

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 330 of 2006

Order Reserved on 30.1.2014

Order Pronounced on 13/03/14

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Smt. Alpana Deepak aged adult, wife of Shri Desh Deepak Mishra,
resident of 4/33, Vipul Khand, Gomti Nagar, Lucknow. 226010.

Applicant

By Advocate Sri Anil Srivastava/Shri Praveen Kumar.

Versus

1. Union of India through the Secretary, Ministry of Human Resource Development, Government of India, New Delhi.
2. The Joint Commissioner(Administration), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.
3. The Deputy Director, Navodaya Vidyalaya Samiti, Vikas Nagar, Lucknow.
4. The Principal, Jawahar Navodaya Vidyalaya, Hardoi.

Respondents

By Advocate Sri Anurag Srivastava.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

(i) This Hon'ble Tribunal may kindly be pleased to quash and set aside the impugned memorandum of Charge Sheet dated 4.3.2003, Enquiry Report dated 10.6.2004 and Appellate Order dated 29.7.2005 upholding the order of removal from service which are annexed as Annexure No. A-1, A-2, A-3 and A-4 to this O.A. and reinstate the applicant with all consequential benefits including seniority arrears of salary etc.

2. This Hon'ble Tribunal may kindly be pleased to quash and set aside the rejection of leave applications of the applicant after summoning the original from the respondents.

3. This Hon'ble Tribunal may kindly be pleased to direct for regularization of the entire period of absence from duty as leave of one kind or another which is legally due and legally permissible

3. This Hon'ble Tribunal may kindly be pleased to direct for regularization of the entire period of absence from duty as leave of one kind or another which is legally due and legally permissible to the applicant as per Leave Rules and/or Special Disability Leave Regulations.

4. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case, may also be passed.

5. Cost of this application may also be awarded."

2. The applicant was initially appointed as Physical Education Teacher. In the year 1991, she was shocked to know that she is suffering from tumor and due to constant and proper follow up advise and treatment, it initially went into remission. It resurfaced in 2002 forcing her to go on leave from 7.7.2002 and remain constantly on leave up to July 2003. Notwithstanding her leave application, a charge sheet was issued upon the applicant vide charge memo dated 4.3.2003 wherein, it is indicated that the applicant while serving at JNV, Hardoi during the year 2002, was absent from duty w.e.f. 9.7.2002 to date without any sanction of leave. After the service of the said charge sheet, she was directed to submit the written statement and was also informed that inquiry will be held only in respect of those Articles of charges as are not admitted and she was further informed that if she does not submit his written statement of defence on or before the date specified or does not appear in person before the inquiry officer or refuses to comply the provisions of Rule 14 of the CCS (Classification, Control and Appeal) Rules 1965, the inquiry authority may hold the enquiry against her ex-parte. After the issuance of the said charge sheet, which includes the list of documents as well as the list of witnesses the inquiry officer was appointed and inquiry officer has submitted his report and while submitting report, the inquiry officer has categorically pointed out that the circumstantial evidence too establishes that the applicant remain absent from duties for more than one and a half year. Thus the charges leveled against the applicant were stands proved. The copy of enquiry report was submitted to the disciplinary authority and while passing the

order on 29.9.2004 by the disciplinary authority, it is mentioned that the applicant mentioned in her defence statement about her innocence and also denied charges leveled against her. After considering all the material available on record, the disciplinary authority imposed the punishment of removal from service upon the applicant with immediate effect. The applicant preferred an appeal and the appellate authority has also passed an order on 29.7.2005 upholding the punishment awarded by the disciplinary authority. Feeling aggrieved by the orders passed by the disciplinary authority and appellate authority, the applicant preferred the present O.A.

3. The respondents have filed their detailed reply and through reply, it is indicated by the respondents that the applicant while working as PET At JNV Hardoi was served with a charge sheet under the provisions of Rule 14 of the CCS (CCA) Rules 1965 and detailed inquiry was conducted and submitted his report on 10.6.2006. The applicant was given a copy to submit the reply and thereafter the competent authority i.e. the Deputy Director who is the disciplinary authority has passed an order dated 29.9.2004 of removal from service. Aggrieved by the said order, the applicant preferred an appeal and the appeal was also dismissed by the appellate authority by means of order dated 29.7.2005. The learned counsel for the respondents has categorically pointed out that the scope of judicial review in the case where full fledged inquiry has been conducted is not called for and has also taken the plea that there is no procedural lapses in conducting the inquiry as such, no interference is called for by this Tribunal. The learned counsel for the respondents has also indicated that the applicant is taking the Homoeopathy medicines and the medical certificate submitted by the applicant was also of the Homoeopathy Doctor. Through the counter reply, the respondents tried to indicate that the leave taken by the applicant, some of the leave application were not sanctioned.

4. The applicant has filed rejoinder and through rejoinder mostly the averments made in the OA are reiterated. Through rejoinder, the learned

counsel for the applicant tried to indicate that the applicant could not preserve the prescription slips and other related documents when she was treated at KGMC, Lucknow and only because of illness, she has not joined the duties and applied for leave for all the time and has also indicated that the certificate clearly shows that the doctor advised her for complete rest because of her illness.

5. Heard the learned counsel for the parties and perused the record.

6. The applicant was initially appointed as Physical Education Teacher. In 1991, she was shocked to know that she is suffering from breast tumor developing into cancer, and which was subsequently detected at KGMC Lucknow. After prolong treatment, the illness remained under control and avoided to make it public for obvious reason. In 2000, the applicant requested for her transfer to a place nearer to Lucknow on medical ground and she was transferred from Mau to Hardoi. In 2002, the applicant applied for one date casual leave for 8.7.2002 with permission to prefix Sunday i.e 7.7.2002 and also requested for leaving the campus. It is indicated by the applicant that in 2002, the cancer detected earlier was surfacing as such, she made a request for transferring to Lucknow. In July, 2002, itself, the applicant applied for extension of leave for grant of extra ordinary leave up to 31.7.2002 as she was to go under investigations. In July 2002, itself she again sought in reference to earlier letter dated 10.7.2002 disclosing about her illness and also attached medical certificates with her leave applications. As admitted by the applicant herself that her leave application was rejected without verifying the illness from the applicant. Subsequently, the applicant applied for extension of leave up to 15.4.2003. But prior to that, the applicant was served with a charge sheet and as per the Article-1 of the charge, it is indicated that the applicant while serving at JNV, Hardoi during the year 2002, has been absent from duties w.e.f. 9.7.2002 to date without any sanction of leave. Thereafter, as per law, the inquiry was conducted by the inquiry officer who has submitted his report on 10.6.2004 indicating therein that the

applicant was asked whether she has received the charge sheet or not, surprisingly her response was negative. But the said charge sheet was duly received by the applicant along with enclosures through Principal JNV Hardoi and also submitted her representation vide her letter dated 31.1.2003 denying the charges leveled against her and demanded to inspect the relied upon documents in original and the copy of memorandum along with enclosures were made available to the charged officer on 30.7.2003. Not only this, the charged officer was also asked to submit the additional list of documents if required in her defence and also defence assistance to plead the case within 10 days. In response to the aforesaid intimation, the applicant appointed Shri Chandra Kumar Mishra a retired officer as defense assistant and in no additional documents were required for her defense. She failed to attend the regular hearing and expressed her inability on account of suffering from conjunctivitis. As such, regular hearing was adjourned to 24.9.2003. Subsequently, the regular hearing was adjourned to 21.10.2003 for certain reasons and on that date the inquiry was conducted and the written proof was submitted by the presenting officer for perusal and to be submitted by the charged officer. The applicant submitted her reply in response to the written brief of the presenting officer through her letter dated 9.3.2004 and after due inquiry, the inquiry report was submitted to the disciplinary authority. It is also indicated by the inquiry officer that the applicant applied for one day casual leave on 8.7.2002 with permission to prefix Sunday i.e. 7.7.2002. The leave was as such granted by the Principal JNV, Hardoi and the applicant left the campus on 6.7.2002 AN. But charged officer made a request to Principal for granting extra ordinary leave up to 31st July 2002 and this request was further continued for extending the leave upto 30th September 2002 then up to December, 2002 and ultimately requested for extension of leave up to 15th April 2003 on the ground that since she is suffering from breast cancer and going under treatment of Dr. Rajeshwar Mishra a Homeopathic Physician. It is also indicated by the inquiry officer that the

competent authority rejected the long leave up to December, 2002 vide letter dated 26.9.2002 in the light of loss to the students and directed her to report for duty immediately failing which the period of absence will be treated as unauthorized absence and disciplinary action as deemed fit would be initiated as per rules. The inquiry officer also indicated in his inquiry report about all the case of the charged officer that since she was suffering from cancer since 1991, she applied for the leave and extended till 15th April 2003. In the inquiry, it is also mentioned that the charged officer was asked to join her duties vide letter dated 2.9.2002, 19.9.2002 and 26.9.2003, but she failed to make the compliance in resuming her duties. Considering all the submissions, the inquiry officer came to the conclusion that the charges leveled against the applicant stands proved as such, the disciplinary authority passed an order of removal from service. While passing this order, the disciplinary authority has also indicated the reasons for coming to such a conclusion and also mentioned the findings recorded by the inquiry officer. The applicant preferred an appeal and through appeal, it is indicted by the applicant that she never committed any illegality and no penalty is imposed upon her and the authorities have put the applicant to unjust inconvenience hardship and her request for transferring her to Lucknow was not accepted whereas, she was only transferred from Mau to Hardoi whereas the applicant was suffering by serious illness which requires regular treatment and medical check up at Lucknow only. It is also indicated by the applicant that apart from this, she has also personally apprised the authorities about her constraints and frequent medical considerations at Lucknow. It is also indicated by the applicant that her husband of an employee of the Central Government. The appeal of the applicant was also considered by the appellate authority and appellate authority rejected the appeal of the applicant by means of an order dated 29.7.2005 and upheld the punishment awarded by the disciplinary authority.

7. It is very surprising that when the applicant is suffering from such a serious disease, she has not annexed any medical prescriptions

along with the O.A. or along with the rejoinder reply. Only the prescriptions of Homeopathic Doctor was submitted. As per the submissions made by the applicant herself that her disease was detected in the year 1991 by the Doctors of the KGMC then at least one prescription or discharge slip, medical slip was required to be annexed by the applicant in the O.A. or to be given to the respondents for their kind consideration. The applicant herself made a request for her transfer to a place nearer to Lucknow as such she was transferred from Mau to Hardoi by the respondents. The learned counsel for the applicant has also relied upon the decisions rendered by this Tribunal in **O.A. No. 604/2001 in the case of Jawahir Vs. Union of India and others** as well as the decision of the Calcutta High Court in the case of **Gour Hari Kayal and Anr. Vs. State of West Bengal and Ors.** decided on 20.12.2005.

8. It may not be out of place to mention that the scope of judicial review is very limited in respect of disciplinary proceedings when there is no infirmity or illegality in conducting the inquiry. The general principle in regard to the leave is a leave cannot be claimed as a matter of right and the same shall be availed only after it is sanctioned by the competent authority. In the instant case, the applicant was granted leave for one day prefixing Sunday, but subsequently, the same was not extended. Undisputedly, the applicant remained on leave without any sanction of the competent authority. It is also required to be pointed out that the applicant remained absent for a long period which cannot be said to be minor misconduct. The job of teacher is an important job and unauthorizedly remaining absent can be treated a serious misconduct. The applicant was given chance to resume her duties but despite that she remained absent. The learned counsel for the respondents has also relied upon certain decisions of the Hon'ble Apex Court such as the case of **North Eastern Karnataka RT Corpn. Vs Ashappa reported in 2006 (5) SCC 137** as well as **New India Assurance Co. Ltd Vs. Vipin Behari Lal Srivastava reported in 2008 (3) SCC 446** as

well as the **Regional Manager, Bank of Baroda Vs. Anita Nandrajog reported in (2009) 9 SCC 462** and has pointed out that unauthorized absent by the applicant is misconduct and the same is not liable to be interfered. Apart from this, it is also observed by the Hon'ble Apex Court that there are certain general principles for grant of leave including the sick leave and without following the same it is illegal. Apart from this, the Hon'ble Apex Court has also been observed that the sick leave can be granted only on the production of a medical certificate from a registered medical practitioner clearly stating as far as possible the diagnosis and probable duration of treatment.

9. The Hon'ble Apex Court in the case of **State of Uttar Pradesh v. Raj Kishore Yadav reported in 2006(5) SCC 673** has been pleased to observe that:-

"4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a writ petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but an error of judgment. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal is noting but an error of judgment. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed. As already noticed, the charges are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the enquiry report and the order of the disciplinary authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the disciplinary authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the disciplinary authority ordering dismissal of the respondent herein from service."

10. The Hon'ble Apex Court in the case of **B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749** again has been pleased to observe


that "the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence."

10. In another case the Hon'ble Apex Court in the case of Union of India v. Upendra Singh reported in 1994(3)SCC 357 has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been further pleased to observe as under:-

"In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

11. As observed by the Hon'ble Apex Court in the case of **State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya reported in (2011) 4 SCC 584**, the Hon'ble Apex Court has been pleased to observe as under:

"It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings, in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."



12. As observed by the Hon'ble Apex Court in the case of **State Bank of India Vs. Ram Lal Bhaskar and Another reported in (2011) 10 SCC 249**, the Hon'ble Apex Court has been pleased to observe as under:

"Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to and yet by the impugned judgment the High Court has re-appreciate the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against Respondent 1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct."

13. As observed by the Hon'ble Apex Court in the case of **State of Rajasthan Vs. Mohd Ayub Naz reported in (2006) 1 Supreme Court Cases 589**, the Hon'ble Apex Court has been pleased to observe as under:

"The Court in Om Kumar Vs. Union of India while considering the quantum of punishment/proportionality has observed that in determining the quantum, rule of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for"

14. In the instant case, it clear that the applicant was unauthorisedly absent for a long period and the leave of the applicant was also rejected. The applicant was also given a chance to join the duty but despite she has not joined. As such, the punishment awarded by the respondents does not require any interference.

15. In terms of the decisions rendered by the Hon'ble Apex Court and the facts of the case, we are not inclined to interfere in the present O.A.. Accordingly the O.A. is dismissed. No order as to costs.

J Chandra

(Ms. Jayati Chandra)
Member (A)

U R. Chowal
(Navneet Kumar)
Member (J)

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