

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT NAINITAL, U.A .

Allahabad this the 13<sup>th</sup> day of May, 2003.

Original Application No. 72 of 1997.

Hon'ble Maj. Gen. K.K. Srivastava, Member- A.  
Hon'ble Mrs. Meera Chhibber, Member- J.

Kumari Kamla Chaudhary daughter of Late G.L. Chaudhary  
Deputy Field Officer (Women's Instructor), WATS Nagdeo,  
SSB Pauri, Distt. Pauri.

.....Applicant

Counsel for the applicant :- Sri P.S Adhikari

V E R S U S

1. Commandant, W.A.T.S, Pauri Distt. Pauri Garhwal.
2. Divisional Organiser in Seva Puram S.S.B, U.P. Division,  
Govt. of India (Ganiyan Doli)Ranikhet Distt. Almora.
3. Union of India through the Director, S.S.B, R.K. Puram,  
New Delhi-66.

.....Respondents

Counsel for the respondents:- Km. Sadhna Srivastava

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member- J.

By this O.A applicant has sought the following  
reliefs:-

"The notice of 3 months for getting retirement after  
the expiry of stipulated time vide impugned order  
dated 01.10.1996 which will come into effect on  
20.02.1997 be quashed and the present application  
of the applicant be allowed with cost and the  
applicant may be permitted to function as usual  
on the post held by her till the age of superannuation."

2. The brief facts as narrated by the applicant are that  
applicant was serving under the respondents from the year

1966 in WATS i.e. Women Advanced Training School, Pauri as Instructor. Till 1990 she had absolutely clean record and through-out the career she had been appreciated by the senior officers as she was given number of appreciation letters and rewards etc.. It is further submitted by the applicant that she was the first <sup>founding</sup> ~~holding~~ lady of the training. Unfortunately, in the year 1990 a purchasing committee for purchase of the Vocational Training Instruments was formed wherein she was also a Member. There were three Members in the Committee which was presided by the Circle Organiser, WATS, Pauri. However, on the finding given by the court of inquiry an amount of Rs.38,474/- was imposed on six officials including the applicant and she was directed to deposit an amount of Rs.800/- as her share due to financial irregularities in the purchase of items. She alongwith five other persons were also given warning to be recorded in their ACR.

3. Even though the findings <sup>of court of inquiry</sup> ~~of court of inquiry~~ were not arrived at, after holding the <sup>proper</sup> ~~appropriate~~ enquiry nor the important and main persons related to the purchase items were called, yet she deposited the amount of Rs. 800/- as directed by the respondents. It would be relevant at this stage to mention that the amount of Rs. 38,474/- was bifurcated as under :-

(1)	Smt. Kamala Das, Commandant, WATS, Pauri (Now Area Organiser, Tinsukia)	Rs. 22,500/-
(2)	Sri S.C. Gairola, Storekeeper WATS, Pauri.	Rs. 11,974/-
(3)	Sri L.M. Bhatt, UDC/Cashier, WATS, Pauri (Now in Pauri Area)	Rs. 1,500/-
(4)	Sri A.S. Atri, Jr. Asstt. WATS, Pauri	Rs. 1,500/-
(5)	Miss. Kamala Chaudhari, AFO(I) WATS, Pauri.	Rs. 800/-
(6)	Miss. Kamala Ghildiyal, AFO(I) WATS, Pauri.	Rs. 200/-

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Total Rs. 38,474/-

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*[Handwritten Signature]*

Similarly all the six officers were warned for their irresponsible act at different levels.

4. On 05.08.1995 applicant gave her representation against the adverse entries made in her CR on account of irregularity in purchase of store items stating therein that she was neither incharge of the said committee nor she had committed any such irregularity in the purchase items. The said representation was however, rejected vide order dated 07.09.1995 (Annexure A-5).

5. The grievance of the applicant is that this did not end at this level but she was surprised when she was <sup>even R</sup> given an order dated 01.10.1996 whereby she was given a notice that she would retire from the service on expiry of three months period from the date of service of the notice on her in <sup>h</sup> order <sup>h</sup> to exercise of the powers conferred by rule 48 of the CCS (Pension) Rules, 1972 (Annexure A-1). It is this order which has been challenged by the applicant in the present O.A. Being aggrieved applicant had given her representation on 21.11.1996 but the same has not been decided till date. Applicant's counsel has <sup>also R</sup> invited our attention to memorandum dated 01.06.1995 (Annexure A-7) whereby applicant was informed that for the year 1994-95 her personality, intelligence, stamina, moral character, discipline, loyalty, professional ability have been adjudged to be very good but her attitude has been reflected 'below average' as per warning issued vide Divisional Headquarter Memo dated 31.01.1995.

6. Learned counsel for the applicant submitted that this notice of retirement is absolutely wrong, arbitrary and not sustainable in law as she has been asked to retire simply on the basis of one warning given to her in the year 1995 that too due to the irregularities committed by

*R* as many as ~~the~~ six officers/official in purchase of items. He has

*R*

submitted she was neither the incharge of the said committee nor any role was attributed ~~to~~ her directly for committing any irregularity in her personal capacity. Therefore, she ~~could~~ have been retired on the sole incident of 1996 or the only warning given to her in the year 1995. He has further submitted that the applicant had worked in WATS for a long period from 1966 onwards and through-out her career, <sup>is graded as good or B</sup> has been very good and she was never warned nor any <sup>other</sup> memo <sup>was</sup> served on her for any lapse. On the contrary she had always been appreciated by the senior officers for her dedicated work and all her CRs were also very good. He had next argued that since this retirement is passed on single incident of irregularity in purchase of items, ~~this~~ <sup>she</sup> cannot be stated to be retired in public interest but infact,

*S* is a stigmatic order, therefore, it is not sustainable in law.

He has thus prayed that the impugned order may be quashed and set aside. He also submitted that out of 6 officers, applicant alone is being retired thus she is being discriminated against as all others are continuing without any hindrance. *S*

7. The respondents on the other hand ~~was~~ opposed this O.A and have justified the retirement of applicant on the ground that petitioner's case was considered after completion of 30 years of qualifying service and the Review Committee did not recommend the case of the applicant for further continuance/retention in the service beyond completion of 30 years of service vide letter dated 17.09.1996. On basis of this recommendation of the Review Committee the applicant was served with the notice for retirement vide order dated 01.10.1996. They have further submitted that against the said order applicant had filed a representation on 21.11.1996 <sup>in B</sup> and the matter is still under consideration of Directorate.

8. We have heard both the counsel and perused the pleadings as well.

9. Vide order dated 24.10.2002 Tribunal had directed

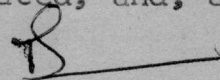
*S* →

the respondents to produce the proceedings relating to Review Committee. Learned counsel for the respondents produced the file for Court's perusal but since the file was incomplete and it was also seen that after the representation made by the applicant, a Representation Committee was constituted on 7.2.1997 to review her case, but ultimately the said Representation Committee's report was neither on the file nor respondents' counsel was in a position to inform the latest position to the Court. Therefore, the respondents' counsel was directed to produce the full file & ACRs within two weeks.

10. The respondents have produced the ACRs of the applicant as directed by the Tribunal earlier and perusal of the same shows that throughout applicant had been graded as Good, Very Good and even Outstanding. It is also an admitted position that she had not been given any other memo, warning or show-cause notice during her entire career of 30 years of service. On the contrary, even in the year 1994-95, she had been graded as Very Good, the Reporting Officer had remarked as follows :

"A very good Instructor, who performs her duties sincerely, but she has been penalised & warned as per memo dated 31.1.1995, which was confirmed by the Reviewing authority. Even, the earlier ACRs showed that she was stated to be a very good Instructor, matured, intelligent and hard working. She had never been given any other punishment except one as stated above. On the contrary, it is relevant to mention that she had been given promotion to the rank of DFO on 3.9.94. We also noticed a note in the original records whereby the officers had themselves recorded as under :

"Ms. Kamla Chaudhary has not been recommended by the Committee because she was issued recordable warning for committing financial irregularities vide O.M. dated 31.1.1995, but as per MHA O.M. 25013/14/77-Estt. A dated 5.1.78 rule relating to pre-mature retirement should not be used to retire a Govt. servant on grounds of specific acts on mis-conducts. It further clarifies that intention is not that when an officer has reached a stage in service where review under FR-56(i) can be initiated, and, at that time a

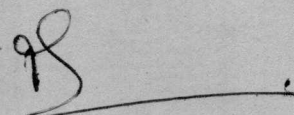


specific act of misconduct also comes to notice action under FR-56(i) is not so cover for what is, in fact, a punishment sought to be imposed. In other words, it implies that if the act of misconduct committed by Smt. Chaudhary was not taken so seriously and it was not considered necessary to initiate disciplinary proceedings against her, but was let off with a recordable warning, it may not be proper to retire her pre-maturely under the said instructions."

11. It is also to be kept in mind that no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years has been found satisfactory which implies that extention cannot be stopped on sundry adverse entry/comments. The officer concerned has consistently got good/very good record of service except for the year 1994-95. Therefore, the case may be put up for reconsideration. Thereafter, there had been internal correspondence between the officers and ultimately the Cabinet Secretariat approved the Representation Committee to consider the case of the applicant on 13.3.1996, but thereafter it seems that no action was taken by the respondents as the matter was pending in the Tribunal, which is evident from the note dated 2.6.97 from the original records.

12. We have already seen that in the preceding five years from 1995, applicant had been graded as Good in the first year, but in the following years, she had been graded Very Good.

13. It is also to be kept in mind that the act of ~~misappropriation~~ <sup>financial irregularity</sup> of Government money for which recordable warning was issued to Mrs. Kamla Chaudhary, was done collectively by six officers. More-over the act pertained to the year 1990, while she had been given promotion thereafter in the year 1994 and the recordable warning is not even a punishment, therefore, it does not have bearing on future prospect and service as clarified vide Govt. of India instructions no. 10 below Rule 11 of CCS (CCA) Rules. Since she had been promoted after the act, the repercussion of act, became null and void in the eyes of law.

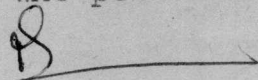


Therefore, the only thing against the applicant in her entire career of 30 years service is the warning given to her vide order dated 31.1.1995 for the irregularities committed by six officers/officials during the purchase of store items. She has also been made to pay an amount of Rs.800/- as her share against the total amount of Rs.38474/-. No action has been taken against other five officers/officials even though they had been made to pay higher amount in their share for the same irregularity in the purchase of store items, therefore, she alone has been dealt with in this fashion.

14. The Hon'ble Supreme Court has held in J.T. 1992 (2) SC 1 in re. Baikunth Nath Das & Another Vs. Chief DMO Baripada that Review committee has to consider the entire record of service before taking a decision in the matter, of course attaching more importance to record of and performance during the later years. The record would naturally include the entries made in Confidential records both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks such remarks loss their <sup>2 things</sup> ~~thing~~ more so if the promotion is based on merit (selection). In State of Gujrat & Another Vs. Suryakant reported in 1999 (2) SLJ 28 Hon'ble Supreme Court held whether the integrity of an employee is doubtful or not and whether he is efficient or honest, is the function of the appointing authority or the immediate superior of the employee to consider and assess. It is not the function of the Review Committee to brand <sup>an</sup> ~~a~~ employee as a person of doubtful integrity.

15. At this juncture, it would be relevant to refer to the ACRs of the applicant for the period from 1.4.94 to 31.3.1995. Even in this ACR her integrity had been certified, however, against general remarks it was written as under :

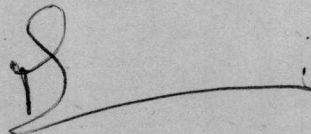
A very good Instructor who performs her duties



sincerely, but she has been penalised & warned as per memo dated 31.1.95, accordingly against her column of work attitude she was graded as Average which was not agreed to by the Reviewing authority as he recorded as follows:

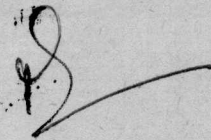
" I don't agree with this remarks. officer has been down graded. Self has been officer's work. The warning pertains to 1989-90 hence grading in respect of work attitude is upgraded as good."

It goes without saying that even the Reviewing authority did not agree with the 'Average' grading given to the applicant for an incident and also given promotion as DFO w.e.f. 3.9.94 and even otherwise no regular departmental enquiry was held for the alleged financial irregularity and she had been warned alongwith five other officers collectively. No individual involvement had been attributed to her, therefore the initiating authority and reviewing authority rightly did not touch her integrity because in the instructions issued by Govt. of India published in Swamy Establishment & Admn. at page 74 clearly state under the heading 'principles to be observed by Reporting officer in writing reports - Remarks like "Doubtful Character" or complaints received about his taking illegal gratification are not permissible. Entries should be made on established facts and not on mere suspicion. <sup>By</sup> But no stretch of imagination can it be said that the financial irregularity was an established fact as admitted <sup>by</sup> no chargesheet was issued to the applicant, nor any Departmental enquiry was conducted. Accordingly, in our considered view ~~that~~ the recommendations of the Review Committee is not sustainable because she has been not recommended for further retention solely on the ground that she was involved in financial irregularity. It is also relevant to note that all other officers who were collectively warned for this incident are still continuing in the offices, therefore, she cannot be singled out and retired by attracting Rule 48 of CCS (pension)

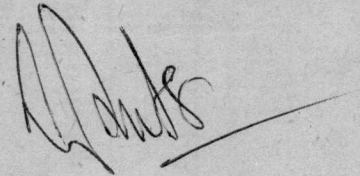


Rules. As is stated above her service record throughout has been satisfactory/good/very good/outstanding and for this single warning given for the incident of 1989-90 in 1995, she could not have been retired, therefore, the notice of retirement is quashed and set-aside. Respondents are directed to take back the applicant and allow her to continue in service in accordance with law. Since we are holding the notice of retirement to be bad in law, she would also be entitled to all consequential benefits including salary for the intervening period.

16. The O.A. is accordingly allowed with no order as to costs.



MEMBER (J)



MEMBER (A)

GIRISH/-