

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00046/2016

Friday, this the 14th day of June, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Sreedevi Unnikrishnan, W/o. Unnikrishnan Nair,
 aged 49 years, Ex Stenographer of Income Tax,
 Earath House, Kanipayyur PO, Kunnumkulam,
 Trichur – 680517.

..... **Applicant**

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

V e r s u s

1. Union of India, represented by the Secretary,
 Department of Revenue, Ministry of Finance,
 North Block, New Delhi – 110001.
2. Chairman, CBDT, Room No. 458, 4th Floor,
 Samrat Hotel, New Delhi – 110001.
3. Chief Commissioner of Income Tax-1, Room No. 373,
 Aayakar Bhavan, M.K. Road, Mumbai – 4000020.
4. Commissioner of Income Tax, Room No. 373,
 Aayakar Bhavan, M.K. Road, Mumbai – 4000020.
5. Additional Commissioner of Income Tax,
 Headquarters (Personnel), Aayakar Bhavan,
 M.K. Road, Mumabai – 4000020.

..... **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 11.06.2019 the Tribunal on
 14.06.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“(i) To quash Annexure A17 memorandum of charges, Annexure A28 corrigendum, Annexure A36 disciplinary order, Annexure A39 appellate order and Annexure A42 revision order.

(ii) To direct the respondents to treat the absence of the applicant from 18.5.2005 to 25.5.2011 as medical leave and grant her all consequential benefits.

(iii) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(iv) Grant cost of this OA.”

2. The brief facts of the case are that the applicant joined service as a Stenographer Grade-III in the Income Tax Department on 9.3.1990. She was promoted as Steno Grade-II and then as Steno Grade-I. While working as Stenographer Grade-I, the applicant proceeded on leave to look after her husband who was sick at Dubai. Subsequently she feel ill and was granted leave from 19.4.2005 to 17.5.2005. She had continued on medical leave but leave was not granted from 18.5.2005. She had applied for extension of leave on medical grounds along with medical certificate. Applicant could not report back to duty due to her physical inability. While so a charge memo was served on her for alleged unauthorized absence. An inquiry was conducted but the applicant could not be present as she was physically unable to travel. Finally as per Annexure A36 the applicant was dismissed from service by the 4th respondent. The appeal filed by the applicant was rejected. At that point of time applicant filed OA No. 482 of 2014 before this Tribunal wherein she was permitted to file a revision application to the 2nd respondent. In the revision application she had prayed for converting her dismissal into compulsory retirement. However, the revision application was also rejected vide Annexure A42 order. The inquiry was conducted ex-

party. The applicant has not absented herself from duty but had applied for leave on medical grounds with supporting medical certificates. The applicant had more than 20 years of unblemished service and no consideration was given either by the disciplinary authority or the appellate authority. The punishment of dismissal from service was too harsh and disproportionate to the alleged misconduct. The alleged misconduct was not willful but due to her illness. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents and Shri N. Anilkumar, SCGSC put appearance in the matter and filed a reply statement contending that applicant was given various opportunities by the enquiry officer but she did not attend any of the hearing. The applicant was proceeded ex-parte in the enquiry proceedings. The Enquiry Officer submitted its report to the competent authority. The applicant went on leave for Dubai up to 17.5.2005. Further the leave was extended on medical ground for one month up to 16.6.2005. The applicant further submitted medical certificate from Dubai extending her leave for three weeks from 14.7.2005. Hence, the period from 17.6.2005 to 13.7.2005 is not accounted and the respondents treated this period as unauthorized and further the subsequent period is also treated as unauthorized as her leave was sanctioned only up to 17.5.2005. On 6.3.2006 a medical examination was constituted to examine the applicant. But she did not respond on 6.8.2006. Earlier also the applicant requested for extra ordinary leave for of 334 on medical grounds. When the applicant submitted her fitness certificate on 18.12.2000 she was directed to

be examined by Dr. (Ms.) M.A. Nandkani who opined that her illness is cured and she is fit to join duty. On 1.1.2001 the official then submitted an application for extra ordinary leave for 182 days from 21.6.2000 to 19.12.2000 on medical grounds. The disciplinary authority on 25.5.2011 considered all the above aspects and imposed the penalty of dismissal from service. The applicant never submitted medical certificate from a Government hospital except in the first instance. Further she did not appeared before the Medical Board for check up. Hence, the medical certificates produced by her cannot be relied upon and therefore, the respondents prayed for dismissal of the OA.

4. Heard Mr. C.S.G. Nair, learned counsel appearing for the applicant and Mr. N. Anilkumar, SCGSC learned counsel appearing for the respondents. Perused the records and the argument notes produced by the respondents.

5. Learned counsel for the applicant has relied on the following judgments:

- a) The apex court in ***H.P. Thakore v. State of Gujarat*** – (1979) 1 LLJ 339 (Guj.) held that penalty should be commensurate with the magnitude of the misconduct committed.
- b) Further the apex court in ***Alexander Pal Singh v. Divisional Operating Superintendent*** – (1987) 2 ATC 922 (SC) held that ordinarily the court or Tribunal cannot interfere with the discretion of the punishing authority in imposing particular penalty but the rules

has exception. If the penalty imposed is grossly disproportionate with the misconduct committed, then the court can interfere.

c) Also in *B.C. Chaturvedi v. Union of India* – (1995) 6 SCC 749 the apex court held that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court or the Tribunal, it would be appropriate to grant the relief either directing the disciplinary or the appellate authority to reconsider the penalty.

d) In *Union of India v. Giriraj Sharma* – AIR 1994 SC 215 the apex court held that dismissal is harsh and uphold the order of reinstatement of service but gave liberty to the Government to impose any minor penalty for such misconduct.

e) In *Ram Kishan v. Union of India* – (1995) 6 SCC 157, the apex court held that the punishment was too harsh and disproportionate to the gravity of the charge.

f) In *Mehonga Singh v. I.G. of Police* – (1995) 5 SCC 682 the apex court held that penalty of dismissal is too harsh when compared to his previous record which was unblemished.

g) In *Hussaini v. Chief Justice of High Court of Judicature at Allahabad & Ors.* - (1985) 1 SCC 120 the apex court held that there is some scope for taking a little lenient view in the matter of punishment which will keep him away from penury destitution.

h) Further, in *Union of India & Anr. v. Giriraj Sharma* – 1994 SCC 604 the apex court held that the punishment of dismissal for over-staying the period of 12 days is harsh.

i) The Hon'ble High Court of Kerala in *A. Sreekumaran Nair v. Union of India & Ors.* - OP (CAT) No. 2367/2012 held that since the petitioner having put in more than 19 years of service even according to the respondents, is at least entitled for a compulsory retirement from 9.9.1998 so that he will be eligible for minimum pension as per the rules.

j) The apex court in *Krushnakant B. Parmar v. Union of India & Ors.* - 2012 (3) SCC 178 held that the question whether unauthorized absence from duty amounts to failure of devotion to duty or behaviour of unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful.

k) Based on the decision of the apex court in *Krushnakant B. Parmar's* case (supra) the Principal Bench of the Tribunal in *Shailender Kumar v. Union of India & Ors.* - OA No. 2805/2013 dated 13.5.2015 ordered to reinstate the applicant forthwith with all consequential benefits.

6. The counsel for the applicant Shri C.S.G. Nair, argued that the impugned order of dismissal from service is harsh and not sustainable in the eyes of law. Instead he has submitted that lesser punishment could have been imposed upon the applicant in view of the length of service and considering the medical fitness/certificates of the applicant. She is otherwise

entitled for child care leave for two years.

7. On the contrary the counsel for the respondents submitted that the applicant was given ample opportunity to defend her case in the enquiry proceedings but she deliberately chosen not to attend the enquiry proceedings and when she was directed to appear for examination before the medical board she had not presented herself before the medical board.

8. Taking into account the entire gamut of the facts and circumstances of the case and after appreciating the legal citations, one thing is clearly established that this Tribunal can only interfere in the punishment order when it is shocking to the conscience of this Tribunal being unreasonable in deserving cases. The conduct of the applicant being a Government servant, she should have adhered to the minimum discipline required for the post. She should have responded to the medical board by describing the reason for not presenting herself for examination. Further she has been asked to participate in the enquiry proceedings but she has chosen not to participate in the enquiry proceedings knowing fully well about the consequences. It is also not understood that for a disease of spondylosis being not such a chronic disease the applicant took leave for four years without getting the opinion or advice from a Government hospital which is a mandatory requirement, unless she is referred by the Government Hospital to specialist hospital. The judgments cited by the applicant is of no help to her. Therefore, we are of the opinion that the applicant's case does not fall where punishment awarded is so harsh that it shocks our conscience to term it as

unreasonable. We hold that the present Original Application lacks merit.

Hence, it is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00046/2016

APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the order NO. Addl.CIT(HQ)
Pers./153-7(A) 2004 dt. 23.1.2004 issued by the
2nd respondent.

- Annexure A2** - True copy of the memo No.
ACIT(Admn.)/Rg22(1)/Non-Gz/05-06 dt.
4.7.2005.

- Annexure A3** - True copy of the medical certificate dt.
14.7.2005.

- Annexure A4** - True copy of the memo No.
ACIT(Admn.)/Rg22(1)/Non-Gaz/05-06 dt.
4.8.2005.

- Annexure A5** - True copy of the medical certificate dt. 4.8.2005
and letter dt. 10.8.2005.

- Annexure A6** - True copy of the memo No. ACIT
(Admn.)/Rg22(1)/Non-Gaz/05-06 dt.
29.9.2005.

- Annexure A7** - True copy of the application for extension of
leave along with medical certificate.

- Annexure A8** - True copy of the application dt. 4.2.2006 for
extension of leave along with medical
certificate dt. 4.2.2006.

- Annexure A9** - True copy of the memo No. ACIT(Admn.)22(i)
Absconding/2005-06 dt. 29.3.2006 issued by
Assistant Commissioner of Income Tax (Admn)
Rge 22(1).

- Annexure A10** - True copy of the application dt. 5.5.2006 for
extension of leave along with medical
certificate submitted to Assistant Commissioner
(Admn) Range 22(1).

- Annexure A11** - True copy of the application dt. 4.8.2006 for
extension of leave along with medical
certificate.

- Annexure A12** - True copy of the memo No. Dy.CIT 22(i)/Admn/Unnikrishnan/leave 2006-07 dt. 23.11.2006.
- Annexure A13** - True copy of the application dt. 12.11.2006 for extension of leave along with medical certificate dt. 4.11.2006.
- Annexure A14** - True copy of the application for extension of leave along with medical certificate dt. 4.2.2007.
- Annexure A15** - True copy of the application for extension of leave along with medical certificate dt. 4.5.2007.
- Annexure A16** - True copy of the application for extension of leave along with medical certificate dt. 5.7.2007.
- Annexure A17** - True copy of the memorandum of charge bearing No. Addl. CIT (HQ) Per/Disc.Action/Abse/07-08 dt. 9.8.2007 issued by the 4th respondent.
- Annexure A18** - True copy of the reply dt. 14.10.2007.
- Annexure A19** - True copy of the memo No. Addl. CIT (HQ) Per/Abse.Cell/07-08 dt. 22.10.2007 issued by the 3rd respondent.
- Annexure A20** - True copy of the reply dt. 3.11.2007.
- Annexure A21** - True copy of the leave extension application along with a medical certificate dt. 29.11.2007.
- Annexure A22** - True copy of the memo No. Addl/CIT (HQ) Per/Vig.07 dt. 10.12.2007 issued by the 3rd respondent.
- Annexure A23** - True copy of the memo No. Addl/CIT (HQ) Per/Vig.07 dt. 10.12.2007 issued by the 3rd respondent.

- Annexure A24** - True copy of the leave extension application along with a medical certificate dt. 20.7.2007.
- Annexure A25** - True copy of the memo dt. 16.5.2008 issued by the inquiry officer.
- Annexure A26** - True copy of the memo No. Addl. CIT(HQ) Pers./Disc. Action/Absc./2009-2011 dt. 1612.2009.
- Annexure A27** - True copy of the order dt. 16.12.2009.
- Annexure A28** - True copy of the corrigendum No. Addl CIT (HQ) Pers./Absc./Corrigendum/2009-10 dt. 29.12.09 issued by the 3rd respondent.
- Annexure A29** - True copy of the memo F. No. RANGE 16(2)/Inquiry/2010-11 dt. 4.6.2010 issued by the inquiry officer.
- Annexure A30** - True copy of the letter dt. 30.6.2010.
- Annexure A31** - True copy of the memo F. No. RANGE 16(2)/Inquiry/2010-11 dt. 12.7.2010 issued by the inquiry officer.
- Annexure A32** - True copy of the memo F. No. RANGE 16(2)/Inquiry/2010-11 dt. 6.8.2010.
- Annexure A33** - True copy of the letter dt. 24.9.2010.
- Annexure A34** - True copy of the memo NO. Addl. CI.T.(HQ) PERS/Absc.2010-11 dt. 11.11.2010.
- Annexure A35** - True copy of the letter dt. 23.5.2011.
- Annexure A36** - True copy of the order No. Addl. CIT (HQ) Pers/Absc./FN 403/2011-12 dt. 25.5.2011.
- Annexure A37** - True copy of the memo No. Addl. CIT(HQ) Pers/Absc./FN 403/SU/2011-12 dt. 25.5.2011 issued by the 4th respondent.
- Annexure A38** - True copy of the appeal dt. 29.6.2011.

- Annexure A39** - True copy of the order No. CCIT/MUM(Vig.)14/2007 dt. 22.9.2011 issued by the 2nd respondent.
- Annexure A40** - True copy of the order dt. 23.6.2015.
- Annexure A41** - True copy of the revision application dt. 25.8.2014.
- Annexure A42** - True copy of the order F. No.C.18013/86/2015-V&L, dt. 19.11.2015.

RESPONDENTS' ANNEXURES

- Annexure R1(a)** - True copy of the memo dated 25.6.2010.
- Annexure R1(b)** - True copy of the entry permit No. 3030975/201/2005.
- Annexure R1(c)** - True copy of the letter dated 6.3.2006.
- Annexure R1(d)** - True copy of the letter dated 30.5.2006.
- Annexure R1(e)** - True copy of the OM No. 13018/2/2008-Estt(L) dated 18.11.2008.
- Annexure R1(f)** - True copy of the letter dated 19.7.2000.
- Annexure R1(g)** - True copy of the CCS Conduct Rules, 1965.
- Annexure R1(h)** - True copy of the letter dated 6.9.2000.
- Annexure R1(i)** - True copy of the letter dated 21.12.2000.

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