

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

MA No.3541/93 & RA No.431/93 in OA No.1841/92

NEW DELHI THIS THE 14TH DAY OF SEPTEMBER, 1994.

MR. JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR. B.N.DHOUNDIYAL, MEMBER(A)

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Union of India through

1. The General Manager,
Northern Railway,
Baroda House
New Delhi-110 001.
2. The Chief Medical Officer
Northern Railway
Baroda House
New Delhi-110 001.
3. The Chief Hospital Superintendent
Northern Railways
Central Hospital
New Delhi.

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Petitioners

BY ADVOCATE SHRI R.L.DHAWAN.

Vs

Smt.S.K.Mani,
Ex.Nursing Sister
R/o C-2/207, Panchkuian Road
New Delhi-110 005.

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Respondent

BY ADVOCATE SHRI B.S.MAINEE.

ORDER(ORAL)

JUSTICE S.K.DHAON:

This is an application on behalf of the Union of India and others seeking the review of our judgement given on 22.7.1993 in OA No.1841/92 in which Smt.S.K.Mani was the applicant.

2. We disposed of the OA on the short ground that the order passed by the Divisional Medical Officer dismissing Smt.S.K.Mani from service was without jurisdiction. We took the view, on the material on record, that in fact Smt.S.K.Mani was appointed as a Nurse by the General Manager. We also took the view that Smt.S.K.Mani had been appointed as a Nursing Sister by the Chief Hospital Superintendent. Our judgement proceeded on the footing that both the General Manager and the Chief Hospital Superintendent are officers superior in rank to the Divisional Medical Officer.

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3. On 8.7.1993, we passed the following order in the OA:

" The point to be examined in this case is as to whether the Divisional Medical Officer who passed the order dismissing the petitioner from service is competent to do so or not. Learned counsel for the respondents submitted that the powers in this behalf have been delegated to the D.M.O. He shall produce relevant record on the next date to substantiate this point. Call on 19.7.1993."

4. It is clear from the aforequoted order that Sh. Romesh Gautam, counsel, who then represented the Union of India and others, took the stand that powers had been delegated to the Divisional Medical Officer and, therefore, we granted him time to produce the relevant material to show that, in fact, powers had been delegated to that officer. However, as recorded in our judgement, Shri Gautam failed to produce the relevant material. We were, therefore, compelled to take the view that, in the absence of any delegation of power in favour of the Divisional Medical Officer, the order of dismissal passed against Smt. S.K. Mani was without jurisdiction.

5. In the review application, it is asserted that in spite of due diligence, the Union of India and others, could not lay their hands on the order dated 6.11.1979 passed by the Divisional Medical Officer. It is stated that the said order had got mixed up with some other files and, therefore, the same could not be produced.

6. We have perused the order dated 6.11.1979.

Undoubtedly, the said order purports to be the order of appointment, offering to Smt. S.K. Mani, the temporary post of a Staff Nurse. For the purpose of this review application, we may assume that the Divisional Medical Officer appointed Smt. S.K. Mani as a Staff Nurse (this position is strongly contested by the learned counsel for Smt. S.K. Mani. He urges that, in fact, the order of appointment was issued by the General Manager(P)).

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7. In paragraphs 4.1 and 4.2 of the OA, the averments, as material, were these. Smt.S.K.Mani was appointed as a Staff Nurse vide letter dated 6.11.1979 issued by the General Manager(P) . She was promoted as a Nursing Sister vide notice issued by the Chief Medical Superintendent on 29.4.1988 (Annexure A-4).

8. In the counter-affidavit, the replies given to the aforesaid averments are these. The contents of paragraphs 4.1 and 4.2 need no reply and are matter of record.

9. Annexure A-4, therefore, may be considered. This is a notice dated 29.4.1988 purported to have been issued by the Chief Hospital Superintendent. By this notice, no less than 11 Staff Nurses were put to officiate as Nursing Sisters purely on ad hoc basis against the existing vacancies. It was made clear in the notice that they were given an officiating chance. The notice also made it clear that they were given a higher scale of pay. At Sl.No.10, we find that the name of Miss S.K.Singh is mentioned. It is stated that after 29.4.1988 ^{not} Miss S.K.Singh became Smt.S.K.Mani. (This fact is/ disputed at the Bar).

10. It is not disputed at the Bar that the authority competent to award the penalties like dismissal and removal from service is the appointing authority. In Rule 2 of the Railway Servants(Discipline and Appeal) Rules,1968(the Rules), the "appointing authority" is, inter-alia,defined to mean, the authority empowered to make appointments to the service of which the Railway Servant is, for the time being, a member or to the grade of the Service in which the Railway Servant is, for the time being,included,or the authority empowered to make appointments to the post which the Railway servant,for the time being holds(underlined by us). Then, ^{other} two/situations are mentioned in the definition clause with which we are not concerned. It is also admitted at the Bar

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that the definition clause makes it clear that amongst 4 authorities mentioned in Rule 2(1)(a), the highest authority ^{to be} would be considered/the appointing authority for the purpose of the Rules.

11. We have already referred to the notice dated 29.4.1988 which shows that Smt.S.K.Mani(Miss S.K.Singh) was appointed as a Nursing Sister on an officiating basis by the Chief Hospital Superintendent. The short question before us is whether even for the purpose of officiating or ad hoc appointments, the definition clause is attracted by the words underlined by us.

12. We have before us a ruling of the Railway Board which shows that the competent authority in the cases of a Railway Servant officiating in a higher post shall be determined with reference to the officiating post held by him at the time of taking an action. Therefore, there can be no getting away from the fact that on the date when the order of dismissal was passed against Smt.S.K.Mani, the Chief Hospital Superintendent would be deemed to be the competent authority. Surely, it is not the case of the Union of India and others that the Divisional Medical Officer who passed the order of dismissal was either higher in rank to the Chief Hospital Superintendent or he was equal in rank to the Chief Hospital Superintendent. The said ruling of the Railway Board is not disputed by Sh.R.L.Dhawan, counsel for the Union of India &ors.

13. Having considered the matter with care, we come to the conclusion that our judgement does not suffer from any error much less an error apparent on the face of the record so as to attract the provisions of Order 47 Rule 1 CPC wherein our jurisdiction to review our orders is circumscribed.

14. This application is supported by a Misc.Application seeking the condonation of delay. Since, we are disposing of the matter on merits, we, by implication condone the delay.

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15. This review application is dismissed but without any order as to costs.

B.N.Dhondiyal

(B.N.DHOUNDIYAL)
MEMBER(A)

S.K.Dhaon

(S.K.DHAON)
ACTING CHAIRMAN

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