

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1698/90 with MP-2243/90
 Tax No and MP-3323/90

DATE OF DECISION 01.05.1992

<u>Smt. Savitri Sharma</u>	<u>Petitioner</u> Applicant
<u>Shri S.C. Luthra</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India & Another</u>	Respondent
<u>Shri M.L. Verma</u>	Advocate for the Respondent(s)

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

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
 Mr. P.K. Kartha, Vice-Chairman)

The applicant, while working as L.D.C. in the Land & Development Office under the Ministry of Urban Development, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the remarks "Service terminated. PRO enquiry in vigilance case" appearing against her name in Annexure A-1, which is the draft seniority list of the Lower Division Clerks. This is on the basis that if the services of the applicant have been terminated, it is inconceivable that an enquiry in a vigilance case could be pending against her. *Q*

2. On 11.9.1990, the applicant filed MP-2243/90 praying for restraining the respondents from proceeding with the enquiry initiated against her under Rule 14 of the C.C.S.(CCA) Rules, 1965.

3. On 13.12.1990, she filed MP-3223/90 praying that the respondents be directed to take her back on duty immediately after the formal revocation/withdrawal of termination notice dated 10.2.1984 which became operative after 9.5.1984 and which notice was illegal and void ab initio. She had also prayed for all consequential benefits.

4. We have gone through the records of the case carefully and have heard the learned counsel for both the parties.

5. The facts of the case in brief are as follows. The applicant was appointed as L.D.O. in 1971 and was confirmed in the said post in 1974. In order to nurse her children, she had applied for the grant of Extraordinary Leave (EOL) and the same was sanctioned upto 31.12.1983. She applied for further extension of EOL. This was not sanctioned by the respondents and she was treated as an unauthorised absentee.

6. On 10.2.1984, the Land & Development Officer issued a memorandum to the applicant the last para. of which

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reads as under:-

"I, therefore, hereby give notice to Smt. Savitri Sharma, permanent Lower Division Clerk in this Office, that her service will stand terminated with effect from the date of expiry of a period of three months from the date on which this notice is issued".

(Vide page 11 of the paper-book)

7. The applicant made a representation on 20.2.1984 addressed to the Joint Secretary in the then Ministry of Works & Housing. After considering her representation, the Joint Secretary passed an order in which it was concluded that while he agreed that sufficient cause exists for taking disciplinary action against the applicant, the notice for termination of his service was not the proper procedure. He directed the L & D O to initiate proper disciplinary procedure against her and issue a charge-sheet, etc., to her for taking action against her. He added that as only a notice had been issued and even in the representation the applicant had asked for further leave, no further action was to be taken on the notice.

8. The above order of the Joint Secretary was communicated to the applicant on 4.2.1985. The respondents did not formally revoke their memorandum dated 10.2.1984, mentioned above.

9. During the hearing, the learned counsel for both the parties stated that a regular departmental enquiry against the applicant is in progress.

10. On 6.5.1989, the applicant submitted a representation to the Joint Secretary, Ministry of Urban Development, praying that the termination order may be withdrawn and that the intervening period from 10.2.1984 till date be treated as "spent on duty" with full pay and allowances and other consequential benefits.

11. The respondents have contended in their counter-affidavit that after the orders of the Joint Secretary were communicated to the applicant by the Director (Lands) on 4.2.1985, she should have immediately reported for duty, but she did not do so. According to them, the very issue of charge-sheet to the applicant shows that there was no termination in force after the orders of the Joint Secretary were passed. It has been contended that the termination notice "stands revoked itself". In other words, they are contending that this is a case of implied revocation of the termination order issued on 10.2.1984.

12. As regards the statement in the seniority list that the applicant's services had been terminated, the respondents have explained in their counter-affidavit that the seniority list was issued to comply with the order of this Tribunal in some other case. The inclusion

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of the name in the seniority list shows that the Department was considering her on the strength of the office. The word "terminated" shown in the seniority list, is for reference of the office only.

13. In our opinion, the communication of the order of the Joint Secretary to the applicant on 4.2.1985, does not amount to the formal revocation of the notice issued to the applicant on 10.2.1984. Whether there had been an implied revocation or not, is not, however, germane for the disposal of the present application. The very fact that a disciplinary proceeding has been initiated against the applicant even after 4.2.1985, clearly indicates that there is 'master-servant' relationship between the Govt. and the applicant. The question arises whether the applicant is entitled to full pay and allowances for the period from 4.2.1985 to date.

14. We have carefully considered the matter. In our opinion, pending the outcome of the disciplinary proceedings, the applicant should be given one-half of the pay and allowances equal to the subsistence allowance payable to a Government servant placed under suspension, for the period from 4.2.1985 to the date of conclusion of the disciplinary proceedings by passing the final order. The question whether the applicant would be entitled to full

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pay and allowances, would depend on the final outcome in the disciplinary proceedings initiated against him.

15. In the light of the foregoing discussion, the application is disposed of with the direction to the respondents to release one-half of the pay and allowances, equal to the subsistence allowance payable to a Government servant placed under suspension, for the period from 4.2.1985 till the date of the conclusion of the disciplinary proceedings initiated against the applicant. We leave open the question whether the applicant would be entitled to full pay and allowances for the said period as that would depend upon the final outcome of the disciplinary proceedings. The respondents shall comply with the above directions as expeditiously as possible, but preferably within three months from the date of communication of this order. There will be no order as to costs.

MP-3323/90 and MP-2243/90 are also disposed of accordingly.

Sukhdev
(I.K. Rasgotra) 15/7/2
Administrative Member

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(P.K. Kartha)
Vice-Chairman (Judl.)