

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.25 of 2009

DATED THIS THE 21st DAY OF AUGUST, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Mr.S.K.Verma
S/o. Sh.M.P.Verma
Aged about 41 years
Working as Assistant Registrar (Presently under suspension)
Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench
1st Floor, W.T.C.Building
FKCCI Complex, K.G.Road
Bangalore-560009.
Presently residing at
Door No.105, S-HIG-B07
4th Cross, 5th Phase
New Yelahanka Town
Bangalore-560106. ...Applicant

(By Advocate Sri K.Hanifa)

Vs.

1. Union of India
Represented by its Secretary
Ministry of Finance
Department of Revenue
North Block
New Delhi-110001.
2. The Registrar
Customs, Excise & Service Tax Appellate Tribunal
West Block No.2
R.K.Puram
New Delhi-110066. ...Respondents

(By Advocate Sri V.N.Holla)

ORDER (ORAL)

(PER HON'BLE DR.K.B.SURESH, MEMBER (JUDL.))

Heard. The matter is in a very small compass. Apparently the avalanche of litigation has happened at a small molehill. The applicant was absent from duty after having taken leave and extended it once on the allegation that he or

his family members is unwell and had produced medical certificates. Apparently, no Medical Board was constituted immediately thereafter to verify its veracity. Therefore, going back to the medical certificates will be an unnecessary exercise. The issue is very simple. Yet it had gone up to the Hon'ble Apex Court now. The Principal Bench after discussing the issue including all these aspects held that the Disciplinary Authority had asserted the power which is not resident in it as it was one rank higher to the original Disciplinary Authority. And therefore could not have taken up this as it deprived the applicant his chance of his appeal. This view may be correct or not it has been upheld by the Hon'ble Apex Court. But the fact remains that from 2009 onwards this matter has been raising the attention of the several Tribunals, High Courts and the Hon'ble Apex Court for such a small reason. Particularly as the applicant had apparently submitted the medical certificates and the Inquiry Authority being the first opportunity adjudicator had looked into the matter and held that the charges against the applicant cannot be proved. The Disciplinary Authority took a different view and expressed a dissent note. At this point of time, Shri Holla files an affidavit across the Bar of the Bench and submits that the issue is now that they are following the dictates of this Tribunal's orders. The actual consequences of such matters would be that at the stage of consideration by the Disciplinary Authority, the matter can now be taken up once again.

2. **What will it entail and what will it achieve?** The Disciplinary Authority will again consider at a level lower in grade with the original Disciplinary Authority after it had been informed of the senior officers' view point and whether or not to accept the views of the Inquiring Authority which it had reached after consideration of the evidences before it and after watching the demeanour of the witnesses before it. By the afflux of time all these authorities have lost

their focus to a point as they were not a party to the issue and would not know to what exact position/infracton lies in the action of the applicant.

3. **The Government had formulated a policy of not going through unnecessary litigation. Just because the applicant had been absent for 63 days, what is the nature of the punishment that can be imposed on him especially when he has produced medical certificates which have not been disproved.** Had the concerned authority taken a position that the medical certificate is not genuine and proceeded to record it then probably an occasion could have arisen in their favour. As it is what is the benefit which will accrue in following this procedure? There cannot be any significant benefit to the governance out of this other than maintaining a litigation which will vitiate the entire atmosphere in that particular office. Had it been that an allegation had been raised as such against the genuineness of the medical certificates it would have been different. Therefore, we had queried Sri V.N.Holla as well as the Assistant Registrar, the departmental representative who is present before us whether they had any knowledge of it and are there any comments to make as such an issue. Apparently, they do not have any comments on it. Shri Holla would add at this point that it is consequential within the provenance of the Disciplinary Authority. Going by the pleadings there is no version of the respondents to show that these medical certificates might not even be genuine at all. Had it been so, a different aspect would be presented for adjudication. The only question which has been agitated through all these decades is the power of the Disciplinary Authority or not. But in the adventurous fight between the party and the respondents, this crucial point was forgotten that the person who is most concerned who is the inquiry officer had accepted that the medical certificates may be of some credence and therefore it had held that the charges against the applicant cannot be

proved or not proven.

4. Now coming back to the quashing of judicial functioning of the new Disciplinary Authority. Is he bound by the observation made by the superior officer or will he be in a position to supplant the views of his superior officer? The answer is in the negative. Without any doubt this new Disciplinary Authority cannot supplant the orders passed by the superior authority at any stage as he himself has not considered the effect of the medical certificates. We find from the pleadings no ground to doubt the integrity of the inquiry officer. We have also found that no ground was raised at any time to disprove the medical certificates.
5. Therefore, what is this litigation meant for? We cannot allow the legal proceedings to be a burden with the unnecessary stipulation. Whether it be the old Disciplinary Authority or the new Disciplinary Authority, the infraction alleged is of such a minor nature that it cannot amount to much.
6. Had the matter been under Rule 16, we would have been justified in the matter being remitted back to the Disciplinary Authority as punishments mentioned in the Rule 14 and Rule 16 are fundamentally different. But since the allegation raised on the absence of 63 days with either adequate or inadequate reasons is under Rule 14 and therefore not justifiable. In the totality of the circumstances or the fact that **(1) the absence is only for 63 days (2) he had proceeded on leave which was extended once and then stayed for some more days (3) during this period he had submitted medical records (4) but these medical records are not disputed on the ground of genuineness or not (5) the issue had been raising in the attention of several Tribunals, High Courts and Hon'ble Apex Court for all these while for no worthwhile reason.**

7. Therefore, we decided to finish of the matter once for all. We have discussed with both the Counsels and the senior Bar of the Tribunal as to how to finish of this matter as there is no need for another one more decade of adventurous litigation. We are convinced of that this will not come under Rule 14 but only under Rule 16. Therefore Shri Holla submits that the penalties for this are under Rule 11. Therefore, we asked the opinion of the Bar what should be the minor penalties. The first one is Censure. We are not agreeing with that. The applicant ought to have informed the authority and taken them into confidence even when he is burdened with illness. The second one, withholding of his promotion may not lie in the interregnum of happenings in several Courts. Third one is recovery from his pay in relation to any pecuniary loss caused to the Government. That is also not relevant. The fourth one reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension. Therefore, we deem it necessary that we ourselves will impose the punishment on him and finish of the matter. After hearing both the Counsels, we feel that punishment of reduction to a lower stage in a time scale of pay for a period not exceeding one year without cumulative effect in relation to that time frame and not adversely affecting his pension and further promotion will be adequate. Therefore, there will be a mandate to the respondents to impose this punishment on the applicant and finish of this matter once for all. In the light of the Hon'ble Apex Court ruling in SLP No.25300/2018 which is arisen out of the judgment and order dtd.9.3.2018 in WP(C).No.1000/2015 passed by the Hon'ble High Court of Delhi at New Delhi dtd.10.08.2018 no other relief is called for on behalf of the applicant or the respondents. Let there be a finality to the issue. Let there need not be any more adventurous litigation. The matter is remitted back to the Disciplinary Authority to impose the

punishment mentioned above within one(1) month next. At this point of time, Shri Holla reminds us that we have not settled the issue of regularisation of suspension period. That we will leave it to the discretion of the respondents to decide.

8. The OA is disposed off accordingly but with the liberty.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.25/2009

Annexure-A1: Copy of the representation made for the promotion to post of Deputy Registrar by the applicant

Annexure-A2: Copy of the application filed by the applicant under Right to Information Act

Annexure-A3: Copy of the order passed by the Hon'ble Disciplinary Authority

OA.No.25/2009/CAT/Bangalore Bench

dt.28.12.2007

- Annexure-A4: Copy of the Hon'ble CAT, Bangalore dtd:13.10.2008.
- Annexure-A5: Copy of the Telegram dt.20.06.2008 issued by the controlling officer
- Annexure-A6: Copy of the medical documents
- Annexure-A7: Copy of the letters issued to the applicant and vice-versa regarding leave on medical grounds
- Annexure-A8: Copy of the letter of the controlling officer regarding rejecting the leave
- Annexure-A9: Copy of the letter dt.18.08.2008 issued by the respondent No.2
- Annexure-A10: Colly-Copies of the treatment of father of the applicant
- Annexure-A11: Colly-Copies of letter dt.20.08.2008, sent by the applicant to the controlling officer, respondent no.2, reports of fax and medical certificate
- Annexure-A12: Copy of suspension order dtd.22.08.2008
- Annexure-A13: Copy of endorsement made by the applicant on the office copy of the suspension order at the time of delivery the same
- Annexure-A14: Copy of charge-sheet
- Annexure-A15: Copy of the appointment order of Inquiry Officer
- Annexure-A15a: Copy of appointment order of Presenting Officer
- Annexure-A16: Copy of reply filed by the applicant on the charge sheet
- Annexure-A17: Copy of the order dtd.31.11.2008 for declaring the Head of Department, with few powers which would not be exercised by her. True typed copy is also attached
- Annexure-A18: Copy of the joining report
- Annexure-A19: Copy of the letter by which the applicant was refused to join his duties by the controlling officer
- Annexure-A20: Copy of the letter issued by the respondent no.2, for extending the suspension period

Annexures with MA.177/2010

- Annexure-A21: True copy of the order dtd.4.12.2009 issued by respondent No.2

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

- Annexure-A22: True copy of the representation dtd.2.2.2009 & 27.5.2009
- Annexure-A23: True copy of the application under RTI & its reply
- Annexure-A24: True copy of the order for classifying the post of Assistant Registrar as Group-"A"

Annexures with MA.No.230/2018 filed by the applicant:

- Annexure-M1: True typed copy of the seniority list dtd.20.11.2007 for the post of Assistant Registrar
- Annexure-M2: True typed copy of the order dtd.26.08.2011 in OA.No.25/2009
- Annexure-M3: True typed copy of the letter dtd.18.12.2015 wrote by the respondent No.2
- Annexure-M4 Colly: True copies of the orders dtd.26.11.2012 in CP.No.56/2012

and 57/2012

Annexure-M5: True copy of the order dtd.04.07.2014 in CP.No.44/2013

Annexure-M6: True copy of the order dtd.29.10.2014 in OA.No.3836/2013

Annexure-M7 Colly: True copy of the orders dtd.04.03.2015, 09.03.2018 and 25.04.2018 in WP(C) No.1000/2015 of Hon'ble Delhi High Court

Annexure-M8: True copy of the representation dtd.09.03.2018 addressed to the President CESTAT by the applicant

Annexure-M9 Colly: Reply of the CPIO, Department of Revenue, Ministry of Finance dtd.26.04.2018 under RTI Act and application of the applicant under RTI Act

Annexures with rejoinder in MA.No.230/2018 filed by the applicant:

Annexure-R1: SLP filed by the respondents in the Apex Court

Annexure-R2: Case status of SLP filed by the respondents in the Apex Court on 19.07.2018

Annexures with reply statement filed against MA.No.230/2018:

-NIL-
