

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1231 OF 1995

ALLAHABAD THIS THE 30th DAY OF April , 2003

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A.K. BHATNAGAR, MEMBER-J

Smt. Anju Rani Gupta,
wife of Ashok Kumar Gupta,
Ex-Investigator,
National Sample Survey Organisation (FOD),
Resident of House No.149-A,
Raghambari,
Housing Scheme, Allahpur,
Allahabad.Applicant

(By Advocate Shri P.K. Ganguly)

Versus

1. The Union of India,
through the Secretary,
Government of India,
Ministry of Planning Department of Statistic,
National Sample Survey Organisation,
Patel Bhawan,
Parliament Street,
New Delhi.
2. The Director,
National Sample Survey Organisation,
(Field Operation Division),
Ministry of Planning,
Department of Statistic,
Govt. of India,
Pushpa Bhawan,
New Delhi.
3. The Joint Director (Central Zone),



National Sample Survey Organisation,
(Field Operation Division),
Ministry of Planning,
Dept of Statistics,
Government of India,
Lucknow (U.P.)

4. The Regional Assistant Director,
(Sri K.S. Lal),
U.P. (E) Region,
32-A, Staneley Road,
Allahabad.

.....Respondents

(By Advocate Shri S. Mandhyan)

O R D E R

HON'BLE MAJ GEN. K.K. SRIVASTAVA, A.M.

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the order dated 19.10.1995 (Annexure A-2). The applicant filed an appeal before the appellate authority which has been rejected vide order dated 29.01.1996 (Annexure A-21). The applicant has prayed that the punishment order as well as the appellate order be quashed and the applicant may be declared to be still continuing in service and is entitled for salary as well as other benefits of service.

2. The facts, in short, are that the applicant was appointed as Investigator on 22.10.1983 in the respondent's establishment. After completion of training she was confirmed by letter dated 30.04.1990. Initially she was posted at Gwalior and later on she was transferred to Allahabad. She was served with a major penalty chargesheet dated 16.03.1995.

An enquiry was conducted and on completion of enquiry the punishment order dated 19.10.1995, removing the applicant from government service, was passed. The applicant filed an appeal challenging the punishment order on 03.11.1995. However, without waiting for the outcome, she filed this O.A. on 22.11.1995. Subsequently the appellate order was passed on 29.01.1996 rejecting the appeal of the applicant. The applicant filed an amendment application no.841/96 which was allowed by order dated 11.07.1996. The O.A. was amended accordingly and the appellate order dated 29.01.1996 has also been challenged. The O.A. has been contested by the respondents by filing CA and Suppl.CA.

3. Shri P.K. Ganguly, learned counsel for the applicant submitted that the applicant had worked in the respondent's establishment for more than 10 years to the entire satisfaction of her superiors. However, due to malafide action on the part of respondent no.4, she has been made to suffer. The applicant has alleged that she was deprived of the benefits of LTC and Rs20,000/- were demanded by respondent no.4 in order to release the second instalment cheque of house building advance. The payment of her G.P.F. advance was delayed and her pay for August 1994 was withheld by the respondent no.4. When she raised her voice against the illegal demand of respondent no.4, the respondent no.4 became biased and he started harassing the applicant. The respondent no.4 also threatened that he would not allow the applicant to work in the establishment.

4. The learned counsel for the applicant further submitted

that an ex-parte enquiry was conducted inspite of fact that respondent no.4 was informed about the applicant being unwell for which she had submitted medical certificates.

5. The learned counsel for the applicant submitted that the applicant has not been given an opportunity to defend herself and thereby respondent no.4 has violated the principles of natural justice. Even the respondent no.4 did not give~~✓~~ an opportunity of hearing though he had decided to pass the removal order.

6. The learned counsel for the applicant also submitted that punishment of removal is too excessive which has been passed as the disciplinary authority was prejudiced. Such an order cannot ~~be sustained~~ in the eyes of law, and is liable to be quashed. The learned counsel for the applicant has placed reliance on the following judgment:-

- i) N.K. Musafir Yadav Vs Commandant, 47 BN C.R.P.F. Gandhinagar and others 2001 Vol IV E.S.C. 1701 and
- ii) Jadurouth Vs. State of West Bengal E.S.C. 2003 Vol I 421.

7. Opposing the claim of the applicant Shri Satish Mandhyan, learned counsel for the respondents raised a preliminary objection that the O.A. is liable to the dismissed on the ground of multi reliefs which is barred by ~~section 19 of AT Act~~ ^{in Rule 10 of CAT Procedure Rule 1985.}

8. The learned counsel for the respondents further

submitted that the applicant showed absolute apathy towards her duties. She was accorded opportunity to appear before the enquiry and to face charges on 22.05.1995, 05.06.1995, 17.06.1995 19.06.1995, 03.08.1995 and 28.08.1995. These intimations were sent to the applicant by registered post but on none of these occasions she appeared before the enquiry nor did she appoint any Defence Assistant.

9. The learned counsel for the respondents submitted that the disciplinary authority gave opportunity to the applicant to have her say in the matter against the enquiry report so submitted but the applicant did not ^{hath} replied/all and, therefore, the Disciplinary Authority very correctly passed the punishment order dated 09.10.1995. There are no procedural lapses and the entire action of the respondents is as per law.

10. The learned counsel for the respondents also submitted that the probation of the applicant was extended. The applicant tries to take advantage ^{hath} of her gender and she is in habit of making complaints against her superiors. She absented herself from duty without submitting any leave application supported by medical certificate, wherever required. Even a notice was published in the newspaper for making her to join duty but the applicant failed to join. She was also awarded adverse/Advisory entries in her ACRs but the applicant did not improve her style of functioning.

11. The learned counsel for the respondents also submitted that the applicant is found quite disobedient, guilty of absenting herself from duty unauthorisedly, not following

instructions of her superior officers, even non-cooperative with fellow employees, reluctant, indisciplined and writing letters to higher authorities against her superiors. In the enquiry all the charges stand proved. The respondents gave 6 dates for appearing before the enquiry but the applicant tried to avoid facing enquiry and she ~~has~~ submitted medical certificates in respect of only 2 or 3 dates. There is no violation of principles of natural justice and, therefore, the plea of the applicant is not tenable.

12. The learned counsel for the respondents finally submitted that there is no scope or valid ground before this Tribunal for interference, ^{In view of the judgments of} Hon'ble Supreme Court in the following cases:-

- i) Union of India Versus B.K. Srivastava 1998 SCC (L&S) 1993.
- ii) Secretary to Government, Home Department and Others Versus Sri Vaikundathan 1998 SCC (L&S) 1249.
- iii) State Bank of India Versus Samarendra Kishore Endow JT 1994 (1) SC 217.
- iv) U.P.S.R.T.C. Versus A.K. Parul JT 1998 (7) S.C. 203.
- v) Union of India and Others Versus Mohammad Rafique Ali Ahmad 1999 SCC (L&S) 634.
- vi) S.B.I. Versus Luther Kondhan 1999 S.C.C. (L&S) 1228

13. Learned counsel for the respondents concluded his

arguments submitting that in the facts and circumstances the Tribunal should not allow this O.A. nor should it consider for modification of the punishment awarded.

14. We have heard counsel for the parties, carefully considered their submissions and perused records.

15. The applicant has challenged the punishment order dated 19.10.1995 passed by respondents no.4 mainly on two grounds Firstly on the ground of malafide and secondly for violation of principles of natural justice. In para 4.5 of her O.A. the applicant has averred that she sent representation on 18.05.1995 (Annexure A-6) in which she has narrated number of cases of harassment by respondents no.4. On perusal of the same it appears from the tenor and tone of the language used therein that the applicant has not adhered to the discipline and decency required in the official correspondence. It certainly smacks of insubordination.

16. The main grounds of malafide on the part of respondent no. 4 alleged by the applicant are that she was deprived of the benefits of L.T.C., Rs. 20,000/- was demanded as bribe for release of second instalment as HBA, delayed payment of her GPF advance etc. By no evidence on record adduced by the applicant, the alleged mala-fide have been substantiated. In the array of respondents the applicant has not impleaded Respondent no. 4 by name. The description of respondent no. 4 is the Regional Assistant Director (Shri K.S.Lal). Such a description is not sufficient and in case the malafide is alleged the applicant has to implead such person by name separately on whose part the mala fide is alleged. We are not inclined to accept the allegation of malafide levelled

by the applicant against respondent no. 4.

17. On perusal of records we find that though a medical certificate issued by Tej Bhadur Sapru Hospital Allahabad, for the period from 15.12.1994 to 06.04.1995 has been placed as Annexure A-11 but no copy of the leave application has been filed. The applicant has been absent from 15.12.1994 till the punishment order dated 19.10.1995. It is also observed that the applicant did not act as a disciplined Government employee. She was ordered by respondent no. 4 to report before CMO by order dated 13.2.1995 but the applicant reported before the CMO only on 6.4.1995 as is evident from perusal of Medical certificate of CMO (Annexure-A 11).

18. The applicant has all along maintained in the O.A. that she was sick and was not able to attend her duty. She has also stated that she was on medical leave. From the perusal of records we find that there is no medical certificate on record covering the period from 19.5.1995 to 15.6.1995, 15.7.1995 to 18.8.1995. Not only this we also find that though the applicant's application dated 19.8.1995 (Annexure A-13) is available on records for leave for the period from 19.8.1995 to 29.9.1995 but the copy of the medical certificate has not been filed. Therefore, we are of the considered view that inspite of the fact that the chargesheet dated 16.3.1995 had been served on the applicant and the enquiry had been instituted, the applicant did not take it seriously and did not even respond to number of communications from respondents. The

dates for the enquiry were fixed on 22.5.1995, 5.6.1995, 19.6.1995, 17.6.1995, 3.8.1995 and 28.8.1995. On each occasion the applicant was informed through registered post. Respondents, in para 11 of their CA, have stated that in absence of communication from the applicant the enquiry was held ex-parte. The applicant while replying to para 11 of the CA in para '8' of her RA has avoided to give any specific reply.

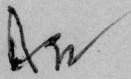
19. It has also not been disputed that the applicant was supplied a copy of the written brief of the presenting officer alongwith an enquiry report by the enquiry officer through registered post AD letter on 11.09.1995 but the applicant did not respond to this as well. The enquiry officer submitted his enquiry report to the disciplinary authority. The disciplinary authority also sent a copy of the enquiry report to the applicant on 29.9.1995 by registered AD Post. Since the applicant did not send her reply or representation with regard to the enquiry report, in our opinion, the disciplinary authority did not commit any error of law by passing the punishment order dated 19.10.1995.

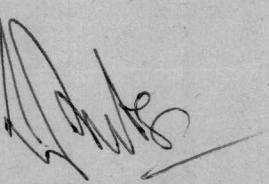
20. We would like to observe that the applicant did not even care to appoint her defence helper nor did she attend the enquiry on any date fixed by the enquiry office. From the perusal of records we find that the applicant was not on medical leave on 22.05.1995 and 5.6.1995 on which dates the enquiry was ^{held} ~~scheduled~~. The applicant could easily attend the same but she preferred not to do so for the reasons best known to her. The applicant

never showed any inclination of her co-operation in Enquiry proceedings which is very much evident on record. The applicant has neither approached the higher authorities nor this Tribunal with clean hands. She has simply stated that on account of illness she could not participate in the proceedings in respect of which she is alleged to have sent medical certificates but on a close scrutiny of material on record, as observed earlier, it is found that on 22.05.1996 and 05.06.1995 her absence is not explained by any medical certificate whatsoever.

21. In the facts and circumstances and our aforesaid discussions we are of the view that the applicant was given ample opportunity to defend herself which she did not avail. There is no violation of principles of natural justice. The respondents have committed no error of law and we do not find any good ground for interference. The case law cited by the applicant Viz-, case of N.K. Musafir Yadav (Supra) and case of Zadurouth (Supra) will not be helpful to the applicant. Since the O.A. is devoid of merits and we do not propose to allow this O.A. as it lacks merits, we do not want to burden this judgement with the case law cited by the counsel for the parties.

22. The O.A. is accordingly dismissed as it lacks merit with no order as to costs.


Member-J


Member-A

/Neelam/