

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA No. 141/2022

HYDERABAD, this the 2nd day of August, 2022

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. K.V. Eapen, Admn. Member



1. K. Anthony Francis, S/o. Late K. John,
59 years, Post Graduate Teacher,
Kendriya Vidyalaya,
Suryalanka, Bapatla,
2. K. Vimalamani, W/o. K. John,
89 years, Block 87, Ajith Singh Nagar,
Vijayawada-15.

... Applicants.

(By Advocate: Mr. M Srikanth)

Vs.

1. Union of India,
Human Resources Development Department,
New Delhi,
Rep. by its Secretary.
2. Kendriya Vidyalaya Sangatham,
Rep. by its Commissioner,
18th Institutional Area,
Shaheedjeet Singh Marg,
New Delhi.
3. The Deputy Commissioner,
Kendriya Vidyalaya Sangatham,
Hyderabad Region, Pickets,
Secunderabad.

... Respondents.

(By Advocate: Mr. K Ajay Kumar for Mr. B N Sharma, SC for KVS)

ORAL ORDER**(As per Hon'ble Mr. Ashish Kalia, Judl. Member)**Through Video Conferencing:

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:



“That this Hon'ble Tribunal may be pleased to declare the rejection order No.F.21065/2021-22KVS(HR)/1315 dt. 27.12.2021 as arbitrary, illegal and contrary to the orders dt. 12.02.2014 of the Hon'ble High Court in WP No.13639 of 2004 and further set aside the same and consequently declare the period from 05.01.2000 to 25.02.2015 as on duty for all purposes and re-fix the pension and Pensionary benefits of the Applicant and release all arrears thereof with interest quantified at 12% and pass such other order or orders as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.”

2. I) The Applicant No.2, the mother of the Applicant No.1 , has filed this original application on behalf of the applicant as the applicant is incapable of understanding and filing the petition.

II) The Applicant No.1 was appointed as Post Graduate Teacher in the year 1987 in Kendriya Vidyalaya, Guntur and worked till 1995. He suffered from mental illness, which worsened into mental chronic Schizophrenia and was under treatment. Later, he was transferred to Hyderabad. It is submitted that a Charge-memo was issued to him on 10.08.1999 for absenting from duty without sanction of leave and for not correcting home work etc. The applicant admitted the charges vide Letter dt. 07.10.1999. Considering the charge-sheet and the acceptance by the applicant, the Disciplinary Authority imposed the penalty of removal from service vide Order dt. 05.01.2000 which was confirmed by the Appellate Authority vide Order dt. 06.10.2000. Aggrieved over the same, he



approached this Tribunal by filing OA/763/2001. This Tribunal, vide Order dt. 27.02.2004, remanded the matter to the respondents only for the limited purpose of considering the imposition of appropriate penalty by way of compulsory retirement. Aggrieved over the said order of the Tribunal dt. 27.02.2004, the applicant as well as the Government preferred an appeal before the Hon'ble High Court of AP by filing Writ Petition Nos. 11288 of 2004 & 13639 of 2004 respectively. The Hon'ble High Court, vide its Order dt. 12.02.2014, set aside the order of the Tribunal and remanded the matter for imposing an appropriate penalty for the proven misconduct as under:

“However, in certain extraordinary cases, courts have power to modify the punishment. But, it is not a extraordinary case where the Courts or Tribunals can modify the punishment. Therefore, the proposal of the Tribunal of imposing punishment of compulsory retirement is liable to be set aside and the same is set aside, while confirming the directions to remand the matter to the Second respondent/disciplinary authority only for a limited purpose of considering the question of imposing appropriate punishment on the applicant, proportionate to the proved misconduct.”

The applicant filed a Review Application before the Hon'ble High Court on the ground that since he suffered from mental illness, no punishment could be imposed on him. The Hon'ble High Court refused to interfere since the medical certificates have not been issued by the competent Medical Board and dismissed the Review Petition on 08.08.2014. Thereafter, the applicant filed SLP before the Hon'ble Supreme Court against the order in Review Petition and the said SLP was dismissed on 05.10.2018.

III) It is submitted that the applicant has also approached the Government General Hospital, Vijayawada, which issued a certificate on 25.02.2015 certifying that the applicant has 70%



disability. The Applicant No.2 has made a representation to the competent authority to consider his son's case under Section 47 of the Persons with Disability Act, 1995 and the Assistant Commissioner directed that the Applicant No.1 be kept in a supernumerary post w.e.f. 25.02.2015 for a period of two years with full pay and allowances, subject to reassessment of his health from time to time. The said authority has also directed that the entire period from the date of his termination i.e. 05.01.2000 till 25.02.2015 be treated as dies-non. The applicant was shown against supernumerary post from 25.02.2015 and by proceedings dt. 28.03.2016, he was called upon to submit his joining report and on complying with the same, he was paid salary from 19.05.2016. However, salary from 25.02.2015 to 19.05.2016 has not been released. Aggrieved over the action of the respondents treating the period from 05.01.2000 to 25.02.2015 as dies-non, OA/862/2019 was filed by the Applicant No.1, through Applicant No.2. This Tribunal, vide Order dt. 07.12.2020, dismissed the OA. Thereafter, Writ petition No.8758/2021 was filed before the Hon'ble High Court of AP at Amaravathi. The Hon'ble High Court has remanded the matter back for fresh consideration in light of the medical reports placed before the Hon'ble High Court on the question whether the period from 05.01.2000 to 24.02.2015 be treated as on duty or not, particularly in view of the disability certificate issued in favour of the applicant under the provisions of the Disabilities Act, 1995. Further, the applicant was directed to make representation enclosing all the medical certificates relating to his treatment in connection with his



mental illness within two weeks from the date of order and upon such representation being made, the Respondent No.3 was directed to consider the disability certificate and take appropriate decision in the matter within four weeks from the date of such representation. The applicant's mother has made a representation on behalf of the applicant on 24.09.2021 enclosing all the medical reports, whereas, the competent authority, vide Order dt. 27.12.2021, rejected the request of the applicant as below:

Whereas, on careful re-examining the request of Shri Kare Anthony Francis, Ex-PGT(English) for counting of period of absence from 05.01.2000 to 24.02.2015 may not be considered as duty even on EOL on private affairs. The decision was already conveyed by letter dt. 03.03.2016 by the competent authority for being not on roll due to the facts that no fresh medical evidence in the form of Disability Certificate issued by the competent medical boards for any periods belonging to the requested period from 05.01.2000 to 24.02.2015 have been produced to consider the period of his absence as on duty and accordingly, the representation dated 24.09.2021 submitted by Mrs. K Vimalamani M/o. Shri Kare Anthony Francis is disposed of.

IV) It is submitted that the Hon'ble High Court has directed fresh consideration, taking into account the medical report submitted by the applicant. Therefore, the rejection Order stating that a decision has already been taken on 03.03.2016 is contrary to the orders of the Hon'ble High Court. The medical reports have not been disputed, which would establish that the applicant was undergoing treatment from the year 1995 onwards and the same have been issued by Government Doctors. Aggrieved over the rejection order of the respondents dt. 27.12.2021, the present original application has been filed.

V) The learned counsel for the applicants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ravinder**

Kumar Dharival & Anr. Vs. Union of India & Ors. in CA No.6924/2021 decided on 17.12.2021.



3. I) Notices were issued. The respondents have filed their reply. It is submitted that the Applicant No.1 has joined KVS as PGT(English) on 31.08.1987 with initial posting at Guntur, Andhra Pradesh. On the complaint received from the students, parents of neglected duties, the Executive Committee in their meeting held on 22.07.1999, decided to suspend him with immediate effect and take departmental action. The Disciplinary Authority, on careful consideration of charge-sheet, issued Memorandum dt. 25.11.1999 for personal hearing on 30.11.1999. He attended the personal hearing and accepted all the charges framed against him vide Letter dt. 30.11.1999. Thereafter, the Disciplinary Authority has imposed penalty of removal from service with immediate effect vide Order dt. 05.01.2000 and relieved of his duties on 07.01.2000 vide Order dt. 07.01.2000. The appeal filed by him to the Appellate Authority has been dismissed vide Order dt. 06.10.2000.

II) The respondents have reiterated the facts of the case. It is submitted that all the dues of Pay & Allowances for the period from 25.02.2015 to 21.06.2016 due to the applicant was paid by depositing an amount of Rs.6,60,181/- in the applicant No.1 bank account on 24.09.2019.

III) The applicants has filed Writ Petition No. 8758/2021 before the Hon'ble High Court of Andhra Pradesh challenging the order of this Tribunal dt. 07.12.2020 in OA/862/2019 with a prayer to treat the period from 05.01.2000 to 25.02.2015 as on duty for all

purposes. The Hon'ble High Court has disposed of the writ petition with the following observations:



“In the light of the foregoing discussion, we remand the matter for fresh consideration by 3rd Respondent in the light of the medical documents placed before us whether the period from 05.01.2000 to 24.02.2015 be treated as on duty or not, particularly in view of the disability certificate issued in favour of the petitioner under the provisions of the Act of 1995. The petitioner shall make representation before the 3rd respondents enclosing all medical certificates relating to his treatment in connection with his mental illness within Two(2) weeks from the date and upon such representation being made, the 3rd respondent shall consider the medical certificates of the petitioner relating to his mental illness in the light of the disability certificate issued under the provisions of the Act of 1995 and take appropriate decision in the matter within four(4) weeks from the date of making such representation. Decision so taken by the 3rd respondents shall be communicated to the petitioner within one(1) week thereof.

Impugned order of the Tribunal is modified to the aforesaid extent.

With these directions, the Writ Petition is disposed of. There shall be no order as to costs.”

As per the direction of the Hon'ble High Court, representation dt. 24.09.2021 was submitted to the respondents along with medical certificates, prescriptions and pharmacy bills for the period from the year 1995 to 26.01.2021. On examination of medical certificates dt. 06.12.1995, 01.08.1996, 15.09.1998 & 17.02.2000 and various medical prescriptions from 1996 to 2000, it is found that the applicant No.1 was suffering from mental depression/chronic schizophrenia and was availing treatment for the said illness during the period from 1995 but nowhere mentioned the percentage of disability. The applicant No.1 has submitted the disability certificate dt. 25.02.2015 issued by Medical Board with 70% disability only on 29.04.2015 and based on the said certificate, he was allowed to work on supernumerary post. Further, it was clarified in Para 2 of the



Letter dt. 03.03.2016 that the period of absence i.e. 05.01.2000 to 24.02.2015 may be treated as dies-non, as no medical certificate was submitted, indicating the percentage of disability, for the said period as per rules. It is further submitted that the request for counting of period of absence from 05.01.2000 to 24.02.2015 was not considered as duty period even on EOL on private affairs. The decision was already conveyed by Letter dt. 03.03.2016 by the competent authority for being not on roll, due to the facts that no fresh medical evidence in the form of Disability Certificate issued by the competent medical boards for any periods belonging to the requested period have been produced, the representation dt. 24.09.2021 was disposed of vide Order dt. 27.12.2021 and the applicant No.1 is not entitled for the relief sought. The respondents prayed for dismissal of the OA on the ground that the applicant has not produced any medical certificate showing the percentage of illness in support during the period 05.01.2000 to 25.02.2015.

4. In the rejoinder, it is submitted that the Hon'ble High Court in W.P. NO.8758/2021 specifically observed that the representation made by the applicant should be considered along with Medical Certificate and the Disability Certificate issued under the Act of 1995. But, the respondents have not taken into consideration the fact that the applicant was suffering with chronic schizophrenia even prior to the disciplinary enquiry. The Medical Board, on examination on 24.06.2022, has certified that the applicant is suffering from Paranoid Schizophrenia and, it is clear from the medical records that he is undergoing treatment from 03.05.1996 till

date. Hence, the applicant is entitled for treating the period from 05.01.2000 to 25.02.2015 as on duty and, the rejection of the same is contrary to the orders of the Hon'ble High Court of Andhra Pradesh. They prayed to allow the OA.



5. Heard the counsel for the parties at length and perused the pleadings on record.

6. I) The short issue raised in the present original application is whether the period from 05.01.2000 to 25.02.2015 can be considered as on duty or not. The respondents' counsel has drawn our attention to Page 6 of the impugned order dt. 27.12.2021 which states that the competent authority, on the directions of the Hon'ble High Court, considered the representation and rejected the case of the applicant No.1 for treating the period from 05.01.2000 to 25.02.2015 as on duty. The crux of the judgment of the Hon'ble High Court in WP No. 8758 of 2021 dt. 06.09.2021 is that the applicant No.1 should be treated as disabled from the year 2000 onwards as the beneficial impact of the PwD Act, 1995 ought not to be restricted to the date on which the disability certificate is issued. Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 reads as follows:

47. Non-discrimination in Government employments-

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having

regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

II) Further, in this regard, the relevant portion of the DoPT

OM No.18017/1/2014-Estt(L) dt. 25.02.2015 is reproduced below:



“2. Section 47 of the PWD Act, 1995 provides that services of no employee can be terminated nor can he be reduced in rank in case the employee has acquired a disability during his service. The first proviso to the Section 47 lays down that if such an employee is not suitable for the post he was holding, he could be shifted to some other post. However, his pay and service benefits would be protected. The second proviso provides that if it is not possible to adjust such an employee against any post, he would be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Further, the Clause (2) of Section 47 provides that no promotion shall be denied to a person merely on ground of his disability. ***In Kunal Singh v. Union of India, [2003] 4 SCC 524***, Hon'ble Supreme Court has observed that the very frame and contents of Section 47 of the PWD Act, 1995 clearly indicate its mandatory nature.

3. The issues relating to leave or absence of Government servants who have acquired a disability while in service are required to be dealt with in the light of the provisions of the Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The case of a disabled government servant who is declared fit to resume duty but who may not be able to perform the duties of the post he was holding earlier may be dealt with as per the first proviso to Section 47 of the PWD Act, 1995. The second proviso shall apply if it is not possible to adjust him against any existing post. In all such cases, the Government servant so adjusted shall be entitled to the pay scale and other service benefits attached to the post he was holding.

4. A disabled Government servant who is not fit to return to duty shall be adjusted as per second proviso to the Section 47 mentioned above, until he is declared fit to resume duty or attains the age of superannuation whichever is earlier, with the same pay scale and service benefits. On being declared fit for resuming duty, the Government servant who is not fit for the post he is holding, may be adjusted as per the first proviso to Section 47.

The crux of the above DoPT OM is that the benefit of service shall be granted to a Government servant, who acquired disability while in service. In the instant case, the applicant No.1 has joined service in the year 1987 and worked till the penalty of removal from service

was imposed on 05.01.2000. Again, he was placed on a supernumerary post w.e.f. 25.02.2015 as per the amended provision of Section 47 of the PWD Act, 1995. He submitted Medical Board Opinion of the Govt. General Hospital, Vijayawada, in which it was certified that he has been suffering from Paranoid Schizophrenia(Mental Illness) and is on treatment from 03.05.1996.



III) In the DoPT OM dt. 25.02.2015, the judgment of the Hon'ble Supreme Court in the case of ***Kunal Singh v. Union of India, [2003] 4 SCC 524*** was referred wherein it was held that the contents of Section 47 of the PWD Act, 1995 clearly indicate its mandatory nature. Therefore, we are of the view that no discretion lies with the respondents to consider the disciplinary proceedings period i.e. 05.01.2000 to 25.02.2015 as not on duty. In view of the above, the impugned order dt. 27.12.2021 is liable to be set aside and it is hereby set aside. The respondents are directed to calculate the pension of the applicant No.1 by treating the disciplinary proceedings period i.e. from 05.01.2000 to 25.02.2015 as on duty and the same shall be paid to him within a period of two months from the date of receipt of a copy of this order.

IV) With the above observation, the OA is allowed. There shall be no order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/Ram/