

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.186/2001

New Delhi, this the 13th day of November, 2001

Mrs. Roseline Palta
w/o Shri Ravi Kumar Palta
r/o 3/157, Sumhash Nagar
New Delhi.
and employed as Assistant
in the office of
Indian Agricultural Research Institute
Pusa, New Delhi - 110 012. ... Applicant

(By Advocate: Shri B.B.Raval)

Vs.

1. Indian Council of Agricultural Research
through The Secretary
Krishi Bhawan
New Delhi - 110 001.
2. The Director
Indian Agricultural Research Institute
Pusa, New Delhi - 110 012. ... Respondents

(By Advocate: Shri V.K.Rao)

O R D E R

By Shanker Raju, Member (J):

The applicant, who is working as Assistant, has assailed an order passed on 30.5.1998 wherein a minor penalty of withholding three increments of pay for a period of three years without cumulative effect has been inflicted upon her. The applicant has sought to quash the aforesaid order and to accord all consequential benefits with 18% interest.

2. Briefly stated, the applicant has been served with a Memorandum dated 30.5.1998 under Rule 16 of the CCS (CCA) Rules, 1972 (hereinafter referred as Rules) for unbecoming of a Government servant due to habitual absent and also falsification of the official record, i.e., attendance register. The applicant has been shown late on 12 occasions and preponing the

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(B)

arrival time in the register even after coming late. The applicant tendered her explanation and thereafter a minor punishment was imposed. The applicant has preferred OA 2216/98 wherein the Court set-aside the appellate order and directed the respondents to pass a fresh and speaking order dealing with the contentions of the applicant and due regard to the observations made in the order. In compliance thereof the respondents have passed an order dated 14.12.2000 wherein the punishment was maintained.

3. The learned counsel for the applicant contended that the applicant has been charged for coming late for 12 occasions out of which six occasions she was on either full day leave or half day leave as such she has been punished without application of mind. It is also stated that there is no proof of any explanatory memos served upon the applicant and absence is on account of justified grounds, interalia, child illness. It is also stated that quantum of punishment is not at all gone into and having issued warning for late coming the applicant has subjected to double jeopardy and also she has been promoted two times. It is also stated that once the leave is sanctioned it is not incumbent upon the applicant to inform and rather the Administrative Officer concerned is to be held responsible for not informing. The learned counsel for the applicant by referring to the order passed by this Court in the earlier OA supra, contended that having regard to the explanation given the Court has observed that the applicant has admitted that on filing case she remained absent due to genuine personal difficulties

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and the charge of absence could not prove and the absence was difficult to be construed as on different grounds than mentioned. It is also stated that the last punishment imposed upon the applicant is of censure in the year 1978 and since then upto 1997, the record of the applicant remains satisfactory and the part of the charge which has been proved does not show her in a very bad life from the point of view of requirement of Government discipline in the office. The quantum of punishment is left to be considered by the appellate authority at the relevant time. The Tribunal, in the circumstances, set aside the impugned order and it has been directed to pass a detailed speaking order after taking into account the observations made and the ground taken in the written appeal. In this back ground, it is stated that though the applicant has taken several contentions in her appeal but the same have not at all been considered and controverted by the appellate authority despite directions of this Court and the observations of the Court where the charge has been partly proved and for other charges the bonafide of the applicant has been shown as not at all been taken into consideration. In this back ground, it is stated that even if there is an admission for late coming the same has been proved from the genuine documents produced and explanation tendered. It is also stated that the punishment is shockingly disproportionate and in the past the applicant had to undergo hospitalisation due to her own sickness. The censure earlier awarded was malafide and having submitted the explanation to the memo issued, the stand of the respondents is bad in law.

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4. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents, Shri V.K.Rao contended that in her reply to the memo the applicant admitted to have sometime reported late due to compelling circumstances and had denied to have interpolated the record and this amounts to admission of the charge. As far as the appellate order is concerned the learned counsel has stated that all the contentions of the applicant have been meted out in the order and there has been compliance of the Court's order earlier the proportionality of the punishment has also been gone into and the same having been commensurate with the gravity of the charge, the original punishment was maintained. It is stated that by placing reliance on a decision of the Apex Court in Secretary to the Govt. of India, Home Department and Others Vs. Srivaikundathan, (1998) 9 SCC 553, wherein it has been held that in the quantum of punishment, the scope of judicial review is to be considered by the disciplinary authority but it is not for the Tribunal to go into the proportionality of the punishment. The learned counsel for the respondent has further stated that the OA is barred by principles of resjudicate as the applicant has earlier approached this Court challenged the orders on the same grounds, this present OA is not maintainable. It is also stated that the OA is barred by limitation as the applicant has challenged an order dated 30.5.1998 beyond one year which is barred by limitation as per Section 21 of the Administrative Tribunals Act, 1985. It is also stated that the applicant has been assessed adversely

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in 1971, 1976 and 1977 this shows that she is habitual of taking leave frequently. The failure of the applicant to submit explanation for late coming on 12 occasions clearly shows her carelessness and dereliction of duties. The charge of falsification the attendance register has been proved. The applicant in the rejoinder has reiterated the pleas taken in the OA. (16)

5. I have carefully considered the rival contentions of the parties and perused the material on record. No doubt in the matter of punishment in pursuance of disciplinary proceedings or minor punishment in judicial review has limited jurisdiction if the order is based on no evidence or is passed in contravention of the procedure rules or law, the same is to be interfered. The Tribunal cannot assume the role of an appellate authority to take a different view what has been taken by the departmental authorities. Applying the aforesaid ratio in the facts and circumstances of the present case, I find that on challenge of the proceedings the Tribunal in the earlier order remanded the case back to the appellate authority and as such having passed another fresh order on 14.12.2000 neither the case is barred by doctrine of resjudicate or by limitation.

6. In the earlier OA this Court has specifically observed that the justification of the applicant for five occasions of late coming was genuine and the evidence in respect of other charges is not conclusive in nature and the charge is not clearly established. As regards the performance, it

is also stated that the applicant has no adverse material after 1978 till 1997. In this conspectus the order passed by the appellate authority which has not dealt with the contentions of the applicant, directions have been issued to consider the various issues raised by the applicant in her written appeal as well as the observations of the Court, the appellate authority while complying with the directions of this Court the has not at all taken into consideration all the contentions taken by the applicant in her appeal to memorandum. The observations of the Court in the earlier OA has also not been considered. This in my considered view is not legally tenable. The appellate order wherein all the contentions of the applicant have not been taken into consideration itself construes a contumacious disobedience of the order of this Court. The order is to be treated as in contravention to the directions of this Court and hence not legally sustainable being mechanical and non-speaking.

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7. Apart from it and in view of the ratio of the Apex Court in Secretary to the Govt. of India, Home Department & Others supra, the ratio regarding proportionality of punishment was in the conspectus that it is for the disciplinary authority to consider the quantum of punishment and the Tribunal cannot assume the role of appellate authority and recommend a lesser punishment but in the event it is felt that the respondents have not considered the proportionality of the punishment it can always remanded back if the punishment shocks the conscience as per the decision of the Apex Court in B.C.Chaturvedi Vs. Union of

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India & Others, JT 1995 (8) SC 65. Though I find that the appellate authority keeping in view the charge and the penalty being commensurate has not been interfered with the same but was to be considered the proportionality in view of the past conduct in part 4 of the previous order wherein it is proved that after 1978 there is nothing adverse against the applicant. As regards the charge is concerned, though this Court will not sit in an appeal in a judicial review but yet I find that out of 12 occasions, on 6 occasions the respondents have regularised the period by granting leave of full day or half day on the justified explanation of the applicant. This clearly shows that the charge was the partly proved as rightly held by this Court earlier. The second charge was also not conclusively proved but yet the respondents have maintained the punishment without dealing with the contentions of the applicant. In the result and having regard to the fact that the applicant has earlier approached this Court, no useful purpose would be served to set-aside the appellate order and remanded the case back to the appellate authority again.

8. In the result, as having regard to the reasons recorded above, the OA is allowed. The order passed by the disciplinary authority and affirmed by the appellate authority on 14.12.2000 are quashed and set aside. The applicant shall be entitled for all the consequential benefits. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)