

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.859/1998

Mumbai, this the 26th day of June, 2002

Hon'ble Shri Justice Birendra Dikshit, VC(J)
Hon'ble Shri M.P. Singh, Member(A)

Smt. Varshaben Rajeshkumar Desai
F-40, Third Floor
Sunil Shopping Centre
J.P.Road, Andheri(West), Mumbai .. Applicant

(Shri I.J. Naik, Advocate)

versus

1. Central PF Commissioner
Hudco Vishala
Bhikhaji Cama Place, New Delhi
2. Addl. Central PF Commissioner
West Zone, 341, Bhavishya Nidhi Bhavan
Bandra (East)
3. Regional PF Commissioner
Maharashtra and Goa
341, Bhavishya Nidhi Bhavan
Bandra (East) .. Respondents

✓ (Shri R.K. Shetty, Advocate)

ORDER(oral)


Shri M.P. Singh, Member(A)

Heard the learned counsel for the parties and perused the records.

2. Admitted facts of the case are that the applicant was called upon, vide Memo dated 1.4.1992, under Rule 10 of Employees Provident Fund Staff (CC&A) Rules, 1971 to answer the charges: (i) that while functioning as UDC in the office of Respondent No.3 during the period from 20.11.91 to 15.1.92, she remained frequently absent from her office duty and continuously thereafter from 20.1.92 to 20.2.92 without obtaining prior sanction of leave and (ii) that during the period of her posting to A/C.Gr.XVI vide office order dated 5.8.91, she failed to carry out the duties assigned to her and left huge pendency of work. She submitted her explanation on 15.6.92 denying the charges. Thereafter an Inquiry Officer (IO) was



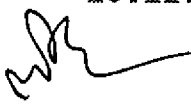
appointed and after conducting the inquiry, IO submitted his report holding that the aforementioned charges were proved against the applicant. The disciplinary authority (DA, for short) vide its order dated 5.6.1995, after agreeing with the findings of IO and applying his mind to the same, held the applicant guilty of the misconduct in terms of Rules 3(I)(ii) and 3(I)(iii) of CCS(Conduct) Rules, 1964 which are mutadis and mutandis applicable to the employee of EPF Organisation by virtue of Regulation 27 of EPF(Staff & Condition of Service) Regulation 1962, and imposed upon her the punishment of withholding of five increments of pay with cumulative effect in terms of Rule 7(iv) of EPFS(CCA), Rules, 1971. Applicant preferred an appeal against the punishment order on 11.7.95. The appellate authority, after discussing various points raised by the applicant and going through the findings of IO and the penalty order of DA, took a sympathetic view that the applicant had proceeded on leave for the aforesaid period in question on compelling grounds and, vide its order dated 21.11.96, reduced the penalty by withholding two increments instead of five increments with cumulative effect. The period of her suspension was also ordered to be regularised. Applicant has filed a revision petition which is stated to be under consideration. Aggrieved by this, the applicant is before us seeking directions to quash and set aside the impugned orders dated 5.6.1995 and 21.11.1996 and also the order dated 4.8.98 by which the office has been



directed to withhold two increments of the applicant with cumulative effect, and pay her all consequential benefits.


3. During the course of the arguments, the learned counsel for the applicant has taken five main grounds in support of the reliefs sought for by the applicant, viz. neither IO nor DA produced the main prosecution witness Shri N.Anil who was to be examined in the inquiry, (ii) only 17 documents out of 80 listed documents were produced and (iii) inquiry was conducted in the absence of applicant, because adjournment sought by her was not granted; (iv) R-2 had not given her an opportunity of personal hearing as per law laid down in Ram Chander's case 1986 SCC(L&S) 383 and that (v) no show cause notice was given to her before imposing penalty as per law laid down in Khem Chand's case AIR 1958 SC 300.

4. On the other hand, learned counsel for the respondents would contend that (i) Shri Anil, then APFC was examined by the Presenting Officer on 18.6.93 and recorded his evidence; thereafter Shri Anil left the services of EPFO; (ii) Presenting Officer vide his letter dated 7.12.94 had given chance to the applicant to inspect all the documents enlisted in Appendix B but the applicant did not care and that it is neither necessary nor feasible to give copies of all documents to the applicant; (iii) on applicant's request the inquiry of 20.12.94 was refixed to 5.1.95 and the applicant was duly




informed at her native place address as well as Mumbai address, the receipt of which is confirmed by her. Sufficient opportunities were given to her on 27.9.94 and 21.11.94 on which the defence assistant expressed his inability to cross examine the PWs. There was total non-cooperation and indifferent apathy on the part of applicant to delay the finalization of the inquiry; (iv) Applicant had not requested for personal hearing in her appeal dated 11.7.95. Besides it is not mandatory on the part of the appellate authority while considering the appeal for grant of personal hearing. The case of Ramchander (supra) is applicable only to major penalty proceedings like dismissal, removal and reduction in rank etc. and (v) in terms of communication dated 28.2.95 (R-6) issued by the respondents, it was not binding upon the DA to issue show cause notice before imposing of penalty. Moreover, the applicant was given a copy of the Inquiry report for making representation on the findings of the IO to the DA vide letter dated 26.4.95. In view of this position, the OA is liable to be dismissed.

5. On a careful perusal of the materials available before us, we find that the applicant was herself responsible in not cooperating with the enquiry proceedings. The enquiry has been conducted in accordance with the procedure prescribed and principles of natural justice have been observed. Besides, the learned counsel for the applicant has not been able to convince that non-supply of all relied upon documents had



paused prejudice to the applicant. It is settled legal position that Tribunal cannot reappreciate the evidence adduced before the IO and come to a different conclusion. It is also an admitted legal position that Tribunal cannot interfere with the quantum of punishment, as it is left to the appropriate disciplinary authority. Both DA and appellate authority have passed reasoned, detailed and speaking orders which do not suffer from any infirmity and warrant our interference. In view of this position, we find the present OA devoid of merit and the same is accordingly dismissed. In so far as applicant's revision petition is concerned, it is open to the respondents to dispose of the same with a speaking order as expeditiously as possible. No costs.


(M.P. Singh)
Member(A)


(Birendra Dikshit)
Vice-Chairman(J)

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