

Central Administrative Tribunal
Principal Bench: New Delhi.

Date of Decision: 12.12.90

OA-638/90

Raj Kumari

... Applicant.

OA-670/90

Smt. Raj Kumari

... Applicant.

Vs.

Union of India

... Respondents.

For the applicant

... Shri Swantanter Kumar,
Advocate.

For the respondents

... Sri O.P. Kshtriya,
Advocate.

CORAM: Hon'ble Shri P.C. Jain, Member (Administrative)
Hon'ble Sri J.P. Sharma, Member (Judicial).

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma)

Both the OAs are filed by the same applicant and can be conveniently disposed of by a common judgement.

OA-638/90

2. The applicant, a Stores-cum-Accounts Clerk but alleged to be working as Unit Catering Manager (UCM), P.M's. Sectt. Canteen, filed OA-638/90 aggrieved by the action of the respondents (Union of India, General Manager, Northern Railway, and Sri Chhatrasal, Assistant Commercial Officer) in threatening the termination of her services without due process of law and also not paying the applicant on the principle of equal pay for equal work.

3. The applicant claimed the following reliefs:

- i) A direction to the respondents to pay to the applicant higher wages and all other benefits in the pay scale as applicable to the UCM from May, 1984.
- ii) a further direction to the respondents to treat the applicant as confirmed Stores-cum-Accounts Clerk and an injunction to the respondents restraining from terminating the services of the applicant without following the process of law from the post of UCM or from Stores-cum-Accounts Clerk.

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4. The facts as given by the applicant are that she was appointed as Stores-cum-Accounts Clerk by the order of General Manager, Northern Railways, Baroda House and she joined in the Parliament House Annexe Canteen. There are 6 canteens in addition to the one which is known as Prime Minister's Secretariat Canteen. The applicant, because of her ability and performance, was made to look after the canteens at North Avenue, Parliament House and Parliament House annexe while mainly she took charge of the Prime Minister's Secretariat Canteen in May, 1984. It is stated by the applicant that though she was appointed as Stores-cum-Accounts Clerk, she was required to perform the duties and functions of Unit Catering Manager with effect from 10th May, 1984. She was disbursing salary to the staff etc. and signing indent of requirement for the Unit as well as maintaining Books of Accounts, Attendance Register etc.

The scale of the Unit Catering Manager is Rs. 1400-2300 (RS)

but the applicant was paid the salary of Rs. 1130/- per month in the pay scale of Stores-cum-Accounts Clerk. She has

further alleged that the respondents, specifically respondent

No. 4 Shri Chattresal, Assistant Commercial Officer,

Northern Railway is threatening to terminate her services.

It is further stated by the applicant that juniors to her,

namely, Mrs. Sunita Sharma, Ajay Singh Yadav and Rameek Singh

have already been regularised but the applicant has not been

regularised as such. Not only that, Shri Rameek Singh has

been given the higher scale than that of the applicant.

The applicant has also alleged malafide against respondent

No. 4.

5. The respondents filed the reply that the application

is misconceived and the applicant has not exhausted the

departmental remedies and so the application is barred by

Section 20 of the Administrative Tribunals Act, 1985. It is

stated that the applicant was engaged as a casual labourer and

given temporary status on ad hoc basis as Store-cum-Accounts

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Clerk in Parliament House Annexe and she is still serving on this post under the Chief Inspector Catering. The applicant is not at all qualified to hold the post of Canteen Manager. She has neither any diploma in catering nor any experience of running a canteen before joining the present service as a casual labourer. She was never appointed as a Canteen Manager. There was no post of CCS (Canteen) at the time of opening of the canteen in the Prime Minister's Secretariat as well as in the Parliament House. These canteen were taken up by the Railways later and the applicant was posted as Stores-cum-Accounts Clerk on ad hoc basis. She was never appointed as the Manager of the canteen. It is further stated that the applicant managed to secure certain certificates with the help of her near relations particularly her brother-in-law Shri B.R. Anand, the then Assistant Commercial Officer, Catering. As a matter of fact the work of the canteen was not satisfactory as is evident from the complaints from the Prime Minister's office (R I & R II). It is further stated that since the applicant was Store-cum-Accounts Clerk, she was misusing the stamp of Manager by stamping it herself on her own accord without any authority. The applicant was issued a memorandum of charges on 16.12.1987 as there was imputation of misconduct/misbehaviour against her on account of her having committed glaring irregularities and embezzlement of Government money to the tune of Rs.2,235/- The charges levelled against her were the result of vigilance check. In that case, a penalty was imposed on her withholding of her increments for three years by the order dated 12th September, 1989. That is the subject matter of the OA-670/90. OA-638/90 was filed by the applicant in 1990 concealing all these facts and made certain statements in the OA which are contrary to facts.

The applicant has no case and as such OA-638/90 is liable to be dismissed.

OA-670/90

6. In OA-670/90 which is taken up along with the above OA, the same applicant Smt. Raj Kumari has assailed the order dated 12th September, 1989 passed by the Assistant Commercial Officer (Catering), Northern Railway by which a penalty of withholding the three increments was imposed on the applicant. (Annexure-IX). In this OA, the applicant claimed the reliefs that the order dated 12.9.1989 be set aside and quashed and the respondents be directed to give all consequential benefits regarding her salary and allowances.

7. The facts given above in OA-638/90 are common to this application also. The only relevant facts are that a memorandum dated 16.12.1987 (Annexure-V) was served on the applicant and the statement of imputations of misconduct/misbehaviour was also given to the applicant and she replied to the above charge-sheet by her representation dated 23.1.89 challenging the imputations against her. It is said that the respondents without holding enquiry in accordance with the CCS (CCA) Rules, 1965 or even following the principle of natural justice passed an order of punishment dated 12.9.1989 (Annexure-IX). The applicant preferred an appeal against the said order vide representation dated 11.10.1989 (Annexure-X) but the same has not yet been disposed of within the period of 6 months. It is contended by the applicant that the punishment order was not passed by the Competent Authority as she was appointed by Senior Personnel Officer who is higher in rank and status than the Assistant Commercial Officer (Catering). The respondents filed a reply contesting the application and most of the contentions taken in this application have already been referred to in the reply to the aforesaid OA 638/90. The respondents have also stated that the applicant was appointed as a casual labourer and was also over-age at the time of her appointment. The applicant

was directly issued memorandum of charges from the Headquarters Officer on account of her glaring irregularities involving embezzlement of Government money to the tune of Rs.2,235/- on account of fictitious payment.

The charges levelled against her were the result of vigilance check. The charge-sheet was issued in December, 1987 but the applicant adopted delaying tactics and filed a reply in January, 1989. The penalty of withholding of increments for three years was imposed by the order dated 12.9.1989. The applicant was given ample opportunities for her defence and she took more than two years in

submission of her defence. There is no violation of principles of natural justice. At the time when this application was preferred, the appeal was still under consideration. The respondents have completely denied the contention of the applicant in para 4.27 of the OA that one Shri Sanjeev Kumar was given ad hoc appointment

on the recommendation of a letter by the P.A. to Railway Minister. The applicant is not entitled to any relief.

8. We have heard the learned counsel for the parties at length and have gone through the records of the case.

9. During the course of the arguments, the learned counsel for the respondents has filed certain papers as Annexure R-4 to R-13. Annexure R-4 is the daily wager staff payment voucher from 16.12.1980 to 31.12.1980, and 1.1.1981 to 19.1.1981 wherein Mrs. Raj Kumari is shown as a daily wager. Annexure R-5 is the offer of appointment dated 22.1.1981 of Mrs. Raj Kumari as purely ad hoc store-cum-Accounts Clerk on the terms and conditions laid down therein in the Catering Department of Parliament House Complex. Annexure R-6 is the Notice of appointment dated 17.2.81 of other persons including the applicant on ad hoc basis in the Catering Units of Parliament House Catering Establishment. Annexure R-7 shows the designations of staff in

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the Catering Unit on ad hoc basis and the date of joining of the applicant is shown as 22.1.1981 as a Store-cum-Accounts Clerk. Annexure R-8 is a notice requiring ad hoc employees to appear on 12.4.1990 at 10 hours in the Headquarters Office, Baroda House, New Delhi for screening (viva-voce) test for regularisation. Annexure R-7 is regarding the resumption of duty of one Shri Unny Chandra Mohan as Chief Catering Inspector on 8.11.1989 and Annexure R-10 is the offer of appointment of said Unny Chandra Mohan dated 3.12.1987. Annexure R-12 is the notice of said Shri Unny Chandra Mohan in the Parliament House Catering Complex. Annexure R-13 is the Recruitment Rules for the staff of departmental catering unit.

10. As regards the OA-638/90, the applicant claimed the relief for higher wages of the scale of UCM from May, 1984

and further for a direction to the respondents that the applicant be treated as a confirmed stores-cum-Accounts Clerk with a further direction on that the services of the applicant be not terminated except by following the due process of law. The OA was filed in April, 1990 and notice was issued to the respondents on the point of admission.

On the interim relief by the order dated 12.4.1990, status quo was ordered to be maintained. It appears from the record that the applicant had already been served with the charge-sheet dated 16th December, 1987 to be proceeded against under Rule 11 of the Railway Servants (Discipline & Appeal), Rules, 1968. The applicant filed her reply to the said charge-sheet in January, 1989 and the punishment order was passed on consideration of the reply of the applicant on September 12, 1989 (Annexure IX) imposing the penalty of withholding of increments for three years. Thus, when the applicant filed OA-638/90, she had already preferred an appeal to CCS on 11.10.1989 (Annexure-X) but she did not disclose this fact in OA-638/90 and thus concealed a material fact. In the other OA-670/90 which was also filed in April,

1990 after OA-638/90 the order of punishment dated 12.9.89 was assailed though the appeal against that order was still pending. Thus in OA-638/90, the applicant did not assail the order of withholding of increments for three years dated 12.9.1989 and obtained status quo by making a prayer for interim relief that the services of the applicant should not be terminated except without following the due process of law and that relief was granted to the applicant as an interim relief on 12.4.1990. After this interim relief was granted to the applicant, OA-670/90 was filed on 16th April, 1990 and in that OA also it has not been shown that the applicant has been granted interim relief in OA-638/90. Thus, the applicant has not come with clean hands before the Tribunal.

11. As regards the relief claimed in OA-638/90, the applicant has not exhausted the departmental remedies as is mandatory under Section 20 of the Administrative Tribunals Act, 1985, Section 20 lays down:

"The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him/her under the relevant service rules as to redressal of grievances."

In OA-638/90 the applicant prays for her deemed confirmation as Store-cum-Accounts Clerk and a direction to the

respondents to confirm her in the post of UCM but she had not made any representation in that regard to the concerned authorities. Be it whatever may, the applicant was employed

as a casual labourer and she was required to appear before a screening committee in connection with her regularisation by General Manager, Northern Railway as is evidence by the notice dated 28.3.1990 (Annexure R-8). The applicant

filed this OA-638/90 after this notice was served upon her.

The applicant concealed this fact in this application.

The applicant should have awaited the result of the screening (viva-voce) test which was held as per notice

under Rule 11 of the Discipline and Appeal Rules, 1968. This order awarded to her as a minor penalty in enquiry proceedings appeal as the Tribunal cannot sit in appeal on the punishment the applicant should have come after the decision of the

period of six months, yet it shall be better and proper that on 11.10.1989. Though the appeal was not decided within a filed a copy of the appeal (Annexure-10) which she preferred is already pending with the Appellate Authority and she has Regarding OA-670/90, the appeal of the applicant

13. fact, the reliefs claimed in OA-638/90 cannot be considered. of right claim certain benefits as per Rules. In view of this casual labourer having a temporary status, cannot as a matter been held in Ram Kumar Vs. U.O.I. 1989(1) SLJ P.102 SC that a Section 20 of the Administrative Tribunals Act, 1985. It has the remedies which should ordinarily have been done under

of not making a departmental representation and not exhausting by the applicant in OA-638/90 suffers from a major fatal defect subsequent OA-670/90. In view of the above, the relief claimed have been terminated nor she has mentioned this fact in her

either in OA-638/90 or in the rejoinder that her services prescribed by law, and for this, the applicant has not shown should not be terminated except without following the process to reliefs claimed by the applicant is that her services

The was actually made to work as U.M cannot be accepted. The clear admission by the applicant, her assertion that she administrative/financial power to employ staff." In view of Accounts Clerk quite a low post and have not been delegated

has clearly stated in para 7(c) "I am appointed as Store-cum- is filed in the file of OA-670/90 (Annexure VII) the applicant record in reply to the charge sheet of December, 1987 which

had not preferred any representation. On the face of the of 'equal pay for equal work', for that too the applicant awarding her wages of Unit Canteen Manager on the principle 12. As regards the relief claimed by the applicant for dated 28.3.1990 (Annexure B-8).

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is also so because the applicant has already filed OA-638/90 on 9th April, 1990. The applicant had preferred the appeal (Annexure-10) on 11.10.1989. The period of six months would have expired on 10th April, 1990 while the OA had already been preferred on 9th April, 1990 and an order was obtained for maintaining status quo on 12.4.1990 (See FB decision in OA 27/90, B.P.Rao Vs. DET Eluru Hyderabad Bench, decided on 12.4.1990).

14. In view of the above, we are of the opinion that OA-638/90 and OA-670/90 are not maintainable and are barred by the provisions of Section 20 of the Administrative Tribunals Act, 1985. However, the applicant shall be at liberty to come again if so advised after the disposal of the appeal against the punishment order dated 12.9.1989. The parties are left to bear their own costs.

(J.P. Sharma)
Member(Judl.)

(P.C. Jain)
Member(Admn.)