

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 415 / 2009

Thursday, this the 8th day of July, 2010.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Padmaja Harikrishnan,
Tax Assistant,
O/o the Commissioner of Income Tax (CIB),
Kandamkulathy Towers,
Kochi.Applicant

(By Advocate Mr P Ramakrishnan)

v.

1. Union of India represented by the
Secretary, Ministry of Finance,
New Delhi.
2. The Chief Commissioner of Income Tax
(Cadre Controlling Authority),
Central Revenue Buildings,
I.S.Press Road, Kochi-18.
3. The Commissioner of Income Tax,
Central Revenue Buildings,
I.S.Press Road, Kochi-18.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC)

This application having been finally heard on 8.7.2010, the Tribunal on delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against the Annexure A-8 letter dated 24.8.2007 intimating her certain adverse remarks recorded in her Annual Confidential Report (ACR for short) for the period from 1.4.2006 to 31.3.2007 and inviting representations, if any, against them, the Annexure A-10



memorandum dated 18.12.2007 rejecting her representation dated 5.10.2007 against the aforesaid remarks and confirming the adverse entries and Annexure A-12 memorandum dated 20.5.2009 by which the aforesaid adverse remarks made by the Reporting Officer and as confirmed by the Reviewing Officer was reconfirmed by the Appellate Authority.

2. The applicant, while working as a Tax Assistant, during the period from 7.3.2003 to 5.1.2007, was informed by the Senior Authorised Representative, ITAT, Kochi Bench vide its Annexure A-2 letter dated 13.9.2006 that she was absent from duty on 12.9.2006 without any prior permission. She was also informed that on earlier 13 occasions (as listed) during the period from 8.8.2003 to 18.7.2006, she remained on unauthorised absence and ex-post facto sanctions of leave have to be granted to her. She was also reminded that, vide earlier office order dated 6.6.2006, she was directed to put in more efforts in discharging her duties assigned to her and to observe strict discipline in attendance but she was found casual in observing punctuality. Further, she was often found coming very late and leaving the office very early at her convenience. Even when she was present, she was seldom exhibiting any keenness in carrying out the duties assigned to her and her output of work was far from satisfactory. Many a times, she was orally asked to be more vigilant during duty time and to show positive improvement in output. But, there have been no palpable change in her attitude and the same was viewed very seriously. She was, therefore, afforded an opportunity to explain her position before any action was taken against her under the CCS (Conduct) Rules. According to the Annexure A-3 explanation dated 20.9.2006, as usual, she informed her immediate superior over phone about her absence on 12.9.2006. As regards the earlier instances of unauthorised absence, she explained that they were due to the tension she had to undergo because of the additional work



entrusted to her, over and above her normal duties. She denied the allegation that she was leaving the office early unless she was asked by her immediate superior for submitting bills, making various payments or getting the cheques encashed. As regards the applications for leave on earlier occasions, she submitted that the varicose disease she was suffering from and her long distance daily journey added to her problems. She has also stated that she submitted all those applications in time. According to her, even in cases she came late for 10/15 minutes and on 2 days of hartals, she was marked 'late'. However, she assured that in future, she will keep punctuality and work according to the expectation and morale of the department. After due consideration of the aforesaid explanation as well as other circumstances such as shortage of staff, pressure of work etc., the Senior Authorised Representative has informed her vide its Annexure A-4 letter dated 3.10.2006 that no severe action was proposed to be taken against her but she was warned to be more careful and vigilant in future in office matters and in maintaining office decorum. She was also informed that any further defiance or lapse on her part would attract action under the CCS(Conduct) Rules.

3. Later, the Commissioner of Income Tax (Appeals) III, Kochi sought an explanation from her vide its Annexure A-6 letter dated 1.2.2007 as to why she has not accounted the drawal of festival advance by her while she was in the office of the Senior Authorised Representative, ITAT, Kochi Bench. According to the said authority, the applicant took an amount of Rs.1500/- as festival advance vide bill dated 19.12.2006 drawn from the Treasury Branch of State Bank of India, Ernakulam on 22.12.2006 but she did not account for it in the concerned registers, viz, cash book, acquittance register, pay bill register etc. and her said action was considered as a deliberate attempt of suppression of facts and fraudulent in nature warranting action under CCS(Conduct) Rules as



the non-detection of her said misdemeanor would have resulted non-inclusion of the said amount in the Last Pay Certificate issued to her resulting the financial loss to the Government. The applicant, vide her letter dated 13.2.2007, explained the circumstances under which the festival advance drawn by her was not properly accounted. According to her, by mistake she forgot to make necessary entries in the concerned registers. But on realising the omission she contacted the Office Superintendent over telephone and subsequently forwarded a request for correction through proper channel addressed to Senior Authorised Representative on 8.1.2007. She has, therefore, requested to exempt her from any disciplinary proceedings and assured that such mistakes will not be repeated in future. The respondents were not satisfied by her aforesaid explanation but did not take any punitive action against her. However, while writing the ACR for the period from 1.4.2006 to 31.3.2007, the reporting officer, against Cols. 20 and 22 of Part III, observed that her punctuality was not adequate and integrity was not certified. The observations of the Reporting Officer were as under:

"Col.20 Punctuality : NOT ADEQUATE"

[It is reported that you were irregular in attending office. Due to the shifting of office and problem associated with commuting, your behaviour was initially condoned. However, during the period from March 2006 to August 2006, your late attendance was marked in the Attendance Register and leave was debited as per proceedings in CR 27/AR/06-07 dated 13.09.2006. This fact has also been accepted by you.]

Col.22 Integrity : Integrity not certified

[It is reported that during the period you were working as Cashier in the office of Sr. AR, ITAT, Kochi, it was found that an amount of Rs.1500/- drawn as Festival Advance vide proceedings dated 19.12.2006 and drawn vide Bill No.102/06-07 dated 19.12.2006 and drawn from the Treasury Branch of State Bank of India, Ernakulam on 22.12.2006 for payment to you was not accounted in some of the concerned Registers viz. Cash book, Acquittance Register, Pay Bill Register etc. But another bill No.100/06-07 (Contingent bill) for Rs.1357/- encashed along with Festival Advance on 22.12.2006 was duly entered in all the concerned registers. The above sum of Rs.1500/- was included in the Monthly/Quarterly expenditure statements of pay and allowances for the month of December 2006 giving data on actual expenditure incurred in item VII(16)(f) captioned as "Festival" prepared by you. From the above, it would

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appear that prima facie, you have made a deliberate attempt to suppress the fact of drawal of Festival Advance of Rs.1500 which was recoverable in 10 equal monthly instalments from you by omitting to record the same in the concerned registers. The inclusion of the amount in the data in the monthly/quarterly statements was apparently done to prevent detection during reconciliation by the ZAO."

4. Vide the impugned Annexure A-8 confidential letter dated 24.8.2007, the 3rd respondent intimated the aforesaid adverse remarks to the applicant and gave an opportunity to her to represent against the same, if she so desire, within 30 days. Accordingly, she made the Annexure A-9 representation dated 5.10.2007 requesting the said respondent to expunge these adverse remarks. However, the 3rd respondent after detailed consideration of her representation rejected her request for expunging of the adverse remarks by the Annexure A-10 memorandum dated 18.12.2007. The applicant appealed against the same vide her representation dated 23.6.2008 but the same was also rejected by the Annexure A-12 memorandum dated 20.5.2009.

5. Her contention is that since she was already warned by the Annexure A-4 memorandum dated 3.10.2006 and by the Annexure A-8 show cause notice dated 24.8.2007, further recording of the same facts as adverse remarks was not warranted. She was also contended that her performance after those warnings was improved and the respondents have found it satisfactory. In this regard, she has also relied upon the Government of India, O.M.No.2(A) dated 5.6.1981 wherein it has been held as under:

"At the end of the year, the reporting authority, while writing the confidential report of the officer, may decide not to make a reference in the confidential report to warning/displeasure/reprimand, if in the opinion of that authority, the performance of the officer reported on or after the issue of the warning or displeasure or reprimand as the case may be, has improved and has been found satisfactory."

She has, therefore, prayed that the aforesaid impugned letter dated 24.8.2007 conveying the adverse remarks in her ACR for the period from 1.4.2006 to



31.3.2007, the memorandum dated 18.12.2007 rejecting her representation dated 5.10.2007 and the impugned memorandum dated 20.5.2009 to the extent that it confirms the adverse entries in the ACR should be quashed. She has also prayed for a direction to the respondents to consider her for promotion as Senior Tax Assistant, as if the adverse entries in the Annexure A-9 are not in existence. According to the applicant, the allegation of financial irregularity against her was absolutely unfounded. In this regard, she has annexed a copy of the letter dated 8.1.2007 written by her to the Senior Authorised Representative of ITAT, Kochi, through the Commissioner of Income Tax (Appeals) and forwarded by one K.A.Gourikutty Amma, Private Secretary, Office of the Commissioner of Income Tax (Appeal), Kochi. According to the said letter she had applied for Rs.1500/- in connection with the festival of Christmas during the year 2006 and received payment on 22.12.2006 but she has forgotten to make necessary entries in the concerned register regarding the receipt of the above account. She has, therefore, requested to make necessary arrangements for recovering the same as it was an inadvertent omission happened and it was not intentional.

6. The respondents in their reply have submitted that the applicant was directed to attend the office in time and not to leave office before time without prior permission of the immediate superior in order to maintain punctuality. As she failed to observe punctuality, she was warned by the memorandum dated 3.10.2006. They have also relied upon Government of India, O.M.No.210/1/81-Estt.(A) dated 5.6.1981 wherein it has been held as under:

"..If the reporting authority comes to the conclusion that despite such warning/displeasure/reprimand, the officer has not improved, it may make appropriate mention of such warning/displeasure/reprimand, as the case may be, in the relevant column in relevant Part-III of the form of confidential report relating to assessment by the reporting officer and, in that case, a copy of the warning/displeasure/reprimand referred to in the confidential report should be placed in the CR dossier as annexure to the confidential report for relevant period."



As regards unauthorised absence from duty is concerned, they have submitted that earned leave for 12 days was debited from the leave account of the applicant for late coming on 36 occasions during March 2006 to August 2006. They have also submitted that the applicant was responsible for not entering the details of festival advance drawn by her in the concerned registers. But it was included in the monthly statement of Pay & Allowances for the month of December 2006 prepared on 4.1.2007. According to them, if the amount was not included in the monthly/quarterly Expenditure Statement of Pay & Allowances, then the non-recording of the entry regarding drawal of advance could have been easily detected by Zonal Accounts Officer who was in-charge of the accounts and Audit of the office. The respondents have also denied the contention of the applicant that she had sent the letter dated 8.1.2007. According to them, even if she had sent the said letter, the fact that when two cheques were withdrawn simultaneously and only one entry has been made in the cash book and the missing entry was only with regard to her festival advance, a simple letter after she was transferred out of the office do not ordinarily clear the allegation of financial impropriety.

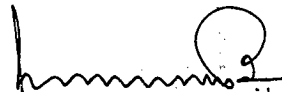
7. We have heard the learned counsel for both the parties. The applicant was given sufficient opportunities to rebut the allegations made against her and she had availed them also. The explanation given by the applicant was not found satisfactory and therefore the adverse remarks entered in the ACR was not expunged. So long as those entries have not been expunged, it will have its consequence. We also have seen that the adverse entries made in her ACR are based on facts. Further, we do not find any arbitrariness or illegality in the aforesaid letter/memoranda as alleged by the applicant. We, therefore, reject the applicant's prayer for a direction to the respondents to consider her for



promotion as Senior Tax Assistant as if the entries made in her ACR are not in existence. Accordingly the O.A is dismissed without any order as to costs.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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