

T.A.NO.22 OF 2015

New Delhi, this the 5<sup>th</sup> day of May, 2017

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER**  
**AND**  
**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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G.A.Arife,  
1269, Laxmi Bai Nagar,  
New Delhi 23                      Applicant

(In person)

 $V_S.$ 

Government of India,  
o/o The Joint Secretary (TRG) & Chief Administrative Officer,  
Block, Dalhousie Road,  
New Delhi 110011

(By Advocate: Mr.Yogesh Mahur for Shri Gyanendra Singh)

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## ORDER

**Per Raj Vir Sharma, Member(J):**

The applicant had filed W.P(C) No.4344 of 2015 in the Honøble High Court of Delhi, seeking the following reliefs:

- ãi) To quash the order dated 09 October 2013  
 OR  
 ii) To stay the order dated 09 October 2013 as the petitioner has been imposed the punishment of compulsory retirement on the lower post i.e. LDC whereas she was to be promoted to other grades the pension arising out of the present Compulsory retirement will be less as compared

to her original pension, if she would have been promoted to the right grade of her designation, which were not done since 14 years since passing of the order dated 16 January 2001 reverting her to LDC grade.

- ii) To order for re-inquiry.
- iii) To direct the department to hold inquiry/proceedings & completion of the same within the month of October 2014 as the Directorate of Estates, Ministry of Urban Development wants speedy disposal of the case.
- iv) To direct the department to provide translated English Version of order dated 16 January 2001, if the Department will not promote her to further Grades she might move to court of law for Justice (as petitioner's translated words may or may not be correct).
- v) To pass further order(s) in favour of the petitioner in the circumstances of the case.

2. The aforesaid W.P. (C) No.4344 of 2015, on being transferred to the Tribunal, has been registered as TA No.22 of 2015 on the file of this Bench of the Tribunal. In terms of Section 29(4)(b) of the Administrative Tribunals Act, 1985, the Tribunal has to deal with the TA in the same manner as in the case of an application under Section 19 of the Act from the stage which was reached before transfer or from any earlier stage or de novo as it may deem fit.

3. Resisting the T.A., the respondent has filed a counter reply. The applicant has filed a rejoinder reply thereto.

4. We have heard Ms.G.A.Arife, the applicant who appeared in person, and Mr.Yogesh Mahur for Mr.Gyanendra Singh, the learned counsel appearing for the respondent. We have also perused the written submission filed by the applicant.

5. The main grievance of the applicant is against the impugned order dated 9.10.2013, which was passed by the Disciplinary Authority, i.e., Deputy Chief Administrative Officer (P), office of the Joint Secretary (Training) & CAO, Ministry of Defence, Government of India, in the disciplinary proceedings initiated against the applicant, imposing on her the penalty of "Compulsory Retirement" with immediate effect on the basis of the Inquiry Officer's report and the materials available on record of the departmental enquiry.

6. The impugned order dated 9.10.2013(ibid) reads thus:

ORDER

WHEREAS, a disciplinary proceedings were initiated under Rule 14 of the CCS (CC&A) Rules 1965 vide memorandum dated 29 May 2007 against Ms.G.A.Arief, LDC for being unauthorizedly absent from her duty without prior intimation/permission with effect from 28 Sep 2006 and refusal to accept the official document.

AND WHEREAS, no representation was submitted against the memorandum by Ms.G.A.Arief and Sh.R.A.Sharma, Section Officer was appointed as Inquiry Officer vide order dt.24 Aug 2007.

AND WHEREAS, the Inquiry Officer, in his Inquiry Report, had submitted that Ms.G.A.Arief did not cooperate in the Inquiry proceedings despite being given many opportunities and the Inquiry was conducted ex parte and the articles of charges were established from the documentary evidence in the Inquiry Report dt.25 Feb 2008.

AND WHEREAS, a copy of the Inquiry Report was provided to Ms.G.A.Arief vide memorandum dt.18 Mar 2008 wherein Ms G.A.Arief sought extension of time to submit her representation against the Inquiry Report due to her pending Court cases, ill health and the mental trauma caused due to her daughter being diagnosed with brain tumor.

AND WHEREAS, Ms.GA Arief was granted extension till 30 Apr 2008 but no representation was submitted by her. The Disciplinary Authority observe, during the personal h hearing granted to her, that her mental condition is not well.

AND WHEREAS, Ms.GA Arief was advised vide letter dt. 31 Jul 2009 to report to Dr.R.M.L.Hospital before Medical Board on 05 Aug 2009 for her medical examination. The Medical Board was also requested to confirm whether her mental indisposition comes under the Persons with Disabilities Act, 1995.

AND WHEREAS, it was confirmed by Dr.R.M.L.Hospital vide their letter dt. 15 Jun 2011 that Ms.G.A.Arief did not appear before the Medical Board.

AND WHEREAS, Security Office/Special Police Staff and Police Station, Sarojini Nagar were requested to find whereabouts of Ms.G.A.Arief and it was confirmed by them that her house was found locked on repeated visits.

AND WHEREAS, the undersigned having considered all the facts and circumstances of the case, available documents, Inquiry Report and non-appearance of Ms.G.A.Arief before the Medical Board, have arrived at the conclusion that the charges levelled against Ms.G.A.Arief in the memorandum dt.29 May 2007 stands established.

NOW THEREFORE, the undersigned imposes the penalty of Compulsory Retirement on Ms.G.A.Arief with immediate effect.ö

7. öCompulsory retirementö has been prescribed under Rule 11 of the CCS (CCA) Rules, 1965, as one of the major penalties. Under Rule 23 an appeal lies against an order passed by the Disciplinary Authority imposing any of the penalties specified in Rule 11 of the CCS (CCA) Rules, 1965.

8. Admittedly, the applicant did not make an appeal against the impugned order dated 9.10.2013 passed by the Disciplinary Authority.

9. Section 20 of the Administrative Tribunals Act, 1985, mandates that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him/her under the relevant service rules as to redressal of grievances.

10. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible.

11. In view of the fact that the applicant had not availed of the alternative remedy of appeal, the TA is liable to be rejected as being not maintainable. However, with a view to giving the applicant an opportunity of preferring an appeal against the aforesaid order of penalty, which is impugned in this T.A., we grant liberty to the applicant to prefer such an appeal, if she is so advised, to the Appellate Authority, along with an application for condonation of delay in the filing of appeal, within a period of thirty days from today. We hope that in the event the applicant files an appeal along with an application for condonation of delay in the filing of appeal, the Appellate Authority will condone the delay and decide the appeal on merits by passing a reasoned and speaking order within three months from the date of receipt of the appeal along with the application for condonation of delay.

12. With the above observation, the TA is rejected as being not maintainable. The interim order passed by the Tribunal stands vacated. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SHEKHAR AGARWAL)**  
**ADMINISTRATIVE MEMBER**

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