

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

Date of Decision : 13th March 2002

O.A. No. 1089/99.

Mrs. Q.L. Mascarenhas, (Ex-LDC), Artificial Limb Centre, Pune-40,
residing at M-58, Paramarnagar Housing Society, Fatimanagar,
Wanawadi, Pune-13.
(Shri S.P.Saxena, Advocate for the applicant)

h.s.

... APPLICANT.

v e r s u s

1. Union of India, through the Secretary, Ministry of Defence
DHQ, P.O. New Delhi- 110011.
2. Director General of Armed forces, Medical Services (DG-2B),
Ministry of Defence, M-Block, New Delhi. 110 011.
3. The Commandant, Artificial Limb Centre, Pune-41 040.
(Shri R.R.Shetty, Advocate for Shri R.K.Shetty
for respondents)

... RESPONDENTS.

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Hon'ble Mr. B. N. Bahadur, counsel for the applicant.
Hon'ble Mr. J. K. Kaushik, counsel for the respondents.

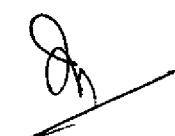
:O R D E R :
(per J. K. Kaushik, Judicial Member)

The applicant has filed this Original Application under
Section 19 of the Administrative Tribunals Act, 1985, and has
prayed for the following reliefs :-

"a) to quash and set aside the impugned orders dt.
26.3.1999, and order dt. 18.10.1999, passed by Appellate
Authority communicated vide letter dt. 4.11.99 by
Respondent No.3.

b) to direct the Respondents to reinstate the
Applicant, on the same post held by him prior to his
being compulsorily retired.

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- c) to direct the Respondents to treat the period from 26.3.99, till Applicant is reinstated as period on duty and to pay full salary and allowances to the Applicant for the said period.
- d) to grant all other consequential benefits.
- e) to award cost of application."

2. The brief facts of the case are that the applicant was initially appointed to the post of LDC in the office of Central Ordnance Depot on 21.02.1979. She was allowed own request transfer in the year 1996, and she was posted to work in the office of 3rd Respondent. Her record of work was without any blemish till 04.01.1999, when she was issued with a charge sheet under Rule 14 of the C.C.S. (CCA) Rules 1965. In the article of charges, the allegation is as under :-

* * * * *
ARTICLE -I

You are posted in the Artificial Limb Centre Pune, from COD Dehu Road, w.e.f. 01 Oct. 96 and you are detailed to work in Civil Establishment (Industrial). Your trade work as LDC is not up to the efficiency of an LDC. In this connection, you have been given many opportunities to improve your performance, but you have failed to improve your performance."

3. Applicant replied the charge sheet vide letter dated 14.01.1994 (Exhibit A-4). Thereafter, one Lt. Col G.S. Baidwan was appointed as Enquiry Officer and one Major B. S. Bajwa was appointed as presenting officer. The enquiry was conducted into the allegations and she was supplied a copy of Enquiry Report alongwith a copy of the punishment order, vide letter dated 26.03.1999 (Exhibit A-1). As per the Enquiry Report the charges/imputation of charges have been mechanically reproduced. The charges/imputation of charges have been bifurcated into six charges and the same have been held as proved. The Disciplinary Authority has imposed the penalty of compulsory retirement on the basis of the findings of the Enquiry Officer. The applicant preferred a self explanatory and exhaustive appeal vide letter dated 23.04.1999. She specifically requested for a personal hearing before the decision of her appeal but the same has been rejected without passing a speaking order and without affording any opportunity of hearing vide letter dated 04.11.1999 (Exhibit A-2). The applicant has challenged the impugned order of penalty as well the Appellate order. Multiple grounds have been taken in the Original Application, as mentioned in the Para 5 and sub paras of the OA.

4. The respondents have filed written statement on behalf of the respondents and have contraverted the contentions of the

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applicant raised in the Original Application. They have also annexed the papers relating to the proceedings of the enquiry conducted by the Enquiry officer. The applicant has also filed a rejoinder to reply and refuted the averments made on behalf of the respondents in their reply.

5. We have heard the learned counsel for the parties and have carefully perused the records of this case.

6. Learned counsel for the applicant rested his arguments mainly on the grounds that the applicant has not committed any misconduct. Her work on the post of LDC was unblemish, the enquiry was not conducted as per the procedure inasmuch as number of documents were allowed on behalf of the prosecution without ^{of same} their being included in the list of documents, copies ^{of} were not provided to her at the time of enquiry, the evidence of certain persons who were not listed as a departmental witness in the list of witnesses annexed to charge sheet, were called in the enquiry without any permission, person like Subedar Major Licimi Chand who used to tease the applicant by resorting to gender harrassment. Her defence was not taken into consideration, she was not supplied with the copy of Enquiry Report prior to passing the penalty order and she was not given any opportunity to represent against the findings of Enquiry Officer. The Enquiry Officer did not discuss any of the evidence and held the charges proved. The Disciplinary Authority and Appellate Authority passed the order with closed mind in a mechanical manner without

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passing a speaking order and the punishment imposed is grossly disproportionate to the alleged misconduct.

7. The perusal of the Enquiry Report, the penalty order and the appellate order ex facie reveals that the impugned orders are non speaking order and contain no reason for their decision. It is admitted position that the Enquiry report was furnished to the applicant alongwith the penalty order and she was not afforded any opportunity to make representation against the findings of the Enquiry Officer.

8. On the other hand, the counsel for the respondents has vehemently opposed the contentions of the applicant and have taken us to certain statements, wherein, it is shown that the applicant has admitted some of the charges and that no prejudice has been caused to her by the non supply of Enquiry Report. Further, it has been argued that the Disciplinary Authority has agreed with the findings of the Enquiry Officer and there was no requirement to pass a speaking order. Similar is the position with the Appellate Order. It has also been said that no prejudice has been caused due to the non supply of the copy of Enquiry Report, non-giving of the reasons by the Disciplinary Authority and non giving the opportunity of hearing to the applicant by the Appellate Authority. In support of these arguments, the counsel for the respondents has quoted the judgment of Apex Court in State Bank of Bikaner & Jaipur vs.

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Shri Prabhudayal Grover SLJ 1996(1) SC 145, Devkinandan Sharma Vs. U.O.I. & Ors. 2001 SCC (L&S) 1079, U.O.I. vs. Vihwamohan SLJ 1998(3) SC 207. On the other hand, the counsel for the applicant took support of the judgement of the Hon'ble Supreme court in B.C. Chaturvedi vs. U.O.I. & Ors. AIR 1996 SC 484 and stressed that even the penalty was disproportionate to the alleged misconduct.

9. We have given our careful thought to the controversy in question from ^{especially} the records of the case. It is revealed that the applicant has taken consistent stand that she did not commit any misconduct but in her cross examination, she has admitted certain things. It causes anxiety and doubt as to why the applicant has not cross examined the state witnesses. On the other hand, no cogent reasons is forthcoming for recording the statements of the additional witnesses ~~is-controvertial~~. In any case, it cannot be said that it is a case of no evidence and also as to how serious prejudice was caused to the applicant, keeping in view, the available evidence.

10. As regards the disproportionate penalty, it is to be noted that the charge sheet against the applicant was that her trade work as L.D.C. was not up to the efficiency as L.D.C. but as per the evidence she was given additional work of cashier and her alleged misconduct relates to the work as a cashier. The factum of her working for over a period of 17 years satisfactorily is not indisputable except that at one occasion, a minor penalty of

censure was given and her increment was withheld under FR 24.. As regards the withholding increment under FR 24, no details are forthcoming. In fact the charges alleged against the applicant do not conclusively lead to the conclusion that the applicant's work was not up to the required efficiency expected from the L.D.C. Even no details or criteria for such efficiency have been mentioned. One cannot be declared as unfit for a post merely by picking up one or two minor incidents or any indiscipline. In view of the matter, we are fortified with a contention of the learned counsel for applicant, that the punishment of compulsory retirement imposed on the applicant is grossly disproportionate to the alleged misconduct and shocks the ^{Conscience} cognizance of this Tribunal. Once we have come to this conclusion that the penalty is disproportionate to the alleged misconduct we are left with two alternatives as per the verdict of the Apex Court in V.C. Chaturvedi vs. U.O.I. AIR 1996 SC 484. One is to remand the matter to the Competent Authority to reconsider the punishment and the other is to modified the penalty order and impose the appropriate punishment, to shorten the litigation. In the present case, keeping in view the facts and circumstances of the case, we are of the view that the second alternative would meet the end of justice and we choose to modify the order.

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12. We accordingly pass the order as under :-

" The O.A. is partly allowed. The impugned order dated 26.03.1999 (Exhibit A-1) and order dated 04.12.1999 (Exhibit A-2) are hereby modified and the penalty of compulsory retirement is substituted with the penalty of reduction by 3 stages in time scale of pay for a period of three years with cumulative effect. The applicant shall be reinstated in service with all other consequential benefits. However, she shall be entitled to 50% of the back wages subject to set off, of any amount paid to her in consequence of the impugned orders, but with no interest on either side. The order shall be complied with within a period of three months from the receipt of a copy of this order. No order as to costs.

J. K. KAUSHIK
(J. K. KAUSHIK)

MEMBER (J)

B. N. BAHADUR
(B. N. BAHADUR)

MEMBER (A)