

Date	Office Report	Orders
	<u>25/5/55</u>	<p>Present. 1. Sh-B S. Charya Counsel for the applicant 2. Sh. R.L. Shawan Counsel for the Reppels</p> <p>OA allowed by dictatip order in the open Court today.</p> <p><u>Bench</u> Honble JPS/BES</p> <p><i>BC 125 Co/er IV</i></p>

(24)

Central Administrative Tribunal
Principal Bench

D.A. No. 2461/89

New Delhi, this the 25th day of May, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Mrs. Usha Bhalla
Matron Gr.II
Central Hospital
Northern Railway,
New Delhi.

... Applicant

(By Shri B.S. Charya, Advocate)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Hospital Superintendent
Central Hospital,
Northern Railway
Basant Lane,
New Delhi.

... Respondents

(By Shri R.L. Dhawan, Advocate)

JUDGEMENT (ORAL)

Shri J.P. Sharma, Member (J)

The applicant was serving as a Matron in the Railway Hospital. An order was issued asking her to take over charge of ward Nos. 7 & 8 of the hospital after relinquishing the charge of ward nos. 4 & 6, from Smt. E. Herenge, Matron who was in charge of ward Nos. 7 & 8.

Since she has not taken over the charge of both the ward Nos. 7 & 8 and took charge of only ward No. 7 so a memo under SF-5 was issued holding a departmental disciplinary enquiry under rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The charge against the applicant has been that she refused to obey the legal orders of the higher authority of taking over charge of ward No. 8 from Smt. E. Herenye, Matron inspite of repeated reminders. The applicant was given due opportunity to reply to the aforesaid memo of charge but she did not file any reply. Dr. O.P. Sharma was appointed as Enquiry Officer who took the statement of Matron Smt. E. Herenye and also examined the applicant Smt. Usha Bhalla and after perusal of certain other documents, he submitted his report dated 26th October, 1988 which is quoted below:-

"The summary of the enquiry held against Mrs. U. Bhalla, Matron, Gr. II, Central Hospital New Delhi. The witness examined, Mrs. H. Herenye Matron Gr. II and Mrs. P.L. Mehta, Matron Gr. II.

Mrs. U. Bhalla, first mentioned that she will produce a defence council which was not brought at the enquiry and she represented the case herself. As per records she was asked to take the charge of Ward 7 & 8 by transferring her from Ward No. 6 & 4 but she represented that since the wards 7 & 8 had the bed strength of 90 beds and she was a chronic patient of Bronchial Asthma and was suffering off and on and she can not take the charge of both the big wards. However, the administration after considering her representation, has

ordered her to take charge of Ward No. 7&8. In her defence statement, she has mentioned that the letter of 10.9.1987 was delivered to her on 5.10.1987 but it was proved that these were two different letters which were delivered to her on 10.9.1987 and 6.10.1987. This has also been proved that she took the charge of Wd. No. 7 only and has not taken the charge of Ward No. 8 which was with Mrs. Herinze".

The disciplinary authority on the basis of this report agreed with the finding of the Enquiry Officer held that she could not prove her illness by any certificate which did not permit her to work in two wards and, therefore, passed a punishment imposing penalty of withholding of increment permanently for three years. This order was passed on 31st October, 1988. The applicant superannuated on 31st August, 1991. The learned counsel for the respondents gave the statement that this order has been carried out so this is a major penalty which effected the retirement benefits of the applicant.

The applicant aggrieved by this order filed an appeal on 8.3.1989 to the C.H.S., N.R.C.H., New Delhi and the appellate authority passed the following order on the appeal on 18.4.1989:-

" NORTHERN RAILWAY, CENTRAL HOSPITAL, N.DELHI.
No. 7W.Eng.361/U.Bhalla dated 18.4.1989
Smt. U.Bhalla,
Matron Gr.II, N.R., New Delhi.

Sub:- Appeal against W.I.P. for three years
to Smt. U.Bhalla.

In reference to your appeal dated 8.3.1989,
the Appellate Authority C.H.Hospital Superintendent
has passed the following orders:-

" I have gone into the depth of the
case and after applying my mind,
I concur with the penalty imposed
by disciplinary authority"

sd/-

Sr. Divn. Medical Officer"

The applicant has filed this application for
quashing of the order of punishment in December, 1989
before her superannuation. The Tribunal has considered
this O.A. earlier and since the report of the Enquiry
Officer was not supplied before passing the order of
punishment the impugned order was quashed by the
order dated 11.11.1991. Union of India went in appeal
before the Hon'ble Supreme Court of India and the
Hon'ble Supreme Court of India while disposing of the
civil appeal No. 384/94 remanded the matter to the
Tribunal to consider the case on merit as the Hon'ble
Supreme Court has already taken a view in the case of
E.C.I.L. v/s. B.Karnakaran reported in 1993 Volume 6, SC
Page 1 with the aforesaid direction issued in the case of
Union of India v/s. Mohd. Ramzan reported in 1990(1)
SCC Page 588 is prospective in operation.

We issued notice to the parties and Shri B.S. Charya appeared for the applicant and Shri R.L. Dhaman appeared for the respondents. The respondents, in their counter have taken the stand that the applicant has disobeyed lawful orders of the superiors in the discharge of her legitimate duties on the pretext of her illness and, therefore, minor penalty chargesheet was issued. The chargesheet issued earlier in 1987 was not effective as it was not signed by the competent authority so second memo of chargesheet was issued duly signed by the competent authority.

The Enquiry Officer has given the finding that the applicant has disobeyed the orders of superiors and that is why the punishment was imposed which was upheld by the appellate authority.

The learned counsel for the applicant has assailed the finding of the Enquiry Officer firstly on the ground that nowhere in the report of Enquiry Officer Dr. O.P. Shama has given a finding that the applicant has deliberately disobeyed the legitimate orders of the superiors. He has only discussed certain

facts and submitted the report. He has not stated that the charge against the applicant has been established. Though the conclusion from the enquiry file it appears that the applicant has given an explanation of not obeying the orders which naturally leads to conclusion that the applicant had disobeyed the orders of taking over the charge of both the wards No. 7 & 8 but at the same time she has given certain explanation in regard to her illness and that regarding not taking over the charge of ward No. 8 & 7 consisting of 90 beds because of Bronchial Asthma for which she was earlier hospitalised in the same hospital for four months and she could not pull her weight and could not discharge the duties efficiently to the welfare of the patient. This explanation given by the applicant has neither been considered by the Enquiry Officer nor by the disciplinary authority and what to say the appellate authority.

The procedure adopted by the Enquiry Officer was rash and hasty inasmuch as a lady was asked to defend herself and under the provisions the defence assistant is provided. One defence assistant Shri Gupta refused because of having more than 3 enquiry with him. The other

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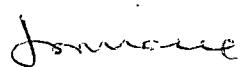
proposed defence assistant was not available being out of station and she was denied the opportunity to engage a defence assistant as is evident by the order dated 9th June, 1988. The Enquiry Officer conducted the enquiry on 23.6.1988 having held earlier on 9/6/88 that the applicant should herself conduct the case. We are aware of the fact that the simplicity with which even certain educated ladies may project themselves cannot inspire the confidence and convince the authority regarding their point. In this case, she has plainly and simply accepted that she did not take over the charge of ward No. 8 because of acute health and the disciplinary authority wants a medical certificate in that regard of a Matron working in the same hospital having been hospitalized for four months in the same hospital and this could have been taken care of by defence assistant ^{been} as she ~~being~~ provided once. The procedure adopted by the Enquiry Officer is, therefore, not only rash and hasty against the rules but violates the principle of natural justice. A person cannot be punished without affording an adequate, reasonable and sufficient opportunity, even at the cost of adjournments time and again.

The learned counsel Shri R.L.Dhawan representing the respondents has ^{read} ~~read~~ out an order passed on the representation but that is of 1987 and that cannot be taken for any help in considering the order of the appellate authority. Shri Dhawan has pointed out straneously that when the applicant has conceded to and almost impleaded as guilty to the charge, the procedure adopted by the Enquiry Officer in giving adequate opportunity for engaging defence assistant cannot be said to be a violative of principle of natural justice. This contention is totally unacceptable and is without basis. When a request has been made and had ^{been} turned down in the order sheet of dated 9/6/88 no other explanation can compensate the view taken by the Enquiry Officer against the applicant. We find no justification to afford the punishment imposed upon the applicant. Since there was some irregularities, we could have remanded the the matter, but the applicant has already super-annuated on 31st October, 1991, four years are likely to be passed. She is already said to be a patient and must be in advanced

age both of illness as well as the treatment of the same. No useful purpose will be served to tax her again against the enquiry initiated in the year 1987.

The application is, therefore, allowed and the impugned order of punishment is quashed and set aside. The applicant shall be given the withheld increments from the date these have been withheld and shall be granted the increments as and when they fell due year-wise and the pay shall be fixed on the date when she retired i.e. on 31st August, 1991 taking into account these withheld increments and re-determine the pensionary benefits and other retirement benefits on the last pay drawn adding these withheld increments. The respondents are directed to comply with the direction given in the judgement within a period of four months from the date of receipt of the copy of this order/judgement. Cost on parties.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

/nkap