

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.475/09

Wednesday this the 22nd day of September,2010

CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.K.Purushothaman,
(Formerly LDC Naval Store Depot, Southern Naval Command,Kochi)
Now residing at Puthan Veettil, Vattayal Ward,
Thiruvambadi P.O,
Alappuzha. .. Applicant

By Advocate:Mr.V.Madhusudhanan

vs.

1. Commodore, Chief Staff Officer,
(P&A) H.Q.Southern Naval Command, Kochi.
2. The Flag Officer Commanding in-chief,
Headquarters (SSO (P),Southern Naval Command,
Kochi-4.
3. The Controller Materials,
Naval Store Depot, Kochi. .. Respondents

By Advocate: Mr.Rajesh for Mr.Sunil Jacob Jose, SCGSC

The Application having been heard on 16.09.2010, the Tribunal on
22.09.2010 delivered the following:-

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN,JUDICIAL MEMBER:

Unauthorized absence from service was culminated in the



dismissal of the applicant following an ex-parte enquiry and its finding. The Dismissal as well as the Appellate orders are impugned in this Original Application. The applicant has prayed for the quashing of the impugned orders and for a direction for his reinstatement in service with all consequential benefits.

2. The facts which are relevant for the decision of the Original Application are as follows. While the applicant was working as a Lower Division Clerk in the Naval Command, Kochi, he unauthorizedly absented from duty from 12th August, 1998 to 29th April, 1999. An enquiry has been ordered on a charge-sheet basing on the unauthorized absence of the applicant from service. Though the notice and charge-sheet have been sent to the applicant to his residential address, that was not served on him due to absence in the residential address. However, on considering the material available on records and on finding that the applicant unauthorizedly absented from service from 12th August, 1998 to 29th April, 1999 the matter has been published in Malayala Manorama Daily dated 4th June, 1999 affording an opportunity to the applicant for making any representation or to file any written statement, the applicant was dismissed from service as per order dated 21st June, 2000. Against the said order, the applicant filed an appeal only on 4th March, 2009 before the Appellate Authority,



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after the filing of the O.A. Subsequent to the filing of the O.A. on the basis of the interim order given by this Tribunal, the Appellate Authority confirmed the order passed by the Disciplinary Authority as per the Appellate Order dated 20th July, 2009. These two orders are now challenged before this Tribunal. The Original Application has been admitted and notice has been ordered to the respondents.

3. The respondents have filed a reply statement in which it is stated that a charge sheet has been forwarded to the residential address of the applicant for the absence of the applicant from 12th August, 1998 to 29th April, 1999. However the covering letter with the charge-sheet have been returned with the endorsement "the addressee left". Thereafter a disciplinary action has been published in the Malayala Manorama daily on 4th June, 1999 and thereafter a formal enquiry has been conducted by the Department and concluded as ex-parte and on the basis of the enquiry, the Disciplinary Authority found the applicant guilty of the charges and passed the dismissal order. Further it is stated in the reply statement that the stand of the applicant that he had been in a mental abnormal condition from 1999 to 2008 is not correct and it is a fabricated story. If he was under the medical treatment with the help of his friends, as stated by him, the medical records for



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the relevant period ought to have been proved or submitted to the authorities. Further it is stated that an article published in the 'Vanitha' magazine, a sister publication of Malayala Manorama in February 2008 would show that a life story of the applicant has been narrated and the stand taken at present in the O.A. that the applicant was under mental imbalance during the period, is not true. Further it is stated that except Annexure A1 certificate now produced in the O.A. no other medical certificate has been produced by the applicant to show his mental condition. If so, the statement that the applicant was under treatment from years back namely from 1984 onwards, is not acceptable. Annexures A5 and A5(a) alleged medical prescription or the O.P Ticket have not been produced before the authorities for consideration of his case as now contended in the O.A.

4. After the reply statement the applicant has filed a rejoinder in which it is stated that the applicant was in a mentally imbalanced condition since 1999 and he had lost his memory since 1999 and he remained in a mentally imbalanced condition for almost 4 to 5 years and lost his memories in 2003. Further it is stated in the rejoinder that he regained his mental balance and relieved fully from his illness only during 2008 and he was not in a position to keep all the papers regarding his medical treatment.



5. On receipt of the rejoinder the respondents also filed an additional reply statement reiterating the stand taken in the original reply statement and further stated that the applicant has not produced any evidence to prove that he was under medical treatment for mental illness during the years 1998 to 2008 other than the medical certificate produced as Annexure A1. Further it is stated in the additional reply statement that even Annexure A1 medical certificate does not show that the applicant was in any medical treatment for mental imbalance. Further it is stated in paragraph 4 of the additional reply statement that Annexures A1 and A2 medical certificates cannot be acted upon without sufficient supporting documents and the attempt now made by the applicant is an afterthought.

6. We have heard the counsel appearing for the parties and perused the records produced before this Tribunal. It is the case of the applicant that he had taken leave for 3 months from 12.8.1998 and that leave application has been entrusted to one of his co-worker Sankaranarayanan who was working as Stenographer in the office of the Cochin Naval Base and from 1999 onwards he was under medical imbalance and he was not served with any charge sheet and he was not given any



opportunity to defend his case. It is also the case of the applicant that the Appellate Authority though even on production of the medical certificate has not considered his case properly. As he has got a unblemished service from 1984 onwards namely for more than 14 years, penalty now awarded by way of dismissal is disproportionate and is without considering the case set up of the applicant. Hence this Tribunal may set aside the orders impugned and the applicant may be ordered to be reinstated in service with all consequential benefits. To the above arguments relying on the reply statements on behalf of the respondents the counsel appearing for the respondents submits that none of the grounds urged in the O.A. are tenable. Annexure R1 produced along with the reply statement would show that the applicant was not in any mental imbalance and he used to write articles and love letters for college students. Further the counsel submits that even if the applicant regained his mental balance during 2003 the applicant has filed Annexure A7 only on 29.10.2008 and the appeal against the dismissal order on 4.3.2009. The Department has already complied the procedure prescribed under the CCS(CCA) Rules regarding the enquiry even though an ex parte by publishing the charge-sheet in the Malayala Manorama daily before imposing the penalty of dismissal from service. Hence at this distance of time of 10 years, this Tribunal may not be justified in

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interfering with the matter.

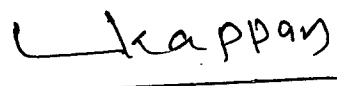
7. We have considered the contentions raised by the counsel appearing for the parties and the question to be decided is whether the dismissal order following by the appellate order is justifiable or not. Though it is the case of the applicant is that he was on leave from 12th August, 1998 for 3 months and he was not in a mental balanced condition to understand what is happening around him, it is an admitted case that he regained his mental balance and memories during 2008. The applicant filed Annexure A7 representation during 2009 and produced Annexures A1 and A2 certificates of 2008. Even though these 2 certificates are not sufficient to show that the applicant was in an imbalanced condition prior to 2003 or till 2008, there is no evidence to prove this fact. But the applicant is not given such an opportunity to prove his case by adducing evidence regarding his mental imbalance and it will be an injustice to be done to the applicant. As per Annexures A1 and A2 it is to be seen that the applicant is now mentally balanced and is in a position to face any enquiry or any trial. Hence we are of the view that it is only proper for the respondents to given an opportunity to the applicant to face the charge with a prudent mind. Apart from that we have already noted that the applicant has got more than 14 years of unblemished service and the dismissal



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order now passed is disproportionate to the alleged misconduct charged against the applicant. We have also summoned the applicant to appear before us to see him before the Court and to answer some questions which we put. We have asked some questions to him and we are of the view that he has got his mental balance and regained his memories. In the above circumstances it is only proper for us to set aside Annexures A4 and A9 and the case has to be remanded back to the Disciplinary Authority for affording an opportunity to the applicant to prove his case by adducing evidence. Accordingly without considering any of the other contentions regarding the justification for absence of the applicant, we are quashing Annexures A4 and A9 orders and the matter is remanded back to the Disciplinary Authority. It is also made clear that since the applicant has to complete 60 years, the case has to be taken up and decided within a reasonable time. The O.A. is allowed to the extent indicated. No order as to costs.


(K. GEORGE JOSEPH)
MEMBER(A)


(JUSTICE K. THANKAPPAN)
MEMBER(J)

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