Central Administrative Tribunal, Principal Bench

Original Application No.411 of 1996

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New Delhi, this the 16th day of December,1999

Hon'ble Mr.Justice V.Rajagopala Reddy, Vice Chairman(J)
Hon'ble Mr.R.K.Ahooja, Member (Admnv)

Smt. Rashmi Gyanchandani, 6C/A-12, Kalkaji Extension, New Delhi-110019. - Applicant

(By Advocate - Mrs.Madhu Moolchandani)

Versus

1. FA&CAO(Financial Advisor & Chief Accounts Officer, Western Railway, Churchgate, Bombay.
2. Dy. CAO (TA) (Dy. Chief Accounts Officer) Western Railway, Ajmer Rajasthan.
3. SAO (FTA) (Senior Accounts Officer), Western Railway, Kishan Ganj, Delhi. - Respondents

(By Advocate Shri Romesh Gautam)

O R D E R

By R.K.Ahooja, Member (Admnv)-

The facts of the case may be briefly stated. The applicant was appointed as a Clerk Grade-I in the Ajmer Division in the Office of Deputy CAO Western Railway on 18.3.1983. After her marriage she sought a mutual transfer to Delhi on 18.4.1983 and was thereafter posted in the Office of SAO, FIA, Western Railway. She was on maternity leave from 1.5.1986 to 31.7.1986 and gave birth to a child on 25.7.1986. She states that she applied for extension of leave on medical grounds with a private doctor's medical certificate for the period 1.8.1986 to 31.10.1986. She was, however, informed that her medical certificate was not in order and she was asked to rejoin her duties immediately or if leave was required to get it recommended from the authorised medical doctor. The applicant did not do so but gave another application for extension of medical leave again with a private doctor's certificate for the period

1.11.1986 to 31.12.1986. She was informed by letter dated 14.11.1986 from the SAO,(FTA) DKZ of her unauthorised absence with effect from 1.8.1986 and was warned that if she did not join her duties immediately suitable action may be initiated against her. However, the applicant again informed her office on 19.11.1986 that she had not fully recovered and hence she could not rejoin duties. She again asked for further leave from 1.11.1986 to 31.12.1986. Once again a letter was received from her office asking her to rejoin duties. The applicant, however, again applied for further extension from 1.1.1987 to 28.2.1987. She was thereupon directed to present herself before the Divisional Medical Officer, Northern Railway and was warned that failing compliance action will be taken under the Discipline and Appeal Rules for her unauthorised absence. Thereupon she joined duty on 1.3.1987. However, from 23.3.1987 to 15.4.1987 and again from 30.4.1987 onwards she absented herself and applied for leave on grounds of her new born son's illness. The respondents, however, issued a charge sheet dated 23.6.1987 on account of her irregular attendance and unauthorised absence from duty. The applicant in reply took a stand that by being allowed to resume duty with effect from 3.3.1987 the respondents had in effect regularised her leave period and that she was absent from 23.3.1987 on account of the illness of her child. The applicant resumed duty for a short period between 31.8.1987 and 7.9.1987 but was again absent till 27.9.1987. She was absent from 4.10.1987 till 10.10.1987 and was absent again from 19.10.87 to

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25.10.1987. She again went on leave from 2.11.1987 to 31.12.1987. Enquiry proceedings against the applicant were held at Delhi ex parte on 18.1.1988 and she was removed from service vide order dated 26.4.1988. The appeal filed by the applicant was dismissed on 11.5.1990.

2. In the background of the aforesaid facts the applicant filed an OA no. 1038/91 before this Tribunal which was disposed of by an order dated 14.8.1995 directing the respondents to consider the appeal preferred by the applicant afresh. The appellate authority in compliance of this direction passed the impugned order dated 14.12.1995 and maintained the penalty of removal from service. It is against this order that the applicant has now come again before this Tribunal.

3. We have heard the counsel. The Tribunal in its order dated 14.8.1995 in OA 1038/91 had remitted the matter to the appellate authority in the following terms:

> "In view of what is stated above, we are of the considered view that this matter should be remitted to the appellate authority for reconsideration of the appeal of the applicant against the order of removal from service. It would not be out of place to mention here that the appellate authority will have to take into account the fact that the applicant is a woman who had given birth to a child recently and it was under such circumstances that she did not report for duty and had applied for leave. The circumstances under which the applicant did not report for duty should have been taken into account at least by the Appellate Authority in coming to the conclusion regarding the allegation that she showed lack of devotion to duty and conduct unbecoming of a railway servant. The fact that there was no allegation in the charge-sheet that she wilfully absented from duty should also be

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taken note of in deciding the quantum of penalty if the appellate authority holds the applicant guilty of any misconduct.

4. The learned counsel for the applicant contended that firstly the applicant was entitled to the extension of two months leave on the expiry of her maternity leave without submitting a medical certificate. The certificates thereafter were given by the private doctor who was a competent person having served earlier as the Head of Gynaecology Department of the All India Institute of Medical Sciences, New Delhi. It was also contended that the Tribunal in the earlier OA had duly taken into account and accepted the contention of the applicant that her absence was not wilful but was forced upon her due to her own medical condition and later the illness of her child. The learned counsel argued that the penalty imposed, even if the applicant was assumed to be at fault was totally disproportionate as her absence even if unauthorised could not be treated as wilful.

5. We have carefully considered the above contentions but are unable to find any merit therein. The unauthorised absence of the applicant is not confined only to two months after the expiry of her maternity leave. On the other hand she continued to be absent thereafter, except for very short periods, for nearly two years. The authorities had asked her repeatedly to obtain medical certificate from the Railway doctors and she was also asked on more than one occasion to appear before the D.M.O. Railway Hospital. Yet she failed to do so even once. Rule 513(3) of

Railway Leave Rules, 1949 provides that a medical certificate from a private doctor can be rejected by the competent authority. The private doctor from whom the applicant consistently obtained medical certificates was not an authorised Medical Attendant for Railway servant. There is also a lacuna in the medical certificates since none of these were, as pointed out by the learned counsel for the respondents, signed by the applicant herself.

6. The contention of the learned counsel for the applicant that the applicant was obliged to consult the nearest available competent doctor also does not stand to reason. There is no indication that the private medical doctor was located next door to the applicant. If it was possible for the applicant to approach a private doctor at a distant place, she could equally have reported at the Railway hospital. The contention that the private Medical Doctor in question was one from whom the applicant always was getting treatment has no relevance in regard to obtaining of a medical certificate as per rules. The applicant could get the treatment from whomsoever she chose but as per the service rules the medical certificate had to be obtained, if the authorities so required, from the authorised Medical Attendant. In view of this position, her failure to produce the certificates from the Railway doctor clearly shows that her absence could not be explained by her medical condition.

7. It is correct, as contended by the learned counsel for the applicant, that the Tribunal in its earlier order in OA No. 1038/91 had directed the appellate authority to take into account the fact that

the applicant had given birth to a child recently. The appellate authority has in the impugned order looked at the past record of the applicant even prior to her confinement to see whether a sympathetic approach would be merited. It was found, however, that the applicant's past record was also equally bad and she had been absent for long periods. We do not agree with the contention of the learned counsel for the applicant that her past record could not be taken into account when it was not part of the charges against her. The appellate authority took that into account only in compliance of the directions of the Tribunal that the appellate authority should see whether a lenient view could be taken. The reason why the past record was looked at has been clearly stated by the appellate authority and we find no infraction of the principles of natural justice in taking the same into account while determining whether a lesser punishment could be justified.

8. It was also argued by the learned counsel for the applicant that considering the circumstances which obliged the applicant to remain absent from duty, namely, her own illness and subsequently the illness of her new born baby, the punishment of removal from service is highly disproportionate. She also pointed out that the Tribunal in its earlier order in OA 1038/91 had indicated the same while remitting the matter to the appellate authority. We observe that while remitting the case to the appellate authority the Tribunal had not quashed the order of the disciplinary authority. A direction to reconsider the matter cannot imply a decision as regards the merits of the case. The scope

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of interference by the Tribunal in regard to the nature of penalty is highly circumscribed. Once there is a finding that the charges have been proved, it is within the domain of the disciplinary authority to determine the penalty which can be imposed in terms of the Disciplinary Rules. It is only when the penalty imposed is so disproportionate as would shock the conscious of the Court that interference is called for. In the present case the charge against the applicant is of unauthorised absence during long periods. It cannot, therefore, be said that the penalty of removal from service is so disproportionate as to call for interference by the Tribunal.

9. The learned counsel also submitted that under the provisions of Rule 510 of Railway (Liberalised Leave) Rules, 1949 the applicant was entitled to leave up to a maximum period of five years. The purport of Rule 510 is to place a ceiling on the maximum leave that can be granted to a Railway servant. It does not denote that a Railway servant is automatically entitled to avail the maximum leave of five years. No Government servant is entitled as of right to take a day's leave unless it is authorised by the competent authority.

10. In the light of above discussions, we find no merit in this OA and it is accordingly dismissed but without any order as to costs.

(R.K.Ahooja)
Member (Admnv)

(V.Rajagopala Reddy)
Vice Chairman (J)

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