

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

(18)

ORIGINAL APPLICATION NUMBER 185 OF 1997

ALLAHABAD, THIS THE 13th DAY OF MAY, 2003

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Smt. Sobha Shukla aged about 45 years,
wife of Shri Umesh Chandra Shukla,
Nursing sister in Lalit Narayan Mishra Hospital,
N.E. Railway, Gorakhpur.Applicant

(By Advocate : Shri B. Tiwari)

V E R S U S

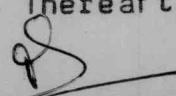
1. Chief Hospital Superintendent,
N.E. Railway Hospital,
Lalit Narayan Mishra,
N.E. Railway,
District - Gorakhpur.
2. Union of India through the General Manager,
N.E. Railway,
District - Gorakhpur.Respondents

(By Advocate : Shri Lalji Sinha)

O R D E R

By this O.A. applicant is claiming increments for the year 1991-92 of Rs.50/- and consequent salary from Feb 1991 to Feb 1993 and bonus as well along-with 18% interest.

2. Brief facts as stated by applicant are that she was working as Staff Nurse in NER Hospital when vide order dated 16.07.1987 Chief Hospital Superintendent had posted her in O.P.D. till her requirement (Annexure A-1). In 1991 she went on sicklist & joined back in Lalit Narain Mishra Hospital on 10.09.1991 (Annexure A-2). Thereafter she was



being harrassed so she filed O.A. No.1320/1991 which was decided on 20.12.1991 directing the respondents to take work from her and to pay salary to her (Annexure A-3). In spite of it she was not paid salary so filed C.P. No.685/92. Ultimately vide order dated 07.04.1993 she was posted in morning shift (Annexure A-4). On 02.03.1993 the Chief Matron Grade-I gave order to applicant to join duties without any delay (Annexure A-5). on 09.03.1992 she gave an application to the Chief Hospital Superintendent to give her salary as per order dated 20.12.91 passed by the Tribunal but the same was not paid.

3. Thereafter vide order dated 14.06.1995 she was declared suitable for the post of Nursing Sister in the scale of 1640-2900. She was posted as such w.e.f. 27.10.1995 and pay was fixed Rs.1880/- w.e.f. 01.11.1995. On 06.06.1995 seniority list was issued wherein applicant was shown to have worked upto 11 years 4 months and 26 days while she was appointed on 05.11.1983. Therefore, there was no break in her service since he had been given promotion also in 1995 her misconduct cannot be looked into now counsel for the applicant relied on 1968(SLR) 88 to substantiate his argument.

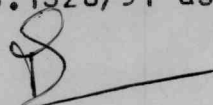
4. Grievance of the applicant is that she was not paid increment of Rs.50/- for the year 1991-1992. She was not even paid salary from Feb 1991 to Feb 1993 nor bonus for 2 years was paid to her in spite of directions by the court therefore, she is entitled to the relief as claimed by her.

5. O.A. is oppo-sed by the respondents who have submitted



that applicant had been unauthorisedly absent from 16.02.1991 to 03.09.1991. She was not on sick list of Railway Doctor, instead she produced private medical certificate dated 04.09. 1991 certifying her illness from 01.09.1991. On the basis of medical fitness, she was given duty on 10.09.1991 but she never reported for duty at the place of her posting upto 1993, therefore, it is wrong to ^{B suggest} ~~request~~ that she joined on 10.09.1991, inspite of letter dated 11.09.1991 . They have further submitted that in O.A. No. 1325/91 she had prayed for setting aside the order by which she was given rotational duty but the Hon'ble Tribunal upheld rotational duty orders and she still remained absent from duty w.e.f. 16.02.1991 to 02.03.1993, therefore, she is not entitled to any salary for the said period. She had even filed contempt petition but since applicant had been issued chargesheet for the same period (the Contempt Petition was rejected. Chargesheet is annexed as CR-I). They have submitted that since she was unauthorisedly absent increment/bonus for the year 1991-1992 is not admissible to the applicant. As far as seniority list is concerned. They have submitted that it was only a provisional list & confers no right on appointment. They have thus prayed that O.A. may be dismissed.

6. I have heard both the counsel and perused the pleadings. Annexure CR-I shows applicant was chargesheeted for remaining unauthorisedly absent from duty w.e.f. 26.02.1992 to 02.03.1993 and all these points were raised by the applicant in Contempt Petition No.12/94 in O.A. No.1320/91 as well, but



after perusing the records, Tribunal observed as under:-

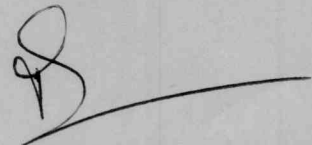
" There are two parts of the interim order; first part pertains to take work from the applicant as Staff Nurse on rotation basis. Order dated 25.01.1989 and 10.09.1991 clearly indicate that she had been assigned duty on rotation basis. So such an order being in existence from before the date on which the interim direction issued, there was nothing for the respondents to comply with. There is, therefore, no question of respondents committing contempt of Court for not complying with that part of the order.

The other part of the direction pertains to giving salary alongwith other allowances to the applicant as due. According to the respondents, the same could not be given to her as she was absconding from duties with effect from 10.09.1991. We have perused the attendance register of Nursing Staff from 01.09.1991 to 31.10.1991. It appears that she was marked absent on certain dates. On some date the register has been initialed presumably by the applicant. It was submitted that the applicant had appeared on 11.09.1991 and signed the attendance register but, there-after she did not attend her duty in the CC Ward. We have also perused the file pertaining to the applicant and we find that her attention was drawn having sent the attendance register and thereafter failed to attend the duty in CC Ward. She was also directed that in future, she should attend her duty after signing the attendance register failing which disciplinary proceeding shall be initiated against her. This order is dated 11.09.1991. It is alleged that the petitioner despite the above direction continued to absent herself from duty. The attendance register for the month of October, 1991 indicates that she was absent from the whole month. Accordingly charge-sheet dated 25.02.1992 had been issued.

In the event the disciplinary proceeding is decided in favour of the applicant, and it is held that she had been attending her duty all along, only then a conclusion as averred by the applicant in the contempt petition can be arrived at. "

7. The Contempt Petition was thus dismissed by observing that no case of deliberate and intentional disobedience has been made out.

8. In the rejoinder of para-17 applicant has herself stated that the said chargesheet is still pending and proceedings are not yet finalised. In view of the observations made by Tribunal in C.P. that this issue can be decided only after the



disciplinary proceedings are decided in her favour, I don't think the present O.A. is maintainable. It is not the claim of applicant that disciplinary proceedings should be decided early as no such relief is sought in the O.A. and so long disciplinary proceedings are pending no relief as claimed by applicant can be given to her as she is claiming salary increment & bonus and respondents have stated she was unauthorisedly absent. Respondents have stated specifically that applicant did not work from 16.02.1991 to 02.03.1993 and applicant has not been able to show us anything to the contrary, therefore, in the given circumstances, applicant cannot be said to be entitled to any relief as claimed by her. However, if ultimately the proceedings are decided in her favour, it will be open to her to put ^{up} her claim at that stage.

9. I would be failing in my duty, if I don't ~~deal~~ ^{deal} with the judgment relied upon by applicant's counsel. In 1968 SLR 88 the facts were that petitioner therein was given show cause notice on 27.01.1954 but thereafter no action of any kind was taken by the department. Thereafter, petitioner was promoted and given annual increment and was allowed to cross efficiency bar also, therefore, it was in those circumstances that the court came to the conclusion that the department had ~~condoned~~ ^{condoned} the negligence of petitioner therein, whereas in the instant case respondents had neither given the salary nor bonus nor increment to the applicant. On the other hand they had issued chargesheet dated 23.09.1997 to the applicant

for remaining unauthorisedly absent from duties w.e.f. 26.02.1992 to 02.03.1993. Therefore, it cannot be said that respondents had condoned the misconduct of applicant. Since facts of the case are different, that judgment would not be applicable in present facts of the case. I would however, agree with the applicant's counsel to this extent that after issuing the chargesheet, department cannot sleep over the matter and must take the same to a logical conclusion. Inquiry cannot be lingered on indefinitely. Even though in the O.A. applicant has not sought this relief but it would be in the interest of justice to direct the respondents to conclude the disciplinary case within 4 months from the date of receipt of a copy of this order and for this purpose applicant is also directed to cooperate with the department. After conclusion of the inquiry respondents shall pass a separate order showing how the entire period of absence has been treated. Since Chargesheet is related to the period from 26.02.1992 to 02.03.1993^{only}, respondents shall also pass a separate order showing how the period from 16.02.1991⁸ to 25.02.1992 has been treated.

10. With the above directions this O.A. is disposed off with No order as to costs.

Member (J)

shukla/-