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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

C.P.No.291/98 with M.A.No.1687/98
& MA No.877/99.

IN

O.A.No.1262/97

New Delhi: this the 3rd day of June 1999.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

Smt. Surender Kaur ,
W/o Shri Laxman Kumar Mallah,
R/o House No.C-2/75,
Lodhi Colony,

New Delhi Applicant.
(By Advocate: Shri O.P.Gupta).

Versus.

Shri Vijay Kelkar ,
Secretary,

Ministry of Finance,

Deptt. of Economic Affairs,

Govt. of India,

New Delhi

..... Respondents.

(By Advocate: Shri P.H.Ramchandani)

ORDER

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

We have heard applicant's counsel Shri O.P. Gupta and respondents' counsel Shri Ram Chandani on C.P.No.291/98 pressed by applicant alleging contumacious disobedience of the Tribunal's order dated 6.2.98 in O.A.No.1262/97, and we have also heard both sides on M.A.No.1687/98 & 877/99 filed by respondents seeking extension of time to conclude the D.E.

2. The operative portion of the Tribunal's order dated 6.2.98 is extracted below:

" In the circumstances we hold that the termination orders passed on 20.6.95 and 21.6.95 deserve to be quashed

and we accordingly quash them. The applicant shall be reinstated in service. We give full liberty to the respondents to conduct an enquiry on the allegation of misconduct. If the enquiry reveals the allegation to be true and the applicant had benefitted from the alleged act of filing a forged certificate then the respondents are free to inflict on her any punishment in accordance with law. The enquiry should be conducted in a fair manner and should be completed within a period of six months from the date of receipt of a copy of this order. If the respondents are of the view that the applicant is not blameworthy of the misdemeanour alleged against her and the enquiry reveals that she was innocent then the respondents should also consider payment of back wages to her in accordance with law on the lines of FR 54 where a Govt. servant is reinstated in service after an enquiry ultimately exonerates him. This shall be done within four weeks from the date of the order of the disciplinary authority in the event she is held to be not guilty."

3. Registry issued copies of this order to the parties on 13.2.98.

4. The first direction was to reinstate applicant in service. Respondents issued order dated 6.3.98 (Annexure-R-11) reinstating her in service and she joined duty on 10.3.98 (Annexure-R-III). It cannot be said that there was any undue delay in carrying out this part of the Tribunal's directions.

5. Respondents were given full liberty to conduct an enquiry into the allegation of misconduct. The allegations of misconduct were indeed grave, namely of furnishing forged matriculation certificate to secure compassionate appointment as LDC upon the death of her husband, and thereby committing fraud on the Govt. of India. However, it is because the order

terminating applicant's services under Rule 5(1) CCS (Temporary Services) Rules was not an order simpliciter but was a dismissal order passed on the basis of serious allegations of misconduct and amounted to removal from service within the meaning of Article 311 of the Constitution, without holding an enquiry, that the Tribunal quashed the impugned termination order but gave full liberty to respondents to conduct an enquiry into the misconduct.

6. Respondents by their order dated 12.8.98 (page 51 of OA) had placed applicant under deemed suspension w.e.f. 21.6.95, but respondents subsequently reconsidered the matter and by order dated 25.2.99 (Annexure-R-W) rescinded their order dated 12.8.98 and directed that she continue to remain reinstated w.e.f. 10.3.98. It was further directed that in view of the Tribunal's order dated 6.2.98 the question of backwages for the period 21.6.95 to 9.3.98 would be decided after the inquiry against her was completed. In view of the fact that respondents by their order dated 25.2.99 rescinded their own earlier order dated 12.8.98 placing applicant under deemed suspension w.e.f. 21.6.95, it cannot be said that on this count there has been any contumacious disobedience or violation of the Tribunal's order dated 6.2.98, which also made clear that backwages for intervening period from the date of her removal till the date of her joining duty pursuant to the Tribunal's order dated 6.2.98 would be admissible to her only if the charge in the DE against her was not established.

7. By the impugned order the inquiry was directed to be completed within 6 months from the date of

receipt of a copy of order dated 6.2.98. Respondents have stated that the copy of the order was received by them on 18.2.98, and the inquiry should have been completed by 18.8.98. Respondents in their reply have however given the reasons why the enquiry could not be completed within the prescribed period. They have stated that as the alleged forged documents were obtained from Punjab State Education Board by applicant, the process of initiating disciplinary proceedings was initiated by first writing to PSEB authorities to make available the relevant documents, but PSEB authorities were unable to hand over all the documents in original because a court proceeding was already pending filed by some PSEB officials against the penalty orders imposed on them by PSEB for allegedly abetting/helping applicant to secure the false documents/certificate. Thus the chargesheet could be issued only on 5.6.98, which she denied on 12.6.98 upon which the I.O/p.O. was appointed on 17.7.98. In this connection, respondents state that when the inquiry had reached its final stage, applicant herself did not appear for one of the hearings fixed for 10.11.98, which has not been denied by her in rejoinder and thereafter she made a representation dated 27.11.98 (Ann.-R-VIII) for change in the I.O, as a result of which the proceeding had to remain stayed, till the contents of her representation were examined in detail and rejected on 22.2.99. While it is not anybody's case that the time period between these different stages could not have been shortened, it is clear that in the

facts and circumstances noticed above, the spilling over of the enquiry beyond 18.8.98 cannot be construed to be deliberate, flagrant and contumacious violation of the Tribunal's order dated 6.2.98.

8. Shri Gupta has argued that the continuance of the D.E. beyond the period of six months prescribed in the Tribunal's order dated 6.2.98 is illegal, and has relied upon the Tribunal's order dated 22.4.94 in C.P.No.440/93 in C.P.No.387/92 in O.A.No.997/86 Shri Bhauri Ram Vs. Shri Masih-uz-zaman, G.M. Northern Railway, New Delhi. We have considered that ruling but find that the present case is quite different and distinguishable on facts. In the present case unlike in Bhauri Ram's case (supra) the departmental inquiry could not be initiated against applicant only after receipt of relevant documents from PSEB, which were tied up in another court proceeding. There is no mention of any such contingency arising in the Tribunal's order dated 22.4.94 in Bhauri Ram's case (supra) and under the circumstance, the time which elapsed in securing the relevant documents from PSEB which were essential for issuing the chargesheet dated 12.6.98 cannot be held to be wanton delay or flouting of the directions of the Tribunal as contended by applicants' counsel. Furthermore there is no mention in the order in Bhauri Ram's case (supra) of situations like the one which arose in the present case, of the charged officer not appearing on one of the hearings, or of seeking a change in the I.O. just as the enquiry was approaching its conclusion, leading to delay in finalising the D.E.

Under the circumstance we hold that the order dated 22.4.94 in Bhauri Ram's case (Supra) was based on different facts and circumstances and hence that ruling is not relevant to the present case.

9. Shri O.P.Gupta has also stated that the Tribunal's order dated 6.2.98 had held that the inquiry must be fair, but the present inquiry has not been a fair one. As the enquiry report is still to be submitted, no conclusions can be arrived at by us on this point at this stage.

10. Shri Gupta has also stated that the respondents' reply to the C.P. has not been filed on affidavit by the contemnor himself but by a departmental official and hence the same cannot be allowed to be taken on record. It has also been contended that M.As No.1687/98 and 877/99 have been filed beyond the currency period of the Tribunal's order dated 6.2.98.

11. In so far as the reply to the C.P. not being filed by the contemnor himself is concerned, the CAT, Principal (Full) Bench order dated 12.8.92 in R.A.No.152/90 in C.P.No.11/90 and connected QPs, Shri D.P.Badla Vs. Arvind Dave & Ors. permits replies to QPs to be filed by the contemnors themselves or any officer of UOI duly authorised in this behalf and in the present case the reply affidavit is accordingly in order. Furthermore MA No.1687/98 seeking extension of time was filed on 17.8.98 which is within the currency period and in fact was filed before the present C.P. was filed on 7.9.98. In MA No.1687/98 time was sought for a further period of 3 months beyond 18.8.98 for completion of the inquiry.

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By the Tribunal's order dated 2.11.98 it was directed that C.P No.291/98 as well as MA No.1687/98 would be heard together.

12. Respondents filed MA No.877/99 on 20.4.99 seeking further extension till 30.6.99 for completion of the inquiry. They have also submitted letter dated 10.5.99, placed on record, in which it has been stated that the enquiry officer has already completed the enquiry.

13. In the facts and circumstances discussed above, there is no sufficient cause to initiate contempt proceedings against the alleged contemnor, and CP No.291/98 is dismissed. The prayer contained in MA No.1687/98 for extension of time for completion of the inquiry and that contained in MA No.877/99 for further extension time till 30.6.99 is allowed.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A).

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