

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

O.A. No. 733/88

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DATE OF DECISION 7.8.1989Shri V.T.Ambekar PetitionerApplicant in person Advocate for the Petitioner(s)

Versus

Member Audit Board, Bombay & others Respondent sShri R.C.Kotiankar (for Shri M.I. Sethna) Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 733/88

Shri V.T.Ambekar
'Aashirwad' 35 Avadhoot
Co-op-Society, Nana Shankar
Sheth Road, Dombivli (W),
Thane. 421 202.

... Applicant

Vs.

1. Member Audit Board and
Ex-Officio Director of
Commercial Audit-I,
Engineering Centre,
6th floor, 9, Mathew Road,
Bombay 400 004.
2. The Comptroller and Auditor
General of India, 10 Bahadur
Shah Zafar Marg, New Delhi.
3. The Secretary, Deptt. of
Personnel and Administrative
Reforms, Govt. of India,
Patel Sadan, Parliament Street,
New Delhi 110 001.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Applicant in person

Mr.R.C.Kotiankar
for Mr.M.I.Sethna
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 7.8.1989

(PER: M.Y.Priolkar, Member (A))

The applicant in this case was working as Audit Officer (Commercial) in the office of the Member Audit Board and Ex-Officio Director of Commercial Audit-I, Bombay. On 15.6.1981 he was sent on deputation to the Maharashtra Water and Sewerage Board, an autonomous body controlled by the State Government as Deputy Chief Accounts Officer. After completing four years on deputation, he opted for absorption in that autonomous body on the same post. The orders allowing him to be absorbed with retrospective effect from 15.6.1985 were issued by the office of the Comptroller and Auditor General of India, New Delhi, on 27.12.1985.



2. The applicant's grievance is that while allowing him the pension and DCRG in the orders communicating the absorption, the office of the Member Audit Board did not permit encashment of earned leave at his credit on the date of absorption. In fact, a clarification was sought by that office from the office of the Comptroller and Auditor General of India whether the applicant would be entitled to the cash equivalent of leave salary under the terms of his absorption. The applicant also took up the matter with the Additional Secretary, Department of Pension and Pensioners' Welfare, New Delhi by his letter dated 7.5.1986 and also with the office of the Comptroller and Auditor General of India on 22.5.1986. On 22.9.1986 he was informed by the Department of Pension and Pensioners' Welfare that the benefit of carry forward of leave to him was not admissible. The applicant, however, continued to pursue the matter with his parent department, namely, office of the Comptroller and Auditor General of India. After some reminders, he was finally informed by the office of the Member Audit Board on 29.4.1988 that Government of India, Department of Pension and Pensioners' Welfare has not found it desirable to allow encashment/carry forward of leave to Government servants who have been absorbed in an autonomous body or undertaking under State Government.

3. On 28.7.1988, Central Administrative Tribunal, New Bombay Bench decided a similar case of one Shri B.N.Darvekar, in which it held that the applicant in that case was entitled on his absorption in autonomous body to encashment of leave at his credit on the date of absorption. The applicant, therefore, again represented to Member Audit Board on 29.7.1988 to consider his case in the light of the Tribunal's judgment. Having, however, received no reply, he has filed this application before the Tribunal on 28.9.1988 praying that the respondents be directed to pay to the applicant the leave

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salary in cash with interest. The applicant has since retired from Government service on superannuation.

4. In their written reply, the respondents have resisted the application on the ground that the applicant having been permitted his option for absorption in the autonomous body only on acceptance of the standard terms and conditions of such absorption, which included the condition that the benefit of carry forward of leave was not admissible, it is not open to the applicant now to make a grievance of the fact that encashment of leave has not been permitted.

5. The respondents have also taken the plea that since the department of Pension and Pensioners' Welfare has informed the applicant in their letter dated 22.9.1986 that the benefit of carry forward of leave was not admissible, the present application is barred by limitation of time as it was not filed within one year from that date.

6. I have heard today the applicant in person and Mr.R.C. Kotiankar, holding the brief for Mr.M.I.Sethna, on behalf of the respondents.

7. It is the applicant's case that in the order dated 27.12.1985 communicating the terms of absorption, the Col.No. 12 regarding encashment of leave at his credit was scored out. According to the respondents, the standard terms and conditions laid down in the Govt. of India, Department of Personnel and Administrative Reforms O.M. dated 9.1.1984 state clearly that such Government servants who are absorbed permanently in public sector undertaking/autonomous body under State Government with prior permission of the parent department, may be allowed pro-rata retirement benefits (except the

benefit of carry forward of leave) as are admissible to permanent Central Government Employees absorbed permanently under the autonomous body controlled by the Central Government. The respondents contend that since the applicant had given by the letter dated 14.5.1985 (Ex.2) his consent to the absorption on the normal terms and conditions indicated in the O.M. dated 9.1.1984, he is not justified in making a grievance about the denial of this benefit to him.


8. After hearing both sides, I am of the view, that the condition regarding encashment of leave was not clearly mentioned in the communication regarding the terms and conditions for absorption. If the condition was quite clear as claimed by the respondents, there was no reason why the office of the Member Audit Board had to seek clarification from the Office of the Comptroller and Auditor General of India and that office, in turn, asked for clarification from the Department of Pension and Pensioners Welfare. In my opinion, therefore, the applicant could be under a reasonable belief that although the carry forward of leave was not admissible, he would be entitled to encashment of leave.

9. The more important point, however, on the basis of which the applicant last represented to the Office of Member Audit Board on 29.7.1988 and has also filed this application before us, is that in an exactly identical matter, this Tribunal has held on 28.7.1988 (Annexure X) that encashment of leave is permissible. In the hearing today Mr. Kotiankar conceded that the two cases, viz. of Shri Darvekar and of the present applicant, are identical in all respects.

10. The only ground on which Mr. Kotiankar is contesting the claim is on the plea of limitation. According to him, since the applicant was already informed by the Department

of Pension and Pensioners' Welfare on 22.9.1986 that the benefit of carry forward of leave was not admissible, the applicant should have approached the Tribunal within one year from that date. The mere fact that the applicant was pursuing the matter with the office of the Comptroller and Auditor General of India will not result, according to the respondents, in extending the limitation period. I do not see any merit in this contention. Since the applicant's parent department is the headquarters office of the Comptroller and Auditor General of India, the applicant was entitled to represent to that office for any relief, irrespective of whatever reply he might have received from the Department of Pension and Pensioners Welfare. Since the final reply he received from the office of the Member Audit Board (which had consulted the office of Comptroller and Auditor General of India and that office, in turn, had consulted the Department of Personnel and Administrative Reforms) is dated 29.4.1988, the period of limitation should be counted from that date and since he has filed this application on 28.9.1988 it must be held that the application is within limitation.

11. On the basis of the foregoing discussion, the applicant must succeed. The respondents are directed to pay the applicant the cash equivalent of leave salary for earned leave, if any, at his credit on the date of his absorption, subject to a maximum of 180 days which was the maximum operating at that time. The leave salary will, of course, be worked out in accordance with the rules concerning the subject. The payment of leave salary should be made within a period of three months from the date of receipt of a copy of this order. The parties will bear their respective costs.


(M.Y. PRIOLKAR)
MEMBER (A)