

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 671/2000

Date of Decision : 11th Nov, 2002

Smt.S.A.Damle

Applicant

Ms.N.Gohad

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.K.Shetty

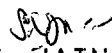
Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? no
- (iii) Library yes


(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.671/2000

Dated this the 11th day of Nov, 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Smt.Savita Ashok Damle,
Ex-Chargeman Gr.II,
H.E.Factory, Kirkee,
Pune.

...Applicant

By Advocate Ms.Neelima Gohad

V/S.

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ P.O.New Delhi.
2. Member,
O/O the Director General
of Ordnance Factories,
10-A, Shaheed K.Bose Road,
Calcutta.
3. The General Manager,
H.E.Factory, Kirkee,
Pune.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order dated 12.11.1999 and 5.6.2000 with direction to the Respondent No.3 to reinstate the applicant forthwith, to treat her on duty with all consequential benefits.

Shetty ...2/-

2. The applicant was working as U.D.C. Chargeman Grade II in the Office of Respondent No.3. She was served with the chargesheet dated 24.6.1999 under Rule 14 of CCS (CCA) Rules, 1965 by Respondent No.3 in respect of her unauthorised absence, irregular attendance, habitual late attendance and habitual offender unbecoming of a Government servant violating Rule 3 (1) (iii) of CCS (Conduct) Rules, 1965. The Respondent No.3 passed an order dated 12.11.1999 (Ex.A-1) imposing the Major Penalty of compulsory retirement w.e.f. 12.11.1999 which was served on the applicant on 27.12.1999. She submitted an appeal to Respondent No.2 on 17.1.2000 (Ex.A-4) through Respondent No.3 which was rejected vide order dated 19.5.2000 by the Respondent No.2 (Ex.A-2).

3. The applicant claims that she has submitted reply to the chargesheet but without conducting an enquiry the penalty order dated 12.11.1999 (Ex.A-1) is passed, as such provisions of Art.311 of the Constitution is being violated.

4. The claim of the applicant is being resisted by the respondents stating that in reply to the chargesheet the applicant gave an admission regarding misconduct on 27.8.1999 (Ex.R-2). No enquiry was held on account of above mentioned admission. Ex.R-2 is reproduced which is as under :-

"I am in receipt of the letter mentioned above and I agree with the statement enclosed. I used to feel giddy in the morning. The effect lasts upto 10 a.m. I am suffering from the illness from last two years. Since I am taking some treatment/medicines, it is quite O.K. now.

P.M. / - ..3/-

That is why I had to stay at home for sometime. But somehow I managed to attend the duty by coming late or availing short leave and when I had much more pains, unwillingly I had been compelled to stay at home. I had taken leave because of the fear that something may happen in between.

Gross misconduct, habitual nothing of that sort. No one can afford the loss of payment to such an extent. But we are helpless against the illness. You may send me to OFH for medical check-up."

5. Rule 11 of CCS (CCA) Rules, 1965 mentions Major Penalties as well as Minor Penalties and Rule 11 (vii) of the same makes it clear that compulsory retirement is the Major Penalty.

6. Rule 14 (1) of CCS(CCA) Rules, 1965 is extracted below :-

"14.(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act."

7. Perusal of the same makes it clear that no order imposing Major Penalty can be passed without an inquiry being held. Order relating to Major Penalties are to be passed after an enquiry in the manner provided in Rule 14 and 15 of CCS (CCA) Rules, 1965.

8. The learned counsel for the applicant relied on (1998) 8 SCC 222 - State of Punjab & Ors. vs. Bakshish Singh, 2001-1-LLJ 809 - Vijaya Kumar S. vs. State Bank of India, Hyderabad. On perusal of case of Bakshish Singh and Vijaya Kumar referred above

Sig -

..4/-

we are of the considered opinion that none of the cases do apply to the points involved in the present case, as case of Bakshish Singh order remanding the case to the punishing authority by the appellate court were subject of consideration along with powers under order 41 Rule 33 read with Section 107 (1)(a) of C.P.C. and Art.142 of the Constitution of India while in case of Vijaya Kumar scope of judicial review was the subject matter of consideration.

9. The learned counsel for the respondents relied on 2000 SCC (L&S) 965 - Aligarh Muslim University & Ors. vs. Mansoor Ali Khan and argued that though the order is passed without an enquiry being held, in view of admission of the applicant (R-2) no prejudice is caused to her. As such, the OA. deserves to be dismissed. The question of law decided by the Apex Court is worth extracting which are as under :-

"There can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 236 is not necessary.

In Ridge v. Baldwin, it was held that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto" prejudice needed to be proved. But since then the rigour of the rule has been relaxed not only in England but also in India.

The principle that in addition to breach of natural justice, prejudice must also be proved has been developed by the Supreme Court in several cases. Since K.L.Tripathi case, the Supreme Court has consistently applied the principle of prejudice in several cases.

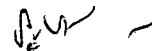
JW / ..5/-

The "useless formality" theory is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" as discussed in S.L.Kapoor v. Jagmohan, there has been considerable debate on the application of that theory in other cases. In the ultimate analysis the applicability of the theory would depend on the facts of a particular case."

10. The learned counsel for the respondents relied on JT 1996 (1) SC 207 - Additional District Magistrate (City) Agra vs. Prabhakar Chaturvedi & Anr. wherein there was a clear admission of the charged officer before the commencement of departmental proceedings, the departmental proceedings commenced and on the basis of the said admission charge was held to be proved.

11. The learned counsel for the respondents relied on 1997 (7) Supreme 7 - Dharmarathmakara Raibahadur Arcot Ramaswami Mudaliar Educational Institution vs. The Educational Appellate Tribunal & Anr. wherein the proposition of law laid down is that when allegation and charges are admitted, no enquiry required though regular enquiry contemplated under Section 6 of Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 Section 6.

12. The learned counsel for the respondents relied on 2001 SCC (L&S) 1079 - Deokinandan Sharma vs. Union of India & Ors. which lays down the proposition that the plea which is not raised before the statutory authority and High Court can not be permitted to be raised before the Apex Court.



13. As laid down in case of Aligarh Muslim University & Ors. vs. Mansoor Alikhan the "Useless formality theory" would depend on the facts of particular case and in addition to breach of principle of natural justice, prejudice must also be proved.

14. We proceed to examine the present case based on tests mentioned in view of case of Aligarh Muslim University & Ors. vs. Mansoor Ali Khan as prejudice to the applicant is the test. In the chargesheet it is mentioned that :-

"That the period of unauthorised absence which continues beyond the date of chargesheet will also be taken into account for the purpose of the relevant charges in the chargesheet at the time of final stage."

15. The perusal of the order of the Disciplinary Authority makes it clear that period commencing after the issue of the chargesheet till it's finalisation is also taken into consideration and the applicant is held guilty for the same. Keeping in view Annexure-R-2, wherein the applicant has specifically stated about her illness denying Gross misconduct, habitual nothing of that sort stating that "we are helpless against the illness. You may send me to OFH for medical check-up", we are of the considered opinion that the admission was coupled with stipulation, reasoning based on facts. Hence, in such circumstances, to proceed based on part of the admission ignoring other part certainly causes prejudice to the applicant.

PM /

..7/-

16. In the result, OA. is allowed. Impugned order dated 12.11.1999 and 5.6.2000 are quashed and set aside with all consequential benefits available to the applicant. The respondents are at liberty to continue with the enquiry, if they choose so, but decision to continue with the enquiry be taken within one month from the date of receipt of copy of the order and enquiry be concluded at the stage of Disciplinary Authority within the period of three months thereafter. The applicant be reinstated within a period of one month from the date of receipt of copy of order. No order as to costs.

Shanta J

(SMT. SHANTA SHASTRY)

MEMBER (A)

P. S. Jain

(S.L. JAIN)

MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

C.P. 101/2003 in
ORIGINAL APPLICATION NO: 671/2000

TRIBUNAL'S ORDER

Dated: 12.11.2003

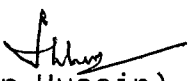
Ms. Neelima Gohad for Shri S.P. Saxena counsel for the applicant. Shri R.R. Shetty counsel for the respondents.

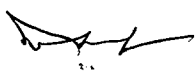
2. The applicant has filed C.P. 101/2003 for implementation of the order dated 11.11.2002 in OA 671/2000. The Tribunal had directed the respondents to reinstate the applicant within one month from the date of receipt of copy of the order with all consequential benefits.

3. The respondents have submitted in the affidavit that the order of the Tribunal has been received by the respondents on 22.11.2002 and Smt. S.A. Damle was reinstated in service with effect from 21.12.2002 and granted all benefits such as Annual increments, crediting of earned leave/ half pay leave as admissible to her during the period from the date of her compulsory retirement to the date of reinstatement. He has also produced copy of the order dated 4.11.2003 wherein an amount of arrears of Rs. 2,58,544/- has been released to the applicant. An amount of Rs. 6676/- had been deducted on account of rent of the Government Quarter for the period from 1.1.2000 to 11.3.2000.

4. The learned counsel for the applicant seeks time to consult her client with regard to the amount deducted from the arrears paid to the applicant. We do not consider it necessary to grant further time. The C.P. has been filed for implementation of the order and the same has already been implemented in toto. The C.P. is not for calculation of the amount and the calculation has been made correctly or not.

5. In view of the facts the C.P. is dismissed.


(Muzaffar Husain)
Member(J)


(S.K. Agrawal)
Member(A)

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