

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.1259/ 2013

Date of CAV:30.11.2018.

Date of Order :07.02.2019.

Between :

S.Pydayya, s/o late Appanna,
Aged 52 yrs, Ex-USL, T.No.18349, ND (V),
D.No.58-32-260/13, Venkateswara Adarsh
Basti Colony, Ward No.41, Asivanipalem,
Visakhapatnam-530 008.

...Applicant

And

1. The Union of India, rep., by its
Secretary, M/o Defence, South Block,
New Delhi.
2. The Chief of the Naval Staff,
Integrated Headquarters, M/o Defence,
Sena Bhavan, P.O. DHQ,
New Delhi-110 011.
3. The Flag Officer Commanding-in-Chief,
Headquarters Eastern Naval Command,
Visakhapatnam-530 014.
4. The Admiral Superintendent,
Naval Dockyard, Visakhapatnam-530 014.

5. The Additional Controller of Defence Accounts
(Navy),Area Accounts Office, NAD Post,
Visakhapatnam-530 009. ... Respondents

Counsel for the Applicant ... Mrs.Anita Swain
Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant has filed the present OA seeking the following relief:

“To call for the records of the 3rd respondent /appellate authority’s order No.CE/9400/149, dated 20.05.2013 confirming the 4th respondent/disciplinary authority’s order No.PES/8401/18349, dated 19.06.2007 awarding the penalty of removal from service and set aside as being illegal, arbitrary, and without jurisdiction apart from violative of Articles 14 and 16 of the Constitution and consequently to direct the respondents to reinstate the applicant into service.”

2. Brief facts of the case:

The applicant was appointed as a Temporary (Casual) Unskilled Labourer on 25.11.1991, vide 4th respondent’s offer of appointment No.PIR/3041, dated 19.11.1991. That the 3rd respondent issued a charge memo to the applicant under Rule 14 of the CSS (CCA) Rules 1965, vide charge memo dated 26.08.2003 for remaining absent from duty for the period from 16.4.2003 to 18.08.2003. The applicant submitted unfit and fit medical certificates from authorized Medical Attendant at the time of joining duty. Without verifying the veracity/genuineness or by obtaining second medical opinion, the respondents have issued a charge memo for major penalty. After receiving the said charge memo, the applicant fell sick from 14.10.2003 to 07.10.2005 for which he has submitted periodical unfit medical certificates. Finally, he reported for duty with a fit certificate on 08.10.2005. Instead of taking him to duty, the 4th respondent referred the applicant to Kind George Hospital, Visakhapatnam, vide proceedings dated 18.10.2005, after waiting for reporting formalities for second medical opinion for subsequent period of absence on medical grounds i.e.,

14.10.2003 to 07.10.2005. This correspondence from various Sections took place for 9 months i.e., up to 05.07.2006, and the said period was also shown as unauthorized absence from duty and the applicant was not paid any pay and allowances.

3. The applicant has contended that when he was directed to appear before Medical Board for second medical opinion, the 4th respondent treated the period from 8.10.2005 to 5.7.2006 as unauthorized absence as his evident from Note dated 7.7.2006. After examination by the Regional Medical Board, KGH, Visakhapatnam, the applicant was found fit for duty vide opinion No.Rc.5493/G6/06, dated –Nil- January, 2006. The applicant was taken on duty with effect from 06.07.2006 without prejudice to the disciplinary action contemplated against him. The inquiry officer conducted the inquiry in three sittings from 22.07.2006 to 17.08.2006. The applicant was provided with the report of the Inquiry Officer, wherein the charges stood proved. In response to the Inquiry Officer's report, the applicant submitted a mercy petition dated 26.02.2007 requesting the 4th respondent/Disciplinary Authority not to impose any penalty. Despite this, the 4th respondent imposed a penalty of removal from service, vide order dated 19.06.2007. The applicant preferred an appeal dated 05.09.2011 to the 3rd respondent/Appellate Authority. The Appellate Authority rejected the appeal, vide order dated 20.05.2013 stating that the applicant does not come under the purview of a regular employee and his services can be terminated under Rule 5 of the CCS(Ty) Services Rules, 1965.

4. The applicant contended that if the applicant is treated as temporary status employee, then how was he issued with minor and major penalty charge sheets under Rules 16 and 14 of the CCS (CCA) Rules, 1965. Moreover, the applicant was allotted Government accommodation at Defence Civilian Colony, Meghadripeta, Visakhapatnam, vide 4th respondent allotment order dated 23.10.2000. The applicant was also extended the service benefits on par with the regular employees. At no point of time, the applicant was given an impression that he is a temporary employee. It was only from the Appellate Authority's rejection order, he became aware that he is a temporary employee.

5. The applicant has further submitted that he was paid pay and allowances for the month of May 2007 and during the month of June 2007, the applicant attended for duty for 11 days including 19.06.2007. The applicant further submitted that he was absent from duty from 14.10.2003 to 07.10.2005 on medical grounds and was taken on duty on 06.07.2006 after referring for second medical opinion.

6. The applicant has contended that the present penalties imposed on him for the charges I and II are not commensurate with the misconduct committed. Also, the contention of the Appellate Authority that the applicant continued to remain absent from duty till the date of removal from service i.e., 19.06.2007 is not tenable.

7. The respondents in their reply statement have stated that the applicant was employed on a quarterly casual basis w.e.f. 25.11.1991 and conferred Temporary Status w.e.f. 03.05.1996 in accordance with DOP&T OM dated 10.09.1993. But, since he was frequently on unauthorized absence, he could not be granted regular status. As per the terms and conditions laid down in the DOP&T OM dated 10.09.1993, the services of an individual on temporary status can be dispensed with by giving one month's notice. However, in the case of the applicant, he was offered a reasonable opportunity to defend his case and although he was absent from duty on 15 occasions from 1997 to 2002 and again repeated the same from 16.04.2013 to 18.08.2003, so as to enable him a reasonable opportunity keeping in view the principles of natural justice. He was directed, vide ND (V) letter PRO/0522/18349-B, dated 07.07.2003 to report for duty or in case of sickness to submit medical certificate from the Govt. Hospital/DMO indicating therein the nature of illness within 07 days from the date of receipt of the letter. The applicant again remained unauthorizedly absent from duty from 14.10.2013. He had been directed to report for duty or to submit a medical certificate in case of sickness. However, the applicant reported for duty only on 08.10.2015 and submitted a medical certificate for the entire period from 14.10.2013 to 07.10.2015 for a period of two years and therefore he was directed to Chief Medical Officer, ND(V) and to KGH (V) to ascertain the genuineness of his sickness. The Medical Board concluded that the applicant was fit for duty

as on 23.02.2006 and accordingly, the Disciplinary Authority allowed the applicant to join duty w.e.f. 06.07.2006 and decided to continue the disciplinary proceedings instituted against the applicant, vide charge memo dated 26.08.2003. Again the applicant remained absent from duty from 30.04.2007 to till the date of removal from service i.e., 19.06.2007. Therefore, he was proceeded under Rule 14 of the CCS (CCA) Rules, 1965, vide charge memo dated 26.08.2013.

8. It is also stated by the respondents that there is no truth in the applicant's contention that the departmental inquiry was conducted in three sittings. The applicant had been offered a reasonable opportunity to disprove the charges framed against him, and only then the Inquiry Officer submitting his report with the findings that the articles of charge were proved. A copy of the said report was furnished to the applicant extending him another opportunity to submit his representation, if any, against the findings of the Inquiry Officer. But, the applicant did not submit any representation within the stipulated period. He was extended another opportunity vide letter dated 21.02.2007 to submit his representation. But, again the applicant failed to respond to the aforesaid opportunity and it was only after the Disciplinary Authority imposed the penalty of removal from service, vide order dated 19.06.2007, the applicant preferred an appeal dated 05.09.2011 to the Appellate Authority. Though the appeal was filed by the applicant after 4 years against the stipulated period of 45 days, the Appellate Authority considered the appeal and rejected the same.

9. It is an undisputed fact that the applicant has been a habitual absentee unauthorizedly. Out of 15 years and 6 months in service, he has been remained absent for 5 years, 3 months.

10. In view of the facts and circumstances of the case, it appears that the department has actually been extremely lenient to the applicant by affording him opportunities at every instance. It is evident that being a temporary employee, such disciplinary proceedings need not have been initiated. As per the terms and conditions laid down in DOP&T OM dated 10.09.1993, the services of the temporary employee can be dispensed with by giving one month's notice in writing proceedings. Moreover, despite his pleading guilty of both the articles of charge framed against him, a regular inquiry has been conducted extending opportunity at every stage to cross examine the prosecution witnesses to disprove the charges, which he has not availed of.

11. We, therefore, see no reason to interfere with the orders passed by the Disciplinary Authority as confirmed by the Appellate Authority.

12. The OA is therefore dismissed. No order as to costs.

Sd/-

Sd/-

**(NAINI JAYASEELAN)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated: this the 7th day of February 2019

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