

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00093/2015

Wednesday, this the 29th day of May, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN,	...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA,	...JUDICIAL MEMBER

Thankamony K.,
W/o Dayanandan,
Aged 53 years,
Manavila Veedu,
Thiruvananthapuram-695 502.
(Senior Accountant-Terminated)
O/o the Accountant General -
Thiruvananthapuram.
Ernakulam – 622 511.

....Applicant

(By Advocate Mr.C.P.Peethambaran)

V e r s u s

1. The Union of India,
represented by the Secretary to Government,
Indian Audit Accounts Department,
New Delhi-110 001.
2. The Accountant General,
Office of the Accountant General,
Thiruvananthapuram-695 039.
3. The Deputy Accountant General (Admn),
Office of the Accountant Genral (A&E),
Thiruvananthapuram – 695 039.
4. The Senior Accounts Officer (Inquiring Authority),
Office of the Accountant General (A&E),
Thiruvananthapuram-695 039.

....Respondents

(By Advocate Mr. K.I.Mayankutty Mather for Respondents)

.2.

This application having been heard on 27th May, 2019, the Tribunal on 29th May, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.93/2015 is filed by Smt.K.Thankamony w/o Shri Dayanandan, terminated Senior Accountant, Office of the Accountant General, Thiruvananthapuram against the action taken against her. She seeks annulment of orders at Annexure A2 and A3 imposing the punishment of termination from service. She had entered service under the respondents on 31.10.1985 as a Clerk-Typist in the office of the second Respondent and she had been promoted as Accountant and subsequently as Senior Accountant in the due course. She submits that while working as Senior Accountant at the office of the second Respondent in the year 2006, she had been plagued by severe financial liabilities. Circumstances forced her into certain dealings which were not in keeping with the position she occupied under the respondents. Due to continuous harassment from different corners she fell ill and took shelter "in seclusion" at her sister's house at Kottayam. She was absent from duty from 01.06.2006 to 18.06.2008 and produced medical certificates showing that she was under treatment. She has attached some copies of medical certificates stated to have been submitted along with leave application which are at Annexure A1(a) to A1(k).

.3.

2. When she went to the office to rejoin duty after her treatment was over, she was informed that she has been terminated from service with effect from 28.09.2007 on the ground of unauthorised absence without duly sanctioned leave. She pleads that she had absolutely no knowledge about the proceedings initiated against her and the domestic enquiry allegedly conducted had been without hearing her. A copy of the order dated 28.09.2007 issued by the 3rd Respondent is at Annexure A2.

3. She filed an appeal before the 2nd Respondent against her termination. Copies of her representation and appeal petition are at Annexure A3 and A4. The 2nd respondent unfortunately went along with the Disciplinary Authority and disposed of the appeal vide order dated 17.06.2010 (Annexue A5) rejecting her contentions.

4. As the applicant is approaching this Tribunal after admittedly a delay of 1321 days, she submits this was on account of her further illness which afflicted her between 13.07.2010 and 07.09.2014. Various medical certificates, copies of which annexed at Annexure A6(a) to A6(e) support this fact.

5. The Respondents-2to4 have strongly objected to the MA filed for condonation of delay on the ground that no valid reasons have been adduced. The medical certificates Annexures A6(a) to A6(e) as also

.4.

Annexures A1(a) to A1(k) are dubious and suspicious. For one who claims to have been undergoing treatment in an Ayurvedic Centre at Kottayam, it is not understood how it can be certified by a Medical Practitioner who is stationed at Trivandrum. She states that she had been afflicted by “Paralysis Locomotory Spinal” and was totally paralysed. But during the course of this period she has, on at least two occasions, personally attended the office. Further inquiries made at Sree Guru Hospital, Kuttalamoodu in Tamil Nadu, where the applicant claims to have been an in-patient revealed that she was treated as an out-patient only.

6. The respondents have also strongly opposed the OA stating that she had been charged with very serious misconduct, which are clearly mentioned in the charge sheet as well as in the order of the Disciplinary Authority. She has conducted herself in a manner unbecoming of a Government servant and indulged in financial transactions which were dubious. She also absented herself from work for a significant period and now states that she had sent medical certificates. She had cleverly concealed her whereabouts and notice issued to her to the address that she herself submitted were returned by the Postal authorities. There was no response even to a newspaper notice.

7. When the matter was finally heard on 27.05.2019 , Smt.Mini V.A. appeared on behalf of the applicant and Shri Vineeth Komalachandran

appeared on behalf of the respondents representing Shri K.I.Mayankutty Mather. First and foremost we have considered the delay question. There has been delay extending beyond 1300 days and no satisfactory explanation has been given for this inordinate delay in approaching this Tribunal. The applicant submits that she was again afflicted by disease from 2010 to 2014. The circumstances narrated by her are not believable.

8. We may usefully refer to the judgment of the Hon'ble Supreme Court in the case of *Chennai Metropolitan Water Supply and Sewage Board Vs. T.T.Murali Babu (2014) 4 SCC 108*, wherein it is held as under :

“the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant, a litigant who has forgotten the basic norms, namely, procrastination is the greatest thief of time and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

It was further held therein:

.....A court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

Hence on the issue of inordinate delay itself the OA is liable to be dismissed.

.6.

9. In so far as the merits of the case are concerned, it has to be affirmed here that the role of the Tribunal in disciplinary proceedings is limited to the extent of seeing whether due procedure has been followed and also to ascertain whether the punishment meted out is disproportionate to the misdemeanour proven. In other words, this Tribunal is not expected to put itself in the role of the Disciplinary Authority or Appellate Authority in the event that requirement of natural justice have been met and due procedure followed. There is little scope for the Tribunal to interfere in such a contingency.

10. We have considered the case in detail. The applicant has no other claim other than a narrative full of very dubious arguments raised in her defence. It is clearly established that she had been engaged in several acts not befitting a Senior Accountant working under the Accountant General's Office. She had proceeded on unauthorised leave in order to subvert the demands of her creditors. There are also unethical facts revealed in the case such as another person using room allotted in her name and Rs.20,000/- charged that she failed to pay. Finally the department caught up with her and imposed upon her the maximum punishment. The inquiry was conducted in her absence and proceeded ex parte as the respondents had no other choice.

11. In the appeal also the applicant failed to proffer adequate justification

.7.

for her behaviour and the Appellate Authority had no hesitation in confirming the punishment. Then followed the delay of more than three years in even approaching this Tribunal.

12. Based on the facts before us, we are of the view that the OA has no merit whatsoever. We dismiss the MA No.136/2015 on the ground of inordinate and unjustified delay. Consequent to the dismissal of the MA the OA is also dismissed owing to lack of merit. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/00093/2015

1. **Annexure A1(a):** True copy of the medical certificate dated 01.06.2006.
2. **Annexure A1(b):** True copy of the medical certificate dated 16.06.2006.
3. **Annexure A1(c):** True copy of the medical certificate dated 01.07.2006.
4. **Annexure A1(d):** True copy of the medical certificate dated 15.07.2006.
5. **Annexure A1(e):** True copy of the medical certificate dated 01.09.2006.
6. **Annexure A1(f):** True copy of the medical certificate dated 30.09.2006.
7. **Annexure A1(g):** True copy of the medical certificate dated 26.11.2006.
8. **Annexure A1(h):** True copy of the medical certificate dated 24.02.2007.
9. **Annexure A1(i):** True copy of the medical certificate dated 25.05.2007.
10. **Annexure A1(j):** True copy of the medical certificate dated 22.11.2007.
11. **Annexure A1(k):** True copy of the medical certificate dated 20.02.2008.
12. **Annexure A2:** True copy of the order dated 28.09.2007 of the 3rd Respondent.
13. **Annexure A3:** True copy of the representation submitted by the applicant dated 21.12.2009 before the 2nd respondent.
14. **Annexure A4:** True copy of the additional statement filed by the Applicant before the 2nd respondent.
15. **Annexure A4(a) :** True copy of the English translation of Ann.A4.
16. **Annexure A5:** True copy of the order dated 17.06.2010 of the 2nd respondent.
17. **Annexure A6(a):** True copy of the medical certificate dated 13.07.2010.
18. **Annexure A6(b):** True copy of the medical certificate dated 01.01.2011.
19. **Annexure A6(c):** True copy of the medical certificate dated 01.01.2012.
20. **Annexure A6(d):** True copy of the medical certificate dated 01.01.2013.
21. **Annexure A6(e):** True copy of the medical certificate dated 01.01.2014.

22. **Annexure A7:** True copy of the fitness certificate dated 08.09.2014.
 23. **Annexure R1:** True copy of letter 08.10.2010.
 24. **Annexure R2:** True copy of letter 08.10.2010.
 25. **Annexure R3:** True copy of letter 08.10.2010.
 26. **Annexure R4:** True copy of 21.10.2010.
 27. **Annexure R5:** True copy of letter 20.03.2015 to the Medical Officer of Sree Guru Hospital, Kootalummodu.
 28. **Annexure R6:** True copy of the letter issued by Dr.N.Jayachandran
 29. **Annexure R3(a):** True copy of Form 4.
 30. **Annexure R3(b):** True copy of relevant provisions of paragraph 3.2 (Chapter 3) of the Manual of General Procedure.
 31. **Annexure R3(c):** True copy of the Memorandum of charges 21.09.2006.
 32. **Annexure R3(d):** True copy of the application 08.10.2010.
 33. **Annexure R3(e):** True copy of letter issued by the applicant remittance of the fee 08.10.2010.
 34. **Annexure R3(f):** True copy of the letter 21.10.2010.
 35. **Annexure R3(g):** True copy of the extract of minutes of the personal hearing 21.04.2010.
 36. **Annexure R3(h):** True copy of the letter 20.03.2015 issued to Dr.N.Jayachandran.
 37. **Annexure R3(i):** True copy of the letter issued by Dr.N.Jayachandran.
 38. **Annexure MA1:** True copy of Order dated 11.1.2019 in OA No.180/00093/2015 of this Hon'ble Tribunal.
-

