

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1238 of 1997 decided on 29.6.1998.

Name of Applicant : Ms. Sangeeta Bhatt

By Advocate : Shri T.C. Aggarwal

Versus

Name of respondent/s Lt. Governor, Govt. of NCTD & ors

By Advocate : Shri Surat Singh

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

Ansawati
(N. Sahu)
Member (Admnv)

29.6.98

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1238 of 1997

New Delhi, this the 29th day of June, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A. Vedavalli, Member(J)

Ms. Sangeeta Bhatt, w/o Shri Roshan Lal,
working as Security Asstt. Lok Sabha
Sectt., r/o H - 330, Sarjini Nagar,
New Delhi-110023

- APPLICANT

(By Advocate Shri T.C. Aggarwal) ...

Versus

1. Lt. Governor, Govt. of National Capital Territory of Delhi, Delhi.
2. The Chief Secretary, Govt. of National Capital Territory of Delhi, 5 Sham Nath Marg, Delhi - 110 054.
3. The Commissioner of Police, Police Headquarters, IP Estates, New Delhi - 110 002

(By Advocate Shri Surat Singh)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The applicant impugns in this Original Application an order no.7909-8000/Estdt. I, (E), dated 29.6.1996 issued by respondent no.3.

2. The undisputed background facts in brief are that the applicant was appointed as a temporary Sub Inspector on 1.4.1994. She had executed an agreement/bond duly attested under Rule 5F of Delhi Police (Appointment and Recruitment) Rules, 1980 at the time of joining the service to the effect that she would refund capitation charges in full, in lump sum to the department if she left the department without completing five years of service from the date of her appointment in Delhi. She had undergone a training and joined as Sub Inspector of Police East

District Krishna Nagar Police Station on 1.6.1994 for undergoing practical training. It is an admitted fact that before she joined the Delhi Police she applied for the post of a Security Assistant in Lok Sabha Secretariat in 1992. The respondents state that she did not inform them about her application for the post of Security Assistant. On 8.12.1995 the Lok Sabha Secretariat offered her the post of Security Assistant Grade-II. On 18.12.1995 the applicant requested for relief. She was relieved by an order dated 1.1.1996 (Annexure-A-5). This order of relief is important and is hereby extracted -

"Consequent upon selection of W/PSI Sangeeta Bhatt, No.D-2832 as Security Assistant Grade-II in the Lok Sabha Secretariat, Parliament House Annex, New Delhi vide letter No. F.15/23/93/AN-I, dated 8.12.95 is hereby relieved of her duties from the service of Delhi Police with immediate effect.

She was appointed in Delhi Police as Temporary W/Sub-Inspr.on 1.6.1994 and is a temporary Govt. servant. The W/PSI has submitted her Indemnity Bond to the effect that she will serve her new employer for a period of five (5) years and that if she leaves her new assignment before the expiry of five (5) years, she would pay the capitulation charges of Rs.34,699/- to Delhi Police along with the differences, if rates of capitulation charges are enhanced.

She will clear all his accounts in Delhi Police and deposit all the government articles, belongings in her possession before she proceeds to join her new assignment in the Lok Sabha Secretariat, Parliament House, New Delhi. She will record her final departure report in the daily diary in Dist.Lines/East District, Delhi.

3. It is obvious from the above, that the authorities relieved her by imposing the condition that she shall serve the new employer till the stipulated five years is over. She accordingly executed the bond to the above effect. She joined the Lok Sabha Secretariat on 2.2.1996, and on 20.5.1996 she requested the respondents to revise her relieving date either to 2.1.1996 or the afternoon of 1.1.1996. Acting on this request the authorities passed the impugned order on 29.6.1996 (Annexure-A-1). They accepted her relief with effect from 1.1.1996 (afternoon). They added two further observations. The first observation was that her resignation should not be treated as a technical resignation under FR 22 as the application was not routed through proper channel and as she did not inform the Delhi Police about her candidature at the time of her appointment. The respondents, therefore, held that she is not entitled to the benefit of Rule 26 (2) of the Central Civil Services (Pension) Rules, 1972. This rule states that a resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. The next observation was that the applicant executed an agreement bond that she would refund capitation charges to the Government in full for the training imparted to her. This condition can be waived if she leaves the department to secure employment under a State Government or Central Government after applying

through proper channel. Since she had not completed five years of service in Delhi Police and she did not apply for the said post through proper channel she was directed to deposit a sum of Rs.10,068 in lieu of notice period along with Rs.34,699/- as capitation charges.

4. It is argued by the learned counsel for the applicant that she applied for the post in 1992 and appeared for the test in January, 1993. She was appointed as a temporary PSI. She could not be anticipating her appointment in the Lok Sabha Secretariat. The question of routing her application through the respondents is totally out of question. She claims to have informed on 15.6.1994 which is disputed by the respondents. In this background when she was relieved on 1.1.1996 only condition in that order was that unexpired portion of five years should be completed in the new assignment and the agreement bond was transferred to the new employer. It is alleged that there was no justification of the changing of the stand four months after her joining. This change of stand has proved to be detrimental to the interest of the applicant as violative of the doctrine of promissory estoppel. The learned counsel for the applicant has cited the following decisions in support of his stand - Secretary, ICAR Vs. Shobhana Daisy Kamala (Smt), I.F.S., (1994) 26 ATC 753; Shri Kajal Dev Vs. Union of India & others, 1994(2) ATJ 477, U.P. State Road Transport

Corporation and another Vs. Mohd. Ismail and others. (1991) 17 ATC 234; and Punjab National Bank Vs. P.K. Mittal, 1989(2)SLJ 1.

5. The respondents contend that the previous order dated 1.1.1996 was withdrawn being technically defective. We have already considered the revised orders under which she was not entitled for the benefits under Rule 26(2) ibid. A representation against the above order was turned down on the ground that her application to the Lok Sabha Secretariat was not routed through the proper channel and she did not inform Delhi Police her candidature for the post of Security Assistant at the time of her appointment. The respondents categorically state that her application dated 15.6.1994 conveying her intimation about her candidature in the Lok Sabha Secretariat was stated to be false and wrong.

6. The first question at issue is whether the order relieving the applicant on 1.1.1996 could be changed to her disadvantage on the ground that the earlier order was 'technically defective' and was issued 'inadvertently in routine'. This is an arbitrary action. If the applicant had not applied for a change in her relieving time, there would have been no opportunity probably for the respondents to review the case. This had given them a pretext to reconsider and review the whole issue and pass an order to her detriment. No show cause notice was issued. Such an order imposing on her financial liability without hearing is bad in law.

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7. The second point is that the revised order passed on 29.6.1996 is stated to be retrospectively made effective with effect from 1.1.1996 (para 5.A of the written statement). This action is bad in law in the sense that no administrative decision can be made to operate retrospectively.

8. Can the authority revise its own order dated 1.1.1996 unilaterally and revise that order without an authority? The Government of India, Department of Personnel & A.R. vide O.M.No.28021/1/84-Estt(C) dated 14.11.1984 held as valid and proper execution of a fresh bond in favour of new Government/Semi Government organisation when a trainee resigns from the service of Government enterprise to join such new organisation and to serve the new employer for the balance of the original bond period. The payment of bond money by the employee arises only when he is resigning for a reason other than for joining the Government/semi-Government organisation. This proposition has been examined and upheld in the case of Shobhana Daisy Kamala (supra).

9. As the applicant has joined the Central Government organisation the first order dated 1.1.1996 correctly executed a fresh bond for completion of the unexpired portion of service under the new employer. In this connection paras 2 & 3 of the instructions incorporated in Chapter 50 pertaining to "Enforcement of Service Bond on

Quitting Service" at pages 513-514 of Swamy's Manual on Establishment and Administration, 1987 are extracted hereunder -

"2. According to the extent instructions issued by the Government in 1966, if a Central Government servant leaves his job for taking up employment under a State Government/ Public Sector Undertaking, owned wholly or partly by the Central Government or by a State Government or under quasi-Government organisation, the terms of any bond committing him to serve the Government for a stipulated period, which might have been executed by him need not be enforced, although a fresh bond should be taken from such a Government servant to ensure that he serves the new employer State Government/ Public Sector Undertaking/ quasi Government organisation, for an appropriate period to be determined in each case by the erstwhile Ministry/ Department, taking into account the amount spent by them on their training.

3. The question whether the terms of the bond executed by the employees of the Public Enterprises, who have received scientific/ technical training at the cost of public enterprises should be enforced or not in cases where they join Central Government/ State Government services or take up employment under quasi-Government/ organisations/ Public Enterprises either on the basis of competitive examinations/ tests/ interviews organised by those organisations or the Union Public Service Commission/ State Public Service Commissions, or otherwise has been under consideration for some time. It has now been decided that the enforcement of bond should not be insisted upon in the case of an employee of a Public Enterprise who joins the Central Government/ State Government, quasi-Government organisations or another Public Enterprise, subject to the condition that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the original bond period."

(emphasis supplied)

10. The question that remains now is about intimation of having appeared in the test for the Lok Sabha Secretariat. The applicant states that she had informed by a letter dated 15.6.1994 at page 32 of

the paper book. This was denied by the respondents. The applicant could not have processed her application through the respondents as she applied for the post much much before her joining the Delhi Police.

11. With regard to waiver of the notice period and when resignation is a technical formality there are specific rules and instructions. The decision in Praduman Kumar Jain Vs. Union of India, (1994) 28 ATC 70 decided by the Hon'ble Supreme Court has to be referred to in this context. That was a case of directly recruited Central Government employee resigning to join service in a Central Government undertaking. Their Lordships emphasised at para 7 of their order the condition that resignation to secure employment in the Central Government Public Enterprises must be with proper permission. This is fulfilled when the applicant's resignation has been duly processed and approved and, therefore, it should be treated as a resignation with proper permission. In this case the duly constituted authority, namely, the Commissioner of Police has processed the applicant's resignation in accordance with law and relieved her to join the new assignment. That order is complete and cannot now be changed to the disadvantage of the applicant without obtaining her objections.

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12. Further, as the applicant acted on the orders of 1.1.1996 and joined the new assignment after completion of all formalities, a sudden review of that order breaches the doctrine of promissory estoppel and is therefore bad in law.

13. Finally we think that the respondents have no jurisdiction to pass the impugned order dated 29.6.1996. Once the applicant had been relieved and joined a new employer the respondents ceased to have any valid legal authority to enforce any order on her. They should have placed their point of view before the new employer and sought the applicant's objections through the new employer. The respondents do not have any jurisdiction or authority on the applicant as the juridical tie of master and servant was cut off on 1.1.1996 when she was relieved without any reservation. On the ground of jurisdiction also the impugned order dated 29.6.1996 is liable to be set aside.

14. We, therefore, hold that the impugned order dated 29.6.1996 (Annexure-A-1) is bad in law and is accordingly quashed. As the entire order is bad in law the applicant cannot get the benefit of acceptance of her resignation with effect from 1.1.1996 (afternoon). An order which cannot be sustained in law cannot be taken advantage by the applicant only in respect of those parts of the order which are favourable to her. Thus, the only order

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that governs the applicant's case is the order passed on 1.1.1996 and that order alone shall be acted upon.

15. In the result, the O.A. is partly allowed as above. Relief No.8(b) is rejected. No costs.

A Vedavalli
(Dr. A. Vedavalli)
Member (J)

Narashimha Sahu
(N. Sahu) 29/6/98
Member (Admnv)

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