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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 768/88

Transfer Application No:

DATE OF DECISION 27.1.93

Smt. Nandini Prakash Navare Petitioner

D. V. Ganga Advocate for the Petitioners

Versus

Union of India and ors. Respondent

Shri P. M. Pradhan. Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri JUSTICE S.K.DHAON, Vice-Chairman

The Hon'ble Shri USHA SAVARA, MEMBER (A)

1. whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

U. Savara
27.1.93
(USHA SAVARA)
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION No.768/88

Shrimati Nandini Prakash Naware ... Applicant

v/s

Union of India and ors. ... Respondents

CORAM : HON'BLE SHRI JUSTICE S.K.DHAON, Vice-Chairman
HON'BLE USHA SAVARA, MEMBER (A)

Appearance :

Shri D.V.Gangal, Adv
for the applicant

Shri P.M.Pradhan, Adv.
for the respondents

JUDGEMENT

(PER : USHA SAVARA, M/A)

DATED : 27.1.93

The application is filed against order dated 20.12.1985 by which the applicant's services were terminated in terms of Sub-rule (i) of Rule 5 of the Central Civil Service (temporary Service) Rules, 1965 after giving her a notice of one month by office order dated 21.11.1985. The applicant has also impugned letter dated 11.9.1986 by which her representation was rejected and letter dated 9.5.1988 rejecting her application for reinstatement.

The facts of the case are that the applicant joined the respondents as clerk-cum-typist on temporary basis on 24-3-1973. She was promoted to officiate as auditor against promotion quota by office order dated 9.6.1983. All of a sudden, she was terminated on 11.7.1984. This letter was withdrawn on 16.8.1984 after the applicant gave an undertaking that she would be regular in attendance. The applicant's husband had met with an accident in 1977, and again in July 1982, due to which she was compelled to stay at home,

as her husband and 2 young children needed constant attention. She was served a memo on 3.12.1985 to explain why she was absenting herself from duty without any leave or report. Her reply was taken into consideration, but the order of termination was passed regardless of the troubled situation at home, and the mental agony she was undergoing.

3. A reply has been filed by the respondents. It is pointed out that the applicant was a habitual ~~absentee~~ ^{absentee}. The ~~final~~ ^{first} order of termination was cancelled, after she promised in writing that she would be regular thereafter. However, as evidenced by memo dated 3.12.1985, ~~she~~ again absented herself without proper notice of leave, time and again, between 5.2.1985 to 17.5.1985. She was given a warning on 12.7.1985. She joined on 12.8.1985, but remained absent from 13.8.1985. Final memo was issued on 17.10.1985 to join at once, failing which her unauthorised absence would be viewed seriously. The Weeding Committee considered her record, and opined that the applicant was not fit to be retained in service.

4. We have heard Shri Gangal for the applicant and Shri P.M. Pradhan for the respondents at length. It is the applicant's case that on her promotion in 1983, all her earlier lapses had been condoned, and that she being a permanent Government servant, the C.C.S. (Temporary Service) Rules, 1965 do not apply to her. Therefore, the order of termination is void ab initio, patently illegal, arbitrary, and should be set aside and the applicant be reinstated with full back wages and continuity of service as Accountant with effect from 28.12.1985. ~~No~~ order has been produced to support the applicant's contention that she was, even made quasi-permanent, leave ~~alone~~ permanent.

No doubt, she was working for ten years on a temporary basis but had never represented that she be declared quasi-permanent in accordance with the rules. She was promoted as auditor in 1983 on the basis of seniority -cum- fitness criteria, but the order clearly shows her status as temporary. In the circumstances she is covered by the C.C.S.(Temporary Service) Rules. She was on a two years probation in Accountant's cadre. She was given notice of termination earlier on 11.7.1984. This was withdrawn after she promised to be regular. However, as she continued to remain absent without notice, she was again given notice, and finally terminated.

5. Her record of absence as given by the respondents shows that she remained absent for long spells even prior to her husband's accident in 1977. She was given ample warning and opportunity to improve herself, and was only terminated after due notice, when she did not respond to the respondents efforts to improve her attendance. However, it seems that the official has really had a rough time due to the two accidents which befell her husband, and his subsequent death on 3.12.1986. She has been left without any source of livelihood, and has two minor children to feed and educate. No doubt, she has stayed away from duty very frequently, but there were compelling reasons, and the circumstances in which she found herself, were beyond her control.

6. In view of the facts and circumstances of the case, we feel that a lenient and compassionate view should be taken. The respondents are, therefore,

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directed to reemploy the applicant afresh as a lower division clerk within a period of three months from the receipt of a copy of this order. As she is being given a fresh appointment there is no question of grant of any arrears, nor is she entitled to any benefit for her past services. The application is disposed of in the above terms with no order as to costs.

U. Savara 27.1.93
(USHA SAVARA) ~~U.P.~~
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(S.K.DHAON)
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