CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1123 /1988.
T.A. No. 199

DATE OF DECISION March 6, 1991.

Smt. Promila Kumari — Petitioner

Shri R.K.Kamal — Advocate for the Petitioner(s)

Versus

Union of India & Others. — Respondent-s.

Shri A.K.Sikri, — 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 ? 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

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1123/1988. Date of decision: March 6, 1991.

Smt. Promila Kumari ... Applicant

Vs.

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 R.K.Kamal, counsel.

For the respondents ... Shri A.K.Sikri, counsel.

(Judgment of the Bench delivered by Hon'ble Mr. Justice Amitav Banerji, Chairman)

The applicant before removal from service was employed as Office Assistant, T.M.X., Delhi Telecommunication, Posts and Telegraphs Department, New Delhi. She joined the said Department as Telephone Operator in 1965 and continued in service in various capacities upto January, 1987. Her husband Shri Madan Lall who belongs to I.F.S.(B) Cadre was posted abroad for a period of three years. The applicant was sanctioned three years leave in compelling circumstances from 17.10.1979 to 16.10.1982 by her Department. She had applied for extension of her leave from 17.10.1982. onwards She received a letter dated 29.4.1983 (Annexure A-1) intimating to her that the extended period from 17.10.1982 to 16.10.1984 was treated as "Dies Non". During this period she was with her husband in war-torn

Iraq. After her return to India from Iraq, she was served with a Memorandum dated 28.8.1984 (Annexure A-2) and she was charged with unauthorised absence without pre-sanction of leave for the period from 17.10.1982 to 23.7.1984. She prayed to the disciplinary authority for being heard in person but she had received a reply dated 18.9.1984 (Annexure A-3) to the effect that "personal hearing will not serve any purpose". The Inquiry Officer proceeded ex parte and submitted his report on 25.4.1986. Thereafter the applicant received letter dated 7.1.1987 (Annexure A-5) passed by the Assistant General Manager (Admn.) removing her from service. A copy of the inquiry report was also received along with the above. The applicant had submitted her appeal dated 4.3.1987 (Annexure A-6). The appeal was rejected by an order dated 8.1.1988 (Annexure A-7).

The applicant stated that the entire proceedings against her was bad in law when her extended period of leave had been treated as "Dies Non", secondly, she had already been penalised by treating the period of absence as "Dies Non" in-stead of granting her leave as due and visiting her with a second punishment, viz., removal from service. This amounted to double jeopardy. Another contention raised was that she wanted to be heard in person but was not given an opportunity. The Inquiry Officer proceeded ex parte. Another contention raised was that a copy of the Inquiry Officer's report

was received along with the order of removal. Consequently, she did not have an opportunity of showing cause against imposition of major penalty. Lastly, it was contended that the order of removal as well as the order of the Appellate Authority rejecting the appeal were in violation of the established procedure and principle of natural justice. She has, therefore, prayed that the inquiry report, the punishment order and the appellate order be set aside and quashed as illegal and ab initio null and void. Secondly, the respondents be directed to reinstate the applicant in service with all consequential monetary and promotional benefits.

The respondents case is that a valid and proper departmental enquiry was held against the applicant after issuing the chargesheet on the applicant, who chose not to appear in the inquiry and let it go ex parte in spite of various opportunities given to her to participate. The applicant remained unauthorisedly absent from duties for a very long period without proper application and sanction of leave. She absented from 17.10.1982 to 23.7.1984 and in these circumstances, it could be presumed that the applicant was not interested in service. In stead of terminating her services straight-away on the ground of desertion, the respondents treated the unauthorised absence as misconduct and held the departmental inquiry in which full opportunity had been given to the applicant. The applicant had joined duties on 24.7.1984 but had again started absenting.

She worked for 41 days from 24.7.1984 to 2.9.1984, 15 days from 10.9.1984 to 24.9.1984 and 11 days from 29.7.1984 to 27.10.1984 and thereafter did not attend her duties till the date of her termination. The above conduct does not entitle the applicant to any relief and virtually from 17.10.1982 to 7.1.1987, i.e., for a period of more than 4 years and 3 months, she has attended the work for 67 days only. It was further stated that a proper inquiry was conducted in accordance with the principle of natural justice after following the prescribed procedure. The penalty awarded was reasonable keeping in view the seriousness of the charges. She had been granted three years leave as a special case from 17.10.1979 to 16.10.1982. She was bound to join back on expiry of leave on 17.10.1982. She did not join and remained absent without proper application or sanction of leave. Various communications were addressed to her but she failed to comply therewith. She contravened the provisions contained in para-62 and 162 of P & T Manual Vol. III and committed an act of misconduct unbecoming of a Government servant. She was, therefore, charged for violation of rule 3(1)(i) (iii) of C.C.S. (Conduct) Rules, 1964. No leave was sanctioned to her after 17.10.1982 and the reason given by the applicant for extension of leave was totally untenable and not valid ground on which any leave could be granted. She admits the receipt of the letter dated 29.4.1984 which indicated that her absence was

treated as "Dies Non" and this means that she was unauthorisedly absent from duties. It was further submitted that the period treated as "Dies Non" does not mean that the Department was powerless to take disciplinary action against the applicant. She was asked to file the written statement of defence within 10 days of receipt of the chargesheet. There was no question of personal hearing at that time. It was only asked whether she wanted to be heard in person. She made a request which was considered and vide reply dated 18.9.1984, she was informed that"personal hearing will not serve any purpose". Thus, there was nothing wrong in reply dated 18.9.1984. The disciplinary authority had not developed any bias against her. In reply to the service of the inquiry report along with the order of removal, the stand taken by the respondents was that the pleastaken in paragraph 6.8. were misconceived and untenable.The inquiry report showed that the charges against the applicant had been proved. These were very serious charges and the order of removal from service was perfectly valid. Dismissal of the appeal filed by her also said to be perfectly valid.

We have heard learned counsel for the parties.

A perusal of the above would show that the Inquiry Officer had asked the applicant while serving the chargesheet whether she wanted to be heard in person. The answer was in the affirmative. There

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is no question of giving any hearing at the stage of filing a reply to the chargesheet. The stage of hearing comes only after the proceedings begin. The reply dated 18.9.1984 clearly spells out that " personal hearing will not serve any purpose". It gave an impression that she was not given an opportunity of being heard. The principle of audi alteram partem is applicable in these proceedings before an adverse order is passed against an employee in a disciplinary proceedings. It is imperative that he or she is given an opportunity to explain her part of the case against the charges framed. Shutting her out from personal hearing violates the principles of natural justice.

Another aspect of the matter on which the law is very clear. Non-furnishing of inquiry report to delinquent officer would amount to violation of rules of natural justice. The position of law was made clear by the Tribunal in Full Bench case of PREMNATH K.SHARMA Vs. UNION OF INDIA AND OTHERS (1988 (6) ATC 904) which decision has been recently upheld by the Supreme Court in the case of UNION OF INDIA & ORS. V. MOHD. RAMZAN KHAN (JT 1990 (4)S.C. 456). It is obligatory for the Inquiry Officer to supply a copy of the inquiry report to the delinquent officer before awarding the punishment. This has not been done in the present case. It was sent along with the order removing he from service. This is contrary to an established law and, therefore, on this score her removal from service is

bad in law.

The third point argued by the learned counsel for the applicant was that the punishment was bad in law as the principle of double jeopardy was involved. It was contended that the earlier punishment of treating her leave as "Dies Non" precluded any other punishment under C.C.S. (CCA) Rules against her for absence from duty. The reason given was that the applicant could not be punished twice. The principle of double jeopardy would be involved if the applicant had been tried and punished for an offence and is again subjected to another punishment or another trial or another proceeding for the same offence. The order treating her absence as "Dies Non" was not the result of any proceeding contemplated under the law. It only made clear that the period was of unauthorised absence for which she is not entitled to be paid anything nor can be adjusted any leave due to her. The principle of double jeopardy, therefore, is not invoked.

Learned counsel for the respondents had cited the following cases to urge that the principle of double jeopardy is not attracted in the present case at all and the proceedings against the applicant were valid and not contrary to law:

SATYA PAL SAWHNEY Vs. LIFE INSURANCE CORP. OF INDIA (1980 (1) SLR 136).

A.C. SHUKLA Vs. THE D.G. B.S.F. & ORS. (1981 (1) SLR 733).

SUNIL KUMAR BANERJEE Vs. STATE OF WEST BENGAL & ORS (1980(2) SLR 147).

HAR SWARUP Vs. U.O.I. & ANR. (1986 (4) SLJ 84).

J.P. SRIVASTAVA Vs. U.O.I. & ORS.
(1978 (2) SLR 450)

R.C. SHARMA Vs. U.O.I. & ORS.
(1976 (2) SLR 265).

The question of double jeopardy came for consideration before a Larger Bench of the Tribunal at Calcutta in the case of SHRI BISWANATH DEBNATH Vs. UNION OF INDIA & ORS. (OA No.914/1987). Reference was made in the above case to the cases of MAQBOOL HUSSAIN V. STATE OF BOMBAY (AIR 1953 SC 325), THE ASSISTANT COLLECTOR OF CUSTOMS, BOMBAY AND ANOTHER V. L.R. MELWANI AND ANOTHER (AIR 1970 SC 962), THOMAS DANA V. STATE OF PUNJAB (AIR 1959 SC 375) and BAIJ NATH PRASAD TRIPATHI V. THE STATE OF BHOPAL AND ANOTHER (AIR 1987 SC 494). In the case before the Larger Bench at Calcutta, the Postal employee had taken some money which was not due to him and had returned the same, and thereafter have been tried for unauthorisedly taking the money from the Post Office. The argument that once the money is refunded, the employee cannot be proceeded with again was not accepted and rejected. The principle of double jeopardy was considered by the Supreme Court in the case of THE ASSISTANT COLLECTOR OF CUSTOMS, BOMBAY AND ANOTHER (supra) and it was held:

> "..... it is necessary for an accused person to establish that he had been tried by a "Court of competent jurisdiction" for an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force. If that much is established, it can be contended that he is not liable to be tried again for the same offence nor on the same facts for any other offence ..."

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We are satisfied that in the present case, the principle of double jeopardy has no application.

For the reasons indicated above, we are of the view that this Application must succeed and the order removing the applicant from service be set aside. Consequently, the appellate authority's order (Annexure A-7) must also be set aside. The inquiry proceedings against the applicant must also be set aside for the reasons that she had been denied an opportunity of hearing which she had prayed for. Consequently, the applicant is entitled to be reinstated in service. But we make it clear that it will be open to the respondents if they are so advised, to recommence the proceedings giving her an opportunity of filing a reply, and personal hearing and proceed thereafter in accordance with law. The Inquiry Officer will complete the inquiry proceedings within three months from the date of receipt a copy of this order. The entire disciplinary proceedings including appeal must be concluded in five months period. We also direct that she would be paid for 67 days, if she has not already been paid for the same. Further, she would only be paid her arrears of pay and allowances subject to her satisfying the respondents that she had not been gainfully employed during the period. We order accordingly. There will be no order as to costs.

(I.K.RASGOTRA) 6/3/91
MEMBER (A)
6.3.1991.

(AMITAV BANERJI)
CHAIRMAN
6.3.1991.

SKS