

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 820/97

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T.A.No.

DATE OF DECISION 31.5.2000

Mrs. Malancha Dasgupta,

....Petitioner

None present

....Advocate for the
Petitioner(s)

VERSUS

The Chief Secretary,
Govt. of NCT & Ors.

....Respondent

Shri Vijay Pandita

....Advocate for the
Respondents.

CORAM

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

The Hon'ble Shri H.O. Gupta, 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. 820/97

New Delhi this the 31st day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri H.O. Gupta, Member(A).

Mrs. Malancha Dasgupta,
Librarian (removed from service),
Govt. Girls Senior Secondary School No.1,
Sarojini Nagar, New Delhi-110023. ... Applicant.

(None present)

Versus

1. The Chief Secretary,
Govt. for the National Capital
Territory of Delhi,
Alipur Road,
Delhi.
2. Director of Education,
Old Secretariat,
Delhi.
3. Deputy Director of Education,
District South,
Defence Colony,
New Delhi.
4. Principal,
Govt. Girls Senior Secondary School No.1,
Sarojini Nagar,
New Delhi-110023. ... Respondents.

(By Advocate Shri Vijay Pandita)

O R D E R (ORAL)

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

The applicant has filed this application impugning the penalty order passed by the respondents dated 24.9.1993 removing her from service as Librarian in the office of respondent 4, that is Principal, Govt. Girls Senior Secondary School No.1, Sarojini Nagar, New Delhi (Annexure A-I).

2. As none had appeared for the applicant even on the second call, we have perused the records and heard Shri

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Vijay Pandita, learned counsel for the respondents.

3. The applicant had remained absent from duty, according to her due to various medical problems, which she has explained in paragraphs 4.4 to 4.7. She has also stated that during the period of her absence from duty because of the ill health of her child and herself, she had also submitted medical certificates to the respondents. Her grievance is that in spite of that, respondent 3 has passed the impugned order removing her from service. One of the grounds that the applicant has taken is that in the last paragraph of the impugned order, in spite of the inquiry having been ordered and held against her, respondent 3 has stated as follows:

"Now, therefore, the undersigned in exercise of the powers conferred upon her under rule 11(viii) of the CCS (CCA) Rules, 1965 has come to the conclusion that it is not reasonably practicable to hold an enquiry and do hereby impose the penalty of removal from service under rule 11(viii) of the CCS (CCA) Rules, 1965 which shall not be a disqualification for future employment under the Govt. upon said Smt. M. Dass Gupta, Librarian".

She has submitted that the above concluding paragraph of the impugned order bears out the veracity of her submissions that the finding of respondent 3 is based on no evidence on record and against the principles of natural justice. She has also submitted that the order of removal from service is excessive, harsh, mala fide and hence, deserves to be quashed and set aside. She has submitted that she understands that the Inquiry Officer in his report had exonerated the applicant from the charges levelled against her and had not recommended the penalty of removal from

service. In any case, it is not for the Inquiry Officer to recommend what penalty is to be imposed on the charges as that is a matter for the disciplinary authority to decide.

4. The more important ground taken by the applicant is that once having conducted the inquiry and the Inquiry Officer having submitted his report, it was incumbent upon respondent 3 to not only have furnished a copy of the said report but also to have given an opportunity to her to show cause against the punishment sought to be imposed. The applicant had also submitted an appeal against the impugned order on 15.10.1993, which she has referred to in the application ^{and B.} under Section 21(3) of the Administrative Tribunals Act, 1985 ^{an application B.} for condonation of delay in filing the application. This application has been filed along with the O.A. which was filed on 31.3.1997. According to her, the appeal had not been disposed of by the appellate authority and hence, the O.A.

5. We have seen the reply filed by the respondents and heard Shri Vijay Pandita, learned counsel. He has submitted that the O.A. is highly belated because the applicant has sought relief against the impugned order dated 24.9.1993. The respondents have also stated that they have not received a copy of the appeal said to have been filed on 15.10.1993 although in the rejoinder it is seen that the applicant has submitted photo copy of the UPC letter which bears a postal slip with the date 15.10.1993 (Annexure P-14). This date is also stated to be the date on which the applicant had submitted the appeal to the respondents. The respondents have further submitted that as the applicant was unauthorisedly absent from duty and the inquiry had been held

under the Rules, the impugned order is valid. They have also submitted that after the charge-sheet was issued to the applicant on 2.8.1991, the applicant had submitted her resignation from service w.e.f. 1.1.1993 which was rejected because of the pending proceedings. In the reply, we note that they have stated as under:

"On receipt of inquiry report, the disciplinary authority recommended the penalty of removal from service on the said Mrs. Malancha Das Gupta..."

(Emphasis added)

They have also admitted the facts stated by the applicant in paragraph 4.19 of the O.A. in which she has reproduced the concluding paragraph of the impugned order dated 24.9.1993.

6. We have carefully considered the pleadings and the submissions made by Shri Vijay Pandita, learned counsel.

7. The O.A. has been filed on 31.3.1997 along with an application for condonation of delay in which the applicant has referred to the fact that her appeal dated 15.10.1993 has not been disposed of by the appellate authority which is still pending. In paragraph 4 of this application, she has also submitted that due to her continuously suffering from prolonged illness from 20.2.1995 and ^{then} ~~she~~ staying at Calcutta, after termination of her service ~~on 20.2.1995~~, she could not file the application earlier to challenge the removal order. She has also submitted that as she has a prima facie, good and strong case and was unable to

JB:

✓ file the application within the limitation period for sufficient cause, she has prayed that the delay may be condoned. The respondents in their reply have stated that the O.A. is badly time barred as the applicant has not exhausted the office procedure by filing an appeal against the impugned order dated 24.9.1993. From the documents on record, we are unable to accept the contention of the respondents that the applicant has not filed the appeal dated 15.10.1993 to the appellate authority which was pending at the time when the O.A. was filed before the Tribunal. Taking into account the facts and circumstances of the case and for the reasons which are also mentioned below, we consider that this is a fit case where the delay should be condoned and accordingly we do so as we find sufficient grounds under Section 21(3) of the Administrative Tribunals Act, 1985.

8. The respondents themselves have stated that a charge-sheet had been issued to the applicant on 2.8.1991 and an inquiry had been held. In the reply, they have also referred to the Inquiry Report submitted by the Inquiry Officer which must have been submitted to the concerned disciplinary authority before the impugned removal order has been passed. In the facts and circumstances of the case, we find that the concluding paragraph of the impugned order dated 24.9.1993, removing the applicant from service stating that "it is not reasonably practicable to hold an inquiry..." shows a total non-application of mind. The disciplinary authority ought to have realised the severity of her actions

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and the punishment that was being imposed on the applicant, no doubt for her absence from duty, but this could only be done in accordance with the relevant law and rules.


9. The ground taken by the applicant for her absence is on account of her illness and the illness of her new born baby, who was born to her on 23.5.1989. She has also submitted that she had been submitting the requisite medical certificates about the illness. We find that although in the impugned order of removal from service reference has been made to the medical certificates in which she had been recommended rest for two months, further certificates have not been referred to and it has been observed that the applicant did not bother to resume her duties. It is also relevant to note that the applicant has stated that she understands that the Inquiry Officer had exonerated the applicant from the charges levelled against her and it is not clear from the reply filed by the respondents whether even a copy of the Inquiry Officer's report was given to the applicant before the penalty order was imposed on her. In paragraph 5 of the reply to the grounds taken by the respondents, they have merely stated that none of the grounds as raised by the applicant are maintainable. The procedure adopted by the respondents, therefore, is also contrary to the judgements of the Hon'ble Supreme Court in Union of India Vs. Mohd. Ramzan Khan (1990(2) Scale 1094) and Managing Director, ECIL Vs. B. Karunakar & Ors. (JT 1993 (6) SC 1). ECIL. This is also clearly in violation of the principles of natural justice.

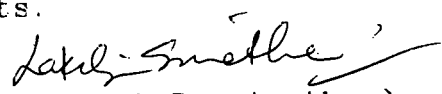
10. Taking into account the facts and circumstances of the case and the reasons for which the applicant was unable to attend her duties in the office, we are also of the

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view that the punishment imposed on her of removal from service is excessively harsh and is not commensurate with the nature of the charges. (See observations of the Supreme Court in Shamsher Bahadur Singh Vs. State of Uttar Pradesh & Ors. (1993(2) AISLJ (V) 16). In any case, the conclusion of the disciplinary authority is shocking where it has been stated that "it was not reasonably practicable to hold the inquiry..." when in fact the respondents state that an enquiry has been held and it is, therefore, perverse. (See Union of India Vs. Parma Nanda (AIR 1989 SC 1185).

11. In the result, for the reasons given above, the impugned order dated 24.9.1993 removing the applicant from service is quashed and set aside. The respondents are directed to reinstate the applicant in the post of Librarian as early as possible and in any case within one month from the date of receipt of a copy of the order. In the facts and circumstances of the case, the applicant shall, however, not be entitled to any pay and allowances from the date of removal from service to the date of reinstatement. The intervening period shall be regularised by the respondents in accordance with the Rules.

Parties to bear their own costs.


(H.O. Gupta)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

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