

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No.97 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Sukanya Sengupta, W/O Mr. P. Sengupta  
working as Dy. Director(Engs.) Office  
of the Chief Engineer (EZ), All India  
Radio and Television residing at 98/  
1/26 Gopal Lal Tagore Road, Calcutta-36

... Applicant

VS

1. Union of India, service through the  
Secretary, to the Govt. of India,  
Ministry of Information & Broadcasting  
Shastri Bhawan, New Delhi

2. The Director General, All India Radio,  
Akashvani Bhavan, Samsad Marg, New Delhi

3. The Chief Engineer (R&D), All India  
Radio & Doordarshan, Ring Road, I P  
Estate, New Delhi-110 002

... Respondents

For the Applicant : Mr. S.K. Dutta, counsel  
Mr. T. K. Biswas, counsel

For the Respondents: Mrs. Uma Sanyal, counsel

Heard on 21.5.1998 & 22.5.1998 : : Date of order : 22.5.1998

O R D E R

In this application applicant, Smt. Sukanya Segupta  
alleged that in pursuance of the order of transfer dated  
20.12.93, Annexure/A1 to the application, she reported for  
joining to the post of Dy. Director (Engg.) on 3.1.94, but her  
joining report was not accepted by the authority on the ground  
that there was no vacancy in the office of the Chief Engineer  
(R&D), AIR, New Delhi and that has been communicated by a letter  
dated 12.1.94 (Annexure/A3 to the application) by the Chief  
Engineer (R&D) stating that Smt. Sengupta could not be  
accommodated in the office as the number of Assistant Research  
Engineers is already in excess of the sanctioned strength. On  
receipt of the said letter, an officer for and on behalf of the  
Director General, All India Radio, New Delhi issued a memo on  
17.1.94 directing the Chief Engineer (R&D) to accommodate the

applicant with effect from 3.1.94 against the vacancy stated therein. It was also directed therein to send a compliance report within a week of the issue of that memo. Despite that direction the respondents did not accommodate the applicant and after series of correspondences made between the parties the applicant was allowed to join on 10.2.94 and she was assigned duty from 10.2.94 which is apparent from the letter dated 10.2.94. After joining to the said office by a letter dated 10.2.94 (Annexure/A8) the Research Engineer for Chief Engineer(R&D) instructed the applicant to regularise her absence from duty with effect from 4.1.94 to 19.1.94 and from 21.1.94 to 9.2.94. She made representation to the authority on 10.2.94 vide also Annexure/A8 to the application stating the ground therein. Thereafter the applicant also made a representation to the Secretary, Ministry of Information and Broadcasting, Shastri Bhavan, New Delhi on 25.3.94 and thereafter, the applicant was served with the impugned order dated 12.6.96, Annexure/A10 to the application to treat her absence from 4.1.94 to 19.1.94, 21.1.94 to 9.2.94 and 4.2.94 to 9.2.94 as unauthorised absence from duty since the applicant did not submit any application for leave for that period and further it was mentioned that the said period would be treated as 'dies-non' under the Govt. of India's instructions (8) of Rule 11 of C.C.S. (C.C.A.) Rules, 1965 and it was also ordered that the said period would neither count as service nor be construed as break in service. Feeling aggrieved by and dissatisfied with the said order dated 12.6.96 and the previous order dated 10.2.94, Annexure/A8, the applicant approached this Tribunal for quashing the impugned orders as arbitrary and illegal and also sought for a direction upon the respondents to regularise the period from 4.1.94 to 19.1.94 and 21.1.94 to 9.2.94 by treating the applicant as on duty during the said period for all purposes and to grant her all consequential benefits thereby.

2. The case of the applicant is resisted by the respondents by filing a detailed reply opposing the claim of the applicant stating interalia that the applicant was not attending the office from 4.1.94 to 19.1.94 and again from 21.1.94 to 9.2.94 except 3.2.94. The applicant was asked vide the respondent No.3, Chief Engineer (R&D) on 10.2.94(Annexure/AIV) to regularise her absence from duty for the above said period and the copy of the memo was endorsed to the DG,AIR stating that the applicant could not be given any assignment as she was not attending the office. The applicant was again asked to regularise her absence including that period, but no reply was received from her. The applicant was again issued memo 22.2.94 (Annexure/AV) to clarify the position by date 25.2.94 positively. On 25.2.94 instead she requested for extension of date of reply upto 4.3.94. The request for extension of date of reply by the applicant ensure the validity of the decision of respondent No.3, Chief Engineer(R&D). However, the reply submitted by the applicant which is at Annexure/AVI to the reply was not found satisfactory. Instead regularising her case, the applicant stated that she was reporting for duty during the intervening period at R&D and DG,AIR. The applicant never reported for duty to CE(R&D) for the period in question. In the reply dated 4.3.97 the applicant stated that during that period she kept on reporting for duty at A.I.R. Directorate during the intervening period, the applicant was asked to intimate the name of the officer in D.G. A.I.R. to whom she had been reporting for duty during the intervening period but she failed to name anyone. Thereby, action taken by the respondents is operative and tenable and thereby, the respondents have stated that the application is liable to be dismissed.

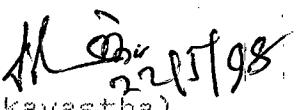
3. The applicant has also filed a rejoinder which I have perused.

4. Mr. Dutta, learned advocate appearing on behalf of the

applicant submits that the applicant was not at fault at for the purpose of alleged absence from duty which would be apparent from the memo dated 17.1.94, Annexure/A4 to the application written by the Section Officer for Director General, New Delhi where a specific instruction was given to the Chief Engineer to accommodate the applicant in view of the contingency referred to by the Chief Engineer (R&D) for non-acceptance of her joining on 3.1.94 and there was a direction that Smt. Sengupta be accommodated with effect from 3.1.94 in the vacancy mentioned therein. It is found that despite that direction the respondent No.3 did not take any action and took the plea that the applicant did not attend the office from 4.1.94. But the letter dated 7.2.94 supports the case of the applicant, which stated that the copy of the charge assumption report dated 1.3.94 submitted by Smt. Sengupta ~~was~~ sent herewith for necessary action. And that direction ~~had~~ been issued by the Office of the Director General, All India Radio to the Chief Engineer (R&D) in pursuance of the Directorate's memo of even number dated 17.1.94 on the subject noted above. And it is found that ultimately she was allowed to join on 10.2.94 and it is evident from the office order dated 10.2.94, Annexure/A6 that the applicant was entrusted with the duty and responsibility for the performance of the work in the office with effect from 10.2.94. In view of the circumstances it is to be ascertained whether the applicant can be held responsible for not attending the office, as alleged by the respondents even if it is accepted for argument's sake that she did not attend the office from 4.1.94. On a perusal of all annexures annexed with the application I got the impression that it is nothing but a high handedness on the part of the Chief Engineer(R&D) in respect of the refusal of the joining report of the applicant who had duly complied with the transfer order passed by the competent authority who is controlling authority and higher authority than that of the Chief Engineer (R&D). For

the high handedness of the respondent No.3, Chief Engineer (R&D), the applicant should not suffer. I do not understand as to why, inspite of specific direction given by the Director General, A.I.R., by a letter dated 17.1.94 and subsequent letter dated 7.2.94, the respondent No.3, Chief Engineer (R&D) did not act upon. The officer being a lady should not be expected to loiter in the corridor of the office. The respondent No.3 ~~should not~~ <sup>was not</sup> ~~intended to~~ <sup>intended in</sup> have refused ~~to accept~~ <sup>cause to</sup> joining report of the applicant ~~even~~ <sup>even</sup> on the ground that wrong order was passed by the higher authority. It is clear that as the respondent No.3, Chief Engineer (R&D) did not comply with the order of the higher authority for the reason best known to him, as I find from the record. So, under no circumstance the applicant can be held responsible for non attending the office, as alleged by the respondent No.3 in the reply. And it is found that the order of "dies non" is a punishment. Moreover, unauthorised absence in all circumstances is not a misconduct and not punishable. In order to hold the applicant <sup>responsible</sup> ~~for~~ unauthorised absence from duty, there ought to have been proper enquiry before passing such order "dies non" on the applicant for non attending the office under the circumstances stated above. No notice of showcause was issued to the applicant proposing such penalty. and reasonable opportunity prescribed under the Rule of principles of natural justice had not been ~~afforded~~ <sup>afforded</sup> in this case. The orders dated 10.2.94 as well as 12.2.96, Annexure/A8 and A10 to the application respectively were issued in violation of principles of natural justice. It is a settled law, as enunciated by the Hon'ble Apex Court that no order detrimental to the interest of the citizen should be passed by any authority without affording him or her to state his or her case. In the instant case I am fully satisfied that the impugned order <sup>on 10.2.94 and</sup> dated 12.6.96 <sup>are</sup> violative of the principle of natural justice and it was issued without giving any reasonable opportunity to the applicant to state her case. Besides this, I

find that the respondent No.3 without any justifiable reasons did not allow her to resume duty on the basis of the joining report submitted by her on 3.1.94. Thereby, the applicant is not at fault for the alleged period of absence. Hence the impugned orders are liable to be quashed on the ground of arbitrariness as well as on the ground of denial of principle of natural justice to the applicant and thereby, I set aside both the orders at Annexure/A8 and Annexure/A10 dated 10.2.94 and 12.6.96 respectively and at the same time I direct the respondents to treat the applicant on duty with effect from 4.1.94 and for the period, as mentioned in Annexure/A8 to the application, ~~and~~ the applicant should be paid all pay and allowances and other consequential benefits thereto on the basis of the joining report dated 3.1.94 within 3 months from the date of communication of the order and accordingly the application is allowed awarding a cost of Rs.1000/- to be paid by the respondents to the applicant.

  
(D. Purkayastha)

MEMBER (J)

22.5.1998