

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.2039/2016**

**Date of Decision: 11<sup>th</sup> October, 2017**

**CORAM: Hon'ble Shri Arvind J. Rohee, Member (J)**  
**Hon'ble Shri R. Vijaykumar, Member (A)**

Anand s/o Jairam Sakhare,  
Aged about 37 years,  
R/o C/o J.B. Sakhare,  
House No.41, Bezanbagh,  
Near Hanuman Mandir,  
Nagpur-44 004.

**...Applicant.**

**(By Applicant Advocate: Shri.M.M. Sudame)**

**Versus.**

1. Union of India  
through the Secretary,  
Ministry of Defence,  
South Block,  
Parliament Street,  
New Delhi-110001.

2. Chief Staff Officer,  
P&A, Western Naval Command,  
H.Q. Shahid Bhagat Singh Road,  
Mumbai-400 001.

3. Chief Administrative Officer,  
Command Civilian Personnel  
Officer, Western Naval Command,  
H.Q. Shahid Bhagat Singh Road,

Mumbai-400 001.

... Respondents

**(Respondents by Advocate Shri R.G. Agrawal).**

**Reserved on : 21.09.2017.**

**Pronounced on : 11.10.2017.**

**ORDER**

**Per:- R. Vijaykumar, MEMBER (A)**

This OA was filed on 04.12.2015 against an impugned order dated 28.07.2010 seeking the following reliefs:-

“(i). quash and set aside the impugned order of termination of services from the post of Lower Division Clerk from the officer of Respondent No.2 dated 28.07.2010 (Annexure-A/1) and (Annexure-A/2);

(ii). Direct the respondent to reinstate the applicant in service on the post of Lower Division Clerk in the officer of respondent No.2 with full back-wages and continuity of service in the interest of justice;

(iii). Grant any other relief which this Hon’ble Tribunal deems fit in the facts and circumstances of the case;

(iv). Allow this original application with cost.”

**2. The factual matrix of the case is;**

The applicant is a graduate, who was

appointed in the Western Naval Command by appointment letter No.CS/ 1/ 1300/ DR/ 08-09/2 dated 30.09.2008 as Lower Division Clerk on regular basis w.e.f. 01.10.2008 and he was asked to report on 01.10.2008 for duty. Since, he had not reported, a reference no.CS/I/1303/3 (Roll No.05144) dated 10.11.2008 observed that he had failed to collect the appointment letter and gave one more opportunity for collection of appointment letter on 21.11.2008. To this he had made an application dated 18.11.2008, which was accepted on 19.11.2008 in reference No.CS/I/1300/1/DR/08-09, and he was asked to report to the office on 02.02.2009. Thereafter, a reference has been filed which shows that in letter No.CS/ 1/ 1300/ DR/08-09 dated 02.03.2009 the Commodore, Mankhurd was advised that the applicant was to report before him at Mankhurd on 03.03.2009. The applicant states that he had been given additional time to join because he had given reasons of family difficulties which was accepted and that he joined on 05.03.2009. The applicant has also stated that his

appointment was subject to medical examination wherein he was found fit for joining duty. Under the terms of the appointment, the applicant was on probation for a period of two years and during probation period of two years, his service was liable to be terminated without any notice and without assigning reasons. After probation was completed, one months notice was required from either side. Thereafter, in letter No.BOS/EST/M2189B dated 04.05.2009, a notice was sent to him on his absence from duty from 22.04.2009 asking him to send an unfit certificate if he was really sick from an authorized medical attendant. He was also warned of the consequences of absence from duty.

Thereafter, the applicant had submitted medical certificate for the period from 22.04.2009 to 21.06.2009 issued by Mayo General Hospital, Nagpur dated 15.05.2009 and his leave was approved in letter no.BOS/EST/M2189B dated 07.07.2009 wherein it is mentioned that he had not reported for duty after the period mentioned in medical certificate. Thereafter, another

letter no.BOS/EST/M2189B dated 05.08.2009 was issued on his unauthorized absence from duty and referred to his letter dated 16.07.2009 requesting medical leave up to 31.07.2009. This letter questioned his reasons for continuous absence from duty beyond 31.07.2009 on pain of disciplinary action. The applicant has claimed that he was under treatment in Government Medical College, Nagpur from 28.12.2009 and he had submitted a medical certificate for the period up to 28.12.2009. He has also stated that on 30.12.2009 the department referred him to J.J. Hospital, Byculla, Mumbai for re-medical examination on 04.01.2010 and this report is stated to have been received by respondents on 30.03.2010, after which the applicant rejoined duty on 03.04.2010. The applicant thereafter proceeded on leave allegedly on receipt of information about the death of his sister on 07.04.2010 and before he could rejoin duty, his services were terminated on 28.07.2010. The applicant has argued that he was suffering from Infective Hepatitis-B which was mentioned in his

various medical certificates and due to infection he was very weak due to which he was unable to discharge his day to day duty. Later, his sister was expired in Mumbai and further, his father was physically disabled to the extent of 40%. He also alleges that the Medical Board of J.J. Hospital, Byculla, Mumbai had confirmed that he was genuinely sick and therefore, the termination was arbitrary and against the principles of natural justice.

**3.** The applicant has also filed MA for condonation of delay in which he claims that the rigid attitude of the respondents had placed him in severe shock and therefore, he could not approach this Tribunal within time and requests for condonation of delay from 28.08.2010 of nearly three years excluded the period allowed for application.

**4.** Respondents have stated that the applicant's service were terminated through an order dated 28.07.2010 which was communicated on 19.08.2010 and final settlement of dues was done on 11.07.2011. They have disputed the arguments

given for condonation of delay. In addition, the applicant has produced a copy of medical certificate issued by IGGMC, Nagpur on 21.01.2009 and also medical certificate dated 08.11.2015 certifying that the applicant was sick from 07.10.2015 to 07.11.2015. He has also provided a copy of OPD Card of IGGMC, Nagpur dated 21.04.2016 to support his case that he was suffering from drug resistant Hepatitis and generalized depression. On this basis, the Psychiatrist had issued a certificate on 21.04.2016 stating that the applicant was fit to join duty.

**5.** In their reply, the respondents have explained how they were very considerate to the applicant in allowing him time to collect his appointment order, to join duty and finally to report at the designated office in March, 2009. However, within 45 days, he absented himself unauthorisedly from duty and only on being issued notice, he submitted an application for medical leave without any certificate and corrected this deficiency later on 20.05.2009.

Again, he failed to report on duty on 22.06.2009 and was accordingly advised on 07.07.2009.

Finally, he asked further extension for a month up to 31.07.2009. However, he once again remained absent and on issue of notice, he once again submitted an application with medical certificate for the period from 01.09.2009 to 16.10.2009 and followed up with another application from 14.10.2009 to 27.11.2009 for leave up to 20.12.2009. Upon reference to the J.J. Hospital, Mumbai, the applicant collected the Referral Letter on 30.12.2009 but did not report back to the office with medical certificate. Finally it was ascertained from J.J. Hospital, Mumbai in their letter dated 26.02.2010 received on 12.03.2010 that the medical examination had been carried out on 18.01.2010 and fitness certificate given with 'Nil' diagnostics. On this basis the applicant was directed to report for duty by Telegram dated 19.03.2010 for which he reported on 31.03.2010 and once again left duty on 07.04.2010 claiming that his sister had died and

forwarded his application for Extra Ordinary Leave dated 17.04.2010. To this respondents have sent a letter on 27.04.2010 directing him to report forthwith and again by Telegram on 31.05.2010, to which no response was available. The applicant had thus worked only for 58 days out of total 496 days he was on strength of Bureau. Therefore, in terms of his appointment order and since he was still on probation, his services were terminated by the competent authority without notice and without assigning any reasons. The respondents have asserted that the applicant's indiscipline and casual approach toward his duty had led to this action of termination while the applicant was on probation.

**6.** The applicant in his Rejoinder has explained all the personal difficulties that he was facing during that time and that his absence was not intentional. His absence due to his sister's death was inevitable in his view.

**7.** The respondents in Sur-rejoinder, have reasserted their rights to terminate the

services of probationer during the period of probation without notice as contained in the appointment order and that it was applicant's repeated absence from duty which led to his termination despite giving ample opportunities.

**8.** We have gone through the O.A. alongwith Annexures A-1 to A-19 and MA for condonation of delay along with Annexure-I to Annexure-III. We have also gone through the Reply along with its Annexure-R-1 to Annexure R-8, Rejoinder and Sur-Rejoinder filed and have carefully examined the various documents annexed in the case.

**9.** We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

**10.** At the outset, this application has been filed after nearly three years of delay and that itself is adequate basis for dismissing this application. However, when the merits of the application are considered it is seen that applicant has been given a long rope at every

stage even from the date of issue of appointment order. For a period of nearly one and half years, he was worked only for 58 days out of 496 days which shows his predisposition for regular absence from duty and for not trying to learn from his job even during the period of probation. The applicant was a probationer who failed to attend duty to learn about his job and instead continuously trampled on discipline requirements of the office which has instead shown great leniency to him. It is his own behavior and action that has led to his termination and therefore, there are clearly no merits that can warrant any consideration of relaxing the requirements of limitation in this case. The termination order by the Competent Authority lacks, therefore, no defects and is completely in accordance with rules and the nature of the case.

**11.** Consequently, both on merits and for the great period of delay, this OA is dismissed. There will be no order as to costs.

**(R. Vijaykumar)**  
**Rohee)**  
**Member (A)**  
**(J)**

**(Arvind J.**  
**Member**

Amit/-