

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 72 OF 1993.

Dated the 25th day of November, 1998.

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

Hon'ble Shri D. S. Baweja, Member (A).

Dr. (Smt.) Nalini Raja,
Residing at -
C/o. V.K. B. Raja,
201-B, MIG/DDA, Rajouri
Garden, New Delhi - 110 027.

Temporarily residing at -
C/o. Mr. B. N. Shah,
Shiv Niwasi, Road No. 1,
Vile Parle (East),
Bombay.

... Applicant

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union Of India through the Secretary, Department of Atomic Energy, Government Of India, Anushakti Bhavan, C.S.M. Marg, Bombay-400 039.
2. Mr. P. K. Iyengar, Secretary to the Government of India, Department of Atomic Energy, Anushakti Nagar, C.S.M. Marg, Bombay - 400 039.
3. Mr. M. M. Ganu, Chief Security Officer, Bhabha Atomic Research Centre, Central Complex, Trombay, Bombay - 400 085.
4. The Secretary, Union Public Service Commission, Dholpur House, Shah Jahar Road, New Delhi - 110 001.

... Respondents.

(By Advocate Shri J. P. Deodhar)

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OPEN COURT ORDER

[Per.: Shri R. G. Vaidyanatha, Vice-Chairman]

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply opposing the application. We have heard the Learned Counsels appearing on both sides.

2. The applicant was working as a Scientific Officer in the Bhabha Atomic Research Centre at Bombay. She went on leave with effect from July 1983. She could not join duty due to her illness and domestic reasons. She went on applying for extension of leave and the same was granted from time to time till 08.11.1986. During this period she had also taken maternity leave. She could not join duty even beyond 08.11.1986 due to domestic reasons and due to her personal illness. She had gone abroad to stay with her husband at Dubai. She had taken medical treatment at Dubai. Subsequently, she wanted to join duty but again due to medical reasons she was unable to join duty. She wrote some letters to the Department about her inability to join duty. There was some correspondence between the administration and her on this point. Then she has referred to some medical certificates obtained by her during different period from different doctors. Since she did not join duty and did not get her leave extended, the administration initiated disciplinary action against her. A charge-sheet dated 26.06.1988 was issued to her alleging that she has committed misconduct in overstaying the leave from 09.11.1986 and onwards, till the date of issuance of the


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charge-sheet. The applicant sent a reply practically admitting the charge but pleading her inability to join duty due to reasons beyond her control. Then the Chief Security Officer was appointed as the Inquiry Officer. He fixed a preliminary date of enquiry. The applicant was represented by her Defence Assistant, Mr. K.A. Mathew. Two three adjournments were granted to enable the applicant in appearing in person and to participate in the enquiry. Even the Defence Assistant later withdrew from the enquiry pleading his inability to represent the applicant in the enquiry. But according to the applicant, the Defence Assistant was prevented by the Administration from defending the applicant. It appears, the enquiry officer conducted ex-parte enquiry due to the absence of the applicant and her Defence Assistant. One witness, Mr. K. Raman Kutty, was examined on behalf of the administration. The applicant did not appear before the Inquiry Officer to examine herself or any witnesses. Then the Inquiry Officer submitted a report holding that the charge is proved. A copy of the inquiry report was sent to the applicant and again the applicant pleaded the circumstances which were beyond her control due to which she was unable to join duty. The Disciplinary Authority, namely - the President of India, in consultation with the U.P.S.C., passed the impugned order dated 15.01.1992 holding that the charge is proved against the applicant and then imposing the penalty of removal from service with immediate effect.

Being aggrieved by the order of the Disciplinary Authority, the applicant has approached this Tribunal challenging the same on various grounds.

3. The respondents have filed a written statement mentioning the circumstances under which the administration was forced to issue a charge-sheet against the applicant, since she over-stayed beyond the leave granted to her and did not join duty inspite of number of opportunities given to her. It was stated that the enquiry has been done properly and the Disciplinary Authority, on the basis of the materials on record, has imposed the penalty of removal from service. It is stated that the applicant did not participate in the enquiry inspite of number of opportunities given to her. It is also pleaded that the applicant's Defence Assistant himself withdrew from the enquiry expressing his inability to participate in the enquiry. It is, therefore, stated that the action taken by the Disciplinary Authority is fully justified and does not call for any interference by this Tribunal.

4. Mr. S. P. Saxena, the Learned Counsel for the applicant, contended that the ex-parte enquiry conducted by the Inquiry Officer is illegal and thereby there was violation of principles of natural justice. On merits, it was submitted that the applicant's absence from duty was beyond her control. That the Inquiry Officer and the Disciplinary Authority have not considered the medical reasons given by the applicant and they have not taken into consideration the medical certificates produced by her. Alternatively, it was argued that the penalty of removal from service is grossly disproportionate to the alleged misconduct and therefore, it is a fit case where the penalty should be set aside and one of the minor penalty's ~~is~~ may be imposed against the applicant. On the other hand,


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the Learned Counsel for the respondents supported the findings of the Disciplinary Authority, both on merits and also regarding the penalty. It was argued that this Tribunal cannot sit in appeal over the findings of the domestic Tribunal. As far as the quantum of penalty is concerned, he supported the imposition of penalty of removal from service, since the applicant had failed to join duty inspite of number of opportunities given to him and this Tribunal has limited jurisdiction in interfering with the quantum of penalty. He, therefore, submitted that there is no merit in the application and it should be dismissed.

5. The Learned Counsel for the applicant contended that the ex-parte enquiry held by the Inquiry officer is bad in law and contrary to principles of natural justice. After perusing the enquiry file, we find that the comment of the Learned Counsel for the applicant is not justified.

We find that the Inquiry Officer had given few opportunities to the applicant to appear before him and to participate in the disciplinary enquiry but the applicant did not turn ^{up} ~~out~~. The applicant had engaged one Mr. Mathew as her defence assistant to appear on two three hearing dates. The applicant's counsel submits that Mr. Mathew was prevented by the administration from appearing for the applicant and placed reliance on the letter of Mr. Mathew, which is at page 96 of the Paper Book. This is dated 12.08.1989, where no doubt Mr. Mathew alleges that he



is prevented by the department from appearing as Defence Assistant. The original letter is not produced. No affidavit is filed by Mr. Mathew on this aspect. However, we have perused the enquiry file and we find that Mr. Mathew has given a letter dated 08.06.1989 expressing his inability to act as Defence Assistant. Inspite of this letter, the Inquiry Officer contacted Mr. Mathew and Mr. Mathew confirmed his inability to appear for the applicant in the enquiry. This letter is dated 08.06.1989. In view of this letter, it is a case of Mr. Mathew withdrawing from the enquiry due to his personal reasons and nothing more.

Infact, the respondents brought to the notice of the applicant that Mr. Mathew is not appearing and asked her to appear in person. Inspite of four to five adjournments, the applicant did not appear in the enquiry and that is why ex-parte evidence was recorded. As far as evidence is concerned, it is only the statement of Mr. K. Raman Kutty who is an Assistant in the Establishment Section of Bhabha Atomic Research Centre. He has also no personal knowledge but produced some documents which are marked as exhibits. Copy of his deposition was sent to the applicant. In this case, the charge is admitted, in the sense, the applicant's absence from 09.06.1986 till the date of charge-sheet is admitted. But the applicant has given reason that she could not join duty due to her domestic problems and medical reasons. Therefore, the burden shifts on the applicant to prove that due to her medical reasons she could not join duty. The applicant did not produce

any evidence before the enquiry officer in support of her case.

6. The Inquiry Officer has recorded a finding that the charge of unauthorised absence is proved and this is confirmed by the Disciplinary Authority. But unfortunately, neither the Inquiry Officer nor the Disciplinary Authority have made any reference to the medical certificates produced by the applicant and which are part of the record. Alongwith the charge-sheet, there is a statement of imputation and then there is annexure-3 which contains the list of documents relied on by the Administration in support of the articles of charge (see vide page 73 of the paper book). Item No. 11 is shown as medical certificate dated 16.05.1987 by Dr. Manohar Mandhani, U.A.E. and Item No. 12 is another medical certificate dated 22.06.1987 from Dr. P. C. Kaushik of New Delhi. Though these two medical certificates are part of the charge-sheet and were exhibited through P.W.-1, there is no comment either by the Inquiry Officer or by the Disciplinary Authority. There is no finding that these two certificates are false certificates or they cannot be relied on. If both, the Inquiry Officer and the Disciplinary Authority have not referred to these two documents, then it is a case of non-application of mind and a case of ignoring the material evidence.

7. As already stated, the absence is admitted but the explanation is that, due to medical reasons the applicant did not join duty. She has written number of letters to the administration pleading her difficulties. She has sent three medical certificates of which, two

are part of the charge-sheet and are exhibited but not considered either by the Inquiry Officer or by the Disciplinary Authority.

8. Then we refer to the medical certificates placed on record by the applicant. At page 47 of the paper book, there is a medical certificate by Dr. Manohar Mandhani of U.A.E. dated 13.01.1986 stating that Mrs. Nalini Raja, the applicant, is anemic, complaints of joint pain, general weakness and she requires prolonged rest and further treatment. The administration was not satisfied with the certificate and therefore, a letter was written to the applicant to report to the Consul General Of India at Dubai vide page 50. Then the Consul General and Head of Chancery of India at Dubai wrote a letter to the applicant to come to his office with the medical certificates. Then the applicant attended the office of the Consul General where a Doctor on behalf of the Consul General of India examined the applicant and confirmed the certificates issued by Dr. Manohar Mandhani, vide page 56 of the Paper Book.

Then we have one more medical certificate produced by the applicant at page 63 issued by Dr. P.C. Kaushik, New Delhi, dated 22.06.1987 which shows, the applicant suffered from general debility with Arthritis and Asthma. She was advised bed rest for two months. Then there is one more certificate of Dr. Manohar Mandhani dated 08.06.1988 at page 65 of the paper book to the effect that the applicant, on her return from India is still suffering from severe attacks of Bronchial Asthma and is anemic.

Then we come to another medical certificate at page 95 of the Paper Book issued by Dr. (Mrs.) Damyanti Kaushik, who is a consulting gynaecologist. In this certificate it is stated that the applicant is having ex-polyp. She has advised removal of biopsy of polyp as soon as possible. That means, it was a serious disease of suspected cancer.

9. It is, therefore, seen that it was ^{not} a case of an official remaining absent unauthorisedly without any reason or right. We are not for a moment condoning the absence of the applicant. What we are pointing out is, admittedly there are some materials on record to show that at different spells of time the applicant had produced medical certificates before the competent authority. Two of the certificates are part of the charge-sheet. Unfortunately, there is no comment or expression of opinion either by the Inquiry Officer or by the Disciplinary Authority about the illness of the applicant or about the medical certificates produced by her. Hence, it cannot be said that it is a case of an official remaining absent unauthorisedly without any reason. It is nodoubt true that leave has not been sanctioned after 09.11.1986 and technically, applicant's absence is unauthorised. But there are number of exchange of letters between the applicant and the administration which shows that the applicant was pleading about her inability to join duty due to her illness. In this state of things and in view of the admitted medical certificates sent by the applicant to the administration, the question is, whether it calls for a penalty of removal from service ?

As already stated, there is no doubt of unauthorised absence but there are certain letters written by the applicant pleading her inability to join duty due to medical reasons. Technically, the applicant is guilty of misconduct of overstaying the leave or remaining absent without sanctioning of leave. We can safely confirm the finding of misconduct recorded by the Disciplinary Authority but the question is, whether it calls for the extreme penalty of removal from service ?

10. It is also not a case of levying of minor penalty and reinstating the applicant in service. The reason is this. On her own showing, the applicant had once resigned the job vide her letter dated 24.06.1988 (at page 66) and subsequently withdrew her letter two months later vide letter dated 23.08.1988 (at page 78 of the Paper Book). When the enquiry report was sent to her asking for her comment, she gave a reply vide letter dated 21.11.1989 (at page 97 of the Paper Book) in which at the end she says that her present letter of reply be treated either as letter of resignation or as a letter for voluntary retirement, if it is permissible as per the length of her service. Therefore, we find that the applicant herself, on two occasions, expressed desire either to resign or to take voluntary retirement from the job. Then we find that the applicant is not in service right from July, 1983 till today. That means, for the last fifteen years she is not in service. She was not doing any administrative work or clerical work where one can again go and join and do the same work.

She was a Scientific Officer. The institution is Bhabha Atomic Research Centre, which is a premier and a prestigious research centre in India in the field of Atomic Energy. A Scientist who works in such a prestigious institution must be updated with the latest trends in science and must be able to cope up with the scientific work and temperament in the institution. When the applicant has lost touch in the field of scientific work for the last fifteen years, it will not be in public interest to reinstate her to work in a scientific field. In the field of research in science, one must be aware of the recent trends in science and recent researches done in the field, which cannot be done by a person like the applicant who has not been in service and not doing any scientific work for the last fifteen years.

11. In view of the fact that there is no misconduct alleged against the applicant touching her integrity except that she overstayed the leave and remained absent unauthorisedly, We have already pointed out that though it could be technically styled as unauthorised absence, she has written few letters to the administration with some medical certificates pleading her inability to join duty due to sickness. No doubt, the medical certificates do not cover the entire period of absence which is the subject matter of charge-sheet. It covers only partly. Justice must be tempered with mercy. In these circumstances, it is not a fit case for extreme penalty of removal from service. At any rate, this is the case of punishment or penalty of removal from

service, which is grossly disproportionate to the misconduct in view of applicant's explanation about her illness coupled with some medical certificates.

On the other hand, we are also not inclined to order reinstatement or direct the authorities to impose a lesser punishment for the reasons mentioned earlier.

We are conscious of the limitations of judicial review. Normally it is the discretion of the disciplinary authority to impose suitable penalty. Normally a Court or Tribunal should not interfere with the quantum of penalty. But here are some special circumstances mentioned above. The medical certificates produced by the applicant, of which two are part of the charge-sheet marked as exhibits, have not been looked into or taken into consideration by the Inquiry Officer or the Disciplinary Authority. The applicant's explanation and number of letters pleading inability to join duty due to her illness, have not been commented and have not been considered either by the Inquiry Officer or by the Disciplinary Authority. At one stage we thought of remanding the matter to the Disciplinary Authority to apply his mind to all the relevant documents and take a view one way or the other. But we find that thirteen years have lapsed after initiating the disciplinary enquiry. The allegation is only of one of absence, for which there is some explanation and some medical certificates. Further, we are not thinking of reinstating the applicant or directing the authorities to give a lesser punishment.

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To do justice in the case, we feel that instead of remanding the matter to the Disciplinary Authority to impose a proper punishment and taking an overall view of the facts and circumstances of the case, we feel that it is a fit case in which a penalty of compulsory retirement would meet the ends of justice.

In 1997(2) SC SLJ 347 [Union Of India & Another V/s. V. G. Ganayutham] the Supreme Court observed that normally Court or Tribunal should not interfere with the punishment imposed by the Disciplinary Authority. Even if it requires any modification, the matter has to be remitted back to the Disciplinary Authority. But then it is pointed out that in very rare cases, to shorten the litigation, the Tribunal or Court may itself substitute punishment.

Similarly, the Supreme Court in 1996 SCC (L&S) 80 [B.C. Chaturvedi V/s. Union Of India] has pointed out that normally the Court or Tribunal should not interfere with the punishment imposed by the Disciplinary Authority except when it is grossly disproportionate and shocks the ~~conscience~~ ^{conscience} of Court or Tribunal and in such cases, it may either remit the matter to the Disciplinary Authority or the Appellate Authority or to shorten the litigation, it may itself, in exceptional and rare cases, impose adequate punishment.

In these circumstances, we feel that having regard to the long lapse of fifteen years of time and other circumstances mentioned above and in the view we have taken that the case does not call for extreme

penalty of removal from service nor does it call for any minor punishment, the only best thing that can be done is to substitute the penalty to compulsory retirement with effect from the same date as mentioned by the Disciplinary Authority.

12. In the result, the application is allowed partly. While confirming the finding of misconduct against the applicant, subject to observations mentioned above, the penalty of removal from service with effect from 15.01.1992 is hereby set aside but substituted with a penalty of compulsory retirement with effect from the same date, namely - 15.01.1992. The applicant's service from the date of her joining till 08.11.1986 shall be treated as qualifying service for the purpose of retirement benefits and the applicant is entitled to whatever retirement benefits she is entitled to as per rules. In the circumstances of the case, there will be no order as to costs.

D. S. Baweja
(D. S. BAWEJA)
MEMBER (A).

R. G. Vaidyanatha
25-11-98
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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