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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1694/88

Date of decision: 22.04.1992

Smt. Suraj ...Applicant

Shri Sant Lal ...Counsel for the applicant

Versus

Union of India & Others ...Respondents

Shri P.P.Khurana ...Counsel for the respondents

CORAM:

THE HON'BLE MR. P.K.KARTHA, VICE-CHAIRMAN
THE HON'BLE MR. A.B.GORTHI, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporter or not? *Yes*

J U D G M E N T

(Delivered by Hon'ble Mr. A.B.Gorthi, Member(A))

The relief sought by Smt. Suraj in this application under Section 19 of the Administrative Tribunals Act, 1985 is that the impugned order dated 18-12-87 removing her from service be quashed and that she be reinstated in service with all consequential benefits.

2. The applicant was appointed as a Nursing Orderly in Dr. Ram Manohar Lohia Hospital on 14-12-1972 after her name was duly sponsored by the

Suraj

Employment Exchange. On 10-1-79, a charge memo was served upon her containing two accusations; firstly that when entering into service, she produced a false School Leaving Certificate purported to have been issued by the Principal, R.B.Ram Roop Vidya Mandir, Bharat Nagar and secondly that she gave a bribe of Rs.500/- to the Labour Welfare Officer to hush up her case. Although the charge memo was dated 10-1-79, no tangible progress was made in conducting departmental enquiry till 1986, despite several ~~several~~ Enquiry Officers ^{been} having appointed in the meantime in succession. Finally, Dr. R.N.Selhan was appointed as the Enquiry Officer on 24-4-86. The Enquiry Officer adopted a novel method of enquiry, in that, he began the enquiry with questioning the applicant and also ended the same after obtaining several additional clarifications from her. Only one prosecution witness, Shri H.C. Madan, who was the Clerk who prepared the charge memo was examined as a witness but his evidence did not relate to the accusations at all. Accordingly, the learned counsel for the applicant argued that the impugned order of removal which was passed on the basis of the said enquiry deserves to be quashed. The punishment was awarded after 15 years from the date of the alleged offence and the enquiry that was held was no enquiry at all in the eye of

law. He further contended that in any case the Enquiry Report did not establish the charges against the applicant. In fact, the entire enquiry makes no reference at all to the second charge, nor does it contain any evidence relevant to it. Notwithstanding this irregularity, the disciplinary authority held the applicant guilty of both the charges. Learned counsel for the applicant stated that in view of these irregularities, the punishment should be set aside.

3. The respondents in their brief reply attempted to explain that the delay was caused due to administrative exigencies of service and that the enquiry was held in accordance with the rules. It was not incumbent upon the Enquiry Officer to examine every witness cited in Annexure IV to the charge memo.

4. A departmental enquiry is required to be conducted in accordance with the laid down procedure. Such procedure invariably takes care of not only the principles of natural justice but also the requirement of giving due opportunity to the delinquent to rebut or disprove the charges. It

casts the duty of establishing the charges squarely upon the prosecution. It has, therefore, been held time and again that where the Enquiry Officer violates the laid down procedure and commences the enquiry with a detailed ^{cross} questioning of the delinquent, the questioning often taking shape of cross-examination, the said enquiry cannot be viewed as just and fair. In the instant case, despite the intensive questioning of the applicant, what all the applicant had admitted was that she signed the Attestation Form and that its contents were all correct except for one entry which related to her educational qualification. She denied that she had ever produced the School Leaving Certificate of R.B. Ram Roop Vidya Mandir. On the other hand, she clarified that she never attended that school but passed Vidya Vinodhini (equivalent to 10th class) from Prayag Mahila Vidya Peeth. The Enquiry Officer, however, concluded that the relevant portion of the Attestation Form must have been recorded as per the information furnished by the applicant. This could be at best a conjecture.

5. The learned counsel for the applicant drew our attention to the judgment of this Tribunal in

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SHRI MUKESH KUMAR V. UNION OF INDIA, 1990(2) ATJ p.1, wherein the Principal Bench of the Tribunal, relying upon the judgment of the Supreme Court in ASSOCIATED CEMENT COMPANY V. THEIR WORKMEN, 1963(2) LAB. L.J. 396, held that where the enquiry proceedings clearly indicate that it was in the form of questions and answers between the Enquiry Officer and the delinquent officer from the very outset of the enquiry, the said enquiry deserved to be quashed.

6. In the result, we hold that the enquiry proceedings are vitiated and that the punishment of removal awarded to the applicant is consequently illegal. We, therefore, set aside the impugned order or removal from service passed by the Chief Medical Officer vide his order dated 18-12-87. The applicant shall be reinstated in service within 3 months from the date of communication of this Order. She will be entitled to all consequential reliefs including back wages in accordance with the extant rules. Although the respondents are at liberty to hold a fresh enquiry, we are of the considered view that it will neither be proper nor just to do so

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keeping in view the fact that a period of more than 19 years has elapsed from the date of the alleged offence. In the case of STATE OF M.P. V. BANI SINGH, 1990(1) ATJ p.653, the Hon'ble Supreme Court quashed the departmental enquiry on the ground that it was held after an inordinate delay of 12 years.

7. The application is allowed in the above terms but in the circumstances of the case, we make no order as to costs.

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(A.B.GORTHE)
MEMBER (A)

22/4/92
(P.K. KARTHA)
VICE CHAIRMAN