

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No. 409/97
T.A. No. MA 1029/2000
MA 2466/2000

DATE OF DECISION 10-11-2000.

Mrs.P.Verma

... petitioner

Sh.G.D.Gupta

... Advocate for the
petition(s)

versus

UOI & Ors

... Respondents

Sh.K.C.D. Gangwani, learned ~~senior~~ Advocate for the
counsel with Sh.KR Sachdeva Respondents

CORAM :

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)
The Hon'ble Shri V.K.Majotra, Member (A)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal? No

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

Central Administrative Tribunal
Principal Bench

O.A. 409/1997,
M.A. 1029/2000,
M.A. 2466/2000

(34)

New Delhi this the 10 th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

Mrs. P. Varma,
Superintending Engineer,
R/o D-11/188, Kalka Nagar,
New Delhi-110003. Applicant.

(By Advocate Shri G.D. Gupta)

Versus

1. Union of India, through
Secretary,
Ministry of Urban Affairs and
Employment, Nirman Bhawan,
New Delhi.
2. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi. Respondents.

(By Advocates Shri K.C.D. Gangwani, Sr. Counsel and Shri
K.R. Sachdeva).

O R D E R

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

The applicant is aggrieved by the action of the respondents in awarding her a penalty of censure by order dated 11.3.1996 which has been imposed on her by the President after holding the departmental proceedings under Rule 16 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules'). (Annexure 'A').

2. This application has been filed in February, 1997 and in MA 2466/2000, the applicant has stated that even at that time she had submitted a review petition dated 13.8.1996 under Rule 29-A of the Rules to the President. This has also been dismissed by order dated 28.7.1998 which

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has been annexed to the counter reply of the respondents (Annexure R-6). Shri G.D. Gupta, learned counsel has submitted that by inadvertence the order dated 28.7.1998 has not been challenged in the O.A. for which he has moved the Miscellaneous Application for permission to amend the O.A. as contained in Paragraph 4. He has submitted that on the review petition filed by the applicant, he has reliably come to know that the respondents had received comments from the Director General (Works), CPWD - Respondent 2 which were in her favour which have not at all been considered by the President while rejecting the petition. He has very vehemently submitted that these comments may be called for and perused by the Court, apart from directing the respondents also to take into account the comments and pass a reasoned and speaking order. He has submitted that the President has completely ignored the factual position as admitted by the CPWD in its comments regarding the estimate for the work. He has also submitted that there is absolutely no mention in the order passed by the President dated 28.7.1998 as to why the respondents have adopted different yard-sticks in the case of the Superintending Engineer (SE) (Project Manager) to that adopted for the applicant. He has, therefore, contended that the order is perverse and contrary to the facts on records. In the Miscellaneous Application, the applicant has submitted that the action of the respondents is, therefore, discriminatory, unfair, unjustified, arbitrary and mala fide because they have adopted double standards while dealing with the applicant and the SE (Project Manager) who has been let off without any punishment, whereas the applicant has been punished with a

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penalty of censure. Learned counsel has very vehemently submitted that the records should be called for to see how the applicant has been singled out for punishment, apart from the fact that in the case of other officers involved in the same project of construction and against whom also departmental proceedings were initiated, they were completed much earlier than in the case of the applicant. He has also submitted that the respondents have nowhere stated that any loss has been caused due to the action of the applicant in taking market rates for certain items for construction of the Over-head Tank and in any case his contention is that the SE (Project Manager) had also approved the very same estimates which, according to him, are also within the limits provided in the CPWD Manual.

3. In the above circumstances, Shri G.D. Gupta, learned counsel for the applicant has submitted that the impugned order dated 11.3.1996 imposing upon the applicant the penalty of censure is illegal and should be quashed and set aside. In the Miscellaneous Application, he has, therefore, prayed for amendment of the prayer clause to include quashing of the impugned order dated 28.7.1998 on the grounds mentioned above.

4. In the reply given by the respondents to MA 2466/2000, they have controverted the submissions of the applicant. They have also taken a preliminary objection that the prayer for amendment is highly belated and barred by limitation. Shri K.R. Sachdeva, learned counsel has contended that as the order in review has been passed by

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the President on 28.7.1998 and MA has been filed more than two years later on 28.9.2000, the same is hopelessly barred by limitation. (37)

5. On merits learned counsel for the respondents have submitted that the penalty order has been imposed on the applicant under Rule 16 of the Rules and there is no violation of the principles of natural justice. They have also submitted that all the relevant materials on record were considered by the President while passing the order and there has been no discrimination, as alleged against the applicant. They have submitted that the allegations investigated against the applicant relate to the action taken by her for the award of work of construction of over-head tank at Vasant Vihar, New Delhi during 1986 when the applicant was working as Executive Engineer in the Both CPWD. Learned counsel for the respondents have submitted that as the President's order had taken into account the ^{Both} while considering relevant facts and circumstances of the case, the review petition submitted by the applicant and is a speaking order, the same is legal and valid. The advice of the UPSC has been given at Annexure R-4 to counter reply of the O.A. and they have submitted that there is no provision for providing this advice earlier to the imposition of the penalty. Learned counsel has submitted that the applicant cannot rely upon the comments received by the Department from their officers. They have also submitted that the President is not required to deal with each of the points contained in those comments when they are not even part of the grounds taken in the Review Application by the applicant. They have stressed that in the order dated 28.7.1998 passed by the President on the review petition,

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each of the grounds taken by the applicant have been considered and, therefore, there is no infirmity in this order. It has been further submitted that the comments received by the Department need not be followed nor can they be relied upon by the applicant as these are notings available in Departmental files for the use of the respondents and nothing more. Learned counsel have also urged that in the O.A., the applicant has nowhere alleged any discrimination in the impugned penalty order passed against her whereas this ground has been taken belatedly only in the Miscellaneous Application for amendment which, therefore, is also not maintainable. They have, therefore, prayed that the O.A. as well as the MA may be dismissed.

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6. We have carefully considered the pleadings and the submissions made by the learned counsel for parties.

7. On the preliminary objection taken by the respondents that MA 2466/2000 is barred by limitation and, therefore, cannot be allowed, we find some force in the same that there has been delay on the part of the applicant for impugning the order passed by the respondents on the review petition which is dated 28.7.1998. This order has been passed during the time the O.A. was pending in the Tribunal. However, considering the fact that before the case was taken up for final adjudication, the Miscellaneous Application has been moved by the applicant challenging the order dated 28.7.1998 also and in view of what is stated below on the merits on the case, we see no good grounds to reject the M.A. on the plea of limitation. Accordingly, MA 2466/2000 praying for amendment of the O.A. is allowed to the extent of the prayer to impugn the order dated

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28.7.1998. The counsel for respondents have also been heard on both the impugned orders dated 11.3.1996 and 28.7.1998.

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8. Another plea taken by the learned counsel for the respondents was that in the O.A. the applicant had not taken any ground of discrimination meted out to her in the impugned penalty order dated 11.3.1996 and all that was stated was that it is , arbitrary, capricious and violative of Article 14 of the Constitution and the principles of natural justice. They have submitted that only in the amendment to the O.A. the allegation of discriminatory action has been taken which again cannot be taken at this late stage. We find this argument difficult to accept because the applicant has clearly challenged the earlier penalty order dated 11.3.1996 on various grounds, like arbitrariness, capriciousness and violation of the principles of natural justice and illegality. In the facts and circumstances of the case, it cannot be stated that the allegation that actions of the respondents are arbitrary and illegal will not include the grounds of discrimination which is also a part of the illegal action.

9. Shri G.D. Gupta, learned counsel has submitted that the respondents, while dealing with the case of SE/Project (Manager) and that of the applicant have applied different standards. In the review petition which has been summarised and referred to in para 6(v) of the impugned order dated 28.7.1998, the applicant has submitted that the justification which was submitted by her to the Project Manager's Office was subject to thorough check in that office and since there was no compulsion for the Project

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Manager to accept the wrong justification, she was not responsible for the lapse. Regarding the submissions of the applicant in the review petition, Paragraph 11 of the order reads as follows:

"11. Regarding Para 6 (v) of above, President noticed that, during the course of investigation, it was observed that the Project Manager who accepted the rate proposed by Smt. P. Verma, EE and the ASW in the Office of Project Manager were also responsible for acceptance of higher rate. Caution Memo, was issued to the then Project Manager and minor penalty of 'Censure' was imposed upon the then ASW for their lapses. Smt. P. Verma was found responsible for acceptance of sub-standard work as well as proposing higher rate. Therefore, rightly, the penalty of 'Censure' was imposed upon her".

(Emphasis added)

10. From the above observations, it is noted that while a Caution Memo was issued to the then Project Manager which admittedly is not a punishment under the Rules, minor penalty of censure was imposed on the then ASW in the office of Project Manager who accepted the sub-standard work, which was the same penalty imposed on the applicant. As pointed out by Shri G.D. Gupta, learned counsel, the SE (Project Manager) who had to finally accept the quality of work and figures submitted by the applicant had not apparently pointed out any difficulties in accepting the estimates or work in his supervisory capacity. Therefore, the position that emerges is that while the Senior Officer who was the Project Manager has been merely let off by a Caution Memo which does not amount to a penalty, the applicant, who had prepared the estimates for execution of the work in question and submitted it to him for approval has been punished. As mentioned above, the applicant may not have used the word "discrimination" while challenging the penalty of censure imposed on her vide order dated

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11.3.1996 vis-a-vis the Caution Memo issued to her higher officer, namely, the SE (Project Manager) which does not amount to a penalty but we find that double standards have been applied by the respondents while dealing with these officers. The respondents have not satisfactorily explained the reasons for taking different decisions with regard to the applicant and her senior officer who was dealt with departmentally under the same set of facts and circumstances. Further, it cannot be held that the challenge to the original impugned order dated 11.3.1996 that it is illegal would not also encompass the plea of discrimination which is writ large on the face of the relevant orders passed by the respondents against that officers and on this ground, therefore, the impugned orders dated 11.3.1996 and 28.7.1998 are liable to be quashed and set aside. It is also relevant to mention that the respondents have nowhere stated that any loss has been caused to the applicant. There is also merit in the submissions made by the learned counsel for the applicant that the estimates and justification given by the applicant which have been approved by her higher officer are also within 10% margin allowed under the CPWD Manual in such circumstances. This is also a matter for the respondents to consider especially when in the same facts and circumstances, they have decided not to impose any penalty on the SE (Project Manager). In case the respondents wanted to deal with these officers differently, they should have cogent and sufficient reasons for the same, which has not been brought by them in this case. It is, therefore, not understood as to how the junior officer, i.e. the applicant can be held guilty while the senior officer, i.e. the SE (Project Manager) is not similarly punished.

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11. However, we are unable to agree with the contention of Shri G.D. Gupta, learned counsel that there was an obligation on the part of the President while dealing with the applicant's review petition to consider in detail and follow the comments and conclusion of Respondent 2, i.e., the DG Works, CPWD who had been consulted by the respondents. He had recommended that the penalty of 'Censure' imposed upon the applicant appears to be too harsh and should be set aside and be substituted by giving her a Caution Memo. These comments no doubt have been made by a senior officer but have been obtained by the respondents as part of the routine intra-Departmental notings for aiding the President/competent authority to take an appropriate decision and while they may not be binding on the competent authority, they would have ^{persuasive value only.}

12. In the result, for the reasons given above, O.A. succeeds and is allowed with the following directions:

- (1) The impugned orders dated 11.3.1996 and 28.7.1998 are quashed and set aside. The case is remitted to the respondents, that is, the Reviewing Authority to reconsider the case of the applicant keeping in view the above observations, and pass a reasoned and speaking order. This shall be done within one month from the date of receipt of a copy of this order.
- (2) Thereafter, the applicant shall be entitled to consequential benefits like seniority and promotion in accordance with the relevant rules and instructions. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)