

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/0200864/2020

HYDERABAD, this the 28th day of January, 2021.

Hon'ble Mr. Ashish Kalia, Judl. Member

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



Bhedananda Padhan S/o Bhaskar Padhan,

Aged 33 years,

Occ : Assistant Central Intelligence Officer,

O/o Foreign Regional Registration Officer (FRRO),

SVP OCR Complex, Immigration Building,

FRRO Office, Mamidipally Road,

Shamshabad 501218,

R/o C5 101, SVP OCR Quarters

...Applicant

(By Advocate : Mr. M.Venkanna)

Vs.

1. Union of India, Represented by its
Secretary to the Government of India,
Ministry of Home Affairs, Jai Singh Marg,
New Delhi – 110001.
2. The Director, Intelligence Bureau,
IB HQ, 35 SP Marg, Conaught Place,
New Delhi.
3. Joint Director, Immigration,
Bureau of Immigration, New Delhi.
4. The Joint Director, Subsidiary Intelligence
Bureau, Koti, Hyderabad.
5. Foreign Regional Registration Officer (FRRO),
SVP, OCR Complex, Immigration Building,
FRRO Office, Mamidipally Road,
Shamshabad – 501 218.

....Respondents

(By Advocate : Mr. V.Vinod Kumar, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed against the penalty of Censure imposed and the decision of the respondents to terminate the deputation of the applicant.

3. Brief facts of the case are that the applicant was appointed in CRPF in 2009 and he came on deputation to the respondents organization (IB) in August 2015. In August 2019, applicant was issued a charge memo under Rule 16 and penalty of Censure was imposed on 19.9.2019. Appeal and revision petition preferred were dismissed. In the midst of these developments, respondents extended the deputation of the applicant from 25.8.2020 to 24.8.2021 vide their letter dated 22.7.2020. After ordering the extension of the deputation, respondents proposed to terminate the same vide their order dated 5.8.2020 which was challenged in OA 445/2020, wherein respondents were directed to follow DOPT guidelines in processing the cancellation of the deputation. Respondents complied with the direction by issuing the impugned order dated 9.12.2020 cancelling the deputation from 25.12.2020 to 24.8.2021 on grounds that the applicant was penalised with the penalty of Censure. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the inquiry under Rule 16(1)b of CCS (CCA) Rules 1965 should have been conducted before imposing the penalty of Censure. That would have given an opportunity to the applicant to come clean on the allegations levelled against him. Not doing so is not in consonance with the observation of the Hon'ble Apex Court in FCI v Sarat Chandra Goswami -2015 (1) SCC (L&S) 286. *Albeit,*

the penalty of Censure imposed on 19.9.2019, was in the knowledge of the 1st respondent yet uninfluenced by the same, the order of extension of deputation was issued for further one year from 25.8.2020 to 24.8.2021 vide order dated 22.7.2020. Therefore, cancelling the deputation on a later date is a motivated decision adversely affecting the interests of the applicant. As per deputation guidelines circulated by DOPT vide memo dated 17.6.2010, the borrowing department should give 3 months notice to the lending department for surrendering the services of the applicant. No such notice was issued and instead, the penalty of Censure has become the source for termination of the deputation.



5. Respondents in their reply statement state that the applicant while working on deputation in the 5th respondents office was found to be absent from the immigration counter on 15/16.7.2019 for some time leading to low passenger clearance which led to the issue of a memo to explain for low passenger clearance and allegations made by applicant against the Asst. Foreigners Regional Registration Officer/D, resulting in issue of a charge sheet under Rule 16 and culminating in the imposition of penalty of Censure on 19.9.2019. Applicant did not seek a detailed inquiry. Appeal and revision petition filed were dismissed. Applicants deputation had to be terminated based on his misconduct. However, as per the directions of the Tribunal in OA 424 of 2020 & OA 445 of 2020 dt. 19.8.2020, the 1st respondent examined the extension of the deputation of the applicant as per guidelines and decided to terminate the deputation of the applicant for the period 25.12.2020 to 24.8.2021. Accordingly, applicant was relieved on 24.12.2020. Respondents also state that the earlier order dated 22.7.2020

extending the deputation up to 24.8.2021 was issued inadvertently and later withdrawn on 5.8.2020. As per rules the maximum deputation period is 5 years and for compelling reasons it can be extended to the 6th and 7th year as well. However, as the issue was under adjudication the deputation got extended by 4 months beyond the 5th year and hence the termination of the deputation is not premature. Deputation is a tripartite arrangement and if any party backs out then the tripartite arrangement will fall through. As the borrowing department would not intend to continue the deputation, cancellation of the deputation is valid under law.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the termination of the deputation of the applicant and the allied issue of imposing the penalty of censure. The applicant was involved in an incident of being away from the immigration counter on 15/16th of July 2019 leading to low passenger clearance. Respondents issued charge sheet under Rule 16 of CCS (CCA) Rules 1965 for low passenger clearance and making allegations against the immediate superior resulting in imposition of the penalty of Censure. Appeal and revision petition filed have been rejected on 26.11.2019 & 27.10.2020 respectively.

II. Respondents state that the applicant is in the habit of taking rest during duty hours on health grounds and takes offence even over trivial matters. The counter staff were advised to interact with the passengers before the immigration stamp is impressed rather doing it mechanically, but the applicant did not follow the instructions. Applicant reply to the memo cited was that he could not attend the counter due to reasons of the health



and he in fact applauded the encouragement given by the AD to pursue LLB and participate in sports & Cultural Activities. Therefore on grounds of misconduct, deputation had to be terminated on 24.12.2020 after the matter was adjudicated by the Tribunal in OAs 424 & 445 of 2020. General impression gained is that the applicant is not able to attend to duty capably for reasons of health. The remedy was to take leave and take treatment but that indifferent health can be no reason to impair operational efficiency. Applicant was involved in the job of clearing international passengers which is a sensitive job reflecting on the image of the country as well the respondents organisation. Therefore, while working in a sensitive post, the applicant should have been careful and taken the advise tendered by those concerned with his duties in the proper perspective. More so in his own interest. The applicant not being careful has invited the charge sheet under rule 16 and the penalty. Indifference and callousness to duty are not the high roads to individual and National prosperity. Any misplaced sympathy if shown to the applicant in regard to the penalty of censure, at this juncture of time would cause greater harm to his career in the years to come. While observing what we did, we rely on the observation of the Hon'ble Supreme Court in Davalsab Husainsab Mulla Versus North West Karnataka Road Transport Corporation in Civil Appeal No. 8487 of 2013 (@ SLP (C) NO. 31287 OF 2009) i

It will be worthwhile to refer to the repercussions that would result in the event of any misplaced sympathy shown to an employee who indulges in certain acts of misconduct which has been lucidly explained in a decision of the Madras High Court reported as Royal Printing Works v. Industrial Tribunal and another – 1959 (2) LLJ 619 - wherein Hon. Balakrishna Ayyar, J. (as he then was) stated the position as under:

“There are certain passages in the order of the tribunal which as I understand them suggest that carelessness on the part of an employee in relation to his work would not justify serious punishment. With this view I



definitely disagree. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. I shall not refer to the classic example of the sentry who sleeps at his post and allows the enemy to slip through. There are more familiar instances. A compositor who carelessly places a plus sign instead of a minus sign in a question paper may cause numerous examinees to fail. A compounder in a Hospital or chemists' shop who makes up the mixtures or other medicines carelessly may cause quite a few deaths. The man at an airport who does not carefully filter the petrol poured into a plane may cause it to crash. The railway employee who does not set the point carefully may cause a head-on collision. Misplaced sympathy can be of great evil. Carelessness and indifference to duty are not the high roads to individual or national prosperity."

III. Applicant contends that the inquiry should have been conducted under rule 16 (1) (b) so that he could have got an opportunity to place his case effectively. However, respondents have stated that the applicant did not ask for the same and hence was not conducted. Applicant did not refute the same by way of a rejoinder. Moreover, applicant was issued a memo to explain his conduct and on receiving the reply, charge sheet was issued and thereafter based on the defence submitted, minor penalty of censure was imposed. It is well settled that the Tribunal cannot question the decision in the disciplinary cases but can go into the veracity of the decision making process. In the instant case we do not find any deviation in the decision making process in imposing the penalty. Further, it needs to be noted that the disciplinary authority has to be satisfied as to whether a detailed inquiry is called for and thereafter take a decision as per the observation of the Hon'ble Apex Court in *FCI & Ors v Sarath Chandra Goswan* cited supra, relied upon by the applicant. The disciplinary authority in the instant case decided not to go for inquiry given the contours of the case and hence the case cited by the applicant is assisting the respondents course of action in the issue under dispute. In one another case in **I.D.L. Chemicals Ltd. vs T. Gattaiah And Ors. on 22 February, 1995**

Equivalent citations: (1996) III LLJ 346 SC, 1995 Supp (3) SCC 573,

Hon'ble Supreme Court has observed as under:

The penalty of stoppage of two increments simpliciter was imposed upon the appellant. He was given a charge-sheet and his explanation was called and taken into consideration. Nothing more need to be done so far as the procedure for imposing minor penalty is concerned. No fault can be found with the penalty of stoppage of two increments imposed by the Bank upon the appellant.



In the instant case the applicant was first asked to explain his conduct and based on the same charge sheet was issued and thereafter on receipt of the reply, penalty of Censure was imposed. Therefore, there is nothing more that the respondents need to do in imposing a minor penalty, since the issue involved in the instant case is also a simplicitor and hence the applicant cannot find fault with respondents action in regard to the process and decision to impose the penalty.

IV. In regard to deputation, it is well settled in law, that it is a tripartite arrangement between the employee, borrowing and lending departments respectively. The consent of the three parties is a must for the deputation to be ordered/continued. The borrowing department ie the respondents decided to do away with the deputation for reasons of misconduct and therefore the tripartite arrangement would not hold good. Besides, the applicant is a deputationist and hence would not have any claim to continue in the borrowing department. He has no lien on any post in the borrowing department and would have to return to the parent department to work against the substantive post after completion of the deputation period or for reasons not acceptable to any of the 3 parties, unless of course he is absorbed by the borrowing department. Hence the decision of the respondents to terminate the deputation is as per rules/law.

V. In addition, the need to issue to notice to the lending department in accordance with DOPT memo dated 17.6.2010 as contended by the applicant would arise in cases of premature repatriation. Coming to the case of the applicant, the 5th year of deputation period expired on 24.8.2020. However, as the matter was adjudicated by the Tribunal, deputation got elongated to 24.12.2020. It is also not of place to mention that the respondents admitted that they made an inadvertent mistake in extending the deputation up to 24.8.2021. A bonafide mistake can be corrected as observed by the Hon'ble Apex Court in **VSNL v. Ajit Kumar Kar, (2008) 11 SCC 591**, as under:



46. It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.

Therefore, the course correction by the respondents in terminating the deputation after detecting the bonafide folly is unquestionable as per the legal principle cited supra.

VI. The applicant has also contended that the penalty of 'censure' was imposed prior to the decision of terminating the deputation. Hence reckoning the same to terminate the deputation is irregular. We do not agree with this contention since the overall record of an employee and that too in the recent past would have a bearing in granting any benefit to the employee in regard to service matters, be it promotion, deputation, financial up-gradation etc.

VII. Thus, in view of the aforesaid circumstances, viewed from any angle, we do not find any merit in the OA. Hence the same is dismissed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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