

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/862/2019

HYDERABAD, this the 7th day of December, 2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

1. K. Anthony Francis,
S/o. Late K. John, Gr.C,
Aged about 59 years,
Post Graduate Teacher,
Kendriya Vidyalaya,
Suryalanka, Bapatla.
2. K. Vimalamani, W/o. K. John,
89 years, Block 87, Ajith Sing Nagar,
Vijayawada – 15.

...Applicant

(By Advocate : Sri M. Srikanth)

Vs.

1. Union of India,
Human Resources Development Department,
New Delhi rep. by its Secretary.
2. Kendriya Vidyalaya Sangathan,
Rep. by its Commissioner,
18th Institutional Area,
Shaheedjeet Singh Marg,
New Delhi.
3. Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Hyderabad Region Pickets,
Secunderabad.

....Respondents

(By Advocate : Sri B.N. Sharma, SC for KVS)

ORAL ORDER

Through Video Conferencing:



2. The OA has been filed seeking a direction to the respondents to release salary and other allowances for which the 1st applicant is eligible and to treat the dies non period as duty.

3. Brief facts of the case are that the 1st applicant was appointed as Post Graduate Teacher in 1987 in the respondent organization. He was issued charge Memo dt. 10.08.1999 under Rule 14 of CCS (CCA) Rules, 1965, as extended to the employees of KVS, with charges that he remained absent from duty without sanction of leave and for not taking classes regularly and not correcting home work, etc. The applicant admitted the charges vide his letter dt. 07.10.1999 and he was also given an opportunity to explain his case in person on 30.11.1999. Considering the charge sheet and the acceptance by the applicant, the disciplinary authority imposed the penalty of removal on the applicant vide Order dt. 05.01.2000. The appellate authority confirmed the said penalty on 06.10.2000 and the applicant filed OA No.763/2001 wherein this Tribunal remanded the matter to the respondents only for the limited purpose of considering the imposition of appropriate penalty by way of compulsory retirement, vide order dt. 27.02.2004. Aggrieved by the said order, the respondents as well as the applicant approached the Hon'ble High Court of AP by way of Writ Petitions Nos. 11288/2004 and 13639/2004

respectively. Hon'ble High Court vide its order dt. 12.02.2014 set aside the order of the Tribunal and remanded the matter for imposing an appropriate penalty proportionate to the proved misconduct. The applicant filed a Review Application vide Review WPMP No. 21257/2014 before the Hon'ble High Court on the ground that since he suffered from mental illness, no punishment could be imposed on him. Hon'ble High Court refused to interfere since the medical certificates have not been issued by the competent Medical Board certifying that the applicant is suffering from disability and accordingly dismissed the Review Petition on 08.08.2014. The applicant filed SLP before the Hon'ble Supreme Court against the order in Review Petition and the said SLP was dismissed on 05.10.2018.

Further, the applicant also approached the Government General Hospital, Vijayawada, which issued a certificate on 25.02.2015 certifying that the applicant has 70% disability. 2nd applicant, mother of the 1st applicant made a representation to the competent authority to consider his son's case under Section 47 of the Persons with Disability Act, 1995 and the Assistant Commissioner directed that the 1st applicant be kept in a supernumerary post w.e.f. 25.02.2015 for a period of 2 years with full pay and allowances, subject to reassessment of his health from time to time. The said authority also directed that the entire period from the date of his termination i.e. 05.01.2000 till 25.02.2015, be treated as dies non. The applicant was shown against supernumerary post from 25.02.2015 and by proceedings dt. 28.03.2016, he was called upon to submit his joining report and on complying with the same, he was paid salary from



19.05.2016. However, salary from the 25.02.2015 to 19.05.2016 has not been released. Aggrieved, this OA is filed with a prayer to release pay and allowances for the period from 25.02.2015 to 19.05.2016 and for treating the period from 05.01.2000 to 25.02.2015 as on duty.



4. The contention of the applicants are that though the competent medical board issued a medical certificate confirming 70% disability of the 1st applicant, the respondents treated the period from 05.01.2000 to 25.02.2015 as dies non, which would deprive him of his pensionary benefits and the said action of the respondents is highly arbitrary and unjustified and would cause great hardship to him as he is a disabled person.

5. The respondents filed a reply stating that the applicant was suspended vide Memo dt. 22.07.1999 for not performing regular duties. He was issued a charge memo for the same. The disciplinary authority imposed the penalty of removal on the applicant on 05.01.2000 and he was relieved from services from 07.01.2000. The applicant preferred appeal on 15.02.2000 and the appellate authority confirmed the penalty imposed by the disciplinary authority on 06.10.2000. The issue was agitated by the applicant before this Tribunal in OA 763/2001 wherein order was passed on 27.02.2004 remanding the matter to the disciplinary authority for imposition of appropriate punishment by way of compulsory retirement. Aggrieved by the said order, the respondents filed WP No. 11228/2004 before the Hon'ble High Court of AP and the Hon'ble High Court passed an interim order on 06.07.2004 granting interim suspension of the order of this Tribunal dt.27.02.2004. Further, the applicant also filed WP No.

13639/2004 before the Hon'ble High Court against the order in OA 763/2001. The Hon'ble High Court disposed of both the Writ Petitions by way of a common order dt. 12.02.2014 directing the respondents to consider imposing an appropriate penalty on the applicant. The respondents also stated in the reply that the mother of the 1st applicant submitted that the applicant was suffering from Paranoid Schizophrenia after the demise of his father and desertion of his wife and he has been treated for the same at Vijayawada from 05.12.1995 and the said disability is covered under Section 47 of the Persons with Disabilities Act, 1995. The mother of the applicant, 2nd applicant herein, submitted representation on 26.10.2015 requesting to show the applicant in a supernumerary post in view of his mental illness. The said representation was duly considered and also based on the certificate issued by the Governmental Hospital on 25.02.2015, the respondents issued Memo. dt. 12.08.2015 to show the applicant against a supernumerary post w.e.f. 25.02.2015 (date of issue of disability certificate) with full pay and allowances, until a suitable post is found or made available or till his retirement on superannuation. Further, the respondents clarified vide letter dt. 03.03.2016 that period of absence from 05.01.2000 to 24.02.2015 shall be treated as dies non. The applicant joined duty on supernumerary post at KVS, AFS, Suryalanka on 05.04.2016. The respondents further stated that the applicant was paid all the dues of pay and allowances for the period from 25.02.2015 to 21.06.2016 to the tune of Rs.6,60,181/- by way of depositing the amount into the account of the applicant.

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

7(I) It is not disputed that the applicant was proceeded on disciplinary grounds and he was removed from service vide order dt. 05.01.2000, which was confirmed by the appellate authority. The said penalty was set aside by this Tribunal in OA No. 763/2001 vide order dt. 27.02.2004, wherein the respondents were directed to consider imposing compulsory retirement on the applicant. The said order of this Tribunal was challenged by the respondents and the applicant before the Hon'ble High Court of AP vide Writ Petitions No. 11288/2004 and 13639/2004 respectively. After hearing both sides, the Hon'ble High Court vide its order dt. 12.02.2014 set aside the order of the Tribunal and directed the respondents to impose an appropriate penalty proportionate to the proven misconduct. Meanwhile, the applicant has developed mental illness and visited the Government General hospital, Vijayawada which certified on 25.02.2015 that the applicant is suffering from 70% disability. Based on the medical certificate issued by the Hospital, the mother of the 1st applicant approached the respondents on 26.10.2015 requesting to show the applicant in a supernumerary post in terms of Section 47 of PWD Act. The respondents passed favourable orders on 12.08.2015 showing the applicant in a supernumerary post w.e.f. 25.02.2015. The respondents also stated that the applicant was paid pay and allowances for the period from 25.02.2015 to 21.06.2016 to the tune of Rs.6,60,181/- and the same was credited to the bank account of the applicant. The respondents have also filed proof to this effect along with the reply statement. Thus, the prayer of the applicant for release of full pay and allowances from 25.02.2015 and 19.05.2016 has already been granted by the respondents.

(II) The other limb of the prayer of the applicant that the period from 05.01.2000 to 25.02.2015 may be treated as duty, cannot be considered for the reason that there is no medical certificate showing that he was ill from 05.01.2000 onwards. Any employee without performing his duty will not be paid any salary. All the more, when the period has been treated as dies non by the competent authority, it may not be appropriate for this Tribunal to intervene on behalf of the applicant, particularly when there is no legal basis to do so. The prayer of the applicant in this regard is not supported by any rule or law. Therefore, we find that the action of the respondents is as per rules.

III. In view of the aforesaid circumstances, we have to necessarily dismiss the OA being devoid of merits. The same is accordingly dismissed, with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/