

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

(30)

O.A. No. 321/90 198  
T.A. No.

DATE OF DECISION 25-10-1995

Smt. Mohini Navani  
Applicant (s)

Shri R.D. Sharma  
Advocate for the Applicant (s)

Versus

U.O.I. & Others  
Respondent (s)

Shri E.X. Joseph, Senior Counsel Advocate for the Respondent (s)  
with Shri N. Amresh

CORAM :

The Hon'ble Mr. N.V. Krishnan, Acting Chairman

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

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. To be circulated to all Benches of the Tribunal ? *NO*

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member (J)

*N.V. Krishnan*  
(N.V. Krishnan)  
Acting Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

31

O.A.NO.321/90

New Delhi, ~~this~~ the 25th day of October, 1995

Hon'ble Shri N.V. Krishnan, Vice Chairman(A)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Smt. Mohini Navani,  
w/o Shri Chander Namani,  
U.D.C., Army Purchase Organisation,  
Ministry of Defence,  
New Delhi.

R/o E-1, Jangpura Extension,  
Opposite Sanatan Dharam Mandir,  
New Delhi.

... Applicant

By Advocate: Shri R.D. Sharma

Vs.

1. Union of India,  
through the Secretary,  
Ministry of Defence,  
South Block, New Delhi.
2. The Director (E),  
Ministry of Defence,  
Government of India,  
(Army Purchase Organisation),  
New Delhi.
3. The Deputy Secretary,  
Government of India,  
Ministry of Food and Civil Supplies,  
Department of Food,  
Krishi Bhawan,  
New Delhi.

.... Respondents

By Advocate: Shri E.X. Joseph, Senior Counsel with  
Shri N. Amresh.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant is aggrieved by the penalty order  
passed by the disciplinary authority dated 16.4.87 removing  
her from service (Annexure - A) which was confirmed by the

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appellate authority by his order dated 9.10.87 (Annexure-B). These orders have been passed after holding a disciplinary proceeding against her under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The applicant claims that the impugned orders have been passed contrary to law and the procedure laid down under the CCS (CCA) Rules, 1965. She has, therefore, prayed that the orders removing her from service dated 16.4.87 and 9.10.87 may be quashed and set aside and she may be reinstated in service w.e.f. 16.4.87 with all consequential benefits.

2. The brief facts of the case are that the applicant was appointed as L.D.C. on 5.5.1972 with Respondent No.3 and promoted as U.D.C. on 8.11.83. According to her, prior to her marriage on 13.11.83, there were no complaints against her from any of her superior officers regarding her work or conduct. The applicant states that she had applied for 48 days Earned Leave from 14.11.83 for her own marriage which was rejected vide memo. dated 29.11.83 (Annexure A-5) and she was directed to resume duty on 1.12.83 positively, failing which action will be taken against her under the rules. Similarly on a number of other occasions she alleges that she had applied for leave on genuine grounds but it was not sanctioned by the competent authority in order to harass her. She was also threatened <sup>that</sup> if she did not resume duty, disciplinary action will be taken against her. The applicant states that

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because of some domestic problems coupled with serious health problems which she developed after her marriage, due to early pregnancy followed by abortions, she could not attend the office for which she had furnished medical certificates. Her applications for leave were initially not granted and she was treated as absent unauthorisedly from duty (Annexures 6, 7, 12 and 18). Subsequently, a charge-sheet was issued to her on 23.11.84 (Annexure A-13) which reads as follows:-

"That Smt. Mohini Navani, U.D.C., Department of Food, Ministry of Food & Civil Supply, Krishi Bhavan, New Delhi while working as such, has been absenting herself from duty w.e.f. 26.9.84 in an unauthorised manner. She has also been irregular in attending during the period from 14th November 1983 to 21st September 1984 inasmuch as she remained away from duty on one pretext or the other for 211 days during the above mentioned period. Smt. Navani, U.D.C. has thus shown lack of devotion to duty and exhibited conduct unbecoming of a Government servant, contravening Rule 3(1)(ii) & (iii) of the Central Civil Services (Conduct) Rules, 1964."

The statement of misconduct/misbehaviour on the part of the applicant is given in Annexure-2 of the chargesheet in which the period of leave and the grounds on which she had applied for leave are given. She was later given another chargesheet dated 11.6.85 (Annexure A-27) but the impugned orders have been passed only in pursuance of the chargesheet dated 23.11.84, as also confirmed by the respondents in their reply. and therefore, the later chargesheet dated 11.6.85 was neither argued nor is being considered here.

3. The Enquiry Officer who was appointed by an order dated 17.1.85, after inquiring into the charges submitted his report on 14.10.86 (Annexure A-52). He states that he conducted the preliminary hearing on 16.2.85 and had also given notice of the hearing to the applicant. The applicant alongwith her defence assistant were present at the preliminary hearing held on 4.3.85, when she denied all the charges. The applicant had contended that she had been giving leave applications regularly to the competent authority and she, therefore, denied the charges that she had remained on unauthorised leave during the period. She had also denied that she had remained away from duty on one pretext or the other because she had applied for the leave on medical and domestic grounds. Regarding the other charge, that she had been showing lack of devotion to duty, the applicant has stated that it can well be judged from her past record that she had not been issued any warning, notice etc. by the Administration for lack of devotion to duty. She, therefore, denied this charge also. The hearing of the case had been conducted by the Enquiry Officer on a number of days as detailed in paragraphs 9 - 12 of his report.

4. The Enquiry Officer has in the concluding part of his report divided the charges into two parts namely:-

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- a) Smt. Mohini Navani had been irregular in attendance during the period from 14.11.83 to 21.9.84. Inasmuch as she remained away from duties on one pretext or the other for 211 days during the above period.
- b) She had been absenting herself from duties w.e.f. 26.9.84 in an unauthorised manner and thereby has shown lack of devotion to duty and exhibited conduct unbecoming of a government servant, contravening the Rule 3(i)(ii) and (iii) of the Central Civil Services Conduct Rules, 1964.

After going through the proceedings of the case, the Enquiry Officer came to the conclusion that for the first period i.e. from 14.11.83 to 21.9.84 the charge was not established that the leave taken was on one pretext or the other as alleged by the administration. The leave applied for her own marriage from 14.11.83 to 31.12.83 which was not recommended for sanction in the first instance was not considered to be on any pretext. Similarly the Enquiry Officer has pointed out that merely because she had taken leave frequently on medical grounds, it cannot be concluded that she remained away on duty on one pretext or the other as she was not asked to produce the second medical opinion. Further, it was noted that the leave for the <sup>first 13</sup> period had been subsequently sanctioned by the competent authority and thus the charge (a) above that she remained away from duties on one pretext or the other for 211 days was held to be not established.

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For the period on leave from 26.9.84, the Enquiry Officer came to the conclusion that the applicant had stated that it was for settling some domestic problems. Later on she had produced medical certificates when the chargesheet was issued to her. He, therefore, states that there is no force in her argument that she had applied for leave on the advise of the Doctor. The argument put forward by the applicant that she was fully devoted to duty before her marriage prior to 14.11.83 was not accepted by the Enquiry Officer on the ground that "she remained most of the period on leave after her marriage on grounds other than medical." He, therefore, found charge (b) above, that the applicant had absented herself from duties w.e.f. 26.9.84 in an unauthorised manner is proved.

5. The Disciplinary authority passed the penalty order of removal from service on 16.4.87. In this order, he has referred to the conclusions given by the Enquiry Officer mentioned in para 4 above namely that the charge pertaining to the 211 days of unauthorised leave is not established and that she has been unauthorisedly absent from duty w.e.f. 26.9.84 as proved. In the next paragraph of the order the disciplinary authority has stated that on a careful consideration he accepts the findings of the Enquiry Officer that the applicant remained away from duties for 211 days on one pretext or the other as not established, followed by the sentence " the said Smt. Navani

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did not attend office w.e.f. 26.9.84 to 11.1.87<sup>th</sup>. He also makes an observation that despite the fact that she had been chargesheeted, she did not make any effort to join duty earlier. He, therefore, comes to the conclusion that the applicant is not interested in Government service and the charge of unauthorised absence, lack of devotion to duty and conduct unbecoming of a Government servant stands fully established on which the penalty of removal from service was passed with immediate effect.

6. The Appellate authority by the order dated 9.10.1987 has confirmed the penalty order. The Appellate authority while discussing applicant's contentions regarding her ill-health and other domestic problems arising from her marriage has commented that if for these reasons she was compelled to take leave, she should have applied for the same and obtained approval of the competent authority. He has also mentioned that she has applied for leave on domestic grounds which coupled with her contention of non acceptance of medical certificates submitted later on as being not arbitrary and irrelevant. The applicant's contention had been all along that she had applied for leave which was, however, not sanctioned by the competent authority. It is seen from the orders passed by the disciplinary authority

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and the appellate authority that neither of them has discussed the reasons, if any, why her leave, including the period of leave she had applied for her own marriage was initially refused by the competent authority and subsequently sanctioned, or the reasons why her leave for the subsequent periods has also been rejected. The appellate authority has stated that the applicant's argument that she has been victimized being a lady is not relevant as she has not been discriminated on the basis of sex.

7. The main contention of Shri R.D.Sharma, counsel for the applicant was that the applicant had been harassed by Respondent No.3 by refusing her leave ~~as~~ which she had applied <sup>even ~~for~~</sup> <sup>own</sup> for her ~~marriage~~, ill-health and because of domestic problems. The learned counsel submits that the impugned orders have been passed without application of mind. The learned counsel further states that her previous record of service from 1972 till 1983, when her troubles started from the time of her marriage in November, 1983 was such that there was absolutely no complaints from her superior officers and she had worked with full devotion and sincerity. Her request for leave was in circumstances which should have been sympathetically dealt with, whereas on the other hand she had been harassed by Respondent No.3. The learned counsel for the applicant also submits that the applicant had joined the duties

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when she was declared medically fit on 19.9.85 (Annexure A-34) and posted to the Army Purchase Organisation where she remained on duty till 3.1.1986. This period had been ignored in the impugned orders showing lack of application of mind and that the orders have been passed arbitrarily. The learned counsel for the applicant also submits that the only witness mentioned in the chargesheet namely Shri Prem Kumar, Section Officer was not called at the enquiry so that the right of the applicant to cross-examine him was not afforded thereby vitiating the enquiry. His next contention was that as per the DOP&T O.M. dated 7.2.77 (Annexure A-4), disciplinary proceedings should not have been instituted on trivial matters and in any case absence from duty on the grounds mentioned by the applicant does not warrant imposition of the major penalty of removal from service.

8. We heard Shri E.X. Joseph, Senior counsel for the respondents and have also perused the record in the case. The respondents have denied the above allegations and stated that because of her unauthorised absence from duty the penalty has been correctly imposed. They also contend that once the penalty has been imposed after holding an enquiry under the rules, the Tribunal ought not to interfere in the matter in the guise of judicial review.

9. We have carefully considered the facts and other relevant material on record in this case including the personal file and A.C.R. file of the applicant which have been submitted by the respondents.

10. The disciplinary authority while passing the order dated 16.4.87 noted that the charge pertaining to 211 days is not established but he concluded that the applicant did not attend the office w.e.f. 26.9.84 to 11.1.87 and he has also added that despite the fact that she had been chargesheeted, she did not make any effort to join duty earlier. The findings of the disciplinary authority that she was absent from duty from 26.9.84 to 11.1.87 is contrary to the facts admitted by the respondents in their reply dated 21.5.90 in which they have stated as follows:-

"Ms. Navani being on duty from 19.9.1985 to 31.1.1986, does not reduce the gravity of the proved misconduct. Further in view of the foregoing it is not relevant either."

The above clearly shows that the conclusion of the disciplinary authority is not based on any evidence before him but on a wrong assumption that she was absent from duty w.e.f. 26.9.84 to 11.1.87. The attitude of the respondents that the fact that she attended duty from 19.9.85 to 31.1.86 does not reduce the gravity of the proved misconduct and that this fact is not relevant shows their inimical attitude towards the applicant that they wanted to impose a major penalty

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41

on her disregarding relevant facts. It is well settled law that a domestic enquiry is not a mere formality and the punishing authority has to consider all the relevant facts, including the defence taken by the applicant before coming to the conclusion. In this case, the career of the applicant was at stake and the attitude displayed by the respondents has nothing to commend it. First, Respondent No.3 refused the earned leave asked for by the applicant for her own marriage which <sup>though</sup> later on sanctioned after the disciplinary proceedings were started shows that respondents' attitude was unreasonable towards her. Then they impose the major penalty, when perhaps a lesser punishment would have been sufficient, in a cavalier manner. They seem to have pre-judged the issue. The disciplinary authority has failed to consider the relevant evidence before him, namely her presence in the office during the relevant period, before coming to the conclusion that the charge stands fully established which shows lack of application of mind. The Appellate authority has also failed to refer to this material fact in the order dated 9.10.87. The stand taken by the respondents in their reply that the fact that she had attended office for more than 4½ months during the relevant period when she was stated to be unauthorisedly absent itself shows the unreasonable and arbitrary action taken by the respondents in imposing the extreme punishment. If the disciplinary authority had applied his mind to all the facts, it might have been possible that <sup>no punishment or</sup> a less harsh punishment, other

than removal from service could have been imposed.

11. In the appeal filed by the applicant to the Appellate authority dated 14.5.87, she had requested the Appellate authority to look into the matter independently and set aside the disciplinary authority's order. She had in particular drawn attention to the fact that the rejection of leave for her own marriage shows that the administration was biased against her and that she has been harassed. While she admitted that leave was not a matter of right, she had submitted that it should not be used as a tool to harass the employee. She had referred to her earlier record of service from 1972 which has, however, not been looked into by the Appellate authority. We have seen the applicant's Annual Confidential Reports from 1972 onwards and we find that against the column whether the applicant has been reprimanded for indifferent work or for other causes for the years 1972 - 1976; the remark is 'No.'; and for the periods ending 31.12.74 and 31.12.75 another remark was that she is "disciplined and maintains excellent relations with the fellow employees". No adverse remarks have been recorded by the Reporting Officers for these years against the columns 'Punctuality in attendance'. We, therefore, find that her averment that she has not been reprimanded for indifferent work or that there were no complaints against her work in the years

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43

from 1972 upto 31.12.83 is as per the records. It will be relevant to mention that for the period 22.7.83 to 31.12.83 the Reviewing Officer who assessed her overall performance as 'Good' had specifically recorded his disagreement with the remarks recorded by the Reporting Officer as follows:-

Amenability to discipline: Fair	}	I do not agree. Reporting Officer never complained to me about her.
Punctuality in attendance: Fair		

Sd/-  
13.1.84

Has the officer been reprimanded for indifferent : No work or for other causes during the period under report. If so, please give brief particulars.

For the period ending 1984 the Reporting Officer had mentioned that she was amenable to discipline, punctual in attendance and he was not aware of any reprimand/warning issued to her, which has been agreed to by the Reviewing Officer. The contention of the applicant that her service and conduct prior to 1983 had not given rise to any complaints from her superior officers, therefore, is borne out by the A.C.Rs. for the relevant period which had not been taken into account at all by the Appellate authority while dismissing her appeal. In this case, admittedly the period of leave from 14.11.83 to 21.9.84 has been sanctioned and only the period of absence from 26.9.84 remained for consideration whether it was unauthorised or not.

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12. In the facts and circumstances of the case, it appears that the penalty of dismissal is too harsh and disproportionate to the misconduct alleged and not warranted. This is so, having regard to the Government of India's instructions to Rule 11 of the CCS (CCA) Rules, (para 5 of Swamy's Compilation, 20th Edition, pages 16 - 17 D.G., P & T.'s letter No.6/28/70-Disc.I(SPB-I), dated the 5th October, 1975). These instructions <sup>decisions</sup> are stated to have been taken in consultation with the Department of Personnel and the Ministry of Finance and hence the general principles contained in it would be applicable to this case. Paras.(ii) and (iii) of these instructions provide as follows:-

- (ii) When a temporary Government servant applies for leave beyond the prescribed limit of extraordinary leave and the leave sanctioning authority is not satisfied with the genuineness of the grounds on which further leave has been asked for, nor does it consider the grounds as exceptional, the leave cannot be granted. In such a case the Government servant should be asked to rejoin duty within a specified date, failing which he would render himself liable for disciplinary action. Disobedience of orders to rejoin duty within the specified period would afford good and sufficient reasons for initiating disciplinary action under CCS (CCA) Rules, 1965. If he rejoins duty by the stipulated date, he may be taken back to service and the period of absence not covered by leave be treated as overstayal of leave and dealt with in accordance with the orders regarding regularisation of overstayal of leave.

18

If the Government servant does not join duty by the stipulated date it would be open to the disciplinary authority to institute disciplinary proceedings against him. If during the course of disciplinary proceedings he comes for rejoining duty, he should be allowed to do so without prejudice to the disciplinary action already initiated against him (unless he is placed under suspension) and the disciplinary action concluded as quickly as possible. The question of regularisation of the period of overstay of leave be left over for consideration till the finalisation of the disciplinary proceedings.

- (iii) If a Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences, viz., that the entire period of absence would be treated as unauthorised, entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If, however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorised resulting in loss in pay and allowances for the period of absence under proviso to F.R. 17(1) and thus a break in service. The question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard.

From the above it can be seen that if the charged official had reported for duty during the pendency of the disciplinary

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proceedings, as in this case, she can be taken back on duty and her period of absence treated as unauthorised resulting in loss in pay and allowances. The question of regularisation of the period of overstay of leave has to be done after the finalisation of the disciplinary proceedings. From a perusal of these instructions, therefore, the penalty of dismissal from service does not appear to be contemplated in such cases where the charged official rejoins duty, because then the question of regularisation of the period of overstay of leave after conclusion of the disciplinary proceedings will not arise.

13. We are well aware that this Tribunal cannot interfere with the findings of the competent authority or substitute its own discretion for that of the competent authority in exercising the power of judicial review unless the decision of the competent authority is arbitrary or utterly perverse or not based on any evidence (UDI Vs. Parmanand reported in AIR 1989 S.C. 1185). As mentioned above, in this case the competent authority has totally ignored the relevant facts mentioned above, including the fact that she had attended office from 19.9.85 to 31.1.86 when the charge is one of unauthorised absence from work during the <sup>relevant</sup> period. This fact alone is sufficient to

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set aside the penalty order as it shows that the same has been passed without application of mind, ignoring material facts and law and is arbitrary and perverse. We accordingly do so. The Appellate authority has also ignored considering the relevant materials as mentioned above before quashing the penalty order. Accordingly, the penalty order dated 16.4.87 and appellate order dated 9.10.87 are hereby quashed and set aside.

14. In the result, the application is allowed. The respondents are directed to reinstate the applicant in service within one month of the receipt of a copy of this order. The disciplinary authority shall pass a reasoned and speaking order for the period of her absence from 26.9.84 till the date of issue of chargesheet on 23.11.84, taking into account also her past record prior to November 1983, and the observations made above, together with an appropriate order dealing with the intervening period from her dismissal to her reinstatement in accordance with law within a period of two months of her reinstatement. There will be no order as to costs.

*Lakshmi Swaminathan*

(SMT. LAKSHMI SWAMINATHAN)  
MEMBER (J)

25/10/85

*N.V. Krishnan*  
25/10/85

(N.V. KRISHNAN)  
ACTING CHAIRMAN