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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

10.05.2012

MA 240/2011 (OA No. 455/2009)

Mr. Rajesh Kapoor, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

MA No. 240/2011

Heard on this MA filed by the applicant for restoration of the OA, which was dismissed in default on 22.07.2011. We are satisfied with the reasons stated in the application for restoration of the OA. The MA is allowed. The OA is restored to its original number and position.

The MA stands disposed of accordingly.

OA No. 455/2009

Heard. The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

J.S. Rathore

(Justice K.S. Rathore)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 10th day of May, 2012

ORIGINAL APPLICATION No.455/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Leelawati
w/o late Shri Chand Mal Sharma,
Ex-Khalassi, C&W, Ajmer,
r/o 400/33, Pal Beechala,
Church Road,
Ajmer.

... Applicant

(By Advocate: Shri Rajesh Kapoor)

Versus

1. Union of India
through the General Manager,
North Western Railway,
Jaipur
2. Divisional Railway Manager (Estb.),
North Western Railways,
Ajmer.

... Respondents

(By Advocate : Shri Anupam Agarwal)

ORDER (ORAL)

Brief facts of the case are that the applicant applied for appointment on compassionate grounds in place of her husband. The respondent No.2 vide order dated 2.11.2007 (Ann.A/6) appointed the applicant on the post of Khallasi in Carriage and Works, Ajmer. In pursuance to the appointment order, the applicant joined duty on 12.12.2007. After about 2 months from joining the duty, the applicant received order dated 1.2.2008 passed by respondent No.2 whereby the applicant was removed from service with immediate effect on the ground of suppression of fact regarding pendency of criminal case against the applicant and pursuant to this order, the applicant was removed from service on 2.2.2008 (Ann.A/7).

2. The applicant vide letter dated 11.2.2008 informed respondent No.2 that no case was pending against her and the applicant has been removed from service without affording opportunity of hearing and prayed that copy of the required documents be supplied to the applicant and independent inquiry be held to verify the allegations and she be reinstated. The representation dated 11.2.2008 filed by the applicant has not been responded by the respondents, then the applicant vide letter dated 14.5.2008 applied for information under RTI Act to supply copy of documents and the same was supplied vide order dated 28.5.2008 (Ann.A/9).

3. Bare perusal of the letter dated 18.1.2008 supplied under the RTI reveals that the office of the District Magistrate supplied wrong



information to respondent No.2 that criminal case was pending against the applicant, which is factually incorrect.

4. The applicant filed review application dated 4.7.2008 praying that the order of removal from service be reviewed on the basis of correct facts. In the review application, she has stated that the person similarly situated have been reinstated by imposing lighter punishment and cited matters of S/Shri Raj Kumar Singh Rawat, Khagesh Sharma, Rajesh Tak, Vinod Sharma and Kishanlal with detail.

5. In reply to para 4.11 the official respondents have submitted that though the criminal case was not pending at the time of appointment, but the information of criminal case against the applicant was suppressed by the applicant in her attestation form. With regard of case of S/Shri Raj Kumar Rawat, Vinod Kumar Sharma, Kishan Lal Meena and Rajesh Tak is concerned, it is stated that cases of these persons are different to the case of the applicant. The criminal case was pending against Shri Khagesh Sharma when he was appointed, hence he was removed and after acquittal in criminal case, he was reinstated in service.

6. Since the official respondents have admitted that against one Shri Khagesh Sharma criminal case was pending and after having knowledge of this fact, he has been removed from service, but after acquittal, his case was considered and he was reinstated in service, we have compared the case of the applicant with Shri Khagesh Sharma. In the case of the applicant, the criminal case not

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admittedly pending at the time of filling the attestation form. It is evident by letter dated 2.9.2008 issued by the Dy. SP South, Ajmer that chargesheet was filed in case No. 124/87 on 30.11.1987 under Section 455, 325, 323, 34 IPC and after hearing the case acquittal order has been passed giving benefit of doubt to the applicant vide order dated 16.10.2000, whereas the applicant was offered appointment on compassionate grounds on 2.11.2007, admittedly, after a period of about 7 years of the acquittal order passed by the criminal court. In the case of Shri Khagesh Sharma a criminal case was pending at the time of appointment, therefore, he was removed from service and after acquittal in the criminal case, he was reinstated in service. In our view, it appears to be a hostile attitude of the respondents and the applicant rightly referred the case of Shri Khagesh Sharma, which has been admitted by the official respondents in para-11 of their reply. In such circumstances, we are fully convinced with the submission made on behalf of the applicant regarding the hostile discrimination, while dealing with case of the applicant as well as the case of Shri Khagesh Sharma.

7. We have also carefully perused the judgments referred to by the learned counsel appearing for the respondents and are of the view that these judgments are not applicable in the facts and circumstances of this case.

8. On the contrary, looking to the fact that the applicant on account of death of her husband applied for appointment on compassionate grounds and respondents have to show compassion

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but rather showing compassion, discriminatory attitude has been adopted.

9. Thus, in view of above discussions, we are of the view that the OA deserves to be allowed. Accordingly, the impugned order Ann.A/1 dated 1.2.2008 is hereby quashed and set-aside. The respondents are directed to reinstate the applicant forthwith, but not later than a period of two months from the date of receipt of a copy of this order. It is made clear that the applicant shall not claim salary from the date of termination i.e. 1.2.2008 till the order passed by this Tribunal, but the said period shall be considered for all other purposes.

10. The OA stands disposed of in above terms with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/