

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A.No./T.A.No. 1040/97

Date of decision 13/11/98

Smt. Sunanda Prasad Applicant(s)

C/A Sri W.H. Khan

COUNSFL for the
Applicant(s)

Versus

Union of India and Others Respondent(s)

Sri Vinod Mishra
Sri Gurukul Kashi

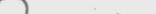
Counsel for the
Respondents)

C O R A M

Hon'ble Mr. S.K. Agrawal, **W.E./Member (J)**

Hon'ble Mr. Member ()

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporters or not? Yes
3. Whether their Lordship wish to see the fair copy of the judgment? Yes
4. Whether to be circulated to all Benches? No


(SIGNATURE)

MANISH

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1040 of 1997

Allahabad this the 13th day of Nov. 1998

Hon'ble Mr. S.K. Agrawal, Member (J)

Smt. Sunanda Prasad, I.A.S. Labour Commissioner, U.P. and Ex-Officio Secretary Govt. of U.P. Labour Department, Ex-Chairman U.P. Trade Promotion Authority and Ex-Commissioner and Director of Industries, U.P. Kanpur.

Applicant

By Advocate Sri W.H. Khan

Versus

1. Union of India through Establishment Officer, Ministry of Personnel, Govt. of India, New Delhi.
2. State of U.P. through Chief Secretary Secretariat Annexe Bhawan, Lucknow.
3. Secretary to Govt. of U.P. appointment Department, Lucknow.

Respondents

Conceted vide file
dated 8/12/98 Sri Vinod Mishra
By Advocate ~~REDDY & SONS~~
Sudhakar

ORDER

By Hon'ble Mr. S.K. Agrawal, Member (J)

In this O.A. filed under Section 19
of the Administrative Tribunal Act, 1985, the

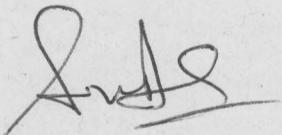
applicant makes a prayer to quash:-

(i) Order No. 2955(i) Two-5-97-22(13)/76 TC,
dated 30.7.97.

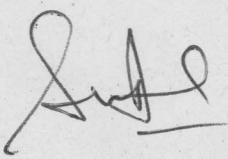
(ii) Order No. 2955/Two-5-97-22(13)/76, dated
21.7.97.

(iii) Order/Letter No.441/11-5-22(13)/16, dated
20.10.97. (amended vide order dated 12.2.98).

2. In brief the facts of the case as stated by the applicant are that an exhibition at World Trade Centre, Dubai was to be held from 07.12.1996 to 11.12.96. The India Trade Promotion Organisation had invited the State Government to exhibit their products in the said fair and the State Government vide letter dated 06.12.96 nominated the applicant to participate in the fair but the applicant could not participate in the fair due to her illness. It is also stated that as the applicant could not participate in the fair due to illness, it was incumbent on her to send at least two officers of U.P. Trade Promotion Authority to co-ordinate the activities of the participants, visitors and goods from U.P. and to fully utilised the stall already booked by spending Rs.1.49 Lacs. Moreover, the expences of all govt. personnel were to be borne by U.P. Trade Promotion Authority, which is a registered society. It is also stated that vide letter dated 28.11.1996, the applicant as Director of Industries, U.P. requested Secretary, Small Scale Industry and Export Promotion, Govt. of U.P. for according approval of Sri S.K. Sharma, P.C.S., Joint Director of Industries and Sri S.K. Singh, General Manager Industries Centre, Ghaziabad but the proposal was rejected by the Finance Department therefore, the applicant spoke to the then Chief Secretary Sri Brijendra



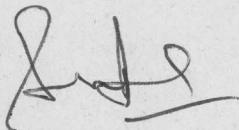
Sahai, I.A.S. and received his verbal approval on 05.12.1996. All these was got done in the public interest and to honour the commitment of the State Government. Thereafter, new B.S.P-B.J.P. collision government with K.M. Mayawati as Chief Minister comes on 21.3.1997 and after 10 days, the matter was re-opened with oblique motive and punishment of Censure by giving warning and making an adverse entry in the Character Roll of the applicant was communicated to the applicant vide letter dated 30.7.97. It is also stated that vide letter dated 07.7.97, Special Secretary to the Govt. of U.P. Industry Department, conveyed the approval for participation in World Trade Centre, Dubai from 07.12.1996 to 11.12.1996 to Sri R.K. Singh, General Manager, District Industries Centre, Ghaziabad and Sri S.K. Sharma, P.C.S., Joint Director of Industries, Agra. It is further stated that the applicant's name was under active consideration for deputation but the appointment's department conveyed the warning thereby the applicant's case would likely to be prejudiced if, the impugned orders are not quashed. It is stated that the Censure is a punishment and cannot be imposed unless an opportunity to show-cause against the proposed imposition of penalty of Censure, is given to the applicant, therefore, the impugned orders are bad in law and to cause irreparable loss to the applicant's career. It is therefore, prayed that the impugned orders be quashed.



2. The counter-affidavit was filed. In the counter, it is stated that the applicant had requested the Secretary, Small Industries Department, Government of U.P. to permit Shri S.K. Sharma, Joint Director, Industries and Sri R.K. Singh, General Manager, District

Industries Centre, Ghaziabad to participate in the fair held from 07.12.1996 to 11.12.1996 but the proposal was not accepted by the Government and the applicant was informed accordingly vide letter dated 05.12.1996. It is denied that the then ^{Chief} Secretary Sri Brijendra Sahai has accorded any oral permission to the applicant, in the absence of record. Therefore, the then Chief Minister finding serious irregularity having been committed on the part of the applicant-Smt. Sunanda Prasad, issued orders dated 02.6.97, giving warning to her and placing the same on her character roll record. It is also stated that as per order of Central Government dated 03.12.1993, a warning issued by the State Government would be treated as adverse entry and shall be placed on the character roll of the officer, therefore, the same was communicated to the Central Government for placing the same on character roll record of the applicant. The representation of the applicant was considered and it was rightly rejected. It is denied that the impugned orders are issued with malafide intention and stated that the impugned orders are perfectly legal and passed in accordance with the rules. On the basis of the averments made in the counter-affidavit, the respondents have requested to dismiss this O.A. with cost.

4. The rejoinder-affidavit has been filed, re-iterating the facts mentioned in the O.A.



5. Heard, the learned lawyer for the applicant and learned lawyer for the respondents and perused the whole record.

6. Learned lawyer for the applicant has submitted

(a) The matter was re-opened with oblique motive despite the fact that the action of the applicant was approved by the Special Secretary, Government of U.P. vide his letter dated

07.7.97.

(b) Censure is a punishment and cannot be imposed unless an opportunity to show-cause is given to the applicant.

(c) The then Chief Secretary did not deny the averments of the applicant, therefore, the averment of the applicant shall be deemed as proved.

(d) The impugned orders were passed in contravention of All India Services Conduct Rules.

7. In support of his contention, learned lawyer for the applicant has referred some judgments :-

(i) 1995 Suppl. 1 S.C.C. Page 552
State of U.P. Vs. Vijay Kumar Tripathi and another.

(ii) State of U.P. Vs. Yamuna Shanker Sharma,
1997(4) S.C.C. page 7.

8. On the other hand, learned lawyer for the respondents has objected to these arguments as mentioned above and stated that the applicant was given a simple warning, therefore, no show-cause was necessary before passing the impugned orders.



9. I gave thoughtful consideration to the rival contention of the parties and perused the whole record.

10. It appears that permission to participate in Expo-96 at World Trade Centre, Dubai from 07.12.1996 to 11.12.1996 was granted by the applicant to Sri S.K. Sharma and Sri R.K. Singh and ex-post facto permission has already been granted to Sri S.K. Sharma and Sri R.K. Singh vide order date-d 07.7.97 by the Special Secretary of Government of U.P. after bringing this fact into the notice of the then Chief Minister of U.P. -

Km. Mayawati. On perusal of the record produced by the applicant, it also confirms the fact that the then Chief Secretary Sri Brijendra Sahai orally permitted the applicant for these two officers as mentioned above in the interest of the Government as is evident from the photocopy of the record produced by the applicant. On the other hand vide order dated 03.2.98, the respondents were directed to produce the certain record for just and fair appraisal of the controversy and to enable the Tribunal to reach the correct conclusion but the respondents did not produced the record. On the perusal of the file, it also appears that on 02.6.98 also the learned lawyer for the respondents was directed to submit the relevant record of this case to the Court but no record was produced by the respondents so far. There is a note appended to this file that the Court Master also contacted the learned lawyer for the respondents for the record as referred in the order dated 02.6.98 but the required record was made not available. To controvert the averments of the applicant an affidavit of Sri Brijendra Sahai, the then Chief Secretary, Government of U.P., should have been filed so as to show that no such verbal permission was given to the applicant by the then Chief Secretary on 05.12.1996 but in the absence of any affidavit by

the then Chief Secretary Sri Brijendra Sahai and conduct of the respondents not producing the original record as directed by this Tribunal, does compell me to reach to the conclusion that the averments of the applicant appear to be correct.

11. It is also an admitted fact that before passing the impugned orders, no show-cause was given to the applicant and without any show-cause, the order was issued to keep the warning on the character roll of the applicant so that it can be used against her. In the counter-affidavit this fact has been admitted that as per orders of Central Government dated 03.12.93 a warning issued by the State Government, would be treated as an adverse entry and shall be placed on the character roll record of the officer. In such circumstances, warning issued by the applicant, which has been placed on the record of the applicant and can be used against her as a adverse entry, is a clear cut violation of principle of natural justice.

12. In 'State of Gujrat vs. Amba Lal Haider Bhai etc. A.I.R. 1976 S.C.2002', it is held that Rule of natural justice are not rules embodied always expressly in a statute or in rules framed therein, they must be implied from the nature of duty to be performed under a statute. What particular rule of natural justice should be implied and what its content should be for a given case must depend to a great extent on the facts and circumstances of the case.

Ansul

13. In 'Olga Tellis Vs. Bombay Municipal Corporation (1985) 3 S.C.C. 545', it was held that the

applicant was deprived of his livelihood without even being heard in the matter and without any notice merely on the basis of an on going Police investigation. Right to life includes right to livelihood and thus the order is violative of Article 21 of the Constitution of India.

14. In 'Menaka Gandhi Vs. Union of India (1978)

1 S.C.C. 248', it was held that before any punitive action is taken which deprives the employee of the benefits he is enjoying, an opportunity has to be given.

15. In 'H.L. Trehan & Others Vs. Union of India

and Others (1989) S.C.C.(L&S) 246', it is held "it is now settled principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a govt. servant without complying with the rules of natural justice by giving him an opportunity of being heard.

16. In 'Delhi Transport Corporation Vs. D.T.C.

Mazdoor Congress 1991 A Supp(1) S.C.C. 600', it was held that the rules of natural justice also requires that the applicant should be given an opportunity to be heard before subjecting him to any punitive action.

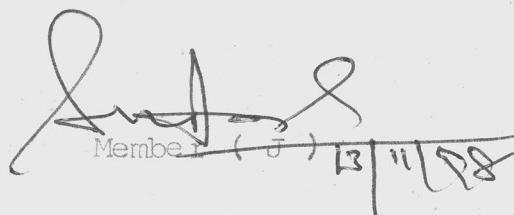
17. In 'Sardar Gulzar Singh Vs. Union of India

and Others S.L.J. 1998(1) C.A.T. (PB-ND) 21', it was held that action having civil consequences should not be done without giving notice.

18. In 'Laxmi Chand Vs. Union of India and Others 1998 A.T.C. 599', it was held that if any order involves civil consequences and has been issued without affording an opportunity to the applicant, such an order cannot be passed without complying with Audi Alteram Partem. Party should be given an opportunity to meet his case before an adverse decision is taken.

19. On the basis of the above legal preposition in the instant case, it is abundantly clear that there has been a violation of natural justice. If any, warning which is to be placed on record of the employee as an adverse entry which can be utilised against him as an adverse principle of natural justice must be followed before placing such an adverse entry on the record of the applicant. The orders appear to have been passed without following the principle of natural justice in the instant case. Therefore, the impugned orders are liable to be quashed.

20. I, therefore, allow this O.A. and quashed the impugned orders dated 21.7.97, 30.7.97 and 20.10.97, as mentioned above. No order as to costs.


Member (J) 13/11/98

/M.M./