

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 170 of 1998.

Dated this Tuesday, the 9th day of April, 2002.

Smt. Elizabeth V. Chacko, Applicant.

Shri G. K. Masand, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. R. Shetty, Advocate for the
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

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

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other X
Benches of the Tribunal ?
- (iii) Library. X

B. N. BAHADUR
MEMBER (A)

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Elizabeth V. Chacko,
Residing at -
204, Snehkunj Co.op. Hsg.
Society, Chakala,
Andheri (East),
Mumbai - 400 083.

... Applicant.

(By Advocate Shri G. K. Masand)

VERSUS

1. Union of India through
The Director,
B.A.R.C. Personnel Divn.,
Central Complex, Trombay,
Mumbai - 400 085.
2. The Controller,
B.A.R.C. Personnel Divn.,
Govt. of India,
Central Complex, Trombay,
Mumbai - 400 085.
3. The Head,
Personnel Division,
B.A.R.C. Central Complex,
Trombay, Mumbai - 400 085.
4. The Head,
Medical Division,
B.A.R.C. Anushakti Nagar,
Mumbai - 400 095.

... Respondents.

(By Advocate Shri R. R. Shetty)

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case challenges the orders of Respondents dated 19.03.1996 and 01.08.1996. She is aggrieved by the penalties imposed upon her, whereby her pay has been reduced

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by three stages for three years with cumulative effect. She is also aggrieved by the orders of the Appellate Authority.

2. The case, as brought out by the Applicant, is that she has been serving the Respondents' organisation diligently since October, 1975. In January 1993, she had been transferred from the B.A.R.C. Hospital at Trombay to the Dispensary near Gateway of India. During that time, the Applicant states that she had taken ill with arthritis. She continued to apply for leave enclosing medical certificates issued by one Dr. A.S. Pethe, Ayurved Physician. The Applicant states that she has been charge sheeted with Memo of Charges issued on 18.01.1994 (page 194 of the Paper Book) alleging disobedience in not following the transfer order and remaining absent from duty, unauthorisedly. The formalities of departmental enquiries are then described, leading to the impugned order with which she is aggrieved. To give the relevant details further, it is stated by the Applicant that she was unwell during the period from January 1993 and had provided the aforesaid certificates which are at pages 41 onwards and that she finally joined at her new post on 25.01.1995. The Applicant states that she has a medical history of arthritis, and low back pain, and that her problems had escalated to the extent that she was unable to attend office from January, 1993. The Applicant had meanwhile been asked to appear before the Medical Board constituted by the Respondents and is aggrieved that they had no faith in the certificate of the medical practitioner i.e. Dr. A.S. Pethe. She had appeared before the Medical Board but claims that the Board was a farce, and was conducted in secrecy. She then takes up certain grounds in her O.A. which, *inter alia*, was argued by her Learned Counsel, Shri G. K. Masand. We shall come to these ahead in the order.

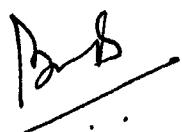


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reliefs" taken by him. We also heard the Learned Counsel, Shri Masand, first on these preliminary points.

5. We have carefully considered the matter of resjudicata and are convinced by the argument raised by Shri G. K. Masand that in view of observations made in the orders in the O.A. decided earlier (O.A.No. 1353/95) copy at Exhibit R-I page 156 the Applicant is clearly saved by resjudicata. In para 5 of the said judgement a clear liberty has been granted while directing the Respondents in view of the fact that an appeal is pending and it has been observed that "any observations made herein would in no way influence the disciplinary and appellate authority who are obliged to decide the case on the basis of rules.....". We, therefore, hold that the matter is not hit by the principles of resjudicata. Similarly, we have examined the various reliefs prayed for and are not convinced by the arguments made by Shri Shetty that the reliefs at para 8 (a) and 8(b) are totally separate. We hold the reliefs in various sub-paras of para 8 to be inter-related/consequential, and therefore reject this technical/legal point also. We, therefore proceeded to hear both Learned Counsel on merits.

6. Learned Counsel, Shri Masand, took us through the various applications made by Applicant from January, 1993 for almost two years, enclosing the various certificates and made the point that there was no reason or ground for disbelieving a very well qualified Ayurved Doctor who had qualifications of allopathy also. He argued that there was no reply for several months until the time the Applicant was suddenly asked to appear before the Medical Board. It was further argued that the report of the Medical Board was not provided to the Applicant and hence, could



not be challenged. On grounds of procedure also, Learned Counsel took up a set of objections stating that Inquiry Officer had placed reliance on documents not provided to Applicant while admitting, of course, that the Applicant had consciously not participated in the enquiry proceedings. He stated that the rules operating in cases where a delinquent does not participate in the enquiry are different and sought at length to discuss Rule 14 (14), etc. of the C.C.S. (C.C.A) Rules, 1965. He thus alleged that proper procedure was not followed.

7. Learned Counsel also took up the point regarding bias of the Inquiry Officer by stating that he was influenced by the Disciplinary Authority under whom he worked. He argued that the Leave Rules did not require as an absolute necessity that a Private Doctors certificate could not be believed. Nobody had said that applicant had no arthritis. It was asserted by the Learned Counsel for Applicant that there was no desire on the part of the Applicant to avoid a transfer. It was also argued that as per rules, it was not open to Respondents to reduce the Applicant in the scale except only by one stage.

8. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri R. R. Shetty, first made the point that as per Rule 19 (3) of C.C.S. (C.C.A) Medical Rules, the Competent Authority had all powers to refer such cases to the Medical Board and there was no impropriety in this reference/requirement. The report of the Medical Board was clear and categorical and in any case, had not been challenged by the Applicant. In fact, he asserted, that no further challenge at

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this stage to the report as such could be made. It was clearly asserted that the contents in gist (of the Medical Boards report) was communicated to the Applicant and that, even an offer was made for perusal of the papers, to which there was no reaction from the Applicant.

9. In regard to procedural aspects, Learned Counsel, Shri Shetty pointed out that all procedure had been duly followed and even though the Applicant had not participated at the enquiry, she had been informed of all the developments on day to day basis. Original documents were provided to substantiate this. In fact, he asserted that even otherwise the Hon'ble Supreme Court has now watered down the requirement of ingredients of natural justice in the case of ex-parte enquiry. He sought support from the decision in the case of Aligarh Muslim University & Others V/s. Mansoor Ali Khan reported at 2000 SCC (L&S) 965. Another point made out by the Learned Counsel at some detail was the progress and decision in O.A. No. 76/93 where Shri Shetty asserted that, in fact, the Applicant was trying to avoid the transfer, as could be seen from the details of this O.A. There is no whisper here of that O.A., and it is incorrect on the part of the Applicant to assert that in no way the Applicant was trying to avoid the transfer. It was also asserted that leave could not be claimed as a matter of right and the duty of Applicant did not end by merely sending letters. The point regarding interpretation of rules made by Shri Masand in regard to quantum of punishment was controverted. In regard to the point about non-speaking order taken at one stage, Learned



Counsel for the Respondents sought to rely on the following case laws :

(i) S. P. Mehta V/s. Union of India & Others reported at 1994 SCC (L7S) 1018.

(ii) State Bank of Bikaner & Jaipur & Others V/s. Shri Prabhu Dayal Grover reported at 1996 (1) SC SLJ 145.

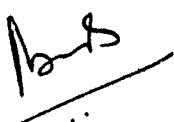
(iii) Syed Rahimuddin V/s. Director General, C.S.I.R. & Others reported at 2001 (2) SC (SLJ) 132.

10. The first point relates to the right of the Respondents to refer the matter to a Medical Board. There is no doubt whatsoever that such a right rests with the Respondents through proper rules, and it cannot be, as the applicant wants to assert that this was a case of unjustifiable lack of faith in the private Medical Practitioner. The Applicant no doubt went on giving applications to the Respondents and one would have thought that Respondents should have reacted earlier than they did. Nine months had already passed before the requirement of appearance before the Medical Board was made. However, this fact, though a little bit of reflection on the lack of sense of urgency on the part of Respondents, cannot be said to create a right with the Applicant in regard to either her combatting the orders to appear before a Medical Board or to claim that the prior period would have to be justified irrespective of the outcome of the Medical Board examination. It must be stated at this point that we agree with the argument taken by Respondents that leave is not a matter

of right, and the Applicant could have perused the matter further instead of merely sending request by post, accompanied by a medical certificate from a Private Medical Practitioner. Thus, no right could accrue through these applications.

11. The aspect relating to procedure not being followed has also been gone into by us at some detail with reference to the various documents and the rules and decision of Government of India under the CCS (CCA) Rules, referred to by the Learned Counsel for applicant. While we are not going into the clause by clause description, we first note that the Applicant had, through a decision of her own, chosen to remain absent at the enquiry. To assert that certain separate rights have accrued to her by interpretation of CCS (CCA) Rules is too far fetched in a context of ex-parte enquiry. We find similarly, from the documents, that the Respondents' organisation and the Inquiry Officer have indeed kept her informed from time to time. It is not as though she was not aware of the enquiry proceedings, as they progressed. However, she has consciously remained absent and not participated.

12. We have carefully considered the arguments made by Shri Masand with reference to Rule 14 {(14) (15) and (16)} of the CCS (CCA) Rules and we are not convinced that there has been a default in the following of procedure. Having been aware of all proceedings, she cannot now come up and seek to take unjustifiable support on grounds of procedure. In any case, we are also not satisfied from any of the arguments that any prejudice is caused to her during the course of enquiry, where she has chosen to remain absent.



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13. Since the point of transfer is in a way linked with counter arguments taken on both sides, we have had a look at O.A. No. 76/93. We note from the file that the O.A. was filed on 07.02.1993 by the Applicant and the prayer therein challenges the impugned transfer order dated 05.01.1993. The O.A. was decided by an order dated 02.11.1993, which is approximately 10 months or so, after being filed. The application was dismissed. A review was filed, which also came to be rejected vide order dated 18.1.1994. The matter was carried by way of a S.L.P. to the Hon'ble Supreme Court and the S.L.P. was rejected on 10.11.1994 whereafter she reported for duty in January, 1995. We cannot but note the above dates in regard to the filing of the O.A., the Review Petition, and decisions upto the S.L.P. The starting point of all these actions, including the application for leave, is January, 1993. The only reason why we record this here is to say that there does not appear to be any correctness or validity in the argument taken that the Applicant was not remaining absent with a view to avoid her transfer or that she had no objection to her transfer. That she had objection to her transfer is certainly evident from the details given above. While it was her right to secure legal redress of her grievances, we are only noting this point for the purpose described above. The probability of a nexus cannot be altogether ruled out.

14. One important point we must take here is that we have no reason to question the decision arrived at by the Board of three Doctors appointed by the Government for this specific purpose. We also consider the objection raised by the Learned Counsel for Respondents as valid, as that decision has not been challenged. Once it was decided that she was fit to work and once it is clear from record that this decision, atleast in its crux, was made



known to the applicant, it is not a satisfactory state of affairs that she continued to remain absent as long a period upto January, 1995. Nor has she questioned the decision of the Board per se in appropriate Administrative or judicial forums. Be that as it may, once we cannot question the decision of the Board, we cannot provide the relief, as sought for, for the periods covered by the certificates of the private Medical Practitioner.

15. We must refer to two other points raised by the Learned for applicant, and deal with them. The first refers to an interpretation of the relevant rules about penalty of reduction in the stages of pay ~~sought to be made~~ ^{Par B} to the effect that the penalty clause mentioned "a stage" and this meant one stage only and that reduction by three stages was not legal. This is a totally incorrect interpretation, and it does not need much argument to reject it straight-away. The second point related to an allegation of bias against the Enquiry Officer, on the ground that he was influenced by the Disciplinary Authority, who was his administrative superior. In the first place, no one is arrayed by name in the present O.A. for bias. Secondly, there is no contention that the ground of bias against the Enquiry Officer ~~and wrongly rejected Par B~~ was raised during enquiry and ^{thirdly,} the contention that the Enquiry Officer is biased just because the Disciplinary Authority is his superior cannot be accepted. If the last point is accepted, this will mean proving of bias perhaps in half the departmental enquiries that take place in service. We must also state here that the case law referred to (Aligarh Muslim University V/s. Mansoor Ali Khan) is relevant to the stand taken by the Respondents.

16. In view of the above discussions, we are not convinced that this is a fit case for provision of the reliefs as sought by the Applicant. The O.A. is, therefore, dismissed. No order as to costs.

(S.L. JAIN)
(S.L. JAIN)
MEMBER (J).

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B.N. BAHADUR

(B. N. BAHADUR)
MEMBER (A).

dt 9/4/92
Order/Judgement despatched
to Applicant, Respondent (s)
on 19/4/92

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