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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 1879/97

New Delhi this the 4th day of August, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri S.A.T. Rizvi, Member (A)

Ms. K. Dayamani
D/O K. Parmesaran
working as Nursing Sister
in Dr. R.M.L. Hospital
New Delhi

R/O Room No. 10, Nurses Hostel,
Dr. R.M.L. Hospital, New Delhi.

.. Applicant

(By Advocate Shri S.C. Luthra)

Versus

1. Union of India through the
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-1

2. Medical Superintendent,
Dr. R.M.L. Hospital,
New Delhi-1

(By Advocate Sh. R. V. Sinha, learned counsel
through proxy counsel Sh. R. N. Singh)

.. Respondents

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant has impugned the penalty order passed
by the respondents dated 8.8.1996 and order dated 6.12.1996
regarding the treatment of the period of suspension from
15.5.92 to 7.8.96.

2. The brief relevant facts of the case are that the
applicant has stated that while she was working as Assistant
Nursing Superintendent in Dr. R.M.L. Hospital i.e. Respondent 2
she has been imposed ~~with~~ the penalty of reduction to ~~the~~ lower
post of Nursing Sister which shall be ~~a~~ bar to her future
promotion. Shri S.C. Luthra, learned counsel has taken a

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number of grounds in assailing the validity of the penalty orders passed by the respondents after holding the disciplinary proceedings, which he has claimed is in utter-violation of the provisions of the CCS (CCA) Rules, 1965 (hereinafter referred to as the 'Rules'). In para 7 of the OA., the applicant has also stated that she has filed an earlier application (OA 2631/92) which was pending, in which she had challenged her suspension. Admittedly, the aforesaid disciplinary proceedings ~~were~~ culminated ⁱⁿ ~~by~~ the impugned order dated 8.8.1996. It is seen from the records of OA 2631/92 that it had been dismissed by the Tribunal by order dated 19.11.1997 for default and non prosecution. Admittedly the present application has been filed by the applicant while the earlier OA was still pending, that is on 6.8.97. It is also a fact that the applicant has filed an appeal in September, 1996 (Annexure A-16) against the penalty order imposed on her by Respondent 2 dated 8.8.96, which according to Shri S.C.Luthra, learned counsel, is still pending.

3. Learned counsel for the applicant has submitted that the aforesaid penalty order is bad in law because firstly, the disciplinary authority's order ^{is} ~~to~~ hold fresh ^{enquiry} ~~a~~ ⁱⁿ ~~by~~ enquiry instead of further enquiry in terms of the provisions of Rule 15 of the Rules. Further, he has ~~also~~ submitted that the witnesses mentioned in the list of witnesses have not been called ~~for~~ ⁱⁿ the enquiry. Similarly, he has also submitted that as the first Enquiry Officer has exonerated

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the applicant, the respondents could not have ordered further ^q fresh enquiry. He has relied on the judgement of the Hon'ble Supreme Court in K.R. Deb Vs. The Collector of Central Excise, Shillong (1971(2) SCC 102). The contention of the learned counsel is that, the remand of the enquiry by the disciplinary authority, to hold the enquiry by another enquiry officer cannot be done. However, it is noticed from the reply filed by the respondents that Sh. George Milton who was the enquiry officer appointed in the first instance had retired from service and hence, another Enquiry Officer had been appointed in his place.

4. The respondents in their reply have contended that the action taken by them is in accordance with the provisions of Rules 14 and 15 of the Rules. Shri R.N. Singh, learned proxy counsel for the respondents, has also submitted that the appeal referred to above stated to have been filed by the applicant in September, 1996 could not be disposed of by the respondents in the facts and circumstances of the case. He has explained that while OA 2631/92 was pending before the Tribunal, admittedly, the applicant had filed ^q the appeal against the action and orders passed by the respondents. ^{ys} This was in connection with the aforesaid disciplinary proceedings, initiated against the applicant on receipt of several complaints against her for misbehaviour and mis-conduct in discharge of her duties. He has submitted that since the earlier application was pending, the respondents had not

dealt with the appeal. He has ~~also~~ pointed out that the present application has been filed in August, 1997 before the Tribunal's order dated 19.11.1997 dismissing OA 2631/92. This OA has been admitted on 13.11.1998. His contention is that taking into account the facts and circumstances of the case, the respondents were not in a position to deal with the appeal stated to have been filed by the applicant in September, 1996 against the penalty orders dated 8.8.96 and 6.12.1996 which have been impugned in the present application. Learned counsel has also submitted that on merits, as the respondents have followed the laid down procedure in conducting/ proceedings against the applicant, the OA may be dismissed.

5. During the course of hearing, learned counsel for the applicant has submitted that while in their reply the respondents have stated that, receipt of the aforesaid appeal is a matter of record, in the additional affidavit filed by them on 6.3.2000 they have stated that the same has not been received either by ^{the} Director General Health Services/or Ministry of Health and Family Welfare. This has been vehemently denied by Shri S.C.Luthra, learned counsel.

6. It is noticed from the records and annexures filed by the applicant that appeal stated to have been filed by her in September, 1996 against the penalty orders which have been impugned in the present OA has been addressed to the DGHS.

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This authority has, however, not been separately impleaded as respondents, although learned counsel for the applicant submits that he is a part of respondent No.1. In the circumstances, we do not propose to express any views on the merits of the case. However, considering the fact that the appeal has been addressed to the DGHS, in the facts and circumstances of the case, it would be appropriate to dispose of this OA with the following directions:-

(i) The applicant may submit another copy of her appeal given in September, 1996 to the DGHS through Respondent 2, within one month from the date of receipt of a copy of this order. Thereafter the competent authority shall consider the appeal submitted by the applicant in accordance with relevant provisions of law and Rules by a speaking and reasoned order, with intimation to the applicant.

(ii) Necessary action shall be taken within three months from the date of receipt of a copy of representation from the applicant.

Parties to bear their own costs.

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(S.A.T. Rizvi)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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