

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 795 OF 1998

ALLAHABAD, THIS THE 17th DAY OF MARCH, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)  
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Smt. G.K. Mathew a/a 35 years w/o Shri A.V. Mathew,  
r/o Angiellivadakatha Puttan Veeda, P.O. Muttan  
via Halipad, District Alappuzha (Kerala),  
Ex-public Health nurse, P.No.070761 CEPC, at present  
residing at c/o Shri R.P. Shukla Advocate, Plot No.  
704, Indra Nagar, Kharka Line Bazar, Jaunpur.

....Applicant

(By Advocate : Shri R.K. Shukla)

V E R S U S

1. Union of India through the Secretary,  
Ministry of Defence, Government of India,  
New Delhi.
2. The General Manager,  
Ordnance Equipment Factory,  
Ministry of Defence, Govt. of India,  
Kanpur.
3. The Additional Director,  
General Ordnance Factory,  
G.E.M. Head Quarters, G.T. Road,  
Kanpur.

....Respondents

(By Advocate : Km. Sadhna Srivastava)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M.

By this O.A. applicant has challenged the order dated 31.07.1996 whereby applicant was dismissed from service (Pg.11) with all consequential benefits including arrears of pay and emoluments along with interest in accordance with law. During the pendency of O.A. her appeal was decided, therefore, the said order was also brought on record.

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2. Applicant was served with a charge-sheet dated 26.06.1995 under Rule 14 of CCS(CCA) Rules 1965 on the charges of (i) unauthorised absence from duty w.e.f. 03.09.1994 till date (ii) forwarding of false Medical Certificates to regularise leave of absence (iii) absconding from the place of residence last intimated. She did not accept the charges levelled against her, accordingly detailed enquiry was ordered. Since applicant did not participate in the enquiry, ex-party report was given by the enquiry officer holding the charges against the applicant proved. Copy of the enquiry report was given to the applicant vide letter dated 20.05.1996. She gave a reply which was taken into consideration by the disciplinary authority and the impugned order was passed.

3. It is submitted by the applicant that copies of the listed documents though asked ~~by her~~ were not given to her, therefore, she had been denied opportunity to rebut the allegation. She further submitted that if a person is absent due to illness it cannot amount to be misconduct and under the Employees Insurance Act, no action can be taken against an employee during the illness. She has also submitted that she did not receive any letter directing her to report to CMO, Janpur for Medical checkup. Therefore, all the evidences adduced in the ex-parte enquiry is baseless and not sustainable. She further submitted that she left at Kanpur with duly sanctioned leave, therefore, it cannot be said that applicant was absconding or was absent from duty unauthorisedly. She has also submitted that penalty given is too harsh, therefore, the matter should be remitted back to the authorities for reconsideration after giving her personal hearing. She infact submitted that since she has not been given personal hearing, the impugned order is bad in law and is liable to be dismissed on this ground alone. She further submitted that the points raised by her in appeal have not been considered, therefore, the order is liable to be quashed and set aside.

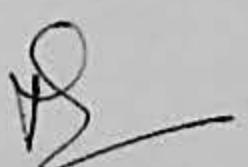
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4. Counsel for the applicant relied on following judgments to support his contention:

- (i) AIR 1986 S.C. 1173 RAM CHANDER VS. U.O.I. & ORS.
- (ii) 1998 AIR S.C. 2722 UNION OF INDIA & ORS. VS. DINANATH SHANTARAM KAREKAR AND OTHERS.
- (iii) AIR 1971 DELHI 133 SURAT SINGH & ORS. VS. S.R. BAKSHI & ORS.

5. Respondents have opposed this O.A. They have submitted that applicant had taken two days leave for 1<sup>st</sup> and 2<sup>nd</sup> September 1994 on the ground that she has to meet her sister at Jaunpur but thereafter she did not join the duties.

Charge-sheet was sent at her permanent address in Kerala. In her reply, she herself mentioned the address of Jaunpur, which is evident from her reply at page 14 of the Supplementary Counter Affidavit. Thereafter ~~none~~ was sent at her permanent address at Kerala as well as Jaunpur both about the fixing of date in enquiry vide letter dated 29.08.1995 through registered A.D. (Pg.19 and 20 of the SCA). Thereafter another notice dated 28.09.1995 was also issued by the enquiry officer which too was sent through registered A.D. at her permanent address at Kerala as well as Jaunpur both wherein it was clearly mentioned that the next hearing would be held on 10.11.1995 at WMPEI office at 2.30 p.m. and in case she failed to attend the enquiry at appointed date and place, enquiry will be conducted ex-parte. Yet another notice dated 31.01.1996 was sent again at her home address at Kerala and at Jaunpur address both giving her one more chance to appear before enquiry which was <sup>scheduled 12</sup> issued to be held on 24.02.1996 at 10.00 a.m. at WM/PE-I office and she was once again informed that if she fails to attend the enquiry at appointed date and place, enquiry will be conducted ex-parte. In this notice, reference was also given to the order dated 23.08.1995, notice <sup>1</sup> ~~one~~ dated 29.08.95 and notice second dated 28.09.1995 (Pg.25 & 26). They have, thus,



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submitted that applicant was given full opportunity and intimation to participate in the enquiry but for the reasons best known to her, she choose not to defend herself in the enquiry at all. Therefor, she cannot be allowed to make any <sup>12</sup> complaint about it.

6. Counsel for the respondents further invited our attention to the letter dated 10.10.1995 written from the office of Superintendent of Police Alappuzha wherein reference <sup>with</sup> <sup>^</sup> to the letter dated 14.08.1995 written by General Manager, Ordnance Equipment Factory, Kanpur, <sup>He</sup> was informed that whereabouts of Smt. G.K. Mathew Public Health Nurse was got enquired through C.I. of Police, Haripad which reveals that she is somewhere in gulf(Pg.28 of SCA). <sup>She</sup> further invited our attention to the report given by a person who was deputed to go to Jaunpur for finding the facts (Pg.34 of SCA). In his report Shri V.P. Shukla L.D.C. Establishment has written that it is confirmed by Mrs. M. Thomas that Mrs. Mathew is not residing with her and she was also not aware about the treatment being administered to Mrs. Mathew. She could also not arrange the meeting with Mrs. Mathew but she refused to give anything in writing. Even though these facts were confirmed by the neighbours as well. He had, thus, stated that Mrs. Mathew is not residing with Mrs. Thomas. Counsel for the respondents, thus, submitted that the above letter<sup>s</sup> clearly show that there was sufficient material on record to prove the charges against the applicant and since she did not even defend herself, the impugned order were rightly passed by the <sup>affable PS</sup> disciplinary authority.

7. She further submitted that even though applicant has stated that the documents relied upon were not given to her but she has herself annexed all the documents along-with charge-sheet in O.A. itself. Therefore, the contention raised

is absolutely mis-conceived. As far as the quantum of punishment is concerned, the applicant had not even challenged the quantum of punishment in her appeal, therefore, it is not open to the applicant to now raise this issue before the court. Even otherwise appellate authority has recorded in the order that no case is made out for interference. As far as personal hearing is concerned, counsel for the respondents submitted that applicant never asked for the same. Therefore, in these circumstances no case is made out for interference by this Tribunal, the O.A. may therefore, be dismissed.

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

9. It is seen that there is sufficient material on record to show that respondents did make full efforts to inform the applicant by sending her registered letters to attend the enquiry at stipulated time at the place mentioned in the letters as well as notices, which was sent not only at permanent address but also at Jaunpur where she had informed the office, she was proceeding on leave for two days. Even in her reply to the charge-sheet applicant had herself given the address of Jaunpur, therefore, so long the letters and notices were sent at the address given by the applicant herself, Naturally it cannot be said that applicant was not given due intimation about holding of the enquiry, Especially when the said letters and notices were received back with postal remarks 'out of India'. It would have been sufficient if respondents had sent notices at her mentioned address given by her in the office record only but since in her application for leave, she had specifically stated that she would be visiting her sister at Jaunpur as an abundant precaution, Department sent letters as well as notices to the applicant at both the addresses, which shows bonafides of the department that they wanted to give full opportunity to the applicant to defend

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herself. In case she did not get the said letters because she was out of India and she did not avail the opportunity, she cannot now be allowed to turn around and make a grievance about the denial of right to defend. At this juncture it would be relevant to quote the view taken by Hon'ble Supreme Court in the case of RANJAN KUMAR MITRA VERSUS ANDREW YULE & CO.LTD AND OTHERS reported in 1997(10)SCC 386 wherein it was held that if an employee chose not to participate in the enquiry inspite of opportunity having been given, it would not vitiate ~~case~~ of the consequential termination. In the instant case, counsel for the applicant relied on the judgment given by Hon'ble Supreme Court in the case of Union of India Vs. Dinanath Shantaram Karekar AIR and others reported in 1998 S.C. 2722 but that judgment would be of no help to the applicant because in that case no effort was made by the department to inform the applicant about holding of the enquiry and the charge-sheet sent by post had come back with remark as "not found". Whereas in the instant case, respondents had sent repeated letters and notices to the applicant at her known addresses to inform her about holding of the enquiry on various dates but since she was not available at those addresses they were received back undelivered with postal remark 'out of India'. It goes without saying that the remarks given by postal authorities cannot be challenged by applicant before us as neither postal authorities have been made a party nor we have any reason to doubt their remarks especially when respondents have got a report from the Superintendent of Police also which categorically stated that Smt. Mathew is stated to be somewhere in gulf. This fact was further corroborated by the L.D.C. <sup>also B</sup> who was deputed to enquire about her whereabouts from applicant's sister's house. Therefore, presence of so-much of material on record clearly suggest that applicant was not at Jaunpur the address and place which she had informed the office in her application.



10. Applicant's counsel has submitted that she had not been relied upon documents, which is contrary to the principles of natural justice as she could not defend herself in the absence of those documents but interestingly we find that applicant has annexed all the relied upon documents along with charge-sheet in O.A. itself and in any case if she had appeared before the enquiry officer, she would have got the opportunity to demand those documents as well but she never appeared before the enquiry officer, therefore, this contention of applicant's counsel is totally mis-conceived. The same is accordingly rejected.

11. The law is well settled that even if there is some evidence available against the delinquent, it is for the competent authority to take decision as to what punishment would be appropriate. It has repeatedly been held by the Hon'ble Supreme Court that courts should not re-appreciate the evidence or substitute their own opinion about the quantum of punishment. Applicant is now trying to suggest that she was sick, if that was so, she ought to have placed her evidence before the enquiry officer when opportunity was given to her, Since no such effort was made by her, we cannot sit as an enquiry officer now in this case and decide the correctness of the charges. Applicant has lost that opportunity of her own volition, therefore, cannot complain about it.

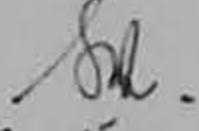
12. As far as the contention of excessive punishment is concerned, Hon'ble Supreme Court has already held that courts should not interfere in the matter of penalty so long evidence is available on record against the delinquent employee and even otherwise since the report submitted by the office of Superintendent of Police itself indicates that she was somewhere in gulf, we are satisfied that applicant was not interested in joining the work because had she been in India at Jaunpur or Kerla, there is no reason why the office of Superintendent of Police would have given such a report and why LDC

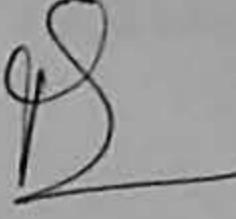


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establishment would give the similar report and why she did not receive any of the letters sent at Jaunpur address. These facts clearly show that applicant was neither at Kerla nor at Jaunpur for such a long time i.e. from 03.09.1994 to till date of issuance of charge-sheet dated 26.06.1995 and even thereafter none of the letters were received by her even though sent at the correct address. In these circumstances if respondents decided to dismiss the applicant from service, we do not think it calls for any interference.

13. In view of the above discussion, we find no merit in the O.A. the same is accordingly dismissed with no order as to costs.

  
Member (A)

  
Member (J)

shukla/-