

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 586/89
T.A. No.

199

DATE OF DECISION 31.12.1990.

Smt. Sonica Sushila Chauhan Petitioner

Sh. S.K. Sawhney Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Sh. S.N. Sikka Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? Ab Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓


(AMITAV BANERJI)
CHAIRMAN
31.12.90.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No.586/1989

Date of decision: 31.12.1990

Smt. Sonica Sushila Chauhan ...Applicant

Versus

Union of India & Others ...Respondents

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman

Hon'ble Mr. I.K. Rasgotra, Member (A)

For the applicant Shri S.K. Sawhney, Counsel

For the respondents Shri S.N. Sikka, Counsel

(Judgement of the Bench delivered by Hon'ble

Mr. I.K. Rasgotra, Member (A))

Smt. Sonica Sushila Chauhan, Ex. Matron Gr.III, Central Hospital, Northern Railway, New Delhi has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order No.724-E/S.S.Chauhan (Annexure A-I) dated 11.4.1985 of the respondents, removing her from service w.e.f. 11.4.1985 and rejection of her appeal vide Order No.724-E/S.S. Chauhan dated 13.2.1989 (Annexure A2).

Smt. Sonica Sushila Chauhan while working as Matron Grade III in the Central Hospital, Northern Railway, New Delhi was selected for foreign assignment as a Nurse on deputation to Government of Libya (Annexure A3). She was relieved from the Central Hospital on 18.2.1975 and she joined Secretariat of Health, Sebha in Libya on 4.3.1975 where she signed a contract with the Libyan Government for two years. The deputation was however extended with the sanction of the

Government of India upto 22.2.1979 (Annexure A4). She sought extension of deputation for further two years which was sanctioned only upto 22.2.1980 vide Railway Board's letter dated 16th August, 1979 (Annexure A5). The applicant states that she submitted her representation dated 15th December, 1979 to the General Secretary of Health, Tripoly, Libya, requesting the concerned authority to relieve her on or before 21.2.1980. Her request was, however, declined by the Libyan Government and she remained in Libya on expiry of her sanctioned term of deputation beyond 22.2.1980. She submitted a representation dated 15th January, 1980 to the Ambassador of India, Tripoli, requesting him to use his good offices in getting her deputation extended as the Libyan Health Ministry still required her service. Alternatively, the Ambassador was requested to get her relieved from the Health Ministry, Libya. The applicant submits that she could not leave Libya on her own without getting an exit visa from the Libyan Government. Her request to the Indian Embassy proved however futile. Ultimately the applicant was relieved by the Libyan authorities on 7.3.1983. Thereafter the applicant fell sick on account of bad climate and arduous and strenous duties which she had undertaken for a period of 8 years. She remained under treatment of Sebha Central Hospital, Libya and was certified fit for travel to India after 23rd July, 1984. The applicant reported for duty to Assistant Divisional Medical Officer (General), Central Hospital on 2.8.1984 and gave her contact address Care of Mr. S.S. Singh Matron, O.T. Incharge, Central Hospital, New Delhi. The applicant claims that thereafter despite her repeated enquiries she was not given a posting. She personally met the

General Manager, Northern Railway in January, 1985 when she handed over a representation to him. Thereafter she was advised vide letter dated 19.8.1988 (Annexure-A-17) that she has been removed from service w.e.f. 11.4.1985. She represented that she has not been communicated any such order nor was she given opportunity to defend herself. She received a copy of the impugned order dated 11.4.1985 without any document or enclosures on 19.8.1988. She represented on 29.11.1988 and 30.11.1988 for obtaining copies of the relevant documents etc. to enable her to file an appeal and the same were furnished including the enquiry report dated 15.2.1985, show cause notice dated 18.3.1985 and the notice of imposition of penalty dated 11.4.1985 but without a copy of the chargesheet. The applicant alleges malafide intention on the part of the respondents to keep her in dark with a view to deny an opportunity to defend herself.

2. The respondents in their written statement have raised the preliminary objections, first that the applicant has not exhausted the departmental remedies under Section 20 of the Administrative Tribunals Act and secondly that the application is barred by limitation under Section 21 of the said Act. On merits, they have not disputed the broad facts of the case regarding her deputation to Libya but have contended that she continued with the Government of Libya on her own without any sanction from the Government of India. She was even directed to return to India vide G.M.(P) letter through the Embassy of India (Annexure A6). The respondents further disclaim any knowledge of her being relieved from Libya on 7.3.1983 by the Libyan Government nor about the date of her return to India. They have

however brought out that from the record Secretary (TCL) Embassy of India letter No.7RP/235/PF/PM/79 dated 27.8.1984 it was observed that she was not in contact with the Indian Embassy for a long time. Admittedly, the applicant reported for duty on 2.8.1984 and gave her address care of Shri Sher Singh Matron, Central Hospital, New Delhi but she failed to give her present address where she was staying and could be contacted. On the other hand, Shri Sher Singh, Metron, Central Hospital, New Delhi informed in writing that Smt. Sonica Sushila Chauhan has left for Libya again on 10.10.1984. This endorsement is borne on the letter annexed to the written statement of the respondents at page 57 of the paper book. In the circumstances, the respondents submit that they had no alternative but to issue a chargesheet for major penalty on account of unauthorised absence as the applicant did not turn up for duties after 2.8.1984. The charge-sheet was sent at her last local address available in the record of the applicant but the same was received back undelivered. The advice regarding the dates of enquiry and time etc. sent to her last local address were also received back undelivered. In absence of the applicant, the enquiry was proceeded ex-parte and on the basis of the available record and evidence the Enquiry Officer submitted his report on 15.2.1985. The disciplinary authority issued the order of removal from Railway Service after considering the enquiry report. The said order sent to her vide letter No.724E/SSC dated 18.2.1985 and 11.4.1985 along with the enquiry report on her last known address. But all these papers however were received back undelivered. The respondents have further denied that she ever came to the office of the

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respondents or met any authority in the hospital. All attempts made to contact the applicant at her last known address proved futile.

The learned counsel for the applicant, however, questioned that the manner in which the enquiry was conducted and drew our attention to Rule 4, Rule 12 and Rule 20 of the Railway Servants Discipline and Appeal Rules, 1968. While Rule 4 deals with the procedure for delivering to the Railway servants, a copy of the article of charge, statement of imputations of misconduct or misbehaviour etc. requires all the Railway servants to file a written statement of his defence within ten days, Rule 12 deals with communication of orders including a copy of the enquiry report, a copy of the findings of each charge to enable the delinquent official to submit his defence to the disciplinary authority before it takes a decision to impose any penalty. Rule 20 prescribes the period of limitation for filing an appeal within 45 days from the date on which a copy of the order appealed against, is delivered to the appellant. The learned counsel submitted that the applicant received copies of the enquiry findings etc. on 30.11.1988 and, therefore, filing of an appeal by her in 1968 was not barred by limitation. On the other hand the learned Counsel he contended that the appeal dated 12th December, 1988 filed by the applicant was summarily rejected by the Senior Divisional Medical Officer as being time barred. The learned counsel for the applicant further submitted that the appointing authority in the case of the applicant was the General Manager while the order for removal from service was passed by a lower authority. He drew our attention in this regard to paragraph 215 of the Indian Railway Establishment Code, Vol. I, according to which the General Manager is competent to make appointment to Group 'C' and Group 'D'. The said rule however also

prescribes that the General Manager can delegate the power to the lower authority.

The learned counsel for the respondents submitted that it is clear from the endorsement of Shri Sher Singh Matron, Central Hospital, New Delhi that Smt. S.S. Chauhan after returning to India left for Libya again on 10.10.1984. It is perhaps reasonable to surmise that she came back from Libya finally only in the year 1988. The applicant had been absconding from 2.8.1984 till 1988 by which time the right to file an appeal against the order of the disciplinary authority had already lapsed. The appeal filed on 12.12.1988 was disposed of on 13.2.1989. The learned counsel further submitted that the General Manager had delegated powers to the concerned authority for removal and dismissal etc. Further the applicant also did not raise the question of competency of the authority in her appeal. She has also not indicated specifically as to who are the authority whom she has been frequently contacting after 2.8.1984 when she reported for duty.

On a specific query from the Bench whether the applicant's passport can be produced before the Court for perusal, the learned counsel submitted that it was not available.

We have heard the learned counsel of both the parties. Smt. Chauhan is said to have returned from Libya on 2.8.1984 but she did not leave her latest address with the competent authority. The matron of the hospital, Shri Sher Singh, whose address she had given, had no knowledge of her present whereabouts. In fact, he has clearly stated that Smt. Chauhan has left for Libya again on 10.10.1984. The learned counsel for the applicant also could not produce the passport which is a vital document to indicate the movement of the applicant

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between India and Libya. In these circumstances the respondents did not appear to have any option but to proceed against her under the Railway Servants Discipline and Appeal Rules, 1968.

In these circumstances, we do not find any merit in the application for interference. Accordingly the application is dismissed with no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)

MEMBER(A) / 31/12/90

Amitav Banerji
(AMITAV BANERJI)

CHAIRMAN

/SKK/