95

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO. 060/01099/2014 **Date of order:-** 15.11.2016

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Gurdeep Kaur wife of Sardar Kapur Singh Sahota, resident of House No.3, Algrave Crescent, Toronto, Onatario, Canada c/o D.R.Sharma, Advocate, House No.1646, Sector 7-C, Chandigarh.

.....Applicant.

(By Advocate :- Mr. K.B.Sharma for Mr. D.R.Sharma)

Versus

1. Union of India through the General Manager(P), Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The Financial Advisor & Chief Accounts Officer/Traffic, Northern Railway, Statistical Branch, Baroda House, New Delhi.
3. The Deputy CAO/T, Northern Railway, Traffic Accounts Office, State Entry Road, New Delhi.
4. Statistics and Analysis Officer, Statistical Branch, Northern Railways, Head Quarter Office, Baroda House, New Delhi.

...Respondents

(By Advocate : Mr. Yogesh Putney).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Gurdeep Kaur has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, for quashing the orders dated 7/8.7.2014, 24.1.2013, 22.7.2010, enquiry report dated 4/11.6.2010, charge sheet dated 3.3.2010 and office communication dated 2.2.2011 (Annexures A-1, A-3, A-6, A-8, A-10 & A-11) respectively with a further prayer that the respondents be directed to release the retiral benefits due from 23.9.2010 *i.e. the date when the applicant had attained the age of*

superannuation along with interest @ 18% till the actual payment is made.

2. Facts as presented by the applicant are that she joined the respondent department as clerk on 31.8.1973 and thereafter was promoted as Senior Clerk. The applicant has stated that she was sanctioned ex.India leave to visit Canada for 33 days i.e. from 12.8.1987 to 13.9.1987. Thereafter, the applicant extended her leave many times from Canada due to ill-health and medical problems and never joined the duties. The applicant has stated that she made a request on 9.11.2010 by stating therein that she had reached the retirement age of 60 years on 23.9.2010, as such, she became eligible for pension and she be informed about the formalities to be completed in this behalf. In response to the request made by the applicant, the respondents informed the applicant vide letter dated 2.2.2011 that she had already been removed from service vide order dated 22.7.2010 with immediate effect, as such, her claim for retirement pension does not arise. The applicant has further stated that the charge-sheet was sent at wrong address. Feeling aggrieved against the order dated 22.7.2010, the applicant earlier approached the Tribunal by filing O.A.No.1063/PB/2012 by challenging the charge-sheet dated 3.3.2010, enquiry report and removal order dated 22.7.2010. The said OA was disposed of by the Tribunal vide order dated 11.10.2010 by directing the competent authority to treat the OA as an appeal and dispose the same within three months. The Appellate Authority rejected the appeal of the applicant vide order dated 24.1.2013. Even the revision petition filed against the order of the appellate authority was also dismissed vide order dated 7.7.2014.

3. The applicant has alleged in the OA that the respondents have passed the orders in violation of the principles of

natural justice and in contravention of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant has also alleged the enquiry proceedings has been concluded without adhering to the procedure stipulated in Rule 9. The applicant has relied upon the following judgments:-

i) Krushnakant B.Parmar versus Union of India decided on 15.2.2012 (Civil Appeal No.2106 of 2012)

ii) State of Punjab & Ors. Versus Ashok Kumar decided on 13.11.2009 (R.S.A.No.589 of 2008) ;

iii) Union of India & Ors. Versus Giriraj Sharma (A.I.R. 1994 S.C. Page 215).

Hence the present OA.

4. The respondents have contested the claim of the applicant by filing written statement. They have stated that the No Objection Certificate dated 31.7.1987 was issued to the applicant with a specific condition that the "request for grant of extension of leave while abroad beyond the period of leave initially applied for and granted to him/her shall not be entertained under any circumstances and He/she will ensure that any change in his/her address is known to the administration from time to time". After grant of ex.India leave, the applicant never came back to join duties and remained on unauthorized absence from duty which is a grave misconduct in law and as defined in the Railway Servant (Discipline & Appeal) Rules, 1968. They have also stated that the present OA is hopelessly barred by the law of limitation. They have further state that while sitting in judicial review, the Tribunal would not act as a court of appeal as the appeal and revision petition filed by the applicant have rightly been rejected. The applicant has displayed a recalcitrant attitude in remaining absent for over two decades, without any contact and, in fact and substance wilfully deserted the job/service and to say so, is

demanding a reward for her chosen misconduct. Public money cannot be squandered. The impugned action of the respondents cannot be interfered with which raps the continued absence of over 22 years while the rules do not provide for continued absence beyond 5 years. Still further no presidential sanction is available.

5. They have also stated that while filing the present OA, the applicant is shown to be residing in Canada. The Power of Attorney in favour of the representing counsel has to be through the foreign office with signature of the applicant attested by the office of Indian Embassy. It being not so, the present counsel who filed the normal Indian Power of Attorney is not competent to represent the applicant. They have thus prayed for dismissal of the OA.

6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. The first issue that deserves consideration while looking at the prayer for relief is the technical objection raised by the respondents that this O.A has been filed through a defective power of attorney given to Sh. D.R. Sharma, Advocate. The address of the applicant mentioned in the O.A is House No. 3, Algrave, Crescent, Torronto Ontario, Canada. The respondents contended that as the applicant is residing in Canada, the process of granting power of attorney requires that it be carried out through a process requiring that the signatures of the applicant are attested by Indian Embassy. We have seen the documents/power of attorney filed along with O.A. It contains signature of applicant, however, the signature of the applicant is not attested. Also, there are no other papers annexed with this document. On examining the O.A, we find that it has also been filed by the applicant and address has been given as House No.

3, Algrave, Crescent, Torronto Ontario, Canada. The applicant while staying in Canada cannot file the O.A without a proper procedure laid down for such cases. Further, if the applicant resides in Canada then her signature on the O.A as well as on power of attorney may have been done by somebody else in which case it becomes a case of impersonation and forgery. In the circumstances, the Registry of Central Administrative Tribunal, Chandigarh is directed to investigate this matter by examining the documents and if on enquiry on impersonation is established and it is found that someone else has signed as the applicant, all necessary actions including reporting the matter to Bar Council, be taken.

8. Coming to the facts of the case, it is an admitted fact that the applicant has been absenting from her duties since 31.07.1987. Even if her contention mentioned in the O.A is taken on its face value, her last request for extension of leave was from 08.06.1988 to 06.08.1988. The respondents, however, claim that the applicant's leave was last extended upto 07.03.1988 and since then she has been absenting from her duties unauthorizedly. There is nothing on record to substantiate the claim of the applicant that she has been constantly keeping respondents informed that due to acute sickness and ill health, she is not in a position to return to India and resume her duty. This fact is further corroborated by the contents of the charge memorandum issued to her on 03.03.2010 and article of charges annexed with charge memorandum clearly mentioning that the applicant has been absent from duty w.e.f. 08.03.1988. This charge sheet remained un-responded. It is, therefore, quite evident that between 1988 and till the time of retirement i.e. 23.09.2010, there was no effort on the part of the applicant either to join the duty or even inform the authorities about her inability to join the duties.

After a gap of 22 years, she seems to have suddenly woken to the fact that she has reached the age of superannuation on 23.09.2010 and is entitled for retiral benefit.

9. The main and the principal argument forwarded by the learned counsel for the applicant consists of the procedural lapse in not serving the charge-sheet and related documents to the applicant. It is the contention of the applicant that she was never in receipt of the charge-sheet and it was not delivered on her address. Taking shelter behind this argument, the applicant is challenging the validity of the order passed by the Disciplinary Authority as also of the Appellate & Revisional Authority.

10. The respondents, on the other hand, have stated that the charge-sheet was sent on the address intimated by the applicant. To this effect, they have shown on record a letter dated 04.05.1988 written by the applicant intimating to the department her address. They further contend that the letter sent to the applicant was returned by the Postal Authorities with the remarks "unclaimed" which implies that the applicant had simply refused to accept the letter that contained the charge-sheet.

11. It is a case where the applicant having stayed away from the country for a very long time wants to assail her removal from service on technical grounds. It is not disputed that she left the country way back in 12.8.1987 after taking permission only for 33 days and thereafter she got her leave extended a number of times, however, she did not come back and was absent since 12.8.1987 despite a minor penalty charge-sheet dated 29.3.1988 issued to her on account of her unauthorized absence. It also seems that this whole exercise of making an appeal against her removal order and revision

against the Appellate Authority is merely to find a way for claiming her retiral benefits like pension etc.

12. Notwithstanding the unusual facts and circumstances of this case, the technical ground taken by the applicant about not receiving the charge-sheet is bereft of any merit. It is clearly established that the charge-sheet was sent to her at the address she had herself intimated to the authorities. The envelope containing the charge-sheet came back not because the address was wrong or because the addressee did not reside in that place, but because nobody accepted that letter (unclaimed). These facts suggest that there was a deliberate decision on the part of the applicants in not accepting the charge-sheet. Therefore, this plea or ground taken by her to assail the validity of departmental proceedings is unacceptable. The authorities had no option but to proceed against the applicant for her unauthorized absence from duty and we cannot fault them on the procedure they had adopted.

13. The scope of interference by Tribunals in case of departmental proceedings is rather limited. In number of pronouncements, the Apex Court has discouraged the Tribunal to go into a fresh appreciation of evidence or to reopen the inquiry at their own level. A number of rulings of Apex Court pretty much lays down the ratio in such matters. This ratio broadly provides that unless there is a gross violation of principles of natural justice or serious flaw in the procedure of inquiry or where appointment is excessively disproportionate to the misconduct, the Tribunals should desist from interfering in such matters. Looking into the facts and circumstances of the case, we cannot think which other way the applicant should have been communicated the charge memorandum except to send it to the address available to them. Obviously, she has not been in touch with

32

department since 1988. In close to 22 years, she has chosen neither to join her duties nor inform the authorities about her intention to join the same. In these circumstances, we are of the clear view that the respondents have proceeded correctly in removing her from service. Here is one instance of a departmental enquiry where facts have become the best evidence.

14. The Hon'ble Apex Court in the case of ***S.R. Tewari versus Union of India*** (2013(7) Scale Page 417) has held that "the punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. Again, the Hon'ble Apex Court in the case of ***Deputy Commissioner, Kendriya Vidyalya Sangthan & Ors. vs. J.Hussain*** (2013 (10) S.C.C. Page 106) has held that the Courts should not be guided by misplaced sympathy or compunity ground, as a factor in judicial review while examining the quantum of punishment. Seen in the light of these observations, the quantum of punishment seems justified.

15. Again, the jurisdictional High Court in the case of ***Union of India versus Raghubir Singh*** (CWP No.1154 of 2014) decided on 6.5.2014 has held that "the relationship between an employer and employee is of utmost vital importance and where an employer loses confidence and faith in such an employee and awarding punishment of dismissal/ removal/termination is the very prerogative of the concerned Disciplinary Authority and there is no place for generosity or misplaced sympathy and, therefore, judicial authorities needs to be cautious in their approach towards such infringement over the powers of Disciplinary Authority".

16. Recently, the Hon'ble Apex Court in the case of **Union of India** versus **P.Gunasekaran** (2015 (2) S.C.C. Page 610) in paras 12, 13 & 20 has held as follows :-

"12. 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 re- appreciation 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.

13. 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.

Xx xx xx

19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

17. We have also gone through the judgments offered by applicant, in support of her contention. After going through those judgments, it transpires that facts and circumstances of each one of them is far from identical to the instant case and convincingly distinguishable. In the case of ***Union of India & Ors. Vs. Giriraj Sharma***, AIR 1994 SC 215, the fact was that the government employee was over staying the period of leave by 12 days and for this misdemeanor, his service was terminated. The Apex Court while affirming the order of Hon'ble High Court quashing the order of dismissal also observed that department, if so desires, could visit the respondent petitioner with minor punishment. In other ruling, in case

of ***Krushanakant B. Parmar Vs. Union of India & Anr.(supra)*** again period of absence was only for a few months. In this case also facts are very different. The third citation, ***State of Punjab & Ors. Versus Ashok Kumar***, R.S.A.No.589 of 2008, is also not of much help to the applicant. The period of absence in the instant case is close to 23 years and none of these citations can even remotely be invoked to argue and justify setting aside of departmental proceedings and the consequent punishment.

18. The aforementioned discussion clearly helps us to conclude that the non-service of charge sheet or her not been given opportunity of hearing, were situations created entirely due to the action/ intention of the applicant. In such circumstances, we cannot but conclude that the instant case does not merit any interference by us as no aspect of this case qualifies for an intervention by the Tribunal. A copy of this order be sent to Registrar, Central Administrative Tribunal, Chandigarh to comply with the directions contained in paragraph 7 of this order and to place his report to the bench within two months from today.

19. In view of above discussions, the O.A deserves dismissal and accordingly, is dismissed. There is no order as to cost.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- 15.11., 2016.
Kks