

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/1094/2016

Hyderabad, this the 10th day of January, 2020



Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

G. Puran Babu (died) per LRs)

1. Golla Swarupa Rani, W/o. G. Puran Babu,
Aged 54 years, Occ: House Wife,
2. Ashritha, W/o. Vinay Kumar,
Aged about 29 years, Occ: House wife,
3. Golla Nishitha, D/o. G. Puran Babu,
Aged about 27 years, Occ: Doctor,
4. Golla Anirudh, S/o. G. Puran Babu,
Aged about 26 years, Occ: Employee,

All are residents of 3-5-68, Ramgopal Pet,
Secunderabad.

... Applicants

(By Advocate Mr. K. Siva Reddy)

Vs.

1. Union of India,
Rep. by the Chief Commissioner of Customs &
Excise and Service Tax, L.B. Stadium Road,
Basheer Bagh, Hyderabad.
2. The Commissioner Customs & Central Excise,
Hyderabad – IV Commissionerate,
Posnett Bhavan, Ramkote, Hyderabad – 500 001.
3. The Chief Commissioner of Customs,
Central Excise & Service Tax, Hyd-I
(Cadre Controlling Authority), Hyderabad.

... Respondents

(By Advocate: Mr. Jose Kollanoor, Proxy Counsel for
Sri T. Hanumantha Reddy, Sr. PC for CG)

ORDER (ORAL)
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the order of removal imposed by the disciplinary authority on the applicant Sri G. Puran Banu, on 9.12.2013 and rejection of the appeal by the appellate authority on 11.6.2014.



3. Applicant, while working as Superintendent in the respondents organisation, was given a charge memo for unauthorised absence for 910 days vide Memo dated 3.5.2013. Disciplinary inquiry was conducted wherein the applicant did not participate and the Inquiry Officer finalised the report on 27.9.2013 against which the applicant failed to make any representation despite being given an opportunity to do so vide letter dated 9.10.2013 by the disciplinary authority. Resultantly, disciplinary authority passed the orders of removal from service on 9.12.2013 granting 45 days time to file an appeal. Applicant did file an appeal, which was rejected for having made the appeal after the stipulated 45 days time. Representation made to condone the delay in preferring the appeal was also rejected on 11.6.2014. Subsequently, applicant made an appeal to the Chairman, Board of Customs and Central Excise with a copy to the Chief Commissioner Customs and Excise, Hyderabad and it is yet to be disposed. Hence the OA.

4. The contentions of the applicant are that due to prolonged illness he was absent to be on unauthorised absence. Due to illness, he could not attend the inquiry as well as make an appeal in time. The appeal made to the Chairman, Board of customs and Excise is pending. Applicant submitted copy of the OA 21/2013 across the bar, disposed of by this Tribunal on 20.11.2017, in support of his contentions.



5. Heard both the counsel and perused the pleadings on record. Reply statement has not been filed by the respondents though the OA was filed in March 2016. Close to 4 years have lapsed. Even the applicant has passed away during the pendency of the OA and his Legal Representatives have come on record vide MA 780/2019. Ld. Counsel for the applicant finally prayed that the respondents be directed to dispose of the representation/appeal made to the Chairman of the Board keeping in view the observation of this Tribunal in OA 21/2013, which was given across the bar this day. Ld. Counsel for the respondents objected to the same since it was not part of the OA filed. Thereupon, Ld. counsel for the applicant prayed that liberty be granted to make a fresh representation on behalf of the deceased applicant by the legal representatives so that the respondents can dispose of the same on merits. In the said circumstances, to uphold justice, *albiet* the matter pertains to the Division Bench, with the concurrence of both the counsel, it has been taken up for appropriate adjudication.

6. I) It is an undisputed fact that the applicant was on unauthorised absence for 910 days from duty while working as Superintendent in the respondents organisation. Respondents issued Charge Memo and the disciplinary inquiry was held with the I.O. holding the charge of unauthorised absence as proved vide inquiry report dated 27.9.2013. Applicant did not attend the inquiry despite given opportunities to do so. Disciplinary authority on receipt of the I.O report, after giving due opportunity to the applicant to represent against the I.O report, which the later did not avail, has imposed the penalty of 'removal'. Appeal made was

rejected on 11.6.2014 (Annexure A-5) stating that it was not made within the mandatory period of 45 days allowed for making an appeal.



II) The point for consideration is that “removal” on grounds of unauthorised absence is valid or otherwise. The applicant could not attend duty nor the inquiry nor represent against the I.O. report for reasons of ill health. Hence, it was absence from duty due to factors beyond the control of the applicant. Any action taken for unauthorised absence due to circumstances beyond the control of the employee is not considered as misconduct. In fact, continued absence by itself cannot be termed as 'continuance of service has come to an end'. In this regard, support could be had from ***Jeewanlal (1929) Ltd. v. Workmen, (1962) 1 SCR 717*** wherein the Hon’ble Apex Court has held as under:-

“If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service.”

III) Further, unauthorised absence due to ill health cannot be construed as misconduct. In fact, it is the responsibility of the respondents to prove that unauthorised absence is wilful. To state what has been stated, the Tribunal relies on the observation of the Hon’ble Apex court in ***Krushnakanth B Parmar and another Vs. Union of India*** reported in (2012) 3 SCC 178. On a reading of the judgment of the Hon’ble Supreme Court, it would make it vivid and its relevance to the present case, as presented below:

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior

permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. *In a department proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."*



Applicant could not attend duty due to the compelling circumstance of ill health (Civil Surgeon Medical Certificate – Annexure A-8). Hence, the unauthorised absence should not be construed as misconduct, which indeed is the essence of the charge memo issued to the applicant. Besides, appeal made by the applicant to the appellate authority has been rejected on technical grounds, but not on merit. It is not out of place to affirm that substantive justice prevails over procedural justice as has been observed by the Hon'ble Apex Court in Criminal Appeal No. 853 of 2019, (arising out of SLP (Crl.) No. 2133 of 2019) in ***State represented by Inspector of Police, Central Bureau of Investigation ... v M. Subramanyam*** as under:

"Substantive justice must always prevail over procedural or technical justice."

IV) Hence rejecting the appeal of the applicant on technical grounds would lead to failure of substantive justice, which is critical in jurisprudence. Even the appeal/ representation made to the Chairman on 25.7.2015 in regard to the delay in filing the appeal is reported to have not been disposed. Speed post receipt of sending the letter to the Chairman of the Customs and Central Excise Board has been appended as proof (Annexure A-11).

V) Therefore, in view of the aforesaid circumstances, after hearing both the counsel, it would be appropriate and fair to direct the legal representative, who is the son of the deceased applicant and applicant No. 4 in MA No.780/2019, to make a fresh representation/appeal to the competent authority, within two weeks from the date of receipt of this order. On receipt of the same, respondents to dispose of the said appeal/representation made, as per extent rules and regulation and in accordance with law, within a period of 8 weeks from the date of receipt of the appeal / representation, by issuing a speaking and reasoned order.



VI) With the above directions, the OA is disposed of, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

/evr/