

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/000723/2018

DATED THIS THE 19TH DAY OF MARCH, 2019

HON'BLE DR.K.B.SURESH ...MEMBER(J)
HON'BLE SHRI C.V. SANKAR ...MEMBER(A)

G.Sathyavageeswaran,
Audit Officer (Commercial),
No. 93, Tejas, 5th Cross,
1st Main, BCHS Layout II Phase,
Chandrfa Layout,
Bangalore-560 032. ..Applicant.

(By Advocate Shri Ganesh Kumar)

Vs.

1. The Deputy Comptroller and Auditor General (Commercial), Cum Chairman, Audit Board, O/o the Comptroller and Auditor General , No.10, Bahadur Shah Zafar Marg, New Delhi – 110 002.
2. Principal Director of Commercial Audit & ex-officio Member, Audit Board, Bangalore, 1st Floor, Basava Bhavan, Bangalore-560 001. ...Respondents

(By Standing Counsel Shri M.V. Rao for Respondents)

ORDER (ORAL)

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

Heard. Learned counsel for the applicant submits that the matter seems to be covered by our order in OA.No.320/2012 dated 18.06.2013, which we quote:

"Heard. Apparently, in this case the employee applied for leave giving due reasons. Leave granting authority passed an order directing for posting a substitute in his place. Now the stand taken by the respondents is that leave cannot be implied but leave is to be granted expressly. It may be that the word, to grant leave, was not used but then the intention was clear. Leave was being granted for rightful reasons. It appears that the next superior officer thought that leave should not be granted and took a view that the applicant would have been unauthorisedly absent from duty for 119 days from 19.6.2006 to 15.1.2007. It appears that disciplinary enquiry was conducted against the applicant. According to the respondents, they have taken a very lenient view and a punishment of censure was imposed on him. The applicant had apparently challenged it in appeal. The Appellate Authority, according to the respondents have passed a reasoned and speaking order and passed the order on 31.1.2011. The Appellate Authority had held that the findings of the DA are warranted by evidence recorded and censure was confirmed. What must prompt the EO, DA as well as AA was to look into it and find out what forced condition was imposed on the applicant. He had apparently produced proper documentation and written statement to the authorities. He had explained the health condition of his aged mother as well as medical infirmities from which he was also suffering from. Therefore, the concerned authority should have looked into the veracity or not of the medical certificates and the reasons given. But this is not seen to be done.

2. Applicant had apparently, vide letter, dated 3.11.2006 on receipt of a letter stating that his requisition has not been considered, had given another letter on 9.11.2006, apparently detailing that a major surgery of removal of left lung and the consequent preventive steps were required to safeguard him from adverse affect. He had also explained his mother's illness and other connected matrix. He had explained that his mother had a stroke which curtailed her movements and he being the only son, there was no way other than for him to remain on leave to protect his mother, whose life he was supposed to look after.

3. He had explained that he could not sign the attendance register on 25.9.2006 as Audit was at Minerva Mills and he was to attend the work at RAP. He had stated that he had only followed the practice normally followed in the office. It was also stated that the respondents in Memo dated 14.1.2008 in the first charge had shown that he was actually absent on 18.9.2006, which was apparently made after a lapse of one year and 4 months, which the applicant alleges is witch hunting. Apparently, the applicant had given another leave

application also on 9.10.2006, when he applied for HPL for changing other kinds of leave applied earlier. He had also submitted the article-wise reply to the enquiry report.

4. In the Memorandum No.PDCA/Secctt/Disc/2010-11/42 issued by Office of Principal Director of Commercial Audit dated 24.11.2010 who is the Disciplinary Authority, it is held that as regards Article-1, that the charged official in his representation and during enquiry proceedings had maintained that he had applied for EL for the period 19.9.2006 to 22.9.2006, but could not produce any evidence of the same. **But then such evidence is available and produced and is not disputed.** But, in fact, leave granting authority has asked for substitute to be posted during this period. Therefore, this version of the DA is incorrect and opposed to fact. He goes on to say that for some of the letters issued by superior officer, DG would clarify this point. When he went on leave, in the sanction letter it was directed that a substitute to be posted in his place. But then he goes on to say that on what conclusion was the CO remained absent from 19.9.2006, when the documents show his absence is from 26.9.2006. But then the applicant had taken a view that it is normal office procedure which he had followed. It can be found only on comparison with other incidents, which was available to the DA on the basis of evidence with them. He had put in his findings that findings of Article-1 is not the result of proper application of mind but on whimsical and imaginary grounds.

5. Regarding Article-II, a reasonable view is seen to be taken that just because the house was locked, the applicant cannot be held responsible for not accepting the recall memo.

6. Regarding Article-III, concerned authorities seems to have taken a reasonable view, but says that if his presence besides his ailing mother is necessary, the CO could have taken a break for a few hours by making alternative arrangements and explained the facts before the competent authority. But instead, the CO chose to send communications justifying his absence. This action of the CO cannot be faulted.

7. Therefore, he found that the case has been dragged and prolonged and that has to be considered sympathetically. He feels that the CO cannot be absolved of all the charges but, a lenient view is to be taken, considering the facts of the case and the CO's past performance. Then having done all these, he hold the applicant is guilty of two charges of unauthorised absence and showing willful disobedience by ignoring the recall memos, but then it is to be noted that in the earlier para of his order itself he has found that there was sufficient reasons to prevent the applicant from being held

responsible by the authorities, so his findings and conclusions are not in consonance with each other. The Appellate order appears neither reasonable nor speaking. The DA had considered the issue and therefore once an appeal is filed, the Appellate Authority had to consider these and pass a reasoned order. Reasons and reasoning is absent in the AA's order. It has only buttressed and concertized the statement made by the IO.

8. In the circumstances of the case, we hold that the Enquiry report, DA's order and AA's order are arbitrary, findings and conclusions contrary, opposed to factual reasons and are quashed. As a consequence to this, the period of his absence will be treated as eligible for leave and he will be granted consequential benefits including notional promotion from the date on which it was otherwise due, seniority etc.

9. OA is allowed to the above extent. No order as to costs.”

2. Shri M.V. Rao, learned counsel for the respondents contends that the benefit in accordance with it had been granted to him. He relies on the word which we had used in the Judgment, which says “including notional promotion”.

3. Applicant challenges this by saying that the word “including notional promotion” is only addition to the word, all consequences, used in the same paragraph.

4. Apparently, a punishment of censure had been issued against the applicant. We have heard both the parties and passed the order in which a finding has been made relating to service of notice to him, as he was away and the house was locked. Therefore, this counting of actual promotion from notional date is available, as only when the concerned person has reason to believe for non acceptance, action was commenced against him and therefore his promotion was delayed.

5. We had, with the assistance of learned counsel gone carefully through the earlier order and its consequences. We are convinced that for non-acceptance reason, the disciplinary proceedings were initiated against him. Therefore, when his notional promotion is to be given, it is that date which should be actual promotion date, as in the absence of DE. As aforesaid, he would get actual promotion on that date. Therefore, we hold that the applicant is eligible for actual promotion from the date of notional promotion and also eligible for consequences which flow out of it, which we had stated in the earlier order, is to be understood in that respect.

6. OA thus allowed. Benefits to be made available within 2 months next. No costs.

(C.V. SANKAR)
MEMBER(A)

Vmr

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

Annexures referred to by the Applicant in OA No.170/00723/2018

1. Annexure A1 : Copy of Speaking Order No.Nil/ 3.7.17 & 23.6.17
2. Annexure A2 : Copy of OA.No.320/2012 dated 18.6.2013.
3. Annexure A3 : Copy of Office Order No.35 dated 3.12.2013.
4. Annexure A4 : Copy of OM dated 4.12.2013.
5. Annexure A5 : Copy of the Office order No.41(a) dated 30.12.13.
6. Annexure A6 : Copy of OM dated 15.04.2014.
7. Annexure A7 : Copy of Annex to OM dated 15.04.2014-
statement of pay.
8. Annexure A8 : Copy of differential salary for the period from
12.3.2007 to 31.12.2013 amounting to Rs.2,89,043.
9. Annexure A9 : Copy of representing dated 9.10.2013.
10. Annexure A9 : Copy of representing dated 17.04.2014.
11. Annexure A11 : Copy of OM dated 6.06.2014.
12. Annexure A12 : Copy of CP.No.170/157/2015 dated 2.2.2016.
13. Annexure A13 : Copy of final order in OA.No.170/596/2016
dated 13.04.2017.
14. Annexure A14 : Copy of DoPT OM dated 14.09.1992.
