

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



O.A./351/00193/ 2021

Dated: 22.02.2021



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Mrs. Nabisa Bibi,
wife of Shri A Latheef,
aged about 50 years,
residing at House No. 57/1, M.A. Raod,
near Kabrasthan Masjid, Phoenix Bay,
Port Blair, South Andaman – 744101
and working as a Mazdoor in the Running
Repair Section, Motor Transport Workshop,
Port Blair, South Andaman – 744101
under the Director of Transport,
Andaman & Nicobar Administration, Secretariat,
Port Blair – 744101.

..... Applicant.

Versus

1. Union of India
service through the Secretary,
Government of India,
Ministry of Road Transport and Highways,
Parivahan Bhawan,
1, Parliament Street,
New Delhi - 110001.
2. The Lieutenant Governor,
Andaman & Nicobar Islands,
Raj Niwas, Port Blair – 744101;
3. The Chief Secretary,
Andaman & Nicobar Administration,
Secretariat Complex,
Port Blair – 744101;
4. The Secretary (Transport),
Andaman & Nicobar Administration,
Secretariat, Port Blair – 744101;
5. The Director of Transport,

Andaman & Nicobar Administration,
Secretariat, Port Blair – 744101;

6. The Assistant Director (Administration),
Directorate of Transport,
Andaman & Nicobar Administration,
Secretariat, Port Blair – 744101;

7. The Deputy Director (Administration/Viz.),
Directorate of Transport,
Andaman & Nicobar Administration,
Secretariat, Port Blair – 744101;

8. The Section In-Charge,
Running Repair Section,
Motor Transport Workshop,
Port Blair, South Andaman – 744101.

..... Respondents.

For the applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the respondents : Mr. P.K. Das, Counsel

ORDER (Oral)

Per : Bidisha Banerjee, Judicial Member

Heard Ld. Counsels.

2. This application has been preferred to seek the following reliefs:

"8.a) To quash and/or set aside the impugned memorandum of charge-sheet dated 16th June, 2020 issued by the Director of Transport, Andaman and Nicobar Administration against the applicant on the ground of one day absent being Annexure A-5 of this original application;

b) To quash and/or set aside the impugned enquiry report submitted by the Enquiry Officer on 25th September, 2020 which was communicated to the applicant vide office order dated 30.09.2020 wherein the Enquiry Officer erroneously stated that the applicant has admitted the charges which is not true being Annexure A-12 of this original application.

c) To quash and/or set aside the impugned penalty order of capital punishment of dismissal from service dated 26th November, 2020 issued by the Director (Transport) Andaman and Nicobar Administration against the applicant being Annexure A-14 of this original application.



d) To declare that the proceedings which was initiated by the respondent authority against the applicant for one day absent when your applicant was suffering a severe pain in her stomach is otherwise bad in law and illegal. The applicant never admitted any of the charges, only she has explained in the reply against the charge-sheet that she was suffering from severe pain in her stomach and for that issuance of a capital punishment order of dismissal from service against the applicant is highly arbitrary and discriminatory and it may be liable to be quashed and/or set aside in the eye of law.

e) To declare that the applicant is entitled for exoneration from all charges levelled against her in the charge-sheet by setting aside and/or quashing the memorandum of charge-sheet, report of enquiry officer and capital punishment order of dismissal from service and after setting aside of the same, the applicant may be reinstated in the service with full back wages."

3. The grievance of the applicant, in a nutshell is that she has been punished with **'dismissal without notice or any compensation in lieu of notice'** for one days absence.

4. The brief background is as under:

The applicant Ms. Nabisa Bibi was a regular employee of the Transport Department of Andaman and Nicobar Administration, working in the department since 1995. She was suffering from medical illness and was intermittently absent at times. The Andaman and Nicobar Administration regularized her leave period vide office order dated 6th May, 2016. The respondent Administration even referred her case to the Medical Superintendent of G.B. Pant Hospital at Port Blair for proper medical examination of the applicant which proved that she was suffering from ailments. Despite that, she would punctually attend the office and discharge her duty and responsibility as assigned by the Director of Transport, Andaman and Nicobar Administration.

Vide office order No. 3658 dated 2nd November, 2010, the Assistant Director (Administration) Directorate of Transport, Andaman and Nicobar Administration regularized her leave, taken during her illness.



But all on a sudden, the Director (Transport), Andaman and Nicobar Administration vide office order No. 933 dated 18th March, 2020 issued an order of suspension against the applicant on the ground that when the Director (Transport), Andaman and Nicobar Administration was on a surprise visit at Motor Transport Workshop, Port Blair at that point of time, she was not present in the said Workshop.

The said suspension was extended vide office order No. 1330 dated 15th June, 2020 for a further period of 90 days with effect from 15.06.2020.

During the period of suspension, the impugned memorandum of charge-sheet dated 16th June, 2020 was issued by the Director of Transport, Andaman and Nicobar Administration against the applicant with the allegation that during his surprise visit on 10th March, 2020 at Motor Transport Workshop, the applicant was not there in the Motor Transport Workshop. He also mentioned that previously one show-cause notice was issued against her seeking explanation but she failed to furnish any explanation within seven days which related to the year 2016. There is only one Article of Charge levelled against the applicant in the charge-sheet.

Against the said memorandum of charge-sheet dated 16th June, 2020, the applicant submitted a detailed reply on 25th June, 2020. She explained due to severe pain in stomach and on feeling uneasy she had to leave the work place during the surprise visit of the Director of Transport and on that day, she went to



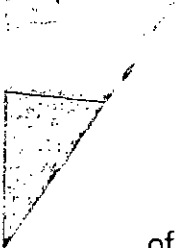
visit on private clinic for check up. The applicant also stated in her reply that she was regular in the duty and that her Section In-charge never raised any complaints nor issued any memo in respect of her performance. That she would complete all kind of works that were assigned to her, on time and that she was always punctual. An Enquiry Officer was appointed, vide office order dated 15th July, 2020 to enquire into the matter. And a notice for enquiry was served upon the applicant on 07.09.2020 to attend the hearing before the Enquiry Officer.

Vide office order No. 1217 dated 8th September, 2020 the order of suspension, issued by the Director of Transport, was revoked with effect from 09.09.2020.

The applicant has alleged that in the preliminary enquiry on 15th September, 2020 it was wrongly recorded that she admitted the charge, that she was not present in the Workshop on 13.03.2020 while the Director of Transport was an inspection.

That, the Enquiry Officer did not consider the supporting evidence or allow her to justify the absence. In his report the enquiry officer concluded that since the applicant has admitted the charges, she is guilty of the said charges. On the basis of such report, a lady mazdoor with 25 years of completed service was punished.

That, the applicant had submitted a reply against the said Enquiry Report before the Disciplinary Authority on 12th October, 2020 when she specifically stated that she did not admit any of charges but she explained why she was not present in the office on 13.03.2020 during the surprise visit of the Director of Transport.



The applicant has submitted a statutory appeal which is yet to be disposed of. She feels that it is an empty formality as The Director of Transport would exert his influence to get it rejected. She has therefore rushed to this Tribunal to seek justice.



5. Ld. Counsel for the applicant would vociferously submit that the penalty order was excessively harsh. The authority ought to have considered that the applicant was a regular employee for the last 25 years who ought not to have been penalised for day's absence that too on medical grounds.

6. Ld. Counsel for the respondents would justify the imposition of penalty.

7. The legal lacunae in the proceedings:


(1) The Director of Transport who is the complainant, and therefore a witness has issued that charge memo and has himself penalised the applicant, which is bad

(2) The charges have been levelled for 1 day's absence but refers to past conduct of which the applicant stood vindicated by way of regularisation of such leave.

(3) The charges, other than her absence on 13.3.2020 and the show cause dated 19.8.16, lack sufficient particulars.

(4) The Enquiry Officer, took her explanation for absence as her admission, treated the absence as wilful and held her guilty, in the following manner:

"The Charged Official while admitting the charges stated that at the time of inspection of Director of Transport on 13.03.2020, she was not present in the workshop and left for home due to severe stomach pain. She further stated that due to her poor health condition she remained absent from duty on many



occasions for treatment but all such periods of absence had been regularized by granting leave on medical ground by the competent authority.

The Charged Official had made a written statement admitting the charges and stating that she had recovered from the illness and assured that such incident of absence will not occur in future. The written statement in original duly signed by the Charged Official and presenting Officer is enclosed herewith as Annexure-I to the report.

With the admission of charges by the Charged Official under Article of Annexure I of charge memorandum, further course of inquiry was dropped."

An absence unless wilful should not be treated as a misconduct.

8. Be that as it may, at hearing it was submitted that a statutory appeal is pending.

9. Therefore in all fairness we direct the appellate authority to apply his mind judiciously on the facts, legal lacunae and pass his orders within 4 weeks from the date of receipt of a copy of this order.

10. O.A. thus stands disposed of. No costs.


(Dr. N. Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

drh