1.
2. The Director,
Central Bureau of Investigation(CBI),
Block No.3, CGO Complex,
Lodhi Road,
New Delhi.
3. The Deputy Director (Admn.),
Central Bureau of Investigation,
Block No. 3, CGO Complex,
Lodhi Road,
New Delhi.

...Respondents.

By Advocate Shri M.M. Sudan.

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The grievance of the applicant is regarding the action of the respondents in not allowing him to cross the Efficiency Bar (E.B.) from the due date, i.e. 1.12.1991. He has impugned the Office Memo dated 27.5.1994 rejecting his representation regarding crossing of E.B. read with the earlier Office Memo dated 21.4.1993 (Annexures A-1 and A-2). Shri Gyan

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Prakash, learned counsel for the applicant, has submitted during the course of arguments today that he is not pursuing the remedy regarding the challenge to the Office Memo dated 28.10.1994. Hence, this office order is not being dealt with here.

2. The applicant, who is working with the respondents, as Inspector of Police w.e.f. 30.12.1985, ~~He~~ was due to cross the E.B. w.e.f. 1.12.1991 which had been withheld. He had made certain representations which, as mentioned above, have been rejected by the impugned order.

3. The main grievance of the applicant is that as is evident from the impugned order dated 27.5.1994, since there was neither any suspension order nor was he facing any departmental enquiry on the relevant date when he ought to have crossed the E.B. i.e. w.e.f. 1.12.1991, the action of the respondents to deny him this benefit was arbitrary, illegal and not in accordance with the rules. He has referred to FR 25. He has further submitted that as appears from the facts given in para 4 of the impugned order, the applicant had been censured in the year 1992, but that, however, could not have been taken into account when the DPC considered his case for crossing of the E.B. w.e.f. 1.12.1991.

4. I have considered the reply filed by the respondents as well as the relevant file in which the case of the applicant had been considered for cross-

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ing of the E.B. From these notes, it appears that a decision had been taken to issue a memo for initiating disciplinary proceedings under the relevant rules against the applicant which was issued on 18.9.1992. After considering his explanation, a penalty of censure was imposed on the applicant vide order dated 3.11.1992 which order is clearly after the ^{due date} date of crossing of the E.B. i.e. w.e.f. 1.12.1991. Although it is seen that a note had been put up on 2.3.1993 that the applicant was fit to cross the E.B. w.e.f. the due date, a decision was taken subsequently by the JD (A) - CBI that his case should not be cleared at present.

5. Another relevant fact to note is that while in the reply given by the respondents, they have mentioned that the applicant had been conveyed an adverse ACR for the year 1988, the learned counsel for the applicant has correctly pointed out that this does not find a mention in the impugned order dated 27.5.1994.


6. From the above facts, ^{therefore} ~~however~~, it appears that apart from the adverse ACR, if any, in 1988, the DPC which had considered the applicant's case for crossing of the E.B. w.e.f. 1.12.1991, had also taken into account the subsequent events, namely, the initiating of the disciplinary proceedings and the ^{subsequent} ~~subsequent~~ censure awarded dated 3.11.1992. This procedure is not in accordance with FR 25 and ^{issued} instructions thereunder.

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7. In the above facts and circumstances of the case, this O.A. is disposed of with the following directions:-

The respondents are directed to consider the case of the applicant with regard to his claim for crossing of the E.B. w.e.f. 1.12.1991 by constituting a review DPC, within a period of two months from the date of receipt of a copy of this order, strictly in accordance with the relevant rules and instructions. If he is found fit, then he shall be entitled to consequential benefits in accordance with law.

No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'