

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/20/690/2018

Dated: 12/04/2019

Between

K. Raja Rao,
S/o. K. Isac, aged about 57 years,
Occ: Supdt. Customs, Central Tax (CGST),
R/o. D.No.26-39-73, 7th Line,
A.T. Agraharam,
Guntur ó 522 004.

... Applicant

AND

1. The Govt. of India, Ministry of Finance,
Dept. of Revenue, North Block,
New Delhi rep. by its
Deputy Secretary/ Under Secretary.
2. Chief Commissioner of Customs,
Central Excise & Service Tax,
Hyderabad Zone, Basheerbagh,
Hyderabad.
3. Commissioner of Customs and
Central Excise,
Guntur Commissionerate,
C.R. Buildings, Kannavari Thota,
Guntur.

... Respondents

Counsel for the Applicant	:	Mr. N. Vijay
Counsel for the Respondents	:	Mr. A. Vijaya Bhaskar Babu, Addl. CGSC

CORAM :

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mrs. Naini Jayaseelan, Admn. Member

ORAL ORDER

(Per Honøble Mr. Justice L. Narasimha Reddy, Chairman)

This is the 3rd round of litigation in relation to the disciplinary proceedings initiated against the applicant.

2. The applicant was appointed as Inspector in Central Excise in the year 1985. He was promoted to the post of Superintendent in the year 1994. Disciplinary proceedings were initiated against him by issuing charge memo dated 07.11.2001, alleging certain acts of indiscipline and misconduct. The applicant submitted his explanation and not satisfied with that, the Disciplinary Authority appointed an Inquiry Officer. A report was submitted by the Inquiry Officer on 31.03.2004, holding that charges are proved. Taking the same into account, the Disciplinary Authority passed an order dated 16.05.2005 removing the applicant from service.

3. Aggrieved by the order of removal, the applicant filed O.A. No.900/2007 before this Tribunal. The O.A. was allowed setting aside the order of punishment and remanding the matter to the Disciplinary Authority. Not satisfied with the nature of disposal given by the Tribunal, the applicant as well as the department filed separate Writ Petitions No.952/2009 &

20766/2010 before the High Court of Andhra Pradesh. Since no interim orders were passed in the Writ Petitions, the Disciplinary Authority proceeded to re-consider the matter after remand and passed an order dated 21.3.2011 compulsorily retiring the applicant from service, subject however to the outcome of the Writ Petitions. The Writ Petitions were disposed of on 6.6.2013, leaving it open to the applicant to challenge the order of compulsory retirement.

4. The applicant filed O.A. No.840/2013, feeling aggrieved by the order of compulsory retirement. The OA was allowed on 29.11.2013, setting aside the order of compulsory retirement and the respondents were directed to reinstate the applicant into service. The applicant felt aggrieved on account of denial of relief as regards the period during which, he was out of service. The department felt aggrieved by the direction of the Tribunal for reinstatement. Both of them filed Writ Petitions No.16003/2014 & 22978/2014 respectively. Through a common order dated 14.08.2014, the High Court had set aside the order passed by the Tribunal and directed the Disciplinary Authority to re-consider the matter in the context of imposition of punishment. The finding on the charges was kept intact.

5. After the second round of litigation, the Disciplinary Authority passed an order dated 18.03.2015, imposing the punishment of reduction of pay scale to the minimum level for a period of 5 years with cumulative effect. In the departmental appeal preferred by the applicant, the punishment was

reduced to the one of reduction of pay scale to the minimum for a period of two years with cumulative effect on 24.6.2016. Accordingly, the applicant is continuing in service. In the context of deciding the various spells of period of absence ever since the applicant was reinstated into service, the Disciplinary Authority passed the impugned order dated 26.9.2017, taking the view that the period shall be treated as the one, 'not on duty'. The fact that the applicant was not exonerated of the charges held and proved, was taken note of. This O.A. is filed challenging the same. The applicant contends that once he is reinstated on the strength of the orders passed by the Tribunal and the High Court, the period preceding that ought to have been treated as duty and he is entitled to be paid wages for the said period.

6. The respondents filed counter affidavit opposing the O.A. It is stated that the charge framed against the applicant is very serious and it is held proved. It is also stated that though the order of punishment was interfered with on several occasions, the findings recorded against the applicant were kept intact and the occasion to treat the period of absence subsequent to the order of removal would arise if only he was exonerated of the charges.

7. We heard Sri N. Vijay, learned counsel appearing for the applicant and Sri A. Vijaya Bhaskar Babu, learned Standing Counsel for the respondents.

8. The background of the case of the applicant, ever since charge memo was issued to him has been mentioned in the preceding paragraphs within the permissible limits of brevity on as many as three occasions, the orders had to be passed by the Disciplinary Authority, one after the other. Starting from the order of removal from the service, the matter rested with the one of reduction of pay scale to the minimum level, to be in force for two years with cumulative effect. This is the result of the dismissal of the O.A. No.840/2013 filed by the applicant challenging the said order of punishment.

9. The Fundamental Rules provide for the manner in which the period of absence of different categories is to be treated, in the context of the employees not attending to duties, be it on account of suspension or on removal from service, but followed by reinstatement on modification of the order of punishment. Ever since the order of removal was passed against him, the applicant was out of service. He was reinstated only on the basis of the direction issued by the Tribunal followed by that of the High Court in the second round of litigation; vis-a-vis the disciplinary proceedings.

10. Things would have been different altogether, had the applicant been exonerated of the charges. In the instant case, the finding on the charges remains and, in a way, is approved by the Tribunal and the High Court. Therefore, the question of the applicant being treated as ~~non~~ on duty during the period of absence does not arise. Though the impugned order is silent, we

direct that the period of absence shall hold good for the purpose of pension and fixation of salary.

11. The O.A. is disposed of with the above observation. There shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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