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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 628 OF 1994

Cuttack, this the 9th day of August, 2000

Shri Hadibandhu Dehuri Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not? *no.*

L. — I.
(G. NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
9.8.2000
VICE-CHAIRMAN

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)
.....

Shri Hadibandhu Dehuri
son of late Sanatana Dehury
at present Havildar, Office of the Assistant
Collector, Central Excise, Cuttack-753 002....Applicant

Advocates for applicant-M/s Antaryami Rath
A.C.Rath

Vrs.

1. Union of India, represented by the Secretary, Ministry of Finance, Department of Revenue, New Delhi-110 001.
2. Collector, Central Excise & Customs, Rajaswa Vihar, Bhubaneswar-751 004.
3. Assistant Collector, Central Excise, Cuttack-753 002.
.....
Respondents

Advocate for respondents -Mr.U.M.Mohapatra
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

Som .
In this application the petitioner has prayed for quashing the order dated 24.12.1992 (Annexure-8) treating his period of absence from 9.12.1991 to 23.12.1991 as dies non and imposing on him the penalty of censure, and the order dated 23.6.1994 (Annexure-9) of the appellate authority partly rejecting his appeal. The facts of this case fall within a small compass and can be briefly stated.

2. At the relevant time the applicant was working as LDC in the Central Excise & Customs Office at Cuttack. In the month of December 1991 his wife fell seriously ill and the petitioner applied for leave. The leave was not recommended by his controlling authority.

Subsequently, the applicant came to know that his wife's illness has aggravated. Because of this the applicant proceeded on leave and in his village he found his wife in an agonising state of health and as such he availed leave from 9.12.1991 to 23.12.1991 and resumed duties on 23.12.1991. A disciplinary proceeding under Rule 16 of CCS (CCA) Rules was initiated against him. The charge is at Annexures 1 and 2. In orders at Annexures 3 and 4, presenting officer and inquiring officer were appointed. The inquiring officer in his report held the charge as proved. A copy of the enquiry report was sent to the applicant in letter dated 24.9.1992 at Annexure-7 and the impugned order of punishment at Annexure-8 was passed. The appellate authority ordered that the period of absence from 9.12.1991 to 23.12.1991 should be treated as leave admissible but he maintained the penalty of censure for which the applicant has come up with the prayer referred to earlier.

3. The respondents have filed counter opposing the prayer of the applicant. It is not necessary to refer to the detailed averments made by the applicant and the respondents in their pleadings because these will be referred to at the time of considering the submissions made by the learned counsel of both sides.

4. We have heard Shri Antaryami Rath, the learned counsel for the petitioner and Shri U.B. Mohapatra, the learned Additional Standing Counsel for the respondents and have also perused the records.

5. The first point made by the learned counsel for the petitioner is that during the course of enquiry the applicant prayed for production of additional document with regard to headquarters leaving permission application dated 5.12.1991. But the inquiring officer

instead of asking the Presenting Officer to cause production of this vital document, asked the applicant to enquire about the matter from the office. In view of this, it is submitted by the learned counsel for the petitioner that reasonable opportunity was denied to him. The applicant has not mentioned as to how non-production of this document has prejudiced him when in their counter the respondents have mentioned clearly in page 2 that an EL application was submitted by the applicant on 5.12.1991. The admitted position is that the petitioner applied for five days leave from 9.12.1991 to 13.12.1991 prefixing 7th and 8th December 1991 and suffixing 14th and 15th December 1991 on the ground of domestic trouble. In view of the fact that the leave application submitted by the applicant on 5.12.1991 has been admitted by the respondents in their counter, it is held that non-production of this document had not prejudiced the applicant in any way and this contention is therefore rejected.

6. It appears from the statement of imputation that the applicant in his letter dated 3.1.1992 had indicated that his wife suffered from serious complications after undergoing tubectomy operation. The respondents have stated that in his original application as also in the revised EL application dated 24.12.1991 the applicant has not mentioned wife's illness as the reason for his going on leave. He has only mentioned domestic trouble. It has been stated that had his wife been seriously ill, he would have mentioned this in his leave application. We are unable to see the logic of this because wife's illness will definitely be a major domestic trouble for any married

person. In course of his examination, the record of which is at Annexure-6 the applicant has stated that his wife was admitted in Danagadi Government Hospital on 7.12.1991. The applicant has also stated that if necessary the matter can be enquired into from the Government Hospital. From all the above it is seen that the applicant had made a due application. He was refused leave on the ground of pending work in the Typing Section as also on account of impending inspection of Additional Collector. In Government of India offices all Clerks are also required to do typing work and in case there was pendency in the Typing Section, the applicant alone could not be held responsible for the same. From the pleadings of the parties it appears that the departmental authorities have taken an adverse view of the applicant's conduct firstly because he has not mentioned in his leave application that his wife is seriously ill and secondly because in spite of he being told that leave will not be granted, he had gone to his village. ^{view of the} In / fact that he has mentioned domestic trouble in his leave application and has explained in his explanation that he felt delicate to mention about the ^{gynaecological} / trouble of his wife in his leave application, the conclusion drawn by the departmental authorities against the applicant on this count does not appear to be reasonable. The applicant has no doubt remained away from his work during the period mentioned above. But under the circumstances when his wife was seriously ill and had to be admitted in Danagadi Government Hospital, his conduct is definitely excusable. The appellate authority has rightly ordered to treat the period of absence as leave admissible. In the above context, the punishment of censure which has been confirmed by the appellate authority does

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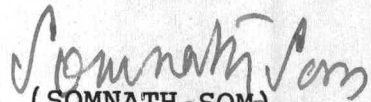
appear to be disproportionate because this record in his CR would adversely affect his future prospects. In consideration of this, instead of remitting the matter back to the disciplinary authority, we quash the punishment of censure and direct the disciplinary authority to caution the applicant in writing and such caution need not be recorded in his CR.

7. In the result, the Original Application is allowed. No costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)
9.8.2000
VICE-CHAIRMAN

9th August, 2000/AN/PS