

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.No.810/95

Hon'ble Shri A.V.Haridasan, Vice-chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

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New Delhi, this 21st day of August, 1995

Smt. Manjula Bhardwaj
w/o Sri Jitendra Bhardwaj
r/o House No.705
Chiragh Delhi
New Delhi - 110 017. ... Applicant
(By Shri Jog Singh, Advocate)

Versus

The Director General
Employees State Insurance Corporation
Headquarter Office
Kotla Road
New Delhi - 110 002.

The Regional Director
E.S.I.C., Rajendra Place
New Delhi.

The Deputy Regional Director (Admn.)
E.S.I.C., Rajendra Place
New Delhi. ... Respondents

(By Shri G.R.Nayyar, Advocate)

O R D E R (Oral)

Hon'ble Shri A.V.Haridasan, Vice-chairman(J)

The applicant, Smt. Manjula Bhardwaj who was appointed on ad-hoc basis as Lower Division Clerk (LDC) w.e.f. 17.9.1990, has in this application prayed for mainly two reliefs:

"(a) to set-aside the impugned order dated 4.4.1995 by which her services were terminated giving a months notice and

(b) to direct the respondents to pay the applicant salaries due to her for the period she remained on maternity leave and for the months January to April, 1995."

2. The respondents oppose the application. A preliminary objection has been raised that the application is bad for plurality of reliefs. This objection has got merits. The applicant has to elect either of the two reliefs reserving her rights to seek appropriate remedy in a separate application on

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the other reliefs. At this juncture, learned counsel for the applicant states that the applicant elects to claim the relief in paragraph 8(a) of the Original Application reserving her right to approach in a fresh application in regard to prayer 8(b). (b)

3. We are considering the claim of the applicant in regard to the unsustainability of the impugned order dated 4.4.1995. A mere reading of the impugned order will make it clear that the termination of the services of the applicant was for an alleged misconduct of unauthorised absence. The use of the provisions of Section 25 F of the Industrial Dispute Act will not make the order an order of ~~reluctant~~ ^{retrenchment} because, termination of services for misconduct does not come within the meaning of retrenchment. It is well settled by now that if the competent authority decides to terminate the service of employer for a misconduct by an order which specifically alleged ~~that~~ ^a misconduct, the order being stigmatic principle of natural justice demands an opportunity being given to the employee to meet the allegation of misconduct. It is undisputed that such an opportunity was not given to the applicant in this case.

4. Since the impugned order at Annexure A-1 dated 4.4.1995 terminating the services of the applicant was for a misconduct without affording her an opportunity to show cause against it, we have no doubt in our mind that the order will have to be set-aside. In the result, the impugned order dated 4.4.1995 terminating services of the applicant is set-aside with all consequential benefits. We make it clear that this order ~~will not~~ preclude the respondents from terminating the services of the applicant in accordance with law, if such an action is warranted for any reason including any act of misconduct on

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her part after giving her a reasonable opportunity to put forth her case. They will also be at liberty to terminate the adhoc service of the applicant for accomodating a nominee of the Staff Selection Commission, or if the requirement of continuance of adhoc service in the post became unnecessary in which case the principles of last come first go in the case of adhoc employees have to be adopted. Regarding the prayer 8(b), the applicant may either approach the respondents through a representation or seek appropriate remedies in accordance with the law seperately. There shall be no order as to costs.

Reaching -

(R.K.AHOOJA)
MEMBER(A)

/RAO/



(A.V.HARIDASAN)
VICE-CHAIRMAN(J)