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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.1206/86.

Date of Decision:23.10.1992

Smt. Manokamna Dewan

Applicant

Versus

Union of India through
Secretary, Ministry of Defence

Respondents

For the applicant

Shri M.L. Bhargava, Counsel

For the respondents

None

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(Judl.)

The Hon'ble Mr. B.N. DHOUDIYAL, Member(Admn.)

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

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. DHOUDIYAL)

This OA has been filed under Section 19 of the Administrative Tribunals' Act, 1985 by Smt.Manokamna Dewan, challenging the orders of the respondents dated 29.6.85, imposing a penalty of withholding of one increment without cumulative effect and dated 24.6.86, after considering her appeal.

2. The applicant is working as Civilian Switch Board Operator, Miltrunk Exchange, Senā Bhawan, New Delhi. She applied for 42 days maternity leave from 19.11.83 to 30.12.83 due to natural abortion and also submitted a medical certificate from the registered medical practitioner. On 3.1.84, she was referred to a Medical Superintendent of Dr. R.M.L. Hospital. The medical report dated 13.2.84

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declared her fit for duty and also mentioned that, at that late stage, it was difficult to ascertain whether she had an abortion in November 1983. On 9.10.84, she was again asked to subject herself to the medical examination at the RML Hospital, which was conducted on 17.10.84. The Hospital authorities informed her that the required medical report would be sent to her office directly. By the letter dated 16.11.84 and 18.12.84, she was asked to obtain the report from the hospital. She informed the Commanding Officer that she had undergone the medical examination and it was for the Hospital authorities to send the report. In spite of this, she received letters dated 7.1.85, 30.1.85 and 4.2.85, reminding her about the medical examination. Later a memorandum dated 13.4.85 proposing action against her under Rule 16 of the CCS(CCA) Rules, 1965 was issued to her. The list of documents by which charge has to be proved ^{was} also mentioned. By her representation dated 16.5.85, she denied the charges and requested for an enquiry under Rule 16(1)(A) of the CCS(CCA) Rules, 1965. She also mentioned that reports received from the hospital may be shown to her. However, the authorities claimed that the medical report was confidential and copies could not be supplied to her. She again reiterated her request for holding an enquiry, for supplying all the relevant documents and pointed out that her disciplinary authority was SO-IN-C. Without holding an enquiry, the respondents issued the impugned order dated 29.6.85, awarding the penalty of withholding one increment for one year without cumulative effect. The appeal against this order was filed by her and vide their letter dated 24.6.86, she was informed that her appeal was dismissed. The orders on her appeal had been passed by Brig. G.K. Bhagat, OIC, Signals, Records. It was xxxxxxxxxxxx mentioned in the order that the applicant did not deny the charges categorically, no enquiry was necessary in this case and that OCI Signals Regiment was the competent disciplinary authority in her

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case. She has prayed that the impugned orders dated 29.06.1985 and 24.06.1986 be set aside and quashed and the respondents be directed to restore the withheld increments.

3. This case had been listed before the Tribunal, on as many as ten occasions since 1987. Despite notice, the respondents have not cared either to make appearance or to file any counter. The case is, therefore, being decided on the basis of the available records.

4. It is correct that under Rule 16 of the CCA (CCA) Rules, 1965, it is the discretion of the Disciplinary Authority to hold, or not to hold any formal enquiry, where penalty of minor nature is involved. However, this discretion has to be exercised judicially, particularly so, in a case like the present one, where, in compliance with the orders, the applicant has subjected herself to repeated medical examinations. The authorities were not satisfied with the first medical report by the registered medical practitioner and referred her to the Dr.RML Hospital. The medical report (Annexure-3) clearly mentions that the present examination does not reveal the evidence of the last abortion in November, 1983, 'as it is too long period since then'. At the time of examination, she was found fit for duty. In such a situation, it stands to reason that even the subsequent examination report would not make any difference. Even then, in compliance of the orders, the applicant subjected herself to a medical examination yet one more time. If the second medical report from Dr.RML Hospital was not received, the authorities should have contacted the Medical Superintendent, Dr. RML Hospital as the applicant was hardly in a position to obtain the same. Moreover, the applicant avers that the medical leave applied for, by her was duly sanctioned. Having sanctioned the medical leave and

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having received two medical reports, it is not fair and just on the part of the authorities concerned to take action against the applicant under rule 16 of the CCS(CCA) Rules, 1965. This is a clear case of non-application of mind by the Disciplinary and Appellate Authorities.

5. In the conspectus of the facts and circumstances of the case, we hold that the applicant is entitled to succeed. We hereby set aside and quash the impugned orders dated 29.06.1985 and 24.06.1986 and direct the respondents to restore the withheld increment to the applicant. The arrears due to the applicant on this account shall be calculated along with interest at the rate of 12%, till the date of actual payment. These orders shall be complied with, preferably within a period of two months from the date of receipt of this order.

6. There will be no order as to costs.

B.N. Dhoondiyal
(B.N. DHOUNDIYAL)
MEMBER(A)

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(P.K. KARTHA)
VICE CHAIRMAN(J)

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