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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 2140/95

Dated 13-12-1995

Hon'ble Shri N.V.Krishnan, Acting Chairman  
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Mrs Sunita Anand  
w/o Sh. Trilochan Anand,  
R/O 5-A Bazar Lane,  
Jangpura, Bhogal,  
New Delhi.-110014

... Applicant

(By Advocate Shri B.B.Raval )

Vs.

1. Union of India  
through the Secretary,  
I.C.A.R.,  
Govt. of India, Krishi Bhawan,  
New Delhi-110001

2. Shri J.M.Singh  
working as Junior Law Officer,  
in the I.C.A.R, Govt. of India,  
Krishi Bhawan, New Delhi.

... Respondents

(By Advocate Shri M.K.Gupta )

O R D E R (ORAL)

(Hon'ble Shri N.V.Krishnan, Acting Chairman )

The applicant joined the first respondent as Junior Law Officer on temporary basis in pursuance of the Annexure A-1 memorandum dated 28.4.1992. She was subsequently selected by the U.P.S.C. for the post of Assistant(Legal) in the Legislative Department, Ministry of Law, Justice and Company Affairs. Her grievance is that she is not being relieved by the respondent No.1 to take up this new post.

2. It is stated by the applicant that she submitted her application to be forwarded

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to the U.P.S.C. and this was duly done by the Annexure A-3 endorsement of the first respondent dated 1-9-1994 which states that the application of the applicant was forwarded to UPSC. It further states as follows:-

" Smt. Sunita Anand holds the post of Jr. Law Officer in the I.C.A.R. in a temporary capacity. In the event of her being selected for the post applied for, she will be relieved after she resigns her post under this council.

Her particulars are verified."

Thereafter the applicant was intimated about her selection by the Annexure A-4 (Copy) Memorandum dated 19-10-1995. She requested by the Annexure A-5 letter which she submitted on 20-10-1995 that she be relieved from the post of Junior Law Officer with immediate effect to enable her to join the post of Assistant (Legal) Legislative Department, Ministry of Law, Justice and Company Affairs. Subsequently, she also sent telegram at Annexure A-6 dated 4-11-1995 repeating <sup>her</sup> request and also <sup>has</sup> indicating that she / resigned from the post of Junior Law Officer forthwith.

3. As she was not relieved from the post so far this DA has been filed.

4. Two replies <sup>have</sup> been filed by the respondents No. 1 and 2. Respondent No. 2 has filed a separate reply.

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because some allegation of bias has been made against him. We are concerned only with the reply of first respondent. It is stated that the applicant is not being relieved because major penalty proceedings have been initiated against her by the memorandum of charge dated 10-11-1995. The charge against her is that she remained absent from duty on 4.1.1994 and 16.2.1994. Nevertheless, she marked her attendance for the above said days in the attendance register in such a manner that the red cross, marked as sign of her absence in the register, may not be visible. Subsequently, when she was asked to submit leave applications, she falsely indicated that she was on duty on these days in connection with conference with certain advocates in a court case.

5. Learned counsel for the respondents, the referee, submits that as <sup>✓</sup> major penalty proceedings are pending, she cannot be relieved.

6. We have heard the parties. We wanted to know from the learned counsel for the respondents as to whether, when the applicant's application was forwarded on 1.9.1994, the enquiry in respect of the above mis-conduct was pending. Learned counsel for the respondents submits that the matter, at that time probably stood referred to <sup>✓</sup> <sup>✓</sup> concerned advocate for verification.

7. We are of the view that if any proceeding was pending against the applicant, it was open to the respondents to decline to forward her application. That <sup>✓</sup>

seems to be the instructions issued in the DOP&T memorandum dated 14.7.1993 (Swamy's Complete Manual on Establishment and Administration Fifth Edition-1994) in Chapter 43 relating to "Forwarding of applications for other employment". The application of an applicant need not be forwarded, if

- (i) he is under suspension ; or
- (ii) disciplinary proceedings are pending against him and a charge sheet has been issued ; or
- (iii) sanction for prosecution, where necessary, has been accorded by the competent authority ; or
- (iv) where a prosecution sanction is not necessary a charge sheet has been filed in a Court of Law against him for criminal prosecution.

However, in case the conduct of government servant is under investigation for the issue of charge sheet in a Departmental enquiry or for initiating prosecution, the application of the government servant may be forwarded with brief comments on the nature of allegations and it could also be made clear that in the event of actual selection of the Govt. servant he would not be relieved for taking appointment if, by that time the charge sheet under the CCS(CCA) Rules, 1965 or sanction for prosecution or chargesheet in the trial court has been issued. No such reservation has been made in the Annexure A-3 endorsement forwarding her application. As early as on 24.8.65 the Ministry of Home Affairs has directed that " if the application of an officer has been forwarded to the UPSC he <sup>she</sup> should be relieved in the event of selection". The only exception is when, subsequent to forwarding of the application but before selection by the Commission, " some exceptional circumstances " arise.

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8. In the light of these provisions the proper time for the first respondent to exercise caution was when the applicant submitted to the first respondent her application to the UPSC, for being forwarded. As no memo. of charges had been issued by then, perhaps, there was no option left except to forward the application. Unconditional forwarding of such applications implies that the employer will relieve the employee if she is selected for the new job. In the present case, the first respondent has affirmed his decision to relieve the applicant if selected, in positive term. Nothing prevented the first respondent from stating that preliminary enquiries were under way to consider whether regular departmental enquiry should be held against the applicant and that her relief, if selected, would be considered only after a decision is taken thereon. The departmental instructions referred to above provides for this information to be added to protect the interest of the present employer. This has not been done. Therefore, it has to be presumed that, there was nothing against the applicants conduct upto 1.9.94 to either justify withholding her application or conditional or making her future relief.

                    . Therefore, the first respondent cannot withhold her relief on this ground.

9. In this view of the matter, we are satisfied that the application has to be allowed. We, therefore, direct the respondents to relieve the applicant within 15 days from the date of receipt of a copy of

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this order, after accepting her resignation for joining her new post. This will not prevent the first respondent from informing the new employer about the memo. of charges which they have issued to the applicant for whatsoever it is worth.

10. O.A. is disposed of as above.

*Lakshmi Swaminathan*  
(Sgt. Lakshmi Swaminathan)  
Member (J)

*N.V. Krishnan*  
(N.V. Krishnan)  
Acting Chairman  
13/2/95

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