

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A.No. 060-00610-2014

Orders pronounced on: 10.03.2015
(Orders reserved on: 28.01.2015)**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**
HON'BLE MS. RAJWANT SANDHU, MEMBER(A)

Sofia Mahajan daughter of Shri Dharam Pal Mahajan, c/o Rajni Mahajan, Near Ved Parkash Chemist, Main Bazar Majitha, District Amritsar, Punjab.

Applicant

By: Mr. Akshay Jindal, Advocate.

Versus

1. Additional Secretary, Health, Department of Health and Family Welfare, Delux Building, Sector 9, Chandigarh.
2. Director General, Govt. Medical College and Hospital, Sector 32, Chandigarh.

Respondents

By: Mr. Rohit Mittal, Proxy counsel for Mr. Rakesh Verma, Advocate

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ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the charge-sheet dated 25.2.2014 (A-6) and order dated 30.5.2014 (A-8) relating to appointment of inquiry officer for conducting enquiry in departmental proceedings against the applicant .
2. The facts may be noticed in the first instance. The applicant joined service as Junior Radiographer/X-ray Technician under respondents on 17.11.2009 and was put on probation for two years. The Government of Punjab invited applications for the posts of Radiographers on 26.7.2011. The applicant also submitted her application against the same, on line, during probation period. She was issued a show cause notice in February, 2012 for submission of application without permission. She explained in her application dated 16.2.2012 for applying and counselling for the post of Radiographer in Punjab. Though reply was taken to be unsatisfactory but taking a lenient view she was warned to be careful in future vide order dated 2.3.2012.

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3. The applicant submitted a casual leave application for 28.10.2013 for attending counselling for the selection in question. However, she was not granted leave and instead her duties were arranged in such a fashion that she may not be able to leave the department. In any case, the applicant came to be selected by the State of Punjab and as such she submitted her resignation to the respondent no.2, which was forwarded to Head of Department, with the comments that she may not be relieved till process for recruitment of Junior Radiographer/Technician is completed due to acute shortage of that category. The applicant again submitted resignation letter and deposited an amount of Rs.24,579/- in lieu of one month's salary for the notice period. She understood to clear all dues. She was informed vide memo dated 3.1.2014 that her resignation dated 13.12.2013 has not been accepted as applicant had not applied for new employment after obtaining NOC. She was informed vide memo dated 27.1.2014 that her resignation stands already rejected and amount deposited by her was returned and she was asked to join back duties within 4 days. To this the applicant submitted a reply dated 5.2.2014 explaining that she had fulfilled all the terms and condition imposed by respondent no.2 for acceptance of resignation.

4. Ultimately, the applicant was served with a charge sheet dated 25.2.2014 (A-6) with the allegation that she had attended interview in the Department of Punjab Government on 28.10.2013 without obtaining NOC before applying for the post of Radiographer and she was given warning in this regard on 2.3.2012 and 3.12.2013. Thus, the basic allegation is that she did not take permission/NOC before applying for the post of Radiographer. The applicant submitted a reply to the same vide letter dated 5.4.2014 that the alleged misconduct already stands condoned by issuance of a warning and as such there is no cause for issuance of charge sheet on the same allegation. However, the respondents have appointed an enquiry officer to conduct the charges levelled against the applicant which has prompted the applicant to file this Original Application.

5. The stand of the respondents is that applicant submitted resignation from the post of Junior Radiographic Technician through HOD/Radio diagnosis within 24 hours notice w.e.f. 13.12.2013. by citing reasons of unavoidable family circumstances and selection as Radiographer in Punjab Government. The HoD had not recommended acceptance of resignation. It was recommended that she may not be

relieved till the recruitment process of Junior Radiographic Technician is completed due to acute shortage of Radiographers and her lien to this post may not be kept since she has not applied through proper channel for the post. This post may be filled along with other posts through direct contract in the interest of patient cadre. Thus, her resignation was rejected. Despite this she deposited one month's salary in lieu of notice which was returned subsequently and departmental action under Punjab CSR (Punishment & Appeal) Rules, 1970 has been initiated.

6. We have heard and considered the submissions made by learned counsel for the parties at length and perused the material on the file with their able assistance.
7. A conjecture perusal of the pleadings of the parties would disclose that the applicant had indeed applied for appointment in Punjab Government by submission of on-line application for which she was issued a show cause notice as to why she had submitted application without NOC to which she submitted an explanation. Though the competent authority did not feel satisfied by the same but it is equally true that vide order dated 2.3.2012, Annexure A-3, she was informed that "a lenient view is taken this time" and she was "warned to be

the ground that she had not obtained prior permission or NOC from the earlier-employer. The answer to this question has to be in negative for the simple reason that for the same very misconduct she was issued a show cause notice, Annexure A-2, asking her to explain as to why disciplinary action may not be initiated against her for not submission of application through proper channel or with prior permission. She gave her explanation to the respondents. Though the reasons given by her did not find favour with the competent authority but the competent authority took a lenient view and she was warned to be careful in future. In other words the misconduct stood condoned or one can say punished by issuance of a warning. Now a subsequent action of resignation to enable the applicant to join her new post cannot be taken as a fresh cause of action to charge sheet her that too on the ground that she had not submitted application without obtaining NOC, as that act stood condoned by the competent authority. Thus, we find ourselves on the side of the applicant in concluding that if the respondents are allowed to have their way, it would amount to double jeopardy which cannot be allowed by a court of law.

8. At this stage, learned counsel for the respondents would argue that the applicant cannot challenge a charge sheet in this Tribunal as it is not permissible under law. Indeed, one cannot dispute the legal proposition that ordinarily, a writ application does not lie against a charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to passing of an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed; it may have a grievance and cause of action. Thus, a charge-sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. Reliance in this regard is placed upon the judgments in **State of U. P Vs Braham Datt Sharma** (AIR 1987 SC 943); **Executive Engineer, Bihar State Housing Board Vs Ramesh Kumar Singh & Ors.** (1996(1) SCC 327); **Ulagappa & Ors. Vs Div. Commr., Mysore & Ors.** (AIR 2000 SC 3603); **Special Director & Another Vs Mohd. Ghulam Ghouse & Another** (AIR 2004)

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SC 1467) **and Union Of India & Another Vs Kunisetty**

Satyanarayana (AIR 2007 SC 906).

9. However, in this case one thing is crystal clear that issue raised is as to whether the applicant could be charge sheeted at all to which we have answered, as discussed above, that it was not permissible since the applicant already stood punished with issuance of a warning to be careful in future. In any case, once the respondents have accepted the fate and decided to fill up the post by way of contract basis and not to keep the lien of the applicant, one fails to understand as to what they want to achieve by charge sheeting the applicant except wastage of governmental resources which can be utilized for some better purposes.

10. In view of the aforesaid discussion, this O.A. is allowed. The impugned charge-sheet, Annexure A-6 and order, Annexure A-8 are quashed and set aside. No costs.

Yours'
(SANJEEV KAUSHIK)
MEMBER (J)

M
(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh
Dated: 10.3.2015

HC*