

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: OA492/95

Date of Decision: 13.06.2000

Smt. Leelavathi K. Manjeshwar

Applicant.

Shri R.P. Saxena.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri Ravi Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. L. Hmingliana, Member (A)

Hon'ble Shri. Rafiquddin, Member (J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

[Signature]
13/6/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

REGISTRATION NO. OA 492 OF 1999

DATE OF ORDER : 13.06.2000

Smt. Leelavathi K. Manjeshwar, Himangi Maheshwar
Housing Society Room No. 24, 4th Floor, R.T.O. Road,
Near 4 Bungalows, Andheri (west), Mumbai - 400 058.

.....APPLICANT.

By Advocate Shri R.P. Saxena.

Versus

1. Union of India, through Quartermaster General,
Secretariat, Board of Control, Canteen Services,
L-I Block, Room No. 16, Church Road, New Delhi.1.
2. The General Manager, Canteen Stores Department
ADELPHI 119, M.K. Road, Mumbai, 400 020.
3. Shri S.C. Sharma, Assistant General Manager,
through the General Manager, Canteen Stores
Department, ADELPHI 119, M.K. Road, Mumbai -400 020.

.....RESPONDENTS.

By Advocate Shri Ravi Shetty for Shri R.K. Shetty.

C O R A M


Hon'ble Mr. L. Hmingliana, Member (A)

Hon'ble Mr. Rafiquddin, Member (J)

O R D E R

L.Hmingliana, Member (A):-

The applicant was appointed as Lower Division Clerk from 5.7.1982, and she was removed from service by order dated 8.2.1993 passed by the General Manager & Chairman of the Board of Administration, Canteen Stores Department, and her appeal against the order of removal was dismissed by the Quartermaster General, New Delhi by order dated 2 31.3.1999. Her OA is for quashing the two orders, and for direction to treat her as in service from the date of her removal from service.



2. The circumstances leading to her removal from service are briefly as follows;

Her husband was working in Muscat, and she took leave for 90 days from 26.3.1990, and went to Muscat to be with her husband, and after expiry of her leave on 25.3.1991, she did not return to duty, but sent applications for extension of leave till 7.9.1991 on grounds of illness. She also submitted medical certificates dated 25.3.1991, 5.5.1991, 16.6.1991 and 28.7.1991 in support of her application for leave. The extension of leave was not granted, and instead the General Manager sent her a memo dated 4.10.1991 (Annexure -2) for holding departmental inquiry against her under Rule 14 of the CCS (CCA) Rules 1965, on the charge of remaining absent from duty unauthorisedly, and thereby failing to maintain devotion to duty, and committing acts prejudicial to good order and discipline, and thereby violating rule 3 of the CCS (Conduct) Rules, 1964. Shri S.C. Sharma, AGM (MR) Canteen Stores Department was appointed as the inquiry officer, and Shri N.N. Shukumaran, AAO was appointed as presenting officer. The inquiry was held on 8.12.1992, when the applicant was present. The minutes of the inquiry at annexure 4 shows that the inquiry officer asked the applicant

whether she accepted the charges or not, and whether she would like to have any defence assistance, to which she stated that she accepted the charges, and that she was actually sick, and the medical certificates she submitted were genuine, and she did not require any defence assistance, and then she prayed that her application for voluntary retirement be accepted by the Department in due course, and any compensation as per rule be given to her. The inquiry officer submitted his report dated 14.12.1992. Then, the impugned order of her removal from service dated 8.2.1993 was passed by the General Manager and Chairman of the Board of Administration, Canteen Stores Department.

3. She filed appeal against the order of her removal, and the appellate authority, viz. Quartermaster General of the Canteen Stores Department, New Delhi dismissed her appeal by order dated 30.8.1993. She filed OA 737/94 challenging the order of her dismissal and rejection of her appeal. The OA was disposed of by our order dated 5.8.1998 by remitting the case back to the appellate authority for disposal of the appeal after giving personal hearing to the applicant in the light of the observation in the order. Then the appellate authority by order dated

31.3.1999 rejected the appeal. As we have already said, the present OA is for quashing the order of the appellate authority and also the original order of her dismissal from service dated 8.2.1993.

4. In the order of her dismissal, the period of her unauthorised absence with effect from 26.3.1991 till the date of passing the order was regularised as extra ordinary leave, as per leave rules. It is the contention of Shri R.P. Saxena, the learned counsel for the applicant that by regularising the period of her unauthorised absence, the sting was taken out of the charges levelled against her. In support of his contention, he relied upon the judgement of the Supreme Court in State of Punjab & Ors v. Bakshish Singh, JT 1998 (7) SC 142, and the judgement of Punjab and Haryana High Court in Punjab State & Ors v. Rur Singh, 2000 (1) SLR 473, and the orders of various Benches of the Tribunal, in which the judgement of the Supreme Court was followed. The learned counsel also contended that the conclusion drawn by the inquiry officer from the record of the proceedings of the inquiry held on 8.12.1992 that she accepted the charges levelled against her was not borne out by the statement attributed to the applicant at one day inquiry.

He contended that her statement was in no way an admission to the charge of not maintaining devotion to duty and committing acts prejudicial to good order and discipline, and thereby violating Rule 3 of the Conduct Rules. He argued that the punishment of removal from service for her absence without prior sanction of leave was disproportionately severe, considering the fact that she applied for leave, and she submitted her applications with medical certificates issued by the Medical Officers In-charge of the Palace Staff Clinic Salalah, Muscat. He also pointed out the observations in our order disposing of her previous OA 737/94 that on prima facie consideration, "the penalty on the face of it appears to be harsh and disproportionate and shocks the conscience of the Court," and ^{he} urged that the order of removal would be fit to be quashed even on that consideration.

5. Shri Ravi Shetty, the learned counsel for the respondents contended, on the other hand, that the regularisation of the period of applicant's unauthorised absence as extra ordinary leave was ~~of~~ ^a mere formality, and not on consideration of the merit of her case, and the formal regularisation of the period of unauthorised absence must not be taken out of context, and it must be read in harmony with the order of punishment. He also cited the order of the

Tribunal in OA 188/94 in the case of Baban Ramachandra Khude v. General Manager, Ammunition Factory, Kirkee and others, which is reported in Swamy's News March, 2000 at page 87 to 91. He also pointed out from the observation in the appellate authority's order that when her leave application supported by the Medical Certificate given to her by Dr. S. Maqdoom Mohiuddin was received, the department wrote to Dr. Maqdoom letter dated 9.9.1991 inquiring about her probable date of recovery, and ~~that~~ the Doctor confirmed by letter dated 8.2.1992 that her health had improved satisfactorily, and he pointed out further that thereafter the applicant sent medical certificates from other doctors and not from Dr. Maqdoom Mohiuddin. He also emphasised that instead of joining duty, when she appeared for inquiry on 8.12.1992, the applicant returned to Muscat. He argued that as long as her husband was in employment, earning a good income in Muscat, the applicant did not bother to show any devotion to duty, and it is only after her husband was out of employment that she has come for relief.

6. It is true that the quantum of punishment awarded in a departmental inquiry is for ^{the} disciplinary authority to determine and not normally for the Tribunal. However, there can be exceptions, for example, when the penalty awarded is so disproportionately

severe that it shocks the conscience. The prima facie finding was clearly given in our order dated 5.8.1998 in the applicant's previous OA 737/94, and the appellate authority in his order dated 31.3.1999 did not deal with that aspect of the matter satisfactorily.

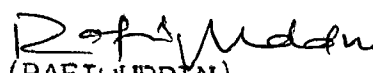
7. As regards the change of doctors by the applicant after her doctor Mohdiddin confirmed that she had sufficiently recovered, it was the contention of ^{her} the learned counsel that all the doctors were ~~the~~ government doctors, working in Salalah, Muscat.


8. We agree with the learned counsel for the applicant that the medical certificates produced by the applicant cannot be simply dismissed as not genuine or not correctly indicating the applicant's state of health. After all, as stated by her learned ^{the} counsel, the doctors who gave her ^{the} medical certificates appear to be government doctors. We are also of the view that the statement given by the applicant at the inquiry held on 8.12.1992 did not amount to admission of the charges. All that it amounted to ^{her acceptance} was that she remained absent unauthorisedly. It is true that she did give the impression that she was not much interested in her employment as lower division clerk, and she was more interested in retirement, and the retirement benefits or in her own words, the

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compensation, when her application for voluntary retirement would be accepted. Even then the extreme punishment of removal from service was unwarranted. Then, in our opinion, the applicant will have to be taken back in service. She has been out of employment for more than 7 years, and that long period of absence can be regularised by the respondents as per rules or as extra ordinary leave without pay, as they have done in the impugned order of her removal for the earlier period of her unauthorised absence.

9. The application is allowed. The impugned orders of the applicant's removal from service and the order of rejection of her appeal by the appellate authority are hereby quashed and set aside. The applicant shall be reinstated in service within three months from the date of communication of this order to the respondents. The respondents shall issue appropriate order ^{for} regularisation of her long absence as per rules or as extra ordinary leave without pay. There shall be no order as to costs.


(RAFIQUDDIN)
MEMBER (J)


(L. HMINGLIANA)
MEMBER (A)

/CBS/