

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/45/2019

ORDER RESERVED ON 08.03.2021

DATE OF ORDER: 12.04.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Sri C.G.Prabhu, 53 years

S/o Late Sri.S.Gopal

Occn: Inspector of Central Excise

Bengaluru-V Commissionerate

TTMC/BMTC Complex

Domluru, Bengaluru: 560 071.

(Under orders of reversion as Tax Assistant)

Residing at No.321, 7th Cross

Bhuvaneshwari Nagar

BSK III Stage, III Phase

5th Block, Bengaluru: 560 085.

.....Applicant

(By Advocate Shri P.A.Kulkarni)

Vs.

1. Union of India

To be represented by its Secretary

Ministry of Finance

Department of Revenue

North Block

New Delhi: 110 001.

2. Principal Chief Commissioner of Customs

Bengaluru Zone

CR Buildings, Queen's Road

Bengaluru: 560 001.

3. Commissioner of Customs

CR Buildings, Queen's Road

Bengaluru: 560 001.

.....Respondents

(By Advocate Shri N.Amaresh)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:
 - i. Quash the impugned order bearing C.No.II/10A/05/2012 Cus. Vig. Dated 06.01.2017, Annexure-A4, passed by Commissioner of Customs, Bengaluru, respondent No.3 herein.
 - ii. Direct the respondents to extend the continuity of service and to regulate the pay and allowances of the applicant in the cadre of Inspector starting from 6.11.2013 up to date with all consequential service/monetary benefits flowing there from.
2. The applicant has pleaded the following facts through his counsel Shri P.A.Kulkarni:
 - a. The applicant while he was working as Inspector of Customs Air Cargo Complex, Bengaluru was issued with a charge memo dated 19.10.2012 under Rule 14 of CCS(CCA) Rules 1965.
 - b. In the charge memo it was alleged that the applicant had entered into a live-in relationship with one Smt.Malathi K.S., prior to annulment of his marriage with Smt.Radha S., and begot a female child out of this relationship on 09.09.2006. The applicant was married to Smt.Radha S. on 17.1.1996 and out of this wedlock a girl child was born on 6.2.1997. Although his marriage with Smt.Radha came to be dissolved on 8.6.2007 in the petition filed by him for divorce in MC 440/2001, he entered into a live-in relationship with one Smt.Malathi K.S. prior to annulment of his marriage and begot a female child out of this relationship on 9.9.2006

which amounts to infidelity and involves moral turpitude thereby committing misconduct in as much as he acted in a manner unbecoming of a Government servant by contravening Rule 3(1)(iii) of the CCS(Conduct) Rules 1964.

- c. The respondent No.3 in exercise of powers of Disciplinary Authority(DA) vide order dated 6.11.2013 imposed the penalty of compulsory retirement on the applicant. An appeal was preferred by the applicant against the said order before the respondent No.2(Appellate Authority) who upheld the imposition of the above penalty vide orders dated 17.3.2014.
- d. The orders of the DA & AA came to be challenged by the applicant in OA.No.617/2014 before this Tribunal. The Tribunal in terms of order dated 6.7.2015 allowed the OA by quashing the punishment order and restored the applicant into service with 50% back wages after coming to the conclusion that alleged misconduct has not in any way tainted the service of the applicant.
- e. The respondents challenged the said order before the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No.33245-33247/2015 (S-CAT) and the High Court vide order dated 9.9.2015 set aside the Tribunal's order in question and remanded the OA to this Tribunal for fresh disposal in accordance with law.

f. The Tribunal in terms of its order dated 30.5.2016, while setting aside both the impugned orders of DA & AA remanded the case back to DA with a direction to consider the matter afresh from the stage where the authority received the representation made by the applicant in response to the inquiry report and to pass a reasoned and speaking order within three months from the date of receipt of copy of the order taking into consideration the observations made therein and just not based on inquiry officer's report and the applicant's representation.

g. After remand of the matter by the Hon'ble Tribunal, the respondent No.3 (Disciplinary Authority) has issued a fresh penalty order on 6.1.2017, operative portion of which reads as follows:

“For the reasons and discussions mentioned above and having regard to the directions of the Hon’ble CAT, I find that the charge made against Sri.Prabhu in the article-1 of charge memorandum of even number dated 19.10.2012 is proved and established. Accordingly, I hold that Sri.Prabhu has acted in a manner which is unbecoming of a Govt. Servant and thereby contravened the provisions of the Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964, and accordingly I pass the following order:

“In exercise of the powers conferred on me as a Disciplinary Authority under Rule 12 and Rule 15 read with Rule 11 of CCS(CCA) Rules 1965, I hereby order that the post of Sri C.G.Prabhu, then Inspector of Customs is reduced to the post of Tax Assistant, and pay as Tax Assistant on 25.12.2002, for a period till his superannuation, with the direction that the period of reduction of post and pay shall operate to postpone future increments of pay and will have cumulative effect his superannuation, with immediate effect.

On the basis of this order, I reinstate Sri C.G.Prabhu from 6.11.2013 i.e., from the date of issue of the OIO dated 6.11.2013. A separate order as required under FR 54 will be issued accordingly.”

h. The applicant challenged the above orders in WP.No.10623/2017 (S-CAT) before the High Court of Karnataka at Bengaluru. The High Court disposed of the said WP on 9.10.2018 with liberty to the applicant to assail the said order before this Tribunal by keeping open all contentions of the parties.

i. Subsequent to the orders of this Tribunal passed on 30.5.2016 in OA.No.617/2014, the applicant was allowed to rejoin his duties as Inspector of Customs on 8.6.2016. Thereafter, vide order dated 22.8.2016, the applicant was transferred from Bengaluru Customs to Bengaluru-V Commissionerate. Accordingly, the applicant reported for duty at Bengaluru-V Commissionerate on 2.9.2016. However, his pay and allowances in respect of the duty period starting from 8.6.2016 i.e. from the date of rejoining to duties is not released by the Authority. Instead of that, from the date of original compulsory retirement order passed by the disciplinary authority i.e. 6.11.2013 up to passing of the latest punishment order dated 6.1.2017, the applicant is paid pension in terms of the compulsory retirement order dated 6.11.2013. The Administration has also chosen to ignore applicant's rejoining as Inspector w.e.f. 8.6.2016 even though he is entitled for the pay and allowances for the duty period as Inspector of Central Excise.

j. The punishment order under challenge is untenable in law for the following reasons:

- i. It is impermissible to impose the penalty of reversion from a retrospective date. In the instant case, authority has punished the applicant reverting him from the post of Inspector to the cadre of Tax Assistant w.e.f. 25.12.2002 even though the charge memorandum is issued on 19.10.2012.
- ii. In *B.C.Chaturvedi vs. UOI and others* reported in (1995) 6 SCC 749, the Hon'ble Supreme Court has held that if the punishment imposed by the Disciplinary Authority is shocking the conscience of the Tribunal, it would appropriately mould the relief either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

k. In the instant case, the initial punishment imposed against the applicant with reference to the charge memo at Annexure-A1 is compulsory retirement. The Tribunal in its order dated 6.7.2015 after holding that alleged infraction has not in any way tainted his service with the Government, had set aside the said punishment with direction to the administration to reinstate the applicant into service with 50% back wages attached to the post held by him as on the date of passing of the compulsory retirement order. Although this order was challenged by the administration before the High Court and set aside on technical grounds, the spirit of the said order has never been disapproved by the High Court on merits. Subsequently, specific observations were made by this Tribunal in its order dated 30.5.2016 in OA.No.617/2014 i.e. after remand of the matter by the High Court with reference to the Tribunal's order dated 6.7.2015. In view of the above, the authority ought to have kept in mind, the spirit of the observations, made by this Tribunal in

assessing the culpability of the applicant with reference to the alleged misconduct. Instead of that, arbitrarily and highhandedly, the impugned punishment order has been passed by respondent No.3 which is in fact much more severe and which should be shocking to the conscience of this Tribunal, in terms of observation made in *B.C.Chaturvedi's* case.

1. In terms of the punishment order of compulsory retirement, the applicant is paid in December 2013 an amount of pension of Rs.21024/-. This pension amount in December 2016 is Rs.25916/-. Now with the punishment order under challenge, he gets the same emoluments classified as 'pay and allowances' attached to the post of Tax Assistant.
- m. Therefore, the authority with an ulterior motive, has seen to it that their compulsory retirement order should be in force in a different form and shape, that too by subjecting the applicant to the rigor of performing the official duty of Tax Assistant until superannuation, as against the applicant's getting the same amount by way of pension by sitting at home.
- n. In the present case, there was a mutual divorce petition pending between applicant and his wife by the time applicant begot a female child from Smt.Malathi K S out of the live in relationship. The fact of such mutual divorce petition pending since 2001 and ending with dissolution of marriage order dated 8.6.2007 makes it clear that there is no question of infidelity and moral turpitude involved in the instant case. It is nobody's

case that on account of such live-in relationship of the applicant only the wife Smt.Radha was dragged to the situation of seeking mutual divorce with the applicant.

- o. Thus applicant would submit that the disciplinary authority is not justified in assuming that the factum of applicant's begetting a female child through K.S.Malathi before dissolution of marriage with his wife by itself should amount to misconduct so as to attract Rule 3(1)(iii) of the Conduct Rules 1964.
- p. The punishment order at Annexure-A4 now imposed is totally highhanded act on the part of the disciplinary authority and it also suffers from serious arbitrariness.
- q. In view of the direction issued by this Tribunal vide order dated 30.05.2016, challenge of the punishment order at Annexure-A4 before the Appellate Authority, which in the normal course, is the availability of the alternate remedy, is not found necessary in the instant case as it would not be efficacious remedy for the humiliation suffered by the applicant throughout. Hence, non-preferring of appeal against the punishment order in question, is not fatal in the instant case and there is no justification for relegating the applicant to that position at this point of time.

3. The respondents in their reply statement has, through their counsel Shri N.Amaresh, averred as follows:

- a. The applicant is not entitled for any relief prayed by him for the reasons that the departmental enquiry was initiated against him for the alleged charges and all the reasonable opportunities were extended to him to defend his case. The misconduct committed by him is in violation of Conduct Rules and the charges against the applicant held as proved. The Disciplinary Authority has considered the explanation submitted by the applicant and taking into consideration the observation of this Tribunal in the order dated 30.05.2017 passed in OA.No.617/2014, came to the right conclusion.
- b. The earlier punishment of compulsory retirement has now been reduced to that of reduction in rank from Inspector of Customs to Tax Assistant and also reduced the pay to that of Tax Assistant as on 25.12.2002 till the date of his superannuation with postponement of increments. The DA has reached a proper conclusion after taking into the overall facts and circumstances of the case.
- c. The applicant has not exhausted the remedy of appeal available to him. Against the order in original passed by the DA dated 6.1.2017, he was advised that appeal against the impugned order lies before the Appellate Authority i.e. the Chief Commissioner of Customs but the applicant has not preferred any appeal. Therefore, the application is premature one. The applicant has no case on merits also and the OA is liable to be dismissed.

d. It is a fact that the divorce petition was pending between applicant and his wife by the time applicant begot a female child from Smt.Malathi K.S. out of live-in relationship. It is also a fact that Smt.Radha was the wife of the applicant till the marriage was annulled, irrespective of whether they were living together or apart. The child was born to the applicant and to Smt.Malathi on 9.9.2006 and the annulment of the marriage came only on 8.6.2007. As per Rule 2(C) of the CCS (Conduct) Rules 1964, members of family in relation to a Government servant includes the wife or husband as the case may be, of the Government servant, whether residing with the Government servant or not but does not include a wife or husband, as the case may be, separated from the Government servant by a decree or order of a competent Court.

e. From the above definition, it is clear that the said Rule considers spouse of a Government servant irrespective of whether the spouse is residing with the Government servant or not and only ceases to be a spouse on separation from the Government servant by a decree or order of a competent court. In view of this, the conduct of the CO was held to be unbecoming of a Government servant and in violation of Rule 3 (1) (iii) of the CCS(Conduct) Rules. In view of this, the decision of DA in deciding that the applicant has acted in a manner which is unbecoming of a government servant is correct. The DA is justified in assuming that the factum of applicant begetting a female child through

Smt.K.S.Malathi before dissolution of marriage with his wife by itself should amount to misconduct, so as to attract Rule 3(1)(iii) of the Conduct Rules 1964. The DA has acted as per Rules and observations of this Tribunal in OA.No.617/2014 and issued the order as per the applicable rules. The DA has acted in the interest of justice and equity and by following principles of natural justice.

4. Heard the learned counsels for the parties.
5. The present OA is filed by the applicant challenging the orders passed by the Disciplinary Authority(DA) on 6.1.2017 imposing on him the following punishment:

“The post of Shri C.G.Prabhu, then Inspector of Customs is reduced to the post of Tax Assistant, and pay as Tax Assistant on 25.12.2002, for period till his superannuation, with the direction that the period of reduction of post and pay shall operate to postpone future increments of his pay and will have cumulative effect after his superannuation, with immediate effect.”

6. The earlier original order of punishment passed by the Disciplinary Authority and upheld by the Appellate Authority on 17.3.2014 is as follows:

“In exercise of the powers conferred on the Appellate Authority under Rule 27(2)(i) of CCS(CCA) Rules 1965, the Appellate Authority upheld the penalty of “Compulsory Retirement” as prescribed under Rule 11 (vii) of the said Rules imposed by the Disciplinary Authority vide his Order-in-Original No.02/2013-(Vig) dated 06.11.2013 issued from file No. C.No.II/10A/05/2012 Cus Vig dated 19.01.2012, on the Appellant.”

7. The order dated 6.1.2017 was issued subsequent to the directions of this Tribunal when the case was remanded back to the DA, with the direction that the case should be reconsidered afresh from the stage where he received the representation made by the applicant in response to the inquiry report. The DA

was expected to issue a reasoned and speaking order within 3 months of receiving a copy of the order of this Tribunal based not just on the inquiry officer's report and the applicant's representation but also in light of the observations made by this Tribunal. The observations made by this Tribunal were as follows:

"9. The fact of the matter is that the applicant did indeed breach the Rules and was guilty of misconduct. He has himself admitted the nature of his relationship with Smt. Malathi during the currency of his marriage with Smt. Radha although he has tried to give it a veneer of respectability by claiming that it was as good as marriage. The only question that remains for us to decide is whether the penalty imposed is appropriate or not. We note that the respondents have not found fault with the applicant's work. There is no charge of financial misconduct. The applicant still has several years of productive service ahead of him. He was abandoned by his wife and therefore became involved with Smt. Malathi. While we cannot condone his behaviour we believe that the respondents have imposed a penalty that is disproportionate to the degree of misconduct. We have come across any number of cases where the applicant was removed from service for proven financial misconduct, how can the present case which does not involve any charge of financial irregularities be treated as akin to the former? We are in fact disturbed by the severity of the penalty imposed by the respondents in the present case and feel it is wholly disproportionate to the nature of the offence. The respondents must move with the times and should not cling on to an antediluvian set of beliefs. In this connection it would be apt to cite the following lines from the judgment of the Hon'ble Apex Court in Vijay Khariwal Vs. State of Punjab and Another:

"22..... The proposition of law has been laid down by a three Judge Bench of the Hon'ble Apex Court in B.C. Chaturvedi Vs. Union of India & Others (1995) 6 SCC 749: [1995(5) SLR 778(SC)] wherein it has been held as under:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the

discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

The said view was subsequently followed in Shri.Bhagwan Lal Arya Vs Commissioner of Police Delhi & others 2004(4) SCC 560 [2004(3) SLR 70(SC)], by noticing that to shorten the litigation and in view of the time already lost, the punishment of removal of service could be altered by the court. Similarly in G.Vallikumari (supra), the Hon’ble Apex Court also substituted the punishment of removal from service imposed with penalty of stoppage of three increments, without cumulative effect, and directed that the appellant be paid only 25% of the back wages, during the intervening period.

8. The first thing which needs to be examined is whether the fresh order of punishment imposed upon the applicant is keeping in view the observations made by this tribunal which were to be taken into account by the DA, before it passed the revised penalty order dated 6.1.2017. It also needs to be examined whether the fresh order imposes a penalty which is less in severity, as compared to the earlier order of compulsory retirement.
9. In this case, the order for reduction to lower rank has been made from retrospective effect i.e. from 25.12.2002 for a period till the superannuation of the applicant, with the direction that the period of reduction of post and pay shall operate to postpone future increments of his pay and will have cumulative effect after his superannuation with immediate effect. It is not clear as to why

this penalty is being imposed from 25.12.2002, which is the date of his promotion as Inspector, when the initial penalty of compulsory retirement was imposed on him on 6.11.2013.

10. As per the CCS(CCA) Rules, the following major penalties can be imposed on a Government servant:

Major Penalties --

(v) Save as provided for in Clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) Reduction to lower time-scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period—

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time-scale of pay, grade, post or service.

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Government;

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

11. As can be seen from the list of major penalties prescribed in CCS(CCA) Rules, the penalty of compulsory retirement is at Sl.No.vii. Reduction to lower time-scale of pay, grade, post or service for a period to be specified in the order of penalty is at Sl.No.vi. The list of major penalties is in order of their severity with the penalty at Sl.No:vii (Compulsory retirement) being considered as a more severe penalty as compared to the penalty at Sl.No:vi (Reduction to lower time-scale of pay, grade, post or service for a period).

12. A careful reading of the specific penalty clause prescribed in the CCA rules, relating to reduction to lower timescale of pay, indicates that the period of the penalty has to be specific, with a direction whether or not on expiry of the said specific period, this would postpone future increments, and whether the Government servant's original seniority from the higher post subsequent to his reduction, would be regained by him or not. There does not seem to be any provision for imposition of penalty from a retrospective date. In the present case, although the disciplinary authority has purportedly granted a less severe penalty as compared to the earlier penalty of compulsory retirement, but strangely it is specified that the period of reduction in rank from Inspector of Customs to Tax Assistant would be from 25.12.2002i.e. from a retrospective effect, till his superannuation, along with a direction that the period of reduction of post and pay shall operate to postpone future increments of pay and will have cumulative effect after superannuation with immediate effect. This implies that

as per the punishment imposed on him, the applicant would be reduced in rank from the post of Inspector of Customs to the post of Tax Assistant retrospectively, from 25.12.2002, which was the date of his promotion as Inspector, till his superannuation, without any increments, and will also draw his subsequent pension on superannuation, based upon the lower scale of pay. The pay due to the applicant as a tax assistant, is similar to the amount of pension that he would have been entitled to, if he was compulsorily retired from service as per the earlier penalty imposed on him. As per the fresh penalty order now imposed on him, at the time of his superannuation, he would now be entitled to a superannuating pension, as a Tax Assistant, which would be around half of the amount he would have been drawing as pension on compulsory retirement. Moreover, this payment of salary would be due to him after serving as a Tax Assistant for his remaining period, whereas he is entitled to a pension after compulsory retirement while simply sitting at home. Hence, there is no doubt that the punishment imposed on him now, is much more severe, than the punishment of compulsory retirement imposed on him in the earlier order.

13. It is therefore clear that the order imposing this penalty now, has been passed in utter disregard to the directions of this Tribunal vide order dated 30.5.2016 passed in OA.No.617/2014. The tribunal, in its order, had observed as follows:

The only question that remains for us to decide is whether the penalty imposed is appropriate or not. We note that the respondents have not found fault with the applicant's work. There is no charge of financial misconduct. The applicant still has several years of productive service ahead of him. He was abandoned by his wife and therefore became involved with Smt. Malathi. While we cannot condone his behaviour we believe that the respondents have imposed a penalty that is disproportionate to the degree of

misconduct. We have come across any number of cases where the applicant was removed from service for proven financial misconduct, how can the present case which does not involve any charge of financial irregularities be treated as akin to the former? We are in fact disturbed by the severity of the penalty imposed by the respondents in the present case and feel it is wholly disproportionate to the nature of the offence. The respondents must move with the times and should not cling on to an antediluvian set of beliefs.

14. The Disciplinary Authority has stated in its order that they have passed this fresh penalty order keeping in view the directions of the Hon'ble CAT in its judgement dated 30.5.2016. However, the penalty now imposed on the applicant, is much more severe in its effect than the earlier order of compulsory retirement, besides being from retrospective effect. This clearly indicates that the disciplinary authority has either not applied its mind, or has passed the order with malicious intent, without taking into consideration the orders of this Tribunal.

15. As observed by the Hon'ble Apex Court in *B.C.Chaturvedi vs. UOI & others* (1995) 6 SCC 749, for exercising the power of judicial review, the Courts cannot normally substitute its conclusion on penalty. However, if the penalty imposed by the authority shocks the conscience of the Courts, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

16. A perusal of the penalty order passed by the Disciplinary Authority, indicates clear lack of application of mind, and probable malicious intent, which is

sufficient to shock the conscience of this Court. There have to be cogent reasons provided by the Disciplinary Authority, to relate the quantum of punishment, to the nature of his misconduct, after taking into account the mitigating circumstances in the case, as well as observations of this tribunal in its judgement dated 30.5.2016. The penalty order, therefore, deserves to be quashed forthwith.

17. Accordingly, the O.A. is allowed and the order dated 6.1.2017 passed by the DA is hereby quashed. A further direction is issued that the Disciplinary Authority shall reconsider the entire case starting from the report of the Inquiry Officer in the matter, taking into account the representations made by the applicant, particularly relating to the facts and the surrounding circumstances, in which he committed the misconduct. The mitigating circumstances, leading to his misconduct, shall be taken into account by the Disciplinary Authority. It shall also take into account the observations made by this tribunal while passing orders in OA.No.617/2014 dated 30.5.2016, before deciding on the quantum of punishment to be imposed upon the applicant.

18. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (ADMN)

(SURESH KUMAR MONGA)
MEMBER (JUDL)