

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 449/03

Jabalpur, this the 19th day of August, 2004.

CORAM: Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.A.K.Bhatnagar, Judicial Member

Smt.Mala Devi
Wife of Shri Rajesh Dehraliya
Karmik No.162002
Sub Division Yard, at Estate,
Gun Carriage Factory,
Jabalpur (MP)

Applicant

(By Advocate Shri S.K.Upadhyaya)

Versus

1. Indian Ordnance Factory
Gun Carriage Factory
Jabalpur
through Senior General Manager.
2. Union of India through
Secretary
Ministry of Defence
New Delhi.

Respondents.

(By advocate Shri K.N.Pethia)

O R D E R (oral)

By A.K.Bhatnagar, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Quash the order of termination dated 7.12.02.
- (ii) A declaration that the applicant has continued in service and be paid for all the period till she is re-appointed.
- (iii) Direction to pay interest at 12% for arrears of pay to which she is entitled to.

2. The brief facts of the case are that the applicant was married to late Shri Premdas Multani, who was an employee of the Gun Carriage Factory, Jabalpur, who died on 10.10.98. As a result of which, the applicant was given compassionate appointment of Karmik (labour) in the Sub Divisional Yard on 8.9.2000 (Annexure A1).

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The applicant was on probation for two years which was further extended for six months vide letter dated 29.8.02. Her services were terminated on 7.12.02 for violating the conditions of service as laid down in (02) (kha) (Annexure A3). The applicant filed OA No.39/03 before this Tribunal, which was disposed of with the following directions:

"Ends of justice would be met, if the present OA is disposed of with a direction to the respondents to dispose of the pending representation of the applicant within a period of two months from the date of receipt of copy of this order by reasoned and speaking order. We order accordingly. OA stands disposed of."

In pursuance of the direction, respondent No.1 passed a detailed order on her pending representation dated 28.12.03 (Annexure A4), thereby terminating her services on the ground that she did not inform the management about her second marriage. She was also granted family pension as her husband died while in service. It is also stated that the applicant remarried on 1.7.2001 but even then she continued to draw family pension for which she gave explanation that she is an illiterate lady and she had no knowledge that after re-marriage she was not entitled for family pension and that she was prepared to refund the amount drawn by her innocently for want of legal position. After that, she stopped taking pension from the respondents w.e.f.10.9.02 (Annexure A6). Inspite of this, the services of the applicant were terminated on 7.12.02. Hence she filed this OA.

3. We have heard the learned counsel for the parties and perused the records available with us. Learned counsel of the applicant submitted that drawing of family pension

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after re-marriage is ~~not~~ a misconduct and even if it is a misconduct, regular disciplinary enquiry should have been held, which has not been done in this case. This is illegal. He submitted that the applicant had informed the management about her re-marriage vide Annexure A7 letter dated 29.5.01 and she had prayed for leave w.e.f.18.3.01 to 22.5.01. It is further submitted that the law is settled that termination without giving opportunity of hearing is illegal and her services were terminated because of the fact that she re-married and the only legal course available to the department was to recover the amount from the applicant after re-marriage instead of terminating her services which is obviously arbitrary, illegal and against rules.

4. Respondents resist the claim of the applicant stating that the applicant was appointed on compassionate grounds on the death of her husband late Premdas Multani on 8.9.2000. After the death of her husband, she was put on probation for two years as per the terms and conditions of her appointment. It is specifically mentioned in clause 2(b) of the appointment order that the appointing authority during the period of probation can terminate the services of the probationer without assigning any reason. The applicant was having poor performance during her tenure and was irregular for which she was repeatedly warned but did not show any improvement. The applicant was given a chance for extending the probation period (Annexure A2). The applicant concealed the fact of her re-marriage from

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the department and kept on drawing the family pension against rules. She was issued a show cause notice asking her to intimate whether she was drawing the family pension against rule, even after her re-marriage which the applicant admitted in her reply sent, filed as R1 & R2 and her services were terminated accordingly on 7.12.02, as per service conditions given in her appointment letter.

5. We have heard the learned counsel for the parties and perused the records. Admittedly the applicant was appointed on compassionate ground after the death of her husband on 8.9.2000. It is also the admitted fact that the applicant remarried on 1.7.2001, which is evident from A6. It is also the admitted fact that the applicant continued to accept family pension even after her re-marriage for which she had shown her ignorance that she is an illiterate lady. We have gone through the appointment letter of the applicant Annexure A1 in which it is clearly mentioned that her probation period will be for a period of 2 years and if need be, her service can be terminated at any time without prior notice. We have also gone through the order dated 20.5.03 marked as Annexure A5 that the applicant concealed the fact of her re-marriage for more than one year and the act of hiding the fact from employer and drawing pension even after remarriage for a long time is a severe reflection on integrity of government servant and this act committed by Smt. Mala Devi was an act unbecoming of a government servant and that Smt. Mala Devi is not a fit person to be retained

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as a government servant and hence terminated the services of Smt. Mala Devi in terms of condition No.2 (kha) of the appointment letter mentioned above and it is relevant that she was still under the probationary period vide factory order No.5148 dt 7.12.02 and the termination is fully covered under the appointment condition. In the last para also, it is clearly stated as under:

"That the action of terminating the services of Smt. Mala Devi by the undersigned in the capacity of appointing authority was done after considering all material facts on record and after due deliberations considering that maintaining of required integrity and conduct by government servants is an absolutely must for retention of any govt. servant in service and hence the undersigned has found that the said Smt. Mala Devi was not a fit person to be retained in government service and orders were passed accordingly for terminating her services."

6., In view of the submissions made by the learned counsel for the parties and in view of our above discussion, we find that there is no illegality committed by the department in terminating the services of the applicant. Under the above facts and circumstances, we are of the view that the OA is without merit and is liable to be dismissed. Accordingly the OA is dismissed being bereft of merit.


(A.K.Bhatnagar)
Judicial Member


(M.P.Singh)
Vice Chairman

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फृष्टांकन सं. लो/न्या..... अबलपुर, दि.....
एकांकीकरण विभाग, अबलपुर
(1) राजिया, अबलपुर, एकांकीकरण विभाग, अबलपुर
(2) राजिया, अबलपुर, एकांकीकरण विभाग, अबलपुर
(3) राजिया, अबलपुर, एकांकीकरण विभाग, अबलपुर
(4) विधायक, अबलपुर, एकांकीकरण विभाग, अबलपुर
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S.K. Upadhyay
K.N. Patel