

S2/4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 374  
T.A. No.

1987.

DATE OF DECISION 10.11.1987

Shri M.N.Dikshit Petitioner

In person. Advocate for the Petitioner(s)

Versus

Controller General of Defence Respondent  
Accounts.

Shri P.P.Khurana, Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

S2/4  
( S.P. Mukerji )  
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: DELHI

Regn. No. OA-374/1987

Date: 10.11.1987

Shri M.N.Dikshit

.. Applicant.

Vs.

Controller General of  
Defence Accounts.

.. Respondents.

For applicant

.. In person.

For Respondents

.. Shri P.P.Khurana,  
Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.

JUDGEMENT

The applicant who is working as an Auditor under the Controller General of Defence Accounts has moved this application under Section 19 of the Administrative Tribunals Act 1985 praying that he should be allowed to draw annual increments from 1st July, 1974 to 1st July 1985 and promoted as selection grade auditor with effect from the date his immediate junior was so promoted with arrears of salary. The brief facts of the case are that the application has been working as an auditor in the scale of Rs.330-10-380-EB-12-500-EB-15-560 from 1.7.1965. He was drawing the salary of Rs.370/- from 1.7.1973 and expecting it to be raised to Rs.380/- with effect from 1.7.1974. However, his date of increment which was to fall due on 1.7.1974 was shifted from 1.7.74 to 1.2.1975 as he had been on extraordinary leave for 224 days from 21.10.73 to 18.11.73, 3.12.73 to 14.3.74 and 30.3.74 to 30.6.74. He was granted increment and his pay was raised with effect from 1.2.75. It was to be raised to Rs.392/- with effect from 1.2.1976 but he was not allowed to cross the efficiency bar (EB) at that stage. His case

was considered in August, 1976 by the Competent Authority but he was found unfit to cross the EB. The review of his case was taken up in 1976, 77, 78, 79 and 80 but was kept pending because of adverse remarks or <sup>his</sup> being on leave. His case was not considered in 1981, '82 and '83 as he had not been on duty for most of this period. His case was finally considered in 1984 and <sup>he</sup> was allowed to cross the EB with effect from 1.2.1984. According to the applicant, the EB was <sup>continued</sup> arbitrarily without assigning any reason and his several representations were not replied to. According to the respondents his increment falling due on 1.7.1974 had to be shifted because the period of Extra Ordinary Leave of 224 days did not qualify any increment. They have explained that he <sup>could</sup> ~~should~~ not be allowed to cross the EB because of the adverse remarks <sup>his</sup> and being on long periods of leave.

2. I have heard the arguments of the applicant and the learned Counsel for the respondents and gone through the documents carefully. In accordance with the letter of Controller of Defence Accounts dated 11th November, 1975 (Annexure II<sup>E</sup> to the rejoinder) "in the light of the evidence produced by him, the period of his absence, viz. 21.7.73 to 7.7.84 may be viewed as absence on medical grounds, for the purpose of retention of Government accommodation in Delhi. During the course of arguments it transpired that the applicant had been a patient of cancer and heart trouble and this <sup>was</sup> also evidenced by the aforesaid letter of 11th November, 1975. The learned Counsel for the respondents <sup>further</sup> ~~also~~ accepted the fact that the son <sup>of</sup> the applicant had been seriously ill between 1976 and 1985 and died in February, 1985. The applicant also stated during the course of arguments that his wife <sup>has been</sup> ~~is~~ a patient of T.B. Taking the entire conspectus of tragic facts of the applicant into

account I feel that having had more than his share of misfortune in his life, he should not be unduly penalised in service. His long absence on leave is amply justified because of his own illness and the terminal illness of his son. The fact that his period of absence between July, 1973 and July, 1974 has been deemed by the respondents to be absence on medical ground justifies the concession of not postponing his date of increment from 1.7.74 to 1.2.75. In that case the applicant should have been allowed the pay of Rs.380/- from 1.7.74 to 30.6.75 and his case of crossing of the EB should have been considered as from 1.7.75. It appears that he was warned on 17.10.74 for refusing to accept the official communication (Annexure 'A' to the counter-affidavit). There is nothing to show that he was given any notice before the warning was entered in the CR dossier or his explanation duly considered. The adverse remarks of 1975 and 1977 were also in connection with the irregularity in attendance as indicated above, he could not be held. No ACR was written during 1978<sup>1979</sup> and 1981. In the aforesaid circumstances, I feel that ~~was~~ not allowing him to cross the EB for 9 long years mainly on the ground of irregularity in attendance, has been too harsh.

3. The arguments of learned Counsel for the respondents that the application suffers by laches and is time barred cannot be accepted as the applicant has come up against the impugned order dated 27th February, 1985 (Annexure I<sup>E</sup> to the petition) by which he has been allowed to cross the EB with effect from 1.2.1984 and his last representation was disposed of on 30th December, 1986 without granting him an interview with the Controller General of Defence Accounts (Annexure II). Besides, by <sup>not</sup> allowing him to cross the EB for

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on which  
nine years on inadequate ground, he has been subjected to  
a continuing loss. <sup>every year</sup> In the circumstances, the plea of  
limitation cannot be stretched against the applicant.

4. In the conspectus of facts and circumstances I allow  
the application with the direction that the applicant  
should be allowed to cross the EB with effect from 1.7.1975  
with all consequential benefits till the date of his  
retirement. The arrears of pay should be made good to him  
and his pension and retirement benefits revised if necessary  
on that basis within 2 months from the date of communication  
of this order. There will be no order as to costs.

S.P.M. (S.P. Mukerji)  
Administrative Member