

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01082/2019

DATED THIS THE 5th DAY OF MARCH, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

H.C.Vijaya Kumari, Asst. Director
Aged about 53 years
Min. of I & B, Govt. of India
Under orders of compulsory retirement from service
R/o No.1201, 3rd Cross, 1st Block
HAL, 3rd Stage, Bangalore-560075.Applicant

(By Advocate Sri N.Obalappa)

Vs.

1. The Union of India
Represented by its Secretary
Ministry of Information and Broadcasting
'A' Wing, Shastry Bhavan
New Delhi-110 001.

2. The Secretary
The Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi-110 069.

3. The Director General
Prasar Bharati, News Services Division
All India Radio, Akashavani Bhavan
New Delhi-110 001.

4. The Director General
Publication Division
Min. of I & B, Soochana Bhavan
CGO Complex, Lodhi Road
New Delhi-110003.Respondents

(By Advocates Sri M.V.Rao, Sr.PC for CG, Sri M.Rajakumar & Sri Vishnu Bhat)

O R D E R
(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The facts of the case as it appears from the contentions made in the OA and the reply statement are as follows:

The applicant joined as Assistant Editor(News) at All India Radio, Bangalore during 1999 and got promotion as Assistant Director, Dept. of Publication Division, New Delhi during the year 2012 and availed CCL for the period from 5.7.2012 to 28.9.2012. According to the respondents, after expiry of leave, she did not report for duty on 29.9.2012 and remained absent. The Cadre Controlling authority issued a charge memo for wilful absence from duty. The IO & PO were appointed for conducting enquiry under Rule 14 of CCS(CCA) Rules, 1965. Meanwhile, the applicant represented to National Commission for Scheduled Castes(NCSC) alleging discrimination and harassment. As per the NCSC order dtd.10.2.2014, the period of unauthorised absence of the applicant had been regularized by sanctioning CCL/EL/HPL/EOL by leave sanctioning authority up to 31.12.2014. Since her entire period of absence had been regularized, the disciplinary proceedings initiated against her had also been dropped. Thereafter the applicant remained absent from duty from 1.1.2015 to 16.11.2015. She reported for duty on 17.11.2015 but proceeded again on unauthorised leave w.e.f. 30.11.2015 despite being advised by the Director(Editorial) not to proceed on leave in view of extraordinary work pressure relating to finalisation of India 2016. According to the applicant, she requested for transfer to Bangalore on the ground that her daughter and son are suffering from ill health and her dependent mother was also suffering from ill health. Since the authorities have not considered her request, the applicant was compelled to move to Bangalore on 30.11.2015 in view of the pressing problems at Bangalore. The Publication

Division had issued a memorandum dtd.2.12.2015 directing the applicant to explain in writing as to why disciplinary action should not be taken against her. However, the applicant neither reported for duty nor submitted any explanation. Therefore, the Ministry initiated disciplinary proceedings vide memo dtd.16.2.2016 under CCS(CCA) Rules 1965 for unauthorised absence from duty from 1.1.2015 to 16.11.2015 and from 30.11.2015 till date and defying the orders/instructions issued to her by the Government from time to time. The applicant confirmed receipt of all the communications, including the charge sheet, statement of charge, statement of imputation of misconduct, list of documents and list of witness. She has also denied to attending any further hearing as she would not be in a position to come again and again for the inquiry. In her written statement, she requested for the inquiry proceedings in one go as she is without salary and TA, DA is not admissible to her to attend the inquiry. But the IO declined to consider the written statement on the ground that the same are not within the purview of the IO and conducted inquiry without listed documents at Annexure-III for the year 2015 upon which the inquiry is required to be held. According to the applicant, the findings of the IO stating that the charges are proved without considering her representation do not sustain under the law. The 1st respondent being the Disciplinary Authority(DA) enclosed the advice of the UPSC dtd.27.6.2019 and on the basis of UPSC's advice, the DA has imposed the penalty of compulsory retirement of the applicant. According to the applicant, the DA has to decide the nature and quantum of punishment proposed to be imposed on the charged official. It is felt that to avoid moving the issue before the NCSC and also to put the blame of responsibility of giving advice by UPSC, the DA passed orders. It has not verified the minimum qualifying service of 20 years for premature retirement and hence she submitted a detailed

representation dtd.26/27.7.2019 to the DA submitting that loss of pay itself is a punishment and she could not attend the duties at New Delhi in view of her compelling difficulties and requested to allow her to rejoin duty at DPD, New Delhi. The penalty proposed by the UPSC and accepted by the DA is disproportionate to the gravity of the allegation as the applicant has not been absent from duty wilfully and avail leave due and admissible in the interest of family.

2. According to the respondents, the UPSC tenders advice to the DA in accordance with the requirement of consultation as laid down in Article 320(3)(c) of the Constitution. Before tendering advice, every case is thoroughly examined by the UPSC with the prime focus on upholding the principles of natural justice. In the present case, the UPSC tendered advice after careful examination of all the case records including representation of the applicant and hence, the penalty recommended by the Commission is commensurate with proven misconduct of the applicant. The representation was examined by the DA and found no new facts and hence after taking into account all the relevant records and advice of UPSC, concluded that the articles of charge against the applicant is proved and imposed the penalty of compulsory retirement on the applicant. They submit that the matters of transfers/postings of Indian Information Service officers are considered in a Civil Service Board on the functional requirement and in accordance with Personnel Policy of Indian Information Service officers.
3. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. In this case, the applicant was promoted to Junior Time Scale Grade of Indian Information Service, Group-A and was posted to the Publication Division(DPD) New Delhi vide order dtd.25.4.2012. She joined

the said post on 2.7.2012 and applied for Child Care Leave w.e.f. 5.7.2012 to 28.9.2012. This leave was sanctioned but on expiry of leave, the applicant did not report for duty and remained continuously absent. The respondents took disciplinary action against her for her wilful absence on the expiry of the sanctioned leave w.e.f. 29.9.2012. However, on intervention by the National Commission for Scheduled Castes (NCSC), she was sanctioned various types of leave for which she was eligible till 31.12.2014. From 1.1.2015 to 16.11.2015, she remained absent from duty without approval and joined back for duty on 17.11.2015 but allegedly proceeded on unauthorised leave w.e.f. 30.11.2015. After following the inquiry process based on a charge memo given on 16.2.2016 vide Annexures-A13, she had been compulsorily retired from Indian Information Service vide Annexure-A23 order dtd.20.9.2019. The applicant because of her personal circumstances relating to the education of her daughter and her ailing mother had repeatedly requested for being posted in Bangalore which was not acceded to. She had made several representations regarding similar concession being given to other individuals in the same department. The crux of the issue is that in the original disciplinary action taken against her for her unauthorised absence after the expiry of the leave from 29.9.2012 till 31.12.2014, the same was regularised with different types of leave based on the intervention of the National Commission for Scheduled Castes(NCSC). While supporting her case, the NCSC had also advised her that 'she should follow the Govt. rules and maintain decorum of the office. Indefinite absenteeism is not a solution of any problem'. The NCSC also informed that 'the department has taken care of her request but there is a procedure in the Government. The DOPT guidelines exist for posting of couple in the same station and department should follow this. The officer should join duty and thereafter her request should be addressed by the

department'. It is obvious that a considered view had been taken by the respondents based on the intervention of the NCSC and her absence from September 2012 to December 2014 had been regularised as various types of leave. However, the applicant chose to remain absent from January to November 2015 and having worked for a brief period had once again gone back absenting herself from duty. It is apparent that the department had very clearly stated that her further request for leave had not been accepted and that she should report back for duty. Even after the issue of the charge memorandum, the applicant had not chosen to join back for duty and in fact would only repeat that she had been discriminated against because of her community whereas other similarly situated persons have been given postings of their choice. The respondents would contend that she had not reported for duty for a long period of time even after the advice of NCSC and even during the enquiry, she did not want to be burdened with the repeated hearings and had requested the respondents to take action based on her written statement. As has been held in any number of cases, leave is not an absolute right to be demanded by persons like the applicant. At the same time, considering the situation of the individuals, a number of guidelines have been issued to provide them suitable choice of postings and also grant of leave for appropriate periods. In this peculiar case, since 2012, the applicant has worked in the department only for a few days and even if we, for a moment, give credence for the alleged bias against her, the applicant has no satisfactory explanation as to why she had not obeyed repeated orders for reporting back to the duty and continued to agitate for her request being accepted. Her earlier absence from duty was regularised at a later date after the intervention of National Commission for Scheduled Castes. The case of the applicant could have been bolstered had she joined back for duty for a reasonable period of time

and if the respondents had not acceded to her request even after a reasonable period, she would have had a strong case of alleged bias that only she has been singled out for discriminatory treatment. However, the facts of the case do not allow us to consider the issue in this line. The respondents in Annexure-A23 have also ordered that she may be granted full pension and gratuity on her compulsory retirement. Therefore, her plea that she would not be eligible for full pension has also been reasonably considered and ordered accordingly by the respondents. We therefore find no merit in the OA and hence dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

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Annexures referred by the applicant in OA.No.170/01082/2019

Annexure-A1: Order dtd.25.4.2012

Annexure-A2: Order dtd.8.8.2012

Annexure-A3: Order dtd.23.10.2013

Annexure-A4: Representation dtd.4.11.2013

Annexure-A5: Order dtd.16.12.2013

Annexure-A6: Communication of NCSC dtd.26.2.2014

Annexure-A7: Order in CA.No.4506/2014
Annexure-A8: NCSC orders dtd.17.6.2014 & 18.5.2015
Annexure-A9: Medical certificates
Annexure-A10: Order dtd.21.11.2014
Annexure-A11: Certificates of applicant's daughter
Annexure-A12: Applicant's joining duty at DPD, N.Delhi on 17.11.2015
Annexure-A13: Order dt.24.2.16, 2nd charge memo dt.16.12.13 & daily order sheet
Annexure-A14: PO's brief dtd.24.10.2016
Annexure-A15: CO's brief dtd.20.11.2016
Annexure-A16: Inquiry report dtd.7.4.2017
Annexure-A17: Representation dtd.19.4.2017
Annexure-A18: 2nd PUC marks card of applicant's daughter
Annexure-A19: Order in OA.246/2017
Annexure-A20: Orders dtd.10.7.2019 & 27.6.2019
Annexure-A21: Representation dtd.26.7.2019
Annexure-A22: Order in 2006(92) SLJ/OS.CAT
Annexure-A23: Order dtd.20.9.2019 compulsory retiring the applicant

Annexures with reply statement:

Annexure-R1: NCSC order dtd.10.2.2014

Annexures with rejoinder:

Annexure-A24: Transfer cum promotion posting of IIS officers dtd.13.9.2019

Annexures with written arguments note filed by the respondents:

Annexure-1: Memorandum dtd.27.7.2015
Annexure-2: Memorandum dtd.2.12.2015
Annexure-3: Memorandum dtd.4.12.2015
Annexure-4: Daily order sheet dtd.20.7.2016
