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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No.5 OF 1987

Date of decision .. August 14, 1987.

Dr (Smt.) Sushila Mishra .. Applicant.

Versus

Union of India & others .. Respondents.

M/s R.K.Mohapatra,
B.Routray & K.B.Kar,
Advocates .. For Applicant.

Mr. A.B.Misra, Sr.
Standing Counsel (Central) .. For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes .
2. To be referred to the Reporters or not ? No .
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .

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JUDGMENT

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the departmental proceeding pending against her.

2. Shortly stated, the case of the petitioner is that she is a Lady Medical Officer attached to the Post & Telegraphs Dispensary, ^{Cuttack}. A departmental proceeding has been initiated against the petitioner on the following allegations :

" Dr (Smt.) Misra while functioning as Medical Officer P & T dispensary, Cuttack on 7.9.78 submitted her T.A. Bills amounting to Rs.1116.05 for sanction and reimbursement being the expenditure of the journey for herself and her family members from Cuttack to Berhampur on 19.7.78 and transportation of personnel effects on 1.8.78 on the occasion of her transfer from Cuttack to Berhampur making false entries and false claim in the said T.A. Bills.

Dr (Smt.) Misra by her above acts exhibited lack of integrity and conduct unbecoming of a Govt. servant thereby violating rule 3 (1) (i) and (iii) of the C.C.S. (Conduct) Rules, 1964".

The case of the Opposite Parties is that Dr. Misra did not move with her dependants and had not transported her personnel effects while moving on transfer from Cuttack to Berhampur and hence she has violated rule 3(1) (ii) and (iii) of the C.C.S. (Conduct) Rules, 1964. It is

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therefore, prayed by the petitioner that the proceeding in question is not maintainable under law and is liable to be quashed .

3. In their counter , the respondents- Opp. Parties maintained that violation of the aforesaid Conduct Rules has led the petitioner to face a departmental proceeding and the case involves questions of fact to bring home the charge against the petitioner. The questions of fact ^{still} remaining to be proved, it is too premature on the part of the petitioner to pray before this Tribunal to quash the proceeding on flimsy grounds. It is , therefore, maintained on behalf of the respondents- Opposite Parties that the application being devoid of merit is liable to be dismissed .

4. Mr. R.K.Mohapatra, learned counsel appearing for the petitioner contended that copies of certain documents not having been supplied to the petitioner during the inquiry , she is prejudiced and therefore the proceeding should be quashed. We do not feel inclined to accept the aforesaid contention of the learned counsel because a direction could be given by this Bench to the appropriate authorities to supply copies of the documents so that the petitioner could adequately and effectively defend herself. In such circumstances, we find no merit in the aforesaid contention of Mr. Mohapatra that on this ground the proceeding could be quashed .

5. Secondly , it was urged by Mr. Mohapatra that even if the Bench does not feel inclined to quash the proceeding on questions of fact , yet on a question ^{law}

of law, the proceeding could be quashed and the petitioner should not be made to face the hazards of an inquiry if the law stands in her favour. In support of his contention, the learned counsel relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1984 S.C. 1361 (A.L.Kalra vrs. The Project and Equipment Corporation of India Ltd.). The appellant before Their Lordships, namely, A.L.Kalra was an employee of the Project and Equipment Corporation of India Limited. Kalra had drawn an advance of Rs.16,050.00 for purchase of a plot of land at Faridabad. He had also drawn an advance of Rs. 11,000.00 for purchase of a motor -cycle. He neither utilised the amount for the purchases for which he had taken the advance nor he had refunded the money within the stipulated period and therefore a disciplinary proceeding was initiated against Kalra for having contravened Rule 4(1) (i) and (iii) of PEC Employees' (Conduct, Discipline & Appeal) Rules. Rule 4 (1)(i) and (iii) of PEC Employees' (Conduct, Disciplinary & Appeal) Rules is exactly similar to the provisions contained in Rule 3 (1)(ii) and (iii) of the Conduct Rules with which the present petitioner has been charged. For better appreciation, the provision contained in Rule 3 need be quoted which runs thus :

3. General

- (1) Every Government servant shall at all times-
 - (i) maintain absolute integrity ;
 - (ii) x x x
 - (iii) do nothing which is unbecoming of a Government Servant. "

Rule 5 of the Conduct Rules prescribes various misconduct

just as Rules 4 to 22 of the Conduct Rules with which the present petitioner is charged. Mr. Mohapatra, learned counsel contended that in the Conduct Rules, Rule 3 does not specify misconduct. Rules 4 to 22 thereof specify acts of misconduct for which action can be taken under Rule 13 of the C.C.A. Rules. It was further contended that the alleged misconduct on the part of the petitioner does not come within the purview of Rules 4 to 22 and therefore the principles laid down by Their Lordships in the case of A.L.Kalra would have fullest application to the facts of the present case and therefore, the proceeding should be quashed. The relevant observations of Their Lordships in the case of A.L.Kalra should be quoted which run thus :

" Rule 4 bears the heading 'General'. Rule 5 bears the heading 'misconduct'. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged

as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut, (1984) 1 SCC 1: (AIR 1984 SC 505), where this Court held that ' everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty'. Rule 4 styled as 'General' specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would, therefore, appear that even if the facts alleged in the two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct."

After hearing learned counsel for both sides, we are of opinion that the above observations are surely applicable to the case of the petitioner. In the Conduct Rules, Rule 3 does not specify 'misconduct'. Rules 4 to 22 thereof specify acts of misconduct for which action can be taken under Rule 13 of the C.C.A. Rules.

6. The petitioner is a Lady Medical Officer.

According to the existing rule, she is entitled to claim T.A. on transfer from one station to another. Admittedly

the T.A. bill submitted by the petitioner in respect of her dependants and transportation of her personnel effects from Berhampur to Cuttack has since been passed. Therefore, we fail to understand as to how objection was taken by the departmental authorities that she had not travelled with her dependants and her personnel effects were not transported from Cuttack to Berhampur for which a departmental proceeding had been initiated against her. Both on questions of fact and mixed questions of law and fact ex facie the charge framed against the petitioner does not disclose misconduct warranting a departmental proceeding under Rule 13 of the C.C.A. Rules. The dictum laid down by Their Lordships in A.L.Kalra's case was also followed by the Hon'ble High Court of Orissa in the case of the present petitioner who was charged in a ^{another} ~~charge of~~ departmental proceeding and the case is reported in 1985 (Vol.II) Orissa Law Reviews 494 (Dr (Smt.) S. Misra v. Union of India). The Division Bench pronouncing the judgment followed the dictum laid down by Their Lordships of the Supreme Court in the case of A.L.Kalra and we would also adopt the same view taken by the Hon'ble High Court and we would hold that the allegations levelled against the petitioner does not warrant a departmental proceeding in view of the law laid down in the case of A.L.Kalra.

7. Mr. Mohapatra, learned counsel for the petitioner also argued that the petitioner is being pursued with vindictiveness on several occasions and she is being relieved of the pangs of the departmental ^{law}

authorities by interference of the High Court and this Tribunal. We do not propose to ~~direct~~ ^{delate} over that part of the argument of Mr. Mohapatra because on ^{the} ~~the~~ questions of Law, we have found that the proceeding is not maintainable. In view of the discussions made above, we would quash the proceeding and exonerate the petitioner from the charges.

8. Thus the application stands allowed leaving the parties to bear their own costs.

h. a. a. a. 14/8/87
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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

I agree.

h. a. a. a. 14/8/87
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Vice Chairman.

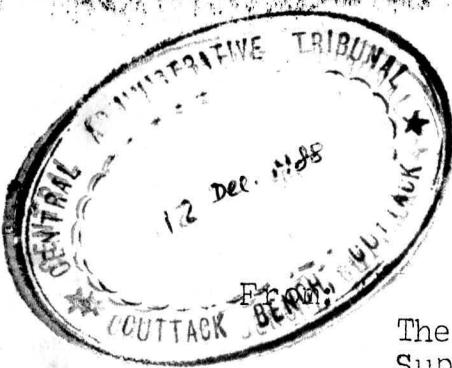


Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 14, 1987/Roy.

SL. NO. 1 (R)

S. O (C)
6/12/88

17/12/88



SUPREME COURT OF INDIA

Section-XI-A

D. No. 1279 187/SC/Sec. XI-A
Dated this the 28th November, 1988
5th December, 1988

The Assistant Registrar,
Supreme Court of India,
New Delhi.

To

The Registrar,
High Court Central Administrative Tribunal,
Cuttack Bench,
Cuttack.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 14288 OF 1987.

(Petition under Article 136 of the Constitution of India for
Special Leave to appeal to the Supreme Court from the judgment
and order dated the 14th August, 1987 of the
High Court of Central Administrative Tribunal, Cuttack Bench at
Cuttack in Original Application No. 5 of 1987.)

Union of India & ors. Petitioner(s)

Versus

Do. (Mrs) Sushila Misra Respondent(s)

I am to inform you that the Petitioner(s) above-mentioned for Special Leave to appeal to this Court was/were filed on behalf of the petitioner(s) above-named from the the judgment and order of the High Court noted above and that the same was/were disposed of dismissed by this Court on the

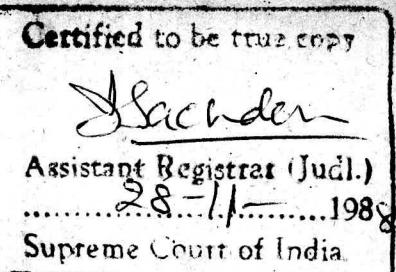
7th day of November, 1988.

A certified copy of the record of proceedings dated 7th November, 1988 in the matter is enclosed herewith for your information and record.

Yours faithfully,

Shreya
Assistant Registrar

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Item No. 34

Court No.2

Section XIA.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition For Special Leave To Appeal (Civil)No.14288 of 1987.

(For the judgment and order dated 18.8.87 of the Central Administrative Tribunal Cuttack Bench.
in O.A.No. 5/87)

Union of India & Ors,

.....PETITIONER.

VERSUS

Dr. (Mrs.) Sushila MisraRESPONDENT.
(With appln. for ex-parte stay)

Date: 7-11-1988, This petition was called on for hearing today.

CORAM:

Hon'ble Mr. Justice E.S.Venkaramiah,

Hon'ble Mr. Justice N.D.Ojha,

For the Petitioners:

Mr. B. Datta, A.S.G.
M/S. A. Subba Rao and P.Parmeshwaran, Advs.

For the Respondents:

Mr. Jitendra Sharma, Adv.

UPON hearing counsel the Court made the following.

O R D E R

Since it is reported that the Respondent Dr. (Mrs.) Sushila Misra against whom disciplinary proceedings had been started is dead. These proceedings have become infructuous. The petition is disposed of.

Sd/-

(C.JHA)
Court Master.

R.C.



Choppa
28/11/88

NK 5/12/88