

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 72 of 2013

Monday this the 31st day of August, 2015
CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

P.V Paul,
Superintendent of Central Excise (Retd)
36/1351, Poothokaran House,
Chammany Road, Kaloor,
Cochin-682017.

...Applicant

(By Advocate Mr. C.S.G. Nair)

Versus

1. Union of India, represented by the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001.
2. Chief Commissioner of Central Excise & Customs, Central Revenue Buildings, I.S.Press Road, Cochin.18
3. Commissioner of Customs (Preventive), Central Revenue Buildings, I.S.Press Road, Cochin.18.
4. Commissioner of Central Excise & Customs, Central Revenue Buildings, I.S.Press Road, Cochin-18.
5. Pay & Accounts Officer, Customs House, Willingdon Island, Cochin-682009.

...Respondents

(By Advocate Mr. N. Anil Kumar, Sr.Panel Central Govt.Counsel)

This application having been finally heard on 20.8.2015, the Tribunal on 31.8.2015 delivered the following:

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

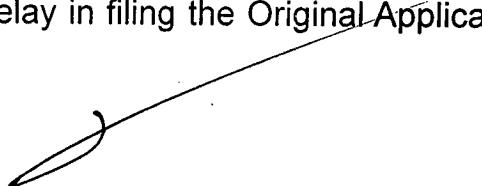
The applicant joined service as Inspector of Central Excise on 27.8.1975. Later he was promoted as Superintendent of Central Excise. While he was working at Trivandrum Air Customs he applied for Earned Leave from 26.3.2004 to 30.8.2004. It was sanctioned by the Assistant Commissioner. In the meantime the applicant was transferred to Cochin as per the order of the 4th respondent. The applicant was considered to have been relieved on 5.8.2004. The applicant contends that he was ill and so he was unable to move about. Though he was asked to rejoin duty he was not having any leave to his credit and thus he did not join duty. He applied for half pay leave for 2 months from 1.9.2004 to 31.10.2004. The leave was extended again and ultimately as the applicant did not join duty a Memorandum of Charges was issued against him proposing to hold an inquiry under Rule 14 of CCS (CCA) Rules, 1965 vide Annexure. A1. An officer of the 3rd respondent was appointed as the Inquiry Officer to inquire into the charges vide Annexure. A2 and one MA Sathanandan was appointed as the Presenting Officer vide Annexure. A3. Inquiry was conducted in the matter. Applicant denied all the charges levelled against him. The Inquiry Officer found the charges proved as per Annexure. A4 Inquiry Report. The third respondent imposed a penalty of compulsory retirement from service w.e.f. 13.9.2006 vide Annexure. A5. As per

Annexure A5 it was ordered that the applicant shall not be entitled for any gratuity. It is absolutely illegal and against Rule 40(1) of CCS (Pension) Rules, 1972. Annexure A6 is the Relief Report issued by the third respondent. The appeal filed against Annexure A5 order was dismissed by the appellate authority. Therefore the applicant has approached this Tribunal for a direction to the respondents to quash Annexure A5 order which was confirmed in appeal by Annexure A11 and for a direction to the respondents to grant arrears of pay and allowances upto the date of superannuation ie., 31.7.2013 and also to direct the respondents to grant the applicant all retirement benefits including gratuity, pension etc.

2. The respondents filed reply statement contending as follows:

2.1 Since the applicant did not join service after the expiry of the leave period and as he had no leave of any kind available at his credit, Memo was issued to him and disciplinary inquiry was conducted fairly and properly and he was imposed the penalty of compulsory retirement. The applicant filed appeal against Annexure A5 order before the Chief Commissioner, Bangalore on 13.10.2006 and it was later submitted to the President of India and as directed by Director General of Vigilance the Service Book of the applicant was submitted. The President of India, the appellate authority, rejected the appeal of the applicant on 3.9.2009.

3. Since there was delay in filing the Original Application MA



207/13 was filed for condonation of delay of 871 days. It is stated that the applicant was out of the country on account of ill health and that he was under the bonafide belief that the third respondents office would disburse his entire retirement benefits.

4. This application has been strongly opposed by the respondents contending that there is absolutely no truth in the contention raised by the applicant in the application for condonation of delay. The applicant has concocted a story which was not supported by any documents. The averment that he was out of the country for treatment is also an untrue statement. It is not supported by any medical certificate.

5. Since the respondents in their reply statement contended that the service book of applicant was received back in the office of the third respondent during December, 2011, as it was earlier kept with the Director General of Vigilance, there was slight delay in finalizing the process for granting the benefits.

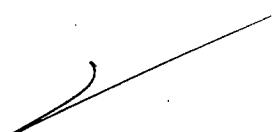
6. In the rejoinder the applicant contends that he was in no way responsible for the delay. The reason for keeping the service book with the Director General of Vigilance for more than 4 ½ years is not explained in the reply statement filed by the respondents.

7. Points for consideration are (i) whether the O.A is liable to be dismissed on the ground of delay as contended by respondents. (ii) Whether Annexure.A5 order which was confirmed in Appeal vide Annexure. A.11 is liable to be set aside, varied or modified on any of

the grounds urged by the applicant?

8. Annexure. A5 is the order passed by the disciplinary authority on 13.9.2006. Annexure. A11 is the order passed by the President of India/the appellate authority on 3.9.2009. Admittedly there is a delay of 871 days in filing the appeal. The contention raised by the applicant that the applicant was out the country for treatment is not supported by medical certificate. The burden is on the applicant to prove that there was reasonable cause or explanation for not filing the Original Application within the time prescribed. Except his bald statement unsupported by any cogent evidence or material the plea raised by him that he was out of the country and that he was lying ill throughout is a brazen lie, the respondents contend. We are not impressed by the statement made by the applicant that he was ill throughout. No material could be furnished by him to sustain the plea of illness put forward by him.

9. Even though the grounds raised by the applicant in support of his application for condonation of delay are found unacceptable, still we are inclined to allow the application in view of the fact that there is a patent error in the order of penalty imposed under Annexure. A5 which was not interfered in the Appellate Order (Annexure. A11). Since that error is pertaining to gratuity which the applicant is entitled to get on compulsory retirement, we are inclined to allow the application for condonation but only on this ground.



Point No.2:

10. There can be no dispute regarding the fact that the applicant was on unauthorized leave for long time. It is also borne out that the applicant had no leave at his credit. In spite of giving ample opportunity the applicant did not join duty. That resulted in the initiation of disciplinary proceedings against the applicant for unauthorized absence. Annexure. A5 is the order passed by the disciplinary authority. Regarding the facts of the case, which led to the punishment of compulsory retirement, we find nothing illegal in it. The illegality lies only in a portion of the order of imposition of punishment.

11. The relevant portion of the order imposing penalty vide Annexure. A5 is as follows:

"I also order that Sri P.V.Paul, Superintendent of Central Excise shall be eligible for pension of two third of the normal pension which he is entitled on the date of his compulsory retirement, viz, 13.9.2006 in terms of Rule 40 (1) of CCS (Pension) Rules, 1972. I also order that he shall not be entitled for any gratuity."

(underlined by me to lay emphasis)

Rule 40 of CCS (Pension) Rules which is relevant for the adjudication of the issue involved is also quoted as under:



40. *Compulsory retirement pension*

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than ¹[full compensation pension] or gratuity or both admissible to him on the date of his compulsory retirement.

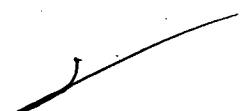
(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the ¹[full compensation pension] admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

EXPLANATION. - In this sub-rule, the expression "pension" includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than the amount of ³[Rupees three hundred and seventy-five] per mensem.

The penalty imposed namely that the applicant shall be eligible for pension of 2/3rd of the normal pension which he is entitled on the date of his compulsory retirement namely 13.9.2006 is found to be perfectly correct since Rule 40(1) quoted above authorizes and empowers the authority competent to impose the penalty to grant pension at a rate not less 2/3rd. Therefore, that part of the order can not be challenged by the applicant.

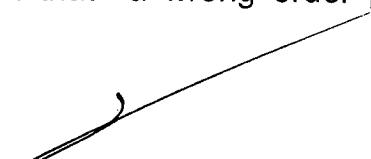
12. The main challenge is regarding the second part of the order of the DA which says that the applicant shall not be entitled for any gratuity. That is actually in contravention of Rule 40(1) quoted above. Since as per Rule 40(1) the applicant is entitled to get gratuity at a rate not less than 2/3rd of the same, that part of the



order which completely takes away the entitlement of gratuity is to be set aside. Therefore we find that the Annexure.A5 order to that extent is to be varied.

13. It vehemently argued by the learned counsel for the applicant that the Appellate Authority did not apply his mind while passing Annexure.A.11 order. It is pointed out that this objectionable part of Annexure.A5 order was very much pressed into service in the appeal memorandum but that was not at all considered. Be that as it may, we have already found that the denial of the entire amount of gratuity which the applicant is entitled to get, is illegal. We hold that the applicant is entitled to get 2/3rd of the gratuity which he is entitled to get on the date of his compulsory retirement; namely, 13.9.2006.

14. The learned counsel for the applicant has relied upon a judgment of the Hon'ble Supreme Court in ***Vijay Singh Vs. State of UP & others (Civil Appeal No. 3550/2012 dated 13.4.2012)*** in order to support his submission that if the punishment awarded is not one prescribed under the statutory rules it cannot be imposed and if that be so the impugned order has to be set aside. The argument that since the disciplinary authority cannot pass the order of punishment holding that the applicant shall not be entitled to get any amount as Gratuity then the whole order passed by the disciplinary authority should be set aside is unacceptable. This was taken exception to by the learned Senior Central Government Panel Counsel pointing out that a wrong order passed by an authority



competent to award punishment is to be distinguished from an order illegally passed by an authority not competent to pass such an order.

If the order of punishment is passed by an authority not having jurisdiction totally incompetent to pass such an order, it goes to the root of the matter in which case the order would be non est in the eye of law. In the case cited supra it was found by the Hon'ble Supreme Court that the punishment awarded by the disciplinary authority was not provided under the relevant rules and so it was felt that the punishment so awarded was without jurisdiction and is liable to be quashed. There the only punishment awarded was withholding of integrity certificate. It was found that such a punishment is not provided for under the relevant rules. Therefore, the only question before the Apex Court was whether the disciplinary authority can impose punishment not prescribed under the statutory rules after holding disciplinary proceedings. The fact that the punishment awarded in that case was not provided under the relevant rules could not be controverted by the State, it was argued that the punishment so awarded was without jurisdiction and was liable to be quashed. Since the punishment awarded was not a punishment it could not be termed as a punishment under the rules. It was held that it was without jurisdiction.

15. It is the settled proposition of law that as a result of disciplinary proceedings punishment not prescribed under the Rules cannot be awarded. But that does not help the applicant to contend



that the entire proceedings are liable to be quashed. In the case on hand admittedly the disciplinary authority had jurisdiction to award punishment but while passing the order, a portion of the order happened to be incorrect and so to that extent alone it is liable to be interfered with. The portion of the relevant order read "*I also order that he [the applicant] shall not be entitled for any gratuity*".

16. In the light for what is stated above this OA is allowed to the extent of setting aside that part of Annexure A5 order as per which the entire gratuity was denied and we direct that the applicant shall be paid two third of the gratuity which he was entitled to get on the date of his compulsory retirement. The amount so due to applicant shall be paid to him within one moth from the date of receipt of a copy of this order, failing which the said amount will carry interest at the rate of 9% per annum till the date of payment.

No order as to costs.



(P.Gopinath)
Administrative Member

kspps



(N.K.Balakrishnan)
Judicial Member