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Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 151/96

New Delhi this the 25th day of November 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

Smt. Avinash Mahajan
W/o Shri Tilak Raj Mahajan
H-17/441 Kali Bari Marg,
Near Birla Mandir,
New Delhi.

(By Advocate: Shri S.M. Rattanpaul)

...Applicant

Versus

1. Union of India through
Foreign Secretary,
Ministry of External Affairs,
South Block, New Delhi.
2. The Secretary (West)
Ministry of External Affairs,
South Block, New Delhi.
3. The Joint Secretary, & (C.P.V.)
Ministry of External Affairs,
Patiala House, New Delhi.

...Respondents

(By Advocate: Shri N.S. Mehta)

ORDER (Oral)

By Reddy, J.-

The applicant impugnes the order of the disciplinary authority imposing the penalty of with-holding of promotion for a period of two years w.e.f. 14.11.94. The facts in the case are as follows:-

2. The applicant was appointed as LDC during September 1976. She was promoted in 1983 as UDC. On 15.11.1988 a charge sheet has been issued with regard to an incident which took place in 1989. The Enquiry Officers have been frequently changed. Finally, one Mr. B.K. Gogoi was appointed who

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conducted the enquiry and submitted his report dated 12.11.91 to the Disciplinary Authority. The Enquiry Officer exonerated the applicant as to the Articles of charge No. I and II but found her guilty with regard to articles of charge III and IV. The applicant was asked to submit her representation to the Enquiry Officer's report which she did on 16.11.92. The Disciplinary Authority did not however find itself in agreement with the findings of the Enquiry Officer as to Article of Charge I and II but found her guilty of the said articles of charge. As to the remaining two charges the applicant was exonerated by him. The Disciplinary Authority consequently imposed the punishment of with-holding of promotion for two years by the impugned order dated 14.11.94. The applicant filed an appeal against the above order. Pending the disposal of the appeal the Disciplinary Authority passed another order modifying the earlier order to state that the punishment would be effective from 14.11.94. The applicant again filed an appeal against this order but the Appellate Authority has not disposed of the appeal.

3. Learned counsel for the applicant vehemently contends that the Disciplinary Authority having disagreed with the findings of the Enquiry Officer in respect of the findings of Article I and II, ought to have afforded an opportunity to the applicant to make her representation against the reasons for disagreement before he passed the impugned order. In the present case the Disciplinary Authority has only asked the applicant

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to make her representation against the Enquiry Officer's report. Learned counsel, therefore, contends that the applicant was not given any opportunity of submitting her representation against the reasons for disagreement which would amount to violation of principle of natural justice, causing prejudice to the applicant's defence in the case thus vitiating the entire enquiry.

4. It is next contended by the learned counsel for applicant that this is a case of no evidence and the impugned order was passed on the basis of suspicion. There is no application of mind by the disciplinary authority. It is also contended that the delay in initiation of the proceedings as well as in the finalisation of the same would go to vitiate the enquiry.

5. Learned counsel for the respondents submits that as the applicant was given an opportunity of making representations against the Enquiry Officer's report, there is no violation of principle of natural justice. He also contends that impugned order is passed by the disciplinary authority on the basis of evidence in the case and hence there is no infirmity in the impugned order.

6. We have given our careful consideration to the arguments of the learned counsel. Four Articles of charge were alleged against the applicant. Articles I and II which were found proved by the disciplinary authority, reads as follows:

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Article-I

"That Smt. Avinash Mahanjan, UDC while working in the RPO Delhi during 1983 availed of 45 days MTP leave w.e.f. 28.3.1983 and furnished a false medical certificate No. A 48889 of 13.4.1983 from Dr. Renu Mahachanda of Safdarjung Hospital.

By her above act the said Smt. Avinash Mahajan, UDC failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant, thereby violating rule 3 (1) (i) of CCS (Conduct) Rules, 1964.

Article-II

That the said Smt. Avinash Mahajan while working in RPO Delhi availed of MTP leave during 1984 and again in 1985 and submitted medical certificates from a particular Doctor who remained posted in different CGHS dispensaries i.e. East Patel Nagar, New Rajendra Nagar and was not an authorised Medical Attendent in her case as she was normal resident of Gole Market, New Delhi. Smt. Avinash Mahajan thus managed to avail of leave which was otherwise not admissible to her by misleading Government into believing that her request for leave was supported by Authorised Medical Attendent.

By her above act, the said Smt. Avinash Mahajan has failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant, thereby, violating rule 3 (1) (i) & (iii) of CCS (Conduct) Rules, 1964."

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7. The first charge relates to the applicant's availing leave for 45 days on the ground for Medical Termination of Pregnancy w.e.f. 28.3.1983 furnishing a false medical certificate from one Doctor of Safdarjung Hospital. The second charge also pertains to MTP leave during 1984 and again in 1985 from a particular Doctor posted in different CGHS dispensaries i.e. East Patel Nagar and New Rajendra Nagar. It was alleged that he was not an authorised Medical Attendant in respect of the applicant as the applicant was a resident of Gole Market. The Enquiry Officer examined PW-I Rajamani, Superintendent Regional Passport office. The applicant was an employee in the passport office at Patiala House. From a perusal of the Enquiry Officer's report it is manifest that the prosecution did not challenge the authenticity of the medical attendant at Safdarjung Hospital. There is no evidence on record which was relied upon by the Enquiry Officer in support of the allegation of the falsity of the medical certificate. In fact the prosecution has not challenged the authenticity of the medical certificate. It is stated in the Enquiry Officer's report that the prosecution witnesses had admitted that the patient could avail the medical facility from the other dispensaries. In view of the above evidence the Enquiry Officer has concluded that the Articles of charge I and II were not proved against the applicant. The Disciplinary Authority in the impugned order disagreed with the findings of the Enquiry Officer and held that there was no evidence of MTP having taken place and that the applicant had produced false certificates from the

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Doctor. The applicant was, however, exonerated of the other two Articles of charge. In the proceedings dated 20.10.92 the copy of the Enquiry Officer's report was enclosed and sent to the applicant for making any representation against the said report. Since the Enquiry Officer has exonerated her in respect of the Articles of Charge I and II, the applicant had made the representation only against the findings of the Enquiry Officer in respect of Articles III and IV. The Disciplinary Authority had not recorded any reasons for disagreement. Hence they were not supplied to the applicant for her explanation. The law is well settled that though the relevant rules do not provide for such an opportunity being given to the applicant the principles of natural justice require that such an opportunity be given before the Disciplinary authority passed the final order.

8. The Supreme court in Punjab National Bank and ors. Vs. Kunj Bihari Mishra (1998) 7 SCC 34 held, if the findings of the enquiry officer are favourable to the charged employee and If the Disciplinary Authority differs with those findings, then he should record its reasons for such a disagreement and the principles of natural justice require that an opportunity to be given to the charged officer to make a representation against the reasons of disagreement. It was also held that such requirement should be read in the relevant Discipline and Appeal Rules. In the present case Rule-15 deals with the action to be taken on the enquiry report. Under Sub-rule(2), it was provided

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that if the Disciplinary Authority disagrees with the findings of the enquiry officer or any article of charge he should record his reasons for such disagreement. Under Sub-Rule-3, it was stated that the Disciplinary Authority having regard to the findings on the charge can impose penalty. Thus there is no provision for affording an opportunity to the charged officer as to reasons of disagreement on the findings of the Enquiry Officer. Even in the absence of such rules, it is stated by the Supreme Court, that the principles of natural justice have to be read into the rules. The same principle has been reiterated by the Supreme Court in the latest case Yeginath.D. Bagde Vs. State of Maharashtra JT 1999 (6) SC 62. In the circumstances, since the principles of natural justice have been violated and the applicant has thus not been given sufficient opportunity to prove her innocence the enquiry has to be held as vitiated.


9. The next contention is that there is no evidence on record in support of the charges and that this is a case of no evidence. As seen supra the Enquiry Officer has clearly stated that the Articles of Charge I and II have not been proved on the ground that the alleged false certificate has not been challenged by the prosecution and on the ground that the rules do not prohibit from obtaining treatment from other dispensaries also. The Disciplinary Authority except reiterating the charges in the impugned order, has not stated any word about the availability of any evidence in support of his conclusion that there is no evidence

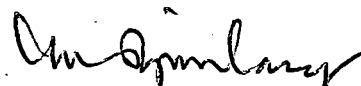
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of MTP having taken place. No reasons are assigned to hold that the certificate is a false certificate. It is seen that the leave period for which the certificate was produced has been regularised even as early as in 1985. Thus it appears that this is a case of not only of no evidence but also a case of no application of mind by the Disciplinary Authority. When the Enquiry Officer has exonerated the applicant, it is the duty of the Disciplinary Authority to have given reasons for disagreement in support of the conclusions arrived at by him to impose the penalty that was imposed upon the applicant. In the circumstances, we are totally in agreement with the contentions of the learned counsel for the applicant.

10. We also find that there is an in-ordinate delay in this case. The incidents that were alleged against the applicant are in 1983 to 1985. Charge sheet has been issued in November 1988 after five years of the incidents. Since several Enquiry Officers have been changed, the actual enquiry has been commenced in 1990 and the impugned order was passed in 1994. Thus there is a delay of 11 years in this case. We are also of the view that the charges are not very serious, we hold that the enquiry is also vitiated on grounds of delay.

11. In the circumstances, the impugned order is liable to be quashed. The OA is allowed. No costs.


(Mrs. Shanta Shastri)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)