

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 80/97 in
Original Application No. 475/96.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Regional Provident Fund
Commissioner,
Maharashtra and Goa,
Bhavishya Nidhi Bhavan,
341, Bandra (E),
Mumbai.

Central Provident Fund
Commissioner,
New Delhi.

... Applicants.

(Original Respondents)

V/s.

Smt. V.M. Desai,
C/o Office of Regional
Provident Fund Commissioner,
341, Bhavishya Nidhi Bhavan,
Bandra(E), Mumbai.

... Respondent

(Original Applicant.)

Tribunals order on Review Petition No. 80/97 in O.A. 475/96
by Circulation.

((Per Shri B.S. Hegde, Member (J)

Dated: 4.9.97

This Review Petition has been filed by the respondents in O.A. 475/96 seeking review of the judgement dated 23.12.96. Though the order was passed on 23.12.96 the same was received by the present petitioner on 13.1.97, and the Review Petition has been filed on 9.5.97 a delay of nearly three months.

The applicant has filed O.A. 475/96 challenging the memorandum dated 6.11.95 and to revoke the suspension. When the matter came up for hearing Shri Shetty, counsel for the respondents submitted

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that as against the order of the Disciplinary Authority the applicant has preferred an appeal to the Appellate Authority, which is pending for consideration. It is further stated that the Appellate Authority has already passed the order on 21.11.96 by which the prayer made in the O.A. under clause 8(b) and (c) has already been granted. Prayer 8(a) relates to quashing and setting aside of impugned order dated 6.11.95, which is not relevant for the purpose of deciding the O.A. Accordingly the Tribunal observed that the O.A. is premature and infructuous. Accordingly the O.A. was dismissed.

The Appellate Authority, considering the various contention raised in the appeal has reduced the penalty imposed by the Disciplinary Authority by withholding of two increments instead of five with cumulative effect. Regarding the regularisation of period of suspension underwent by the applicant, the Appellate Authority has stated that the terms and conditions of DOPT O.M. dated 3.12.95 will apply to the facts of this case for regularisation. Thus in our view, there is no scope to file the Review Petition, which is nothing but futile exercise of judicial power. The Appellate Authority has already passed the order reducing the penalty and in so far as the period of suspension is concerned it will be dealt with as per DOPT O.M. dated 3.12.95.

Admittedly the Review Petition filed by the petitioner is a belated one. They ought to have filed the Review Petition within a period of 30 days from the date of receipt of the order, which they did not do so. The letter of the applicant dated 17.3.97 seems to be in consonance with the order of the Tribunal, therefore any further enquiry in view of the Appellate Authority orders does not arise.

We have not gone into the merit of the Appellate Authority's order which we were not required to do so, even though the department is not barred in passing appropriate order regarding suspension of the applicant in terms of DOPT O.M. dated 3.12.95 which is in accordance with Appellate Authority's order.

In the result, we do not see any merit in the Review Petition. Accordingly the Review Petition is dismissed by circulation.

M. R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

B. S. Hegde
(B.S. Hegde)
Member (J)

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order dated 4/9/97
to be dispatched
on 18/9/97
by
23/9/97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 475/96

Date of Decision: 23/1/98

Smt. Varshaben B Desai

Applicant.

Shri I.J.Naik

Advocate for
Applicant.

Versus
The Regional PF Commissioner(I) &
The Central P.F Commissioner

Respondent(s)

Shri R.K.Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri. M.R.Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to *W*
other Benches of the Tribunal?

abp.

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT RD, 4TH FLOOR.,

FORT, MUMBAI-400 001.

ORIGINAL APPLICATION NO: 475/96.

DATED THIS 23RD DAY OF JANUARY, 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri M.R. Kolhatkar, Member (A).

Smt.Varshaben R.Desai,
C/o. Office of : Regional
P.F. Commissioner,
341, Bhavishya Nidhi Bhavan,
Bandra (East),
Bombay - 400 051.

... Applicant.

By Advocate Shri I.J.Naik.

v/s.

Shri H.D.Sharma,

1. The Regional P.F.Commissioner(I),
Maharashtra and Goa,
341, Bhavishya Nidhi Bhavan,
Bandra (East), Bombay - 400 051.

2. The Central P.F.Commissioner,
Hudco Vishala, 14th Bhikaji Cama Place,
R.K.Puram,
NEW DELHI - 110 060.

... Respondents.

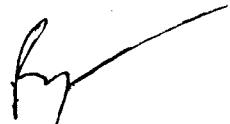
By Advocate Shri R.K.Shetty.

ORDER

¶ Per Shri R.G.Vaidyanatha, V.C. ¶

This is an application challenging the legality and validity of the Charge sheet dated 6/11/95 and consequential reliefs. We have heard the Counsel on both the sides.

2. The Charge sheet dated 6/11/95 was issued to applicant alleging unauthorised absence from 8/3/94 to 18/1/95. It appears earlier the applicant was facing another departmental enquiry and was kept under suspension. That order of suspension came to be revoked on 8/3/94. The applicant did not join her post till 19/1/95. That is why the second charge sheet was issued alleging unauthorised absence.



3. The Learned Counsel for applicant contended that the second charge sheet for alleged unauthorised absence is illegal and void on the ground that the period of suspension was not regularised by competent authority and the backwages for the suspension period was not paid to the applicant and that she was not given the new payscale and therefore the applicant was justified in not joining the duty and hence the charge sheet is illegal and liable to be quashed.

4. On the other hand, the learned counsel for respondents contended that at the interlocatory stage of issuance of charge sheet, the Tribunal cannot interfere and invited our attention to the latest decision of Supreme Court at this point., [1997(II) LLJ-1011] Deputy Inspector of Police v/s. K.S. Swaminathan where the Apex Court has observed that at the stage of issuance of charge sheet, the Tribunal cannot interfere into the question whether the charges are true and could be gone into. Therefore, we are of the considered view that scope of interference of interlocatory issuance of charge sheet is very limited. In the facts and circumstances of the case, we find that no case is made out at this stage.

5. Even granting for a moment that she did not join the post after 8/3/94 till 18/1/95, it is no ground for treating the charge sheet as illegal. It is open to applicant to submit a written statement including justification for remaining absent. Then it is for the competent authority to decide whether enquiry is to be held and pass appropriate orders according to law.

6. It is not possible to say that issuance of charge sheet itself was illegal, as far as the period of suspension is concerned. In the letter of revocation, it is clearly mentioned that a decision regarding period of suspension will be taken after the conclusion of disciplinary enquiry i.e.



the normal procedure to be followed. If during disciplinary enquiry, the applicant is exonerated, then only the period of suspension will have to be treated as period spent on duty.

If the applicant is ~~inflicted~~ charged with a minor penalty then also the competent authority may take a decision to treat the period of suspension as period spent on duty. But if the disciplinary enquiry ends in a major penalty, ~~therefore~~ ^{thus} it is for the disciplinary authority to take a final decision in the matter only after the conclusion of the disciplinary enquiry. Hence, at this stage it is not possible to state that the issuance of charge sheet for unauthorised absence is illegal and void.

6. Anyhow, we do not want to give an opinion at this stage since the disciplinary enquiry is ~~in~~ ^{under} process. All the questions ^{asked} ~~were~~ by the learned Counsel for Applicant are left open. Since, the matter is pending for quite long time and the period of suspension is prior to 1994, we feel that some direction should be given to expedite the disciplinary enquiry.

7. In the result, the OA is disposed of at the admission stage with direction to respondents to complete the disciplinary enquiry and pass final orders as early as possible, preferably within a period of 3 months ~~after~~ ^{from the} date of receipt of this order. The applicant is before the Court and gives an undertaking that she will give full cooperation for the enquiry. All the contentions of the applicant regarding merits of the case are ^{were} ~~left~~ open to be asked before the competent authority. If any adverse order is passed by ^{the} disciplinary enquiry, needless to say ~~that~~ ^{extending time} applicant can ultimately approach the Tribunal if required. If due to unavoidable reasons the enquiry cannot be completed within a period of three months concerned, then liberty to respondents to move the Tribunal by giving appropriate reasons.

M.R.Kolhatkar

M.R.KOLHATKAR)
MEMBER(A)

abp

R.G.Vaidyanatha
(R.G.VAIDYANATHA).
VICE CHAIRMAN