

Reserved
(On 14.05.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 15th day of July 2019

Original Application No. 330/00120 of 2017

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Ashish Kalia, Member – J

Anurag Saxena, S/o Late Suresh Chandra Saxena, R/o B – 162 Avas Vikas, Jhansi.

... Applicant

By Adv: Shri A.K. Pandey

V E R S U S

1. Union of India, through Comptroller and Auditor General of India, 9 Deen Dayal Updhyay Marg, New Delhi – 110124.
2. Deputy Comptroller & Auditor General, Officer of Comptroller and Auditor General of India, 9 Deen Dayal Updhyay Marg, New Delhi – 110124.
3. The Accountant General (General & Social Sector Audit) Audit Bhawan, Jhansi road, Gwalior – 474001.

... Respondents

By Adv: Shri R.K. Rai

O R D E R

By Hon'ble Mr. Ashish Kalia Member – J

The applicant who was working as Assistant Audit Officer was transferred to new office for 18 months in terms of Headquarter policy on 07.10.2004 and he was relieved from duty in the afternoon of 18.10.2004.

2. The applicant applied for leave on 19.10.2004 in compliance of order of CAT in OA No. 884 of 2004 without specifying the nature of leave. He did not supply the copy of the CAT order to the office nor joined the new office. The CAT has dismissed the OA on 18.10.2005. He filed Writ Petition No. 5433 of 2005 before Hon'ble M.P. High Court in which direction was issued to consider his representation against the transfer order.

3. In the meantime, he was allocated to the office of Principal Accountant General M.P. and he joined duty on 11.09.2006.

4. The respondents vide their order dated 03.01.2007 treated his unauthorized period from 18.10.2004 to 10.09.2006 as "Dies non". The same was challenged before this Tribunal. Which was upheld by the Tribunal on 02.05.2013 in OA No. 293 of 2009. On appeal, the Hon'ble High Court quashed the impugned order dated 03.01.2007 passed by this Tribunal and directed the respondents to treat this period without salary after adjusting any leave due to him and gave liberty to hold Disciplinary Enquiry against him in accordance with law.

5. Vide order dated 15.12.2014, the respondents regularized unauthorized as EL of 125 days, HPL of 166 days and extra ordinary leave of 402 days under Rule 14 of CCS (CCA) Rules 1965.

6. Thereafter, respondents decided to hold departmental enquiry against the applicant and issued a charge memo to the applicant on following charges:-

- i. Article –I, applicant put his signature on 18.10.2004 in the attendance register despite not being present in the officer.
- ii Article –II, He did not report to new officer disobeying reliving officer order dated 18.04.2004 and willfully remain absent from the duty w.e.f. 19.10.2004 to 10.09.2006. After enquiry, the Disciplinary Authority has imposed vide its order dated 25.04.2006, punishment of 'dismissal from the service' upheld by the Appellate Authority on 15.12.2016.

7. Feeling aggrieved by the action of respondent dismissing applicant from service, he has approached the Tribunal for redressal of his grievance. Notices were issued. Respondents filed reply submitting that the due procedure of enquiry has been followed and enquiry was conducted in terms of the orders passed by Hon'ble High Court and applicant was offered every opportunity to defend himself and there is no

illegality in it and prayed for dismissal of the present OA, being devoid of merits.

8. The applicant has basically assailed the impugned order on the grounds that the impugned order is wrong, perverse and breach of principles of natural justice. The period of absence was already regularized by the Competent Authority and the Enquiry Officer has proceeded with enquiry proceedings exparty.

9. The applicant has cited the judgment in his support in the case of ***State of Punjab vs Bakshish Singh*** reported in **(1998) 8 SCC 222**, in which the Hon'ble Apex Court has held as under:-

"It will thus be seen that the trial court as also the lower appellate court has both recorded the findings that the period of absence from duty having been regularised and converted into leave without pay, the charge of absence from duty did not survive. Once it was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to understand how the lower appellate court could remand the matter back to the punishing authority for passing a fresh order of punishment. In the face of these findings, specially the finding of the trial court that proper opportunity of hearing was not given and the signatures of the respondents were obtained under duress during departmental proceedings with have not been set aside by the lower appellate court, we are of the view that there was no occasion to remand the case to the punishing authority merely for passing a fresh order of punishment."

10. In the case of State of ***State of Punjab vs Dr. P.L. Singla*** reported in **(2008) 8 SCC 469**, the Hon'ble Apex Court has held as under:-

"An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct....."

11. During the course of arguments, learned counsel for the applicant submitted that once leave is regularized by the Competent Authority, where is the question of giving charge sheet on the same cause of action. We are not in the agreement with the counsel on this for two reasons. First of all, liberty was granted by Hon'ble High Court while

issuing the direction for regularization of his leave. Secondly, apart from absence the applicant has not joined duty at new office, which is a misconduct under CCS (CCA) Rules and thus he defend the order of the Competent Authority. Thus this point failed to convince us.

12. The other point raised is that the punishment imposed dismissal from service is very harsh. The applicant has joined the respondent department in the year 1996 and is discharging his duties. The Hon'ble Apex Court held in the case of ***B.C. Chaturvedi vs. Union of India and others*** reported in ***1995 (6) SCC 749*** as under-

"Punishment imposed shock conscience of the Court / Tribunal. It would appropriately modified or would the penalty imposed Directing Appellate Authority to reconsider."

13. After going through these judgments, we are of the view that the punishment of dismissal from service is too harsh though the conduct of the applicant in non joining duty at new place of posting is not at all appreciated by this Tribunal. However, in the facts and circumstances of the case, we hereby set aside the order of Disciplinary Authority and Appellate Authority and remit back the case to Disciplinary Authority to consider the totality of circumstances of the case and to pass order afresh after giving due opportunity to the applicant of personal hearing. This order shall be complied within 90 days on receipt of a certified copy of this order.

14. The OA is disposed of accordingly. No order as to costs.

(Ashish Kalia)
Member – J

(Ajanta Dayalan)
Member – A

/pc/