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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA No.1040/86

Date of decision:- 24th Sept. 92

Mrs.Kamlesh Dua ... Applicant

versus

Union of India through
Secretary, Ministry of Transport
& anr. ... Respondents

CORAM: THE HON'BLE SH.T.S.OBEROI, MEMBER(J)
THE HON'BLE SH.P.C.JAIN, MEMBER(A)

For the Applicant ... Sh.K.L.Bhandula,
Counsel.

For the Respondents ... Sh.K.C.Mittal,
Counsel.

1. Whether local reporters may be allowed to see the judgement? *yes*.
2. To be referred to the reporter or not? *yes*.

JUDGEMENT

(DELIVERED BY HON'BLE SH.T.S.OBEROI,
MEMBER(A))

In this OA filed under Section 19 of Administrative Tribunals Act, 1985, the applicant, a quasi permanent Steno Grade 'D' in the Ministry of Transport, Department of Surface Transport (Transport Wing), Parivahan Bhavan, New Delhi, seeks quashing of the notice of termination dated 22.8.86 (Annexure-I) issued under Rule 7(1) of the Central Civil Services(Temporary Service) Rules, 1965.

2. The applicant's case briefly is that she was appointed as Stenographer Grade III with effect from 18.9.76 in the Transport Wing of the Ministry of Shipping & Transport and on completion of three years' of satisfactory service, she was declared quasi permanent with effect from 18.9.79. Her case further is that she continued to put in work to the entire

satisfaction of her superiors, and there was no occasion at all, when she was found wanting in the proper discharge of her duties. However, since May, 1984, after her marriage, she was constrained to take leave on account of certain compelling circumstances such as ailment of her mother-in-law, child etc. Total leave availed of by her, during the period January 1984 to November, 1986 comes to about 2 years and 8 months. On 24.7.86, she was telegraphically informed by the respondents to resume duty by 5th August, 1986, failing which it would be presumed that she was not interested in Government service and, action will be taken accordingly, against her. She, however, informed the respondents that absence for the period in question was due to unavoidable domestic circumstances, mentioned above, and that she was very much interested to continue in service, and, therefore, her absence may be regularised by grant of appropriate leave. The respondents did not accept this plea of the applicant and instead issued notice dated 22.8.86 (Annexure -I) under Rule 7(1) of the Central Civil Services(Temporary Service) Rules, 1965 intimating her that her services shall stand terminated after expiry of a period of three months from the date on which Annexure-I is served on her. It is against this notice that the present OA has been filed.

3. Amongst the main grounds urged by the applicant, in support of her case, are that a quasi permanent Government servant is to be equated with that of a permanent Government servant, and, therefore, her services can be dispensed

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with only as per procedure provided for in the Central Civil Services (Classification, Control & Appeal) Rules, 1965, which has not been complied with in her case and that under FR 18, a Government servant can remain on leave upto 5 years, whereas in her case, the period of leave applied for by her, till then, was about 2 years & 8 months, and, therefore, she was within her entitlement, to pray for the grant of leave, on account of the unavoidable domestic circumstances, earlied alluded to by her.

4. In the counter filed on behalf of the respondents, the applicant's case was resisted on the ground that leave cannot be claimed as a matter of right and that the grant of leave rests upon the discretion of the competent authority, to grant or refuse the same, in view of the exigencies of the public service, and in the instant case, there being a ban on the recruitment of the type of posts held by the applicant, and there being shortage of Stenographers, in the organisation of the respondents, the respondents could illafford to allow the applicant to be away from duty for such longer spell. It was further averred that under FR 18 referred to by the applicant, though a Government servant can avail of leave upto a maximum of 5 years, that does not entitle a Government servant to just wilfully, proceed on leave for that much period and that the said rules provide that there should be exceptional circumstances under which leave should be allowed for such long period. Further Rule 7 of the CCS(Leave)Rules declares that the leave cannot

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claimed as a matter of right and that when exigencies of public service so require, leave of any kind may be refused/rejected by the authority competent to grant it.

5. Rejoinder has also been filed on behalf of the applicant, in which her earlier submissions in the O.A., were reiterated.

6. We have heard the learned counsel for both the parties and perused the relevant provisions contained in the Leave Rules and other provisions, referred to by the parties, in support of their respective stands. The learned counsel for the applicant pleaded that a quasi-permanent Government servant is equated with a permanent Government servant and that the latter can be removed from service, only under the due process of law, as envisaged under Article 311 of the Constitution of India. The learned counsel for the respondents, on the other hand, pleaded that due process of law, has been followed in the present case and the applicant has been issued a three months' notice of termination, as per requirement of the rules. We find force in the contention of the learned counsel for the respondents. No Government servant can avail of leave as a matter of right which may be granted or refused, by the competent authority, according to the exigencies of service. The rules under which action has been taken by the respondents in this case, enjoy the sanctity of the constitutional provisions, by virtue of the Proviso to Article 309 of the Constitution, violation of which entailed in

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action against the applicant, and hence, the propriety of the action taken. Further, the applicant's case also deserves to be rejected on the ground that she pretended to be medically unfit which, however, was found to be incorrect, on the applicant having been referred to Dr. Ram Manohar Lohia Hospital, for second medical opinion, as would be seen from copy of report at page 22 of the paperbook.

7. In the above conspectus of the facts and circumstances of the case, we find no merit in the O.A., which is accordingly dismissed, with no order as to costs.

Dec 24/9/92
(P.C. JAIN)
MEMBER(A)

Dec 24.9.92
(T.S. OBEROI)
MEMBER(J)