

Original Application No. 040/00256/2018

Date of Order: This, the 8th day of August 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

1. Smti Sima Choudhury
D/O/ Late Mon Mohan
Ward Sahayiaka in 182,
Military Hospital
Salbagan, Agartala
(Now Under Compulsory Retirement)

Presently residing at:-

C/O ASHOK Kumar Sasrkar
P.O.Madhuban Dukli,
Badharghat Sripalli, Near Netajipalli
J.B.School, P.S.-A.D.Nagar
Agartala, Tripura(W)

Applicant

By Advocate Mr.U.K.Barman.

-AND-

1. The Union of India,
(Represented by the Ministry of Defence)
Integrated Head Quarter of Ministry of Defense (Army)
Adjutant General's Branch, Director General of Medical
Services, (Army), L-Block, New Delhi-110001.
2. Commanding Officer
182, Military Hospital
C/O., 99 APO,
Pin-903182
Salbagan, Agartala
3. Lieutenant General
DGMS,C/O 99 APO,
Pin-903182
Salbagan, Agartala.

Respondents

By Advocates: None

ORDER (ORAL)

MANJULA DAS, JUDICIAL MEMBER:

The applicant herein approached before this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 with the following reliefs:

- "8.1 That the Hon'ble Tribunal be pleased to set aside the Departmental inquiry against the applicant as recommended on 18.09.2013.
- 8.2 The Hon'ble Tribunal be pleased to quash/set aside/cancel the inquiry report dated 27.01.2016 and the consequent order dated 02.06.2016.
- 8.3 That the Hon'ble Tribunal be pleased to prohibit /restrain the respondent authorities from acting upon in furtherance of the inquiry report dated 27.01.2016 and the consequent order of Compulsory retirement dated 02.06.2016 (Annexure-A1).
- 8.4 That the Hon'ble Tribunal be pleased to direct the Respondents authorities particular the Respondent No.3 to modify the transfer order of the Applicant from Pit Line Kamakhya Station to any office duty at Guwahati."

2. Learned counsel for the applicant submitted that the applicant was appointed as a Ward Sahayika, Class-IV, Civilian Vide appointment letter dated 22.02.1990 subsequent to an interview. The applicant is a divorcee and also has a child to look after and they both sustained on the salary received by her due to her

appointment till her illegal compulsory retirement from service by the Respondent authorities. After her joining under the Respondent authorities, applicant was placed as Ward Sahayika at 182, Military Hospital, C/O.99 APO Salbagan, Agartala and since then she has been discharging her duties.

3. Learned counsel further submitted that the applicant on 03.06.2013 lodged an FIR before the Women Police, West Tripura which was registered and numbered as Agt.Women P.S.Case No.44/13 U/S 354(A) (1) (i)/325 of IPC making an allegation against her superior officer. Subsequent to making of the Complaint with the Police authority, the Police authority started investigating the same and submitted their charge-sheet on 17.09.2013. The applicant thereafter also made another Complaint before the Tripura Commission for Women on 10.06.2013. The Tripura Commission for Women started their investigation on 5th of August, 2013. However, the Commission dropped the matter holding that the complaint made by the applicant is not supported by the Witnesses. After the incident which occurred on 03.06.2013 the applicant was severely injured and had to undergo a surgery on her ankle in "Bhaumik Polyclinic & Nursing Home", at Dhaleswar, Kalyani, Agartala and due to which she could not attend to her duties immediately thereafter. During her absence from work due to her injuries and the treatment,

the applicant was served with several summons to appear before the Army Court for inquiry in to the matter. She was also served with a show cause Notice dated 7th of July, 2013 and she was directed to show cause as to why Disciplinary action shall not be taken against her for the followings:-

“(i) On 03 June, 2013, you have physically assaulted and abused Sub.D.N.Joshi of 182 MH in Hospital premises in front of many witnesses.

(ii) Further you filed a false Complaint of assault and outraging of modesty against Sub.D.N.Joshi.

(iii) Moreover you approached the press and TV Media without prior permission of your superiors which is against the Central Civil Services Conduct (CCS) Rules.”

4. The applicant made her reply to the above show cause Notice vide her reply dated 24.07.2013 whereby the applicant categorically stated that the allegations which she made against Sub.D.N. Joshi were true and about the allegations that she went to the press and media are all false. The applicant thereafter served with an intimation during her absence, informing that a disciplinary inquiry has been initiated against the applicant whereby she has been named as the prime accused of the incident that occurred on 03.06.2013 vide intimation dated 18th of September, 2013. In the said intimation it has also been stated that “The lady has not been

attending the work since the day of the incident. The court was ordered by the undersigned not to record the individual's statement from her residence (where she claims to be ailing) to avoid further false allegations against army personnel's by the prime accused."

5. The learned counsel further submitted that the applicant again resumed her duties in the month of October, 2013. But the applicant was served with a Memorandum of Charges, dated 13.08.2013 along with articles of charge are as follows:-

"Article-I

That Smt. Sima Chowdhury, while working as Ward Sahayika at 182 MH verbally abused and physically assaulted JC-693736N Sub.D.N. Joshi of 182 MH in the OPD Complex on 3rd June, 2013 at around 09.05 by resorting to using her footwear.

Article-II

That during the aforesaid period and while functioning in the 182 MH the said Smti.Sima Chowdhury, Ward Sahayika then filed false Complaint dated 3rd of June 2013 of physical assault and molestation against Sub.D.N. Joshi in the Women Police Station, Agartala.

The applicant was asked to submit nomination of her defense assistant on 15th of November, 2014. Vide letter dated 10.12.2015 it was informed to the applicant that the nomination of the defense assistant has been accepted and she was summoned to appear before the authority on 16th of December, 2015. Applicant thereafter received a letter dated 16.12.2015 whereby it was informed to her

that the defense assistant so appointed by her was rejected. She was further asked to appoint any other person to be her defense assistant. Thereafter the applicant was served with an enquiry report dated 27.01.2016 vide a communication dated 07.03.2016 from which it was apparent that her reply dated 15.1.2016 was not considered and she also directed to submit her representation within a period of 15 days. The applicant submitted her reply dated 29.03.2016. On 02.06.2016 the applicant was served with an order whereby the penalty "Compulsory Retirement from Service" was most illegally, arbitrarily imposed upon her under Rule 12 of CCS (CCA), Rules, 1965.

6. Being aggrieved with the Departmental inquiry Reports dated 18.09.2013 and 27.01.2016 and the consequent order dated 02.06.2016, the applicant approached before this Tribunal for setting aside/cancel the same and to direct the respondent authorities to allow the applicant to discharge her regular duties.

7. Heard the learned counsel for the applicant, perused the O.A. and material placed before us.

8. From the perusal of the records, it is noted that against the inquiry report the applicant has not made representation to the respondent authority for her redressal. Hence, without going in to the merit of the case, we feel deem fit and proper to issue a direction to

the applicant to make an appeal before the respondent authority within a period of one month from the date of receipt of this order. On receipt of such appeal, the respondent authority shall consider and dispose of the same within a period of 3 months thereafter.

9. O.A. is disposed of accordingly at the admission stage itself. No order as to costs.

(N. NEIHSIAL)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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