

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2399/1999

New Delhi this the 7th day of March, 2001.

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HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M.P.SINGH, MEMBER (A)

Dr. (Mrs.) Sur Bala Obeja
W/o Dr. Suresh Kumar Obeja
R/O 44, Neelamber Apartments
Rani Bagh
Delhi.110034.

... Applicant

(By Advocate Shri C.B. Pillay with
Dr.K. E.Moses, Advocate)

-versus-

1. Union of India through
the Secretary to the Govt.of India
Ministry of Health and Family Welfare
Nirman Bhawan
New Delhi.

2. The Director
Central Government Health Scheme
Nirman Bhawan
New Delhi.

... Respondents

(By Advocate Shri Madhav Panikar)

O R D E R (ORAL)

Shri M.P.Singh, Member (A) :

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 18/21-12-1998 issued by the Director, Ministry of Health and Family Welfare, Government of India imposing a penalty of dismissal from service on her.

2. The brief facts of the case are that the applicant was appointed as Ayurvedic Physician in the Central Government Health Scheme on temporary basis



with effect from 1.1.1982. The applicant's husband was employed in Saudi Arabia and, therefore, she applied for leave from 19.5.1986 to 2.6.1986 with permission to go abroad which was granted to her with certain conditions. A copy of the permission is annexed at Annexure A5.

3. The applicant fell ill before expiry of her leave. Her illness was diagnosed as moderately severe anxiety depression for which she was advised treatment and complete rest for two months. She accordingly applied for two months' leave. Thereafter the applicant continued to be ill and applied for extension of leave from time to time on 23.9.1986, 20.2.1987, 28.5.1987, 20.9.1987, 10.1.1988 and 28.4.1988 with medical certificates. She was informed by the respondents that her request for extension of leave has not been acceded to. It was indicated in the communication that the entire period would be treated as unauthorised absence and action would be taken against the applicant under the rules. With reference to her letter dated 20.9.1987 requesting for extension of leave for three months from 21.9.1987, the respondents stated that the medical certificate produced alongwith it was not countersigned by the authorised Medical Attendant or any Doctor of Panel approved by the Ministry of External Affairs in support of the applicant's illness. But the applicant by her letter dated 10.6.1988 requested the respondents to intimate the particulars of authorised



Medical Attendants/Doctors on panel who could countersign the medical certificate. She also requested them to name any Doctor from any near place of her stay which was Damman (capital of Eastern Province) since Riyadh, the capital of Saudi Arabia was about 450 Kms. away from her place and her illness as well as the rules of Saudi Arabia did not permit ladies to travel alone to such far off places. In the meanwhile the respondents had informed her that if she did not report back to duty within one month, her services would be terminated vide Rule 5 of the Central Civil Services (Temporary Service) Rules. The applicant was advised by the medical authorities in Saudi Arabia to remain under treatment for a further period of six months. The applicant reported for duty on 16.8.1989 in compliance with the respondents' letter dated 14.6.1989. A copy of the joining report is annexed at Annexure A24. She was directed by the Administrative Officer, CGHS North Zone to report to the Deputy Director (Admn.I), CGHS, Nirman Bhawan, New Delhi. Though the applicant was not yet fit to join duty, she had reported on 16.8.1989 for the purpose of joining duty in compliance with the repeated instructions. Thereafter she visited the Safdarjung Hospital for treatment. The Safdarjung Hospital recommended 30 days' leave from 21.8.1989 for restoration of her health. On 22.8.1989, the applicant forwarded a fresh Medical Certificate from Safdarjung Hospital. She also submitted the Medical Certificate issued by Qatif General Hospital



(Government Hospital) on 1.8.1989 recommending rest for six months along with the leave application. After her recovery, the applicant had reported for duty in July 1993. She was again directed to produce the medical fitness certificate. As the medical certificate was left by her by mistake in Qatif (Saudi Arabia), she took some time to get it back. After receiving the medical certificate, she submitted the same to the respondents.

4. The applicant was placed under suspension by invoking the provisions of sub-rule (1) of Rule 10 of the CCS (CC & A) Rules, 1965 by an order passed on 14.9.1993. A chargesheet was served on her on the ground that she had failed to maintain absolute devotion to duty and conduct unbecoming of a Government servant inasmuch as she absented herself unauthorisedly from 3.6.1986 onwards and thus contravening the provisions of Rule 3.1 (ii) and 3.1 (iii) of the CCS (Conduct) Rules, 1964. An enquiry officer was appointed who conducted the enquiry against the applicant. The applicant had demanded certain document including the deposition of the prosecution witnesses to prepare her defence which was refused by the inquiry officer. The enquiry officer had concluded the enquiry and submitted the report to the disciplinary authority ^{who} and had forwarded a copy of the enquiry report to the applicant and directed her to submit her representation within a period of 15 days. She submitted her representation to the

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disciplinary authority. The disciplinary authority thereafter imposed the penalty of dismissal from service upon the applicant. Aggrieved by this, she has filed the present OA.

5. The respondents have contested the case and have stated that the applicant was granted Earned Leave for 15 days from 19.5.1986 to 2.6.1986 alongwith permission to visit Saudia Arabia where her husband was staying. However, she continued to extend her leave on grounds of illness in violation of the part (a) of the terms and conditions and she was asked repeatedly to report for duty. When she was warned either to join duty within one month or face termination under Rule 5 of the CCS (Temporary Service) Rules vide communication dated 14.6.1989, she reported for duty in the office of the Deputy Director (CGHS) North Zone, New Delhi on 16.8.1989 but without the requisite medical fitness certificate. Accordingly she was asked to submit the medical fitness certificate. Instead of complying with these instructions, she sent another certificate on 22.8.1989 from Safdarjung Hospital stating that she was suffering from nervous disorder and recommended absence from duty for 30 days with effect from 21.8.1989. As she was extending leave thereafter on grounds of nervous depression and stating that she was under treatment of Board of Psychiatrists at Qatif General Hospital, Saudi Arabia, she was directed by the Deputy Director (CGHS), North Zone, New Delhi to

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appear before a Medical Board in Dr. Ram Manohar Lohia Hospital, New Delhi vide letter dated 6.6.1990. Since she failed to appear before the Medical Board, she was again directed by the Directorate General of Health Services on 24.11.1990 followed by another letter on 28.1.1993 to appear before the Medical Board.

6. In spite of all these directions, the applicant did not resume duties but proceeded to Saudi Arabia without the permission of the competent authority and furnished a medical certificate dated 1.7.1993 to the effect that she is fit to work. The disciplinary authority had taken a serious view of her misconduct and placed her under suspension vide order dated 14.9.1993. A charge sheet was served on her vide O.M. dated 5.11.1993 for unauthorised absence from duty from 3.6.1986 onwards. On denial of charges, an oral inquiry was conducted. The inquiry officer had held the charges as proved. The disciplinary authority after considering all the facts and circumstances of the case and in consultation with the Union Public Service Commission imposed the penalty of dismissal from service on the applicant vide order dated 18/21-12-1998. According to the respondents, the inquiry against the applicant for unauthorised absence was held as per the rules and procedure prescribed by the Government. The respondents have also stated that the contention of the applicant in sub para 26 that she was not supplied with the copies of the deposition of witnesses is



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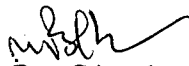
misstatement of facts. It is clear from the proceedings held on 7.7.1994 that she was supplied with the copies of these documents which had been signed by the applicant (Annexure-VIII) to the counter-affidavit). In view of the aforesaid reasons, the OA does not merit consideration and is liable to be dismissed.

7. We have heard the learned counsel for the contending parties and perused the material placed on record. During the course of the arguments, the learned counsel for the applicant submitted that she was not paid subsistence allowance when she was placed under suspension. According to him, this has vitiated the enquiry and on this ground alone, the dismissal order can be set aside. After perusal of the relevant record, we find that there was some delay in making the payment of the subsistence allowance. Initially she was paid at the rate of 50% and thereafter at the enhanced rate of 75%. Therefore, the contention that ~~both~~ the subsistence allowances had ^{not} been paid ~~after~~ ^{is not correct. Moreover,} the enquiry ~~was held~~, keeping in view the financial position of the applicant, it has not affected, in any way, the enquiry conducted against the applicant. On a perusal of the papers placed before us, we also find that the enquiry has been held in accordance with the rules and instructions. It is a settled law that the courts or Tribunals cannot reappreciate the evidence and also cannot go into the quantum of punishment.

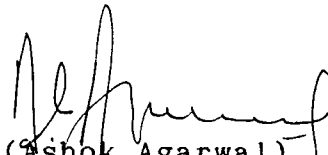
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8. Keeping in view the facts and circumstances of the case, we find no merit in the case and the OA is accordingly dismissed. No costs.


(M. P. Singh)
Member (A)

/sns/


(Ashok Agarwal)
Chairman