28

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

...

O. A. No.060/00709/2014 **Date of decision:** 14.10.2016

(Reserved on: 07.09.2016)

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A).

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Ms. Vaneeta Harrison, Staff Nurse Wife of Sh. Ajay Harrison, resident of House No.3217, Sector-44D, Chandigarh (Presently residing at Canada) represented through his father & Special Power of Attorney holder namely Mubark Masih.

...APPLICANT

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Medical Education & Health, New Delhi.
2. Chandigarh Administration through Home Secretary-cum Secretary, Department of Medical Education & Hospital, Deluxe Building, Sector 9, Chandigarh.
3. Director-cum-Principal, Government Medical College & Hospital, Sector-32, Chandigarh.
4. Medical Superintendent, Government Medical College & Hospital, Sector-32, Chandigarh.

...RESPONDENTS

PRESENT: Sh. Kuldeep S. Choudhary, counsel for the applicant.
None for respondent no.1.
Sh. Vivek Arora, counsel for respondents no.2 to 4.

ORDER

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HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. is directed against an order dated 20.12.2011/6.1.2012 passed by the Disciplinary Authority (Annexure A-20) inflicting punishment of removal from service and order dated 23.04.2014 passed by the Appellate Authority (Annexure A-21).

2. Brief of necessary facts which have been unwrapped are that the applicant Ms. Vaneeta Harrison, who was working as Staff Nurse with Government Medical College & Hospital, Sector-32, Chandigarh

was served with a charge-sheet dated 23.03.2011 for remaining willfully absent from duty from 15.10.2010 to 24.05.2011. She submitted her reply to the charge sheet on 18.04.2011. Thereafter, departmental inquiry was initiated against the applicant for remaining willfully absent from 15.10.2010 to 24.05.2011 i.e. for seven months and 9 days. The Inquiry Officer in its report dated 24.06.2011 held the applicant guilty of charge. Thereafter, Disciplinary Authority asked for comments of the applicant on inquiry report vide letter dated 03.11.2011, which was submitted on 16.11.2011. Based upon the inquiry report, the Disciplinary Authority inflicted the punishment of removal from service on 20.12.2011. The applicant herein before filing any statutory appeal, approached this Tribunal by filing O.A. No.445/CH/2012, which was disposed of by this Tribunal with a direction to file a statutory appeal. The Appellate Authority approved punishment order vide its order dated 23.04.2014. Hence this O.A.

3. The respondents while resisting the claim of the applicant have unfolded the facts which have not been apprised by the applicant that she was initially granted Ex-India leave of three months on 08.02.2010, which she availed and immediately after she joined on 01.07.2010, she applied for earned leave on 30.08.2010 and subsequently, requested for extension up to 14.10.2010. Though thereafter she applied for extension of her earned leave but the same was rejected by the competent authority and applicant was informed vide two communications dated 03.11.2010 and 02.12.2010 that if she does not join her duties, she would be treated as willfully absent from 15.10.2010 and departmental proceedings

under relevant rule formation would be initiated against her. It is also submitted in the written statement that not only the applicant did not join on 15.10.2010 but during the period when she was on earned leave she also re-visited New Zealand without prior permission or intimation to the respondent department. Therefore, rightly departmental proceedings for remaining willfully absent from duty were initiated against her and after considering gravity of misconduct on the part of the applicant the Disciplinary Authority inflicted punishment which was upheld by Appellate Authority rejecting her appeal.

4. We have heard learned counsel for respective parties.

5. Learned counsel for the applicant vehemently argued that the impugned order of her punishment of removal from service for absent from duty is illegal, arbitrary and shows non-application of mind at the hands of Disciplinary Authority. To elaborate his argument, he submitted that in her reply to the charge sheet and subsequently in reply to inquiry report, the applicant had already narrated the facts as to why she could not join the duty on 15.10.2010. Therefore, it was incumbent upon the Disciplinary Authority to consider the causes for not joining the duty but order does not suggest that the respondents have considered the reasons spelt out by applicant and have passed impugned order which shows non-application of mind. Therefore, he prayed that the O.A. be allowed and order be set aside.

6. Per contra, Sh. Vivek Arora appearing on behalf of contesting respondents vehemently opposed prayer of the applicant and submitted that since applicant remained willfully unauthorized

31

absent from duty for 7 months and 9 days despite notice to her that if she does not join then departmental proceedings will be initiated against her, it cannot be said from any angle that her absence is not willful and this is construed as a misconduct in service jurisprudence. Therefore, he submitted that rightly punishment of removal from service has been inflicted. He further argued that this Court cannot sit as Appellate Authority over the findings recorded by the Disciplinary Authority and come to a different conclusion than that has been arrived at by the Disciplinary Authority while inflicting punishment. Reliance is placed on judgment dated 28.05.2013 in the case of S.R. Tiwari Vs. UOI and Anr. 2013(6) SCC 602.

7. We have given thoughtful consideration to the entire matter and perused pleadings available on record. We are in agreement with the submissions made at the hands of the respondents that this petition deserves to be dismissed because this Court cannot re-appreciate the evidence and come to another conclusion than what has been arrived at by the Disciplinary Authority. When charge is proved, as happened in the instant case, it is the Disciplinary Authority with whom lies discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be exercised objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant rules. Host of factors go into decision making while exercising such a discretion which include, apart from nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent employee. To maintain the discipline in the department, it is for the Disciplinary Authority to decide as to

what punishment has to be inflicted upon the delinquent employee. Order of the Appellate Authority while having a re-look at the case, has to examine as to whether punishment is reasonable or not. If Appellate Authority is of opinion that the case warrants of lesser penalty, it can reduce penalty imposed by Disciplinary Authority. Since such power, which vests with the Appellate Authority departmentally, is honorary and is not available to Courts or Tribunals. This is so held by their Lordships way back in the year 1963 in the case of State of Andhra Pradesh Vs. S. Sree Rama Rao, AIR 1963 SC 1723, subsequently in case of State of Haryana Vs. Rattan Singh, 1977 (2) SCC 491. This view has further been followed in subsequent judgment in case of U.T. of Dadra & Nagar Haveli Vs. Gulabhia M. Lad (2010) 5 SCC 775. Their Lordships have held that in exercise of power of judicial review, the Courts are not supposed to substitute thier own opinion on re-appreciation of facts. This view has again been reiterated in case of S.R. Tiwari (Supra) where after considering the entire law on the subject, their Lordships have again reiterated in para 23 and 28 that under the garb of judicial review, Court will not reappreciate evidence as Appellate Authority. Court is devoid of power of re-appreciation and cannot substitute its own views or findings by replacing the findings arrived at by the authorities on detailed appreciation of the evidence on record. This view has subsequently been followed in recent decision in case of UOI and others vs. P. Gunasekaran 2015 (2) SCC 610, wherein their Lordships reiterated findings in para 12 and laid down exceptions where High Courts and Tribunals can interfere, which read as under:

"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

The High Court can only see whether:

a. the enquiry is held by a competent authority;
b. the enquiry is held according to the procedure prescribed in that behalf;
c. there is violation of the principles of natural justice in conducting the proceedings;
d. the authorities have disabled themselves from reaching a fair conclusion, by some considerations extraneous to the evidence and merits of the case;
e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
g. the Disciplinary Authority had erroneously failed to admit the admissible and material evidence;
h. the Disciplinary Authority had erroneously admitted inadmissible evidence which influenced the finding;
i. the finding of fact is based on no evidence. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;
(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
(iii). go into the adequacy of the evidence;
(iv). go into the reliability of the evidence;
(v). interfere, if there be some legal evidence on which findings can be based.
(vi). correct the error of fact however grave it may appear to be;
(vii). go into the proportionality of punishment unless it shocks its conscience.

8. In the light of above authoritative law, this O.A. deserves to be dismissed. Applicant was not only absent from duty, she also concealed this fact from the respondents that she visited New Zealand while she was on earned leave. Therefore, we are of the

34

considered view that the punishment of removal from service was inflicted by the Disciplinary Authority after considering gravity of charge and it cannot be interfered with. Accordingly, the O.A. being devoid of merits is dismissed. No costs.

Uday Kumar Varma

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 14.10.2016
Place: Chandigarh.

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