

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 516/94
T.A. No.

199

DATE OF DECISION 27/1/2000

Smt. Sunita Sharma Petitioner

Mr. P.P. Mathur Advocate for the Petitioner (s)

Versus

U.O.I & Ors. Respondent

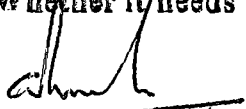
Mr. U.D. Sharma Advocate for the Respondent (s)

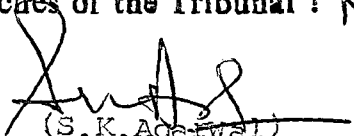
CORAM :

The Hon'ble Mr. S.K. Agarwal, Judicial Member

The Hon'ble Mr. N.P. Nawani, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No


(N.P. Nawani)
Member (A).


(S.K. Agarwal)
Member (J).

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.516/94

Date of order: 27/11/2000

Smt Sunita Sharma, W/o Shri Akash Sharma, R/o C-126, Moti Marg, Bapu Nagar, Jaipur, Ex-Hindi Translator.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt, Mini. of Science & Technology, Govt. of India, New Delhi.
2. The Director General, Survey of India, Dehradun, U.P.
3. Director, Survey of India, Western Circle Office, Geetgarh House, Civil Lines, Jaipur.

...Respondents.

Mr.P.P.Mathur - Counsel for the applicant

Mr.U.D.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes prayer to quash and set aside the impugned order dated 8.12.93 and to direct the respondents to allow the applicant to perform the duties on the post of Hindi Translator and to give all consequential benefits.

2. Facts of the case as stated by the applicant are that on the recommendations of the Staff Selection Commission, respondent No.3 offered appointment to the applicant on the post of Hindi Translator vide order dated 12.5.93. The applicant accepted the offer but on medical examination she was temporarily declared unfit due to her advance stage of pregnancy and appointment of the applicant was kept in abeyance and she was advised that after six weeks of her confinement to go for a medical examination and to report for duty thereafter. The applicant thereafter reported for duty on 10.11.93. Her name was entered in the Attendance Register and she marked her attendance. But it is stated by the applicant that she developed a high fever on that day and she had rushed to the Hospital at about 4.30 PM on the advice of the Dy.Director. The father-in-law of the applicant informed to the Dy.Director regarding her illness, thereafter her father-in-law submitted an application on 16.11.93 in the office of respondent No.3. But suddenly, respondent No.3 on 8.12.93, terminated the services of the applicant vide the impugned order. She submitted an appeal on 2.1.94 and notice of demand of justice on 11.5.94 to the respondents but with no result. It is stated that the impugned order dated 8.12.93 was issued without affording an opportunity to

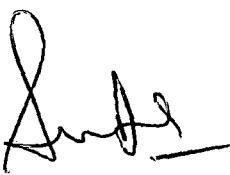
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show cause to the applicant, therefore, the impugned order is ex facie illegal, arbitrary, unreasonable and in violation of Articles 14 & 16 of the Constitution of India. It is also stated that the impugned order was issued on erroneous assumption that the applicant is not interested in rendering service which is baseless. The applicant joined duty on 10.11.94 at 10.00 AM, marked her attendance in the Attendance Register and remained the whole day on duty. But due to serious complaint of bleeding, intolerable pain and high fever, the applicant has to rush to the Hospital on the advice of the Dy. Director but instead of sympathetic approach, the respondents passed the impugned order. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the applicant was sent an offer of appointment on the post of Hindi Translator in pursuance of the recommendations of the Staff Selection Commission, New Delhi and in pursuance of the offer, the applicant reported herself in the office of respondent No.3 on 29.7.93 alongwith medical certificate but her joining was not accepted and her appointment on the post of Hindi Translator was kept in abeyance and she was advised to report on duty after her confinement and medical certificate thereafter. It is admitted that the applicant came to the office of respondent No.3 on 10.11.93 at 12.30 PM and submitted application to seek permission for joining alongwith medical certificate. It is stated that at about 14.30 PM on 10.11.93, a search was made and it was found that the applicant was not available in the office and it was noticed that she left the office without any intimation/permission. It is also admitted that father-in-law of the applicant submitted an application on 16.11.93 in the office of respondent No.3 and from the application it appears that the applicant was not sick from 10.11.93 to 14.11.93 for which no medical certificate was produced. It is admitted that the name of the applicant was entered in the attendance register and she marked her attendance on 10.11.93 but no order was issued permitting the applicant to join duty. It is also stated that the order dated 8.12.93 was rightly issued looking to the facts and conduct of the applicant. No notice of show cause was required to be given to the applicant before issuing such order. Therefore, this O.A is devoid of any merit and liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. It is an admitted fact that on 10.11.93, the applicant reported on duty and submitted an application for permitting her to



join as Hindi Translator. It is also an admitted fact that the name of the applicant was entered in the Attendance Register and she marked her attendance in the Register. It is also an admitted fact that no notice/opportunity to show cause was given to her before the impugned order dated 8.12.93 was passed without following the principles of natural justice. The impugned order dated 8.12.93 reads as under:

'You came to this office to join your duties on your first appointment to the post of Hindi Translator on 10.11.93 (AN) and left this office at about 14.30 Hrs. on the same day without permission from the appropriate authority. Thereafter you sent an application dated 16.11.93, received in this office on 18.11.93 requesting for grant of leave from 15.11.93 stating that you are not feeling well. In this application you did not mention about the period of leave requested for and also mention nothing regarding your absence from 11.11.93 to 14.11.93. Moreover, the same application has been addressed to the Director, Geological Survey of India, who is not the competent authority for this purpose. This shows that you even do not know the name of the Department which you came to join the duties and is indicative of your carelessness.

Since you hardly remained for about 2 hours in this office, you have not been treated as having joined your duties on 10.11.93 on your first appointment in this office. From your above actions it is evident that you are not interested in service in this Department. Therefore, our offer of appointment sent vide this office letter Nos.C-1695/4-E-1-1(HT) dated 29.7.93 and C01747/4-E-1-1(Hindi) dated 3.8.93 stands cancelled.

Sd/-

(N.K.Jain)

Brigadier

Director, Western Circle."

6. On the perusal of the impugned order, the same does not appear to be an order simplicitor and principles of natural justice have not been followed before passing the impugned order dated 8.12.93.

7. In Menaka Gandhi Vs. UOI (1978) 1 SCC 248, it was held that before any punitive action is taken which deprives the employee of the benefits he is enjoying, an opportunity has to be given.

8. In H.L. Trehan & Ors. Vs. UOI & Ors (1989) SCC (L&S) 246, it is held that 'it is now settled principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a govt servant without complying with the rules of natural justice by giving him an opportunity of being heard'.

9. In Delhi Transport Corporation Vs. DTC Mazdoor Congress 1991 Supp(1) SCC 600, it was held that the rules of natural justice also requires that the applicant should be given an opportunity to be heard before subjecting him to any punitive action.

10. In Sardar Gulzar Singh Vs. UOI & Ors, SLJ 1998(1) CAT(PB) 21, it was held that action having civil consequences should not be done without giving notice.

11. In Laxmi Chand Vs. UOI & Ors, 1998 ATC 599, it was held that if any order involves civil consequences and has been issued without affording an opportunity to the applicant, such an order cannot be passed without complying with audi alteram partem - party should be given an opportunity to meet his case before an adverse decision is taken.

12. In Bhagwan Shuckla Vs. UOI & Ors, (1994) 28 ATC 258 And Director of ESI Scheme Vs. Sabata Mohanty, SLP No.15023-24A/93, it was held that if the principle of natural justice are violated in respect of any decision, it is indeed immaterial whether same decision would have been arrived at the absence of departure from the essential preception of natural justice. The decision must be declared to be no decision.

13. On the basis of the foregoing discussion and legal positions, if we consider the instant case then it is abundantly clear that there has been a gross violation of principles of natural justice before passing the impugned order of cancellation of the appointment of the applicant dated 8.12.93. Therefore, the impugned order is liable to be quashed and set aside.

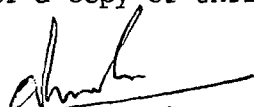
14. As regards the claim of back wages is concerned, the learned counsel for the applicant during the course of his argument has made a statement that the applicant is ready to forgo the claim of salary from 8.12.93 till she is allowed to join the duties.

15. We, therefore, allow this O.A and quash and set aside the impugned order dated 8.12.93 and direct the respondents to allow the applicant to join on the post of Hindi Translator. If the post on which the applicant had reported on duty is not available/vacant at present, the applicant may be allowed against any other vacant post of Hindi Translator with the respondents. The whole exercise should be done within a period of 3 months from the date of receipt

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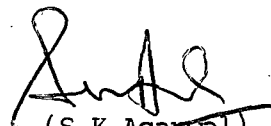
(10)

of a copy of this order. No order as to costs.



(N.P. Nawani)

Member (A).



(S.K. Agarwal)

Member (J).