

Central Administrative Tribunal
Principal Bench

O.A. No. 2322 of 2002

New Delhi, this the 20th March, 2003

HON'BLE MR.JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE MR. GOVINDAN.S.TAMPI, MEMBER (A)

Smt.C.P.Gupta,
308, Dr.Mukherjee Nagar,
Delhi-110009.

(By Advocate: Shri P.P.Khurana)

...Applicant.

Versus

1. Union of India through
Secretary to the Government
of India, Ministry of Labour,
Shramshakti Bhawan, New Delhi.
2. Director General of Employment &
Training/ Joint Secretary, DGE&T,
Ministry of Labour, Shramshakti
Bhawan, New Delhi.
3. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
4. Secretary,
Ministry of Social Justice and
Empowerment, Shastri Bhawan,
New Delhi.

Respondents.

(By Advocate: Shri A.K.Bhardwaj)

ORDER (Oral)

Justice V.S.Aggarwal

Applicant, Smt.C.P.Gupta assails the orders passed by the disciplinary authority dated 22.2.2001 and the subsequent order dismissing the revision petition. By order dated 3.12.2001, the penalty of compulsory retirement has been imposed upon the applicant.

2. We are not dwelling into any other controversies because during the course of submissions

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our attention has been drawn towards the fact that the disciplinary authority has considered certain extraneous factors while imposing the penalty of compulsory retirement and, therefore, the said order cannot be sustained.

3. In the facts of the present case, we find force in this submission.

4. The statement of articles of charge reads as under-

"Consequent upon her repatriation from the Ministry of Welfare, Smt.C.P.Gupta, Deputy Director of Training(WOT), Directorate General of Employment and Training was directed by that Ministry to join Directorate General of Employment & Training latest by 14.8.1995 positively. Smt. Gupta neither joined her duty in the D.G.E.&T. in compliance therewith nor did she seek grant of any kind of leave. Later a formal order was also issued in complying with the directive of the Hon'ble High Court which directed Smt. Gupta to join her duties in the D.G.E.&T. within seven days (with effect from 19.9.1995). Even then Smt.Gupta did not join her duties in the D.G.E.&T. Thus Smt. Gupta has been on unauthorised absence since 14.8.1995.

2. By her above act the said Smt.Gupta has exhibited lack of devotion to duty and has committed an act unbecoming of a Government Servant and thereby violated Rule-3(i)(ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964".

3. The disciplinary authority just in the preceding para before imposing the penalty of compulsory retirement recorded reasons which reads as under-

" And whereas the President after careful consideration of the Inquiry Report, the records of the case and the advice of the Union Public Service Commission hold that the article of

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charge that Smt.C.P.Gupta Deputy Director, remained unauthorisedly absent for a long period and had also deliberately avoided receiving the orders/communications from the Department as proved".

4. The above said facts show that the charge against the applicant that she had been on unauthorised absence since 14.8.1995, is proved or not proved by the disciplinary authority, but he still recorded that in addition to that "the applicant deliberately avoided receiving the orders/communications from the Department as proved".

5. Once the extraneous factors had been considered while imposing the penalty, the only conclusion would be that the said order would not be sustained. The disciplinary authority should confine itself to the charge if proved or not proved.

6. Learned counsel for the respondents pointed that if so, the fact recorded does not show that any extraneous factors had been considered nor the substantive part of the charge. We find ourselves difficult to accept the said contention raised at the Bar. Reasons are obvious. The factors which were in the mind of the disciplinary authority can only be gauged from what is recorded in the order passed by the disciplinary authority. The disciplinary authority considered certain factors which were not in the charge itself. We have no hesitation to conclude that the extraneous factors had been considered while imposing the penalty of compulsory retirement.

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7. Learned counsel for the respondents has drawn our attention to the statement of imputations of misconduct/misbehaviour in support of the articles of charge framed against the applicant where indeed it has been mentioned that the applicant had wilfully avoided accepting the orders with regard to her posting and she showed also disregard and lack of devotion to her bonafide official duties. But this fact is not mentioned in the articles of charge. The factual position is correct that in the statement of imputations of mis-conduct/mis-behaviour, this fact was mentioned but not in the charge that was conveyed to the applicant. When such a controversy arises necessarily it has to be examined on the touch stone of prejudice, if any, caused to the alleged delinquent. Normally, the articles of charge containing the details of the charge is conveyed with the sole object to let the applicant/delinquent know in a precise manner of the allegations against him. The charge must, therefore, contain the assertion against the said person unless there are other circumstances to prompt this Tribunal to come to a conclusion that no prejudice is caused. Ordinarily a delinquent will defend the charge as conveyed. When the charge does not contain certain allegations the presumption of prejudice would be drawn. We, therefore, do not accept the argument of the applicant's learned counsel.

8. Since this matter is disposed of on this short ground, we need not dwell into the other

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controversies which would be embarrassing to either party.

9. Resultantly the O.A. is allowed and the impugned orders are quashed. The matter is remitted back to the disciplinary authority who may, if so advised, pass a fresh order in accordance with law.

(Govindan S. Tampli)
Member(A)

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(V.S. Aggarwal)
Chairman