

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 359/1998

MONDAY, THE 08TH DAY OF MARCH, 2002

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

Mrs. Pratibha B. Niphadkar,
(Ex. L.D.C.) Bombay Engineer Group,
Kirkee, Pune-411 003), residing
at House No.334, Shukrawar Peth,
Shine Ali, Pune-411 002.

... Applicant.

By Advocate Shri S.P. Saxena.

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.

2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi-110 011.

3. The Officer-in-Charge
Record Office,
Bombay Engineer Group,
Khadki, Pune-411 003.

... Respondents

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

O R D E R (ORAL)

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 praying to quash and set aside the impugned orders dated 10.6.97 Exhibit A1 and 03.3.98, Exhibit A2 passed by the Disciplinary Authority and Appellate Authority respectively with all consequential benefits treating the period from 10.6.1997 till the date she resumes duty as on duty and to pay the pay and allowances.

S.L. Jain

....2.

2. The applicant was a civilian group 'C' employee working in the office of the Officer-in-Charge, Record Office, Bombay Engineer Group, Khadki, Pune as LDC before she was awarded the penalty of compulsory retirement. While working in the office of the Respondent No.2 the applicant was served with a charge sheet dated 23.02.97. The applicant denied the charges. The respondents conducted an enquiry, enquiry officer's report was served on the applicant to which she replied. The Disciplinary Authority passed the order of compulsory retirement, which was agitated before the Appellate Authority, which confirmed the order of Disciplinary Authority vide order dated 03.3.1998.

3. The learned counsel for the applicant brought to our notice that during the course of the enquiry, the enquiry officer has taken into consideration the documents other than relied on documents by the respondents. The relied on documents are mentioned at page 29 of the OA. While the enquiry officer has ^{also} taken into consideration, the documents mentioned in para 8

(a) (o) (p) and (q) which are extracted below:

- (a) Record Office letter No.71337/PF/PBN/FRI/CIV dated 12.4.96
- (o) State of absence/EOL of the whole service of the individual.
- (p) Opinion of CO Records, BEG, Kirkee on the representation submitted by the individual.
- (q) Individual's application dated 13 Mar 97 and 19 Mar 97.

P.L. Jha - ...3.

4. The learned counsel for the applicant also brought to our notice the fact that by order dated 19.5.1997 the applicant was sanctioned the leave for which she was charged, the respondents have not conducted the enquiry, only questioned the applicant, thereafter proceeded to close the enquiry, the enquiry officer submitted the report, on the said basis the Disciplinary Authority passed the order, the said order was challenged in appeal before the Appellate Authority which rejected the appeal.

5. The learned counsel for the respondents relied on 2001 (2) SCSLJ 132 Syed Rahimuddin Vs. Director General, CSIR & Others and argued that unless it is shown that the delinquent was prejudiced by non supply of some so called documents, it cannot be said that the reasonable opportunity to defend the case was denied. We agree with this position. In the present case the documents, which the enquiry officer has allowed to be presented by the Presenting Officer are (i) Absence/EOL of the whole service of the individual, (ii) CO Records, on the representation submitted by the individual dated 13th March, 97 and 19th April, 97, (iii) record office letter No.71323/PF/PBN/MON/CIV dated 10.02.97, the whole service record, which were not relied on documents, certainly affects the mind of the enquiry officer on which the applicant was not given an opportunity to

defend the same. The same was neither the question to be decided in view of the charge sheet nor the applicant was provided any opportunity to defend the same. As such, in principle, we agree to the said authority but on facts as that the said opportunity had not been given to the applicant, is of no help to the respondents. In this respect the learned counsel for the respondents also relied 1996 (2) SCSLJ 113 State of Tamil Nadu Vs. Thiru K.V. Perumal & Others. It also lays down the proposition that non-supply of documents, which are relevant can only be supplied to the delinquent. During the judicial review, the delinquent has to establish as to how the non-supply of the documents has prejudiced his case. The above authority applies to the present case.

6. The learned counsel for the respondents relied on 1993 (25) ATC Full Bench 697. This is about Government's intention of the order passed regarding sanction of leave and the intention behind it. We are not concerned with the said preposition of law because the order passed is dated 19th May, 1997.

7. The learned counsel for the respondents lastly relied JT 1998 SC 403 State of Punjab & Ors. Vs. Dr. Harbhajan Singh Greasy which lays down the preposition that when the enquiry was found to be faulty, it would not be proper to direct reinstatement with consequential

ALJA

benefits. Matter remitted to Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law, pending enquiry the delinquent must be deemed to be under suspension. We agree with the preposition that in such case matter deserves to be remitted to the disciplinary authority to follow the procedure.

8. The applicant was examined during the course of the enquiry and some records were produced. This is the total enquiry. As such it is held that no enquiry was held in accordance with law and the extraneous matter was taken into consideration.

9. The leave was sanctioned to the applicant upto 24th November, 96 on 07th January, 97. Thereafter, she has applied for the remaining period without medical certificate. The medical certificate was produced only on 03.4.97. As such the respondents are bound to enquire into the matter only upto the period of issue of charge sheet - whether the applicant's absence was willful or not.

10. The respondents are directed to conduct the enquiry as per provisions of law. The respondents are entitled to examine the applicant in respect of the evidence available on records only. Respondents shall substantiate their case by adducing the evidence.

Signature

11. In the result, the OA is partly allowed. Order dated 10.6.97 Exhibit A1 and 03.3.1998 Exhibit A2 are quashed and set aside. The matter shall go to the disciplinary authority with a direction to conduct the enquiry from the stage after production of only listed/ relied on documents by the Presenting Officer, any other document which is not listed/ relied on shall not be taken on record unless the applicant consents to it or after hearing the applicant an order is passed in this respect and the applicant is afforded an opportunity to rebut the same. The respondents are directed to conclude the enquiry within a period of four months from the date of receipt of the copy of this order. No costs.

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain

(S.L. JAIN)
MEMBER (J)

Gajan