

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-675/2017

Reserved on : 27.02.2017.

Pronounced on : 03.03.2017.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Ms. Usha Kiran,
Group-C,
Aged about 44 years,
D/o Sh. Bhoop Narain,
R/o 858, Type-Z,
Timarpur, Delhi-110054.

.... Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

Govt. of NCT of Delhi through

1. Chief Secretary,
Govt. of NCT of Delhi,
Players Building,
I.P. Estate, New Delhi.
2. Secretary (Health & Family Welfare),
Govt. of NCT of Delhi,
Delhi Secretariat,
New Delhi.
3. Commissioner (Food Safety),
Govt. of NCT of Delhi,
Department of Food Safety,
8th Floor, Mayur Bhawan,
Connaught Place,
New Delhi-110001.
4. Dr. Mrinalini Darswal,
Presently working as Commissioner (Food Safety),
Department of Food Safety,
8th Floor, Mayur Bhawan,

Connaught Place,
New Delhi.

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Respondents

ORDER

Mr. Shekhar Agarwal, Member (A)

This O.A. has been filed seeking the following relief:-

- "(i) quash and set aside the impugned communication dated 09.02.2017 (Annexure-A-1).
- (ii) direct the respondent no. 1&2 to appoint adhoc disciplinary authority in respect of the applicant.
- (iii) direct the respondent no.1&2 to allow the applicant to submit the Written Statement of Defence after supplying the documents as sought for in the representation dated 16.12.2016.
- (iv) may also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice."

2. The applicant was issued a charge Memorandum dated 05.12.2016. He was given an opportunity either to accept or deny the charges levelled therein. Enquiry was to be held only in respect of the charges denied by him. The applicant in her reply instead of denying or accepting the charges raised doubts about the reliability of biometric attendance machine and asked for details of the makers/technical personnel and dealers of the said machine. She also submitted that the charges were unspecific and vague and were bad in law. She also asked for several documents to be provided to her at the earliest to enable her to adduce proper and effective statement of defence.

3. Thereafter, the respondents appointed Enquiry Officer (EO) vide order dated 09.02.2017, which has been impugned in this O.A. On the same day, it was also ordered that the dates on which the applicant had remained absent shall be treated as dies non (page-23 of the paper-book). A third order passed on the same day (page-24 of the paper-book) fixed the headquarters of the applicant at Department of Food Safety, Patiala House Courts Office, New Delhi.

4. The applicant has now filed this O.A. stating that respondent No. 4 Dr. Mrinalini Darswal, Commissioner (Food Safety) was acting in a biased manner against her. To support this contention, learned counsel for the applicant Sh. S.K. Gupta submitted that three orders against the applicant have been passed on the same day, which clearly reveals bias of the respondent No. 4. He also submitted that the dates on which the applicant has been alleged to be absent have been treated as dies non even though salary has been paid for those days. He has cited the following judgments in support of his case:-

(i) In the case of **Maan Singh Vs. UOI & Ors.**, (Appeal Civil No. 2531/2001 decided by Hon'ble Supreme Court on 18.02.2003) in which the following has been observed:-

“Bakshish Singh’s case arose out of a suit filed by Bakshish Singh who was a police constable in Punjab but was dismissed from service on 1.6.1988 after a regular departmental enquiry on the charge of unauthorised absence from duty. This order was challenged on several grounds and the trial court decreed the suit on the basis that the order of dismissal could not have been passed by the defendants inasmuch as they themselves had regularised and treated the period of the plaintiffs absence from duty as the period of leave without pay and they could not legally say that he was guilty of misconduct for unauthorised absence from duty.”

(ii) In the case of **Union of India Vs. B.N. Jha** (Appeal (Civil) No. 2054/2002 decided by Hon’ble Supreme Court on 07.03.2003) in which the following has been observed:-

“There is nothing on record also to show that at least the material which were referred to in Shri Garcha’s letter dated 4th September, 1990 were brought to the notice of the respondent and he has been given an opportunity to make a statement in his defence. There is also nothing on record to show that even the materials in possession of Mr. Bakshi were requisitioned by Mr. Arya and he applied his own independent mind thereupon for directing preparation of record of evidence. From the tenor of the charge sheet dated 7.9.1990, it only appears that he merely heard the officer as to whether he pleads guilty thereto or not. The learned Single Judge of the High Court has considered materials on record and came to the conclusion that valuable rights of the respondent had been breached. The Division Bench went through the entire records and arrived at the same finding. The findings of the learned Single Judge or the Division Bench cannot be said to be perverse or contrary to law.”

(iii) In the case of **UOI & Ors. Vs. J.S. Arora**, 1984 (6) DRJ 211 Hon’ble High Court of Delhi has held the following:-

“8. Legal validity of the second proceeding is contested by the petitioner on the ground that the same is in violation of Rule 14(4) and 14(5). He submits that after the written statement of defense is filed by the delinquent, the disciplinary authority has three choice. They are, to drop the proceedings, to enquire itself the charges levelled or appoint an Enquiry Officer for

conducting the enquiry and a Presenting Officer for the presentation of the case on behalf of the defendant. The petitioner submits that immediately after receiving the charge-sheet he asked for the clarification so as to prepare his written statement of defense. The clarification was necessary because the second charge-sheet was stated to be the continuation of the first with a different charge and the statement of imputation of misconduct went beyond the articles of charge by making the additional allegations. He wanted to know whether he was to defend only the Articles of Charge or the other allegations made in the statements of imputations. No such Clarification was given to him with the result that he could not file the written statement of defense. But without defense statement before him, the Disciplinary Authority appointed the Enquiry Officer and the Presenting Officer, and the petitioner was directed to appear before the Enquiry Officer. As noted earlier the second charge-sheet is of a general nature only referring to an "assessed" without name. There is no allegation that the "assessed" was being assessed at the time of the incident, which was so stated in the first charge-sheet. In the statement of imputations it was further stated that he did not perform his official duty at Kistawar or Bhadarwah but was asking people to become members of Lions Club and consuming liquor. He also interfered with the official work of Shri Mittar, I.T.O. and misbehaved with one Shri V. Grover, Advocate, when he was appearing before Mittar. It was also alleged that the tour programme was undertaken by him after he had handed over the charge on transfer. Considering the nature of these allegations I find that the clarification sought by the petitioner was justified and without which he could not have been able to file a proper statement of defense."

5. Sh. S.K. Gupta, learned counsel argued that the applicant herein has also been denied an opportunity to submit his written statement of defence and the respondents have decided to proceed with the enquiry as is evident from their order by which an EO has been appointed.

6. We have considered the submissions made by the applicant. In our opinion, the only argument advanced to establish bias of the

respondent No.4 is that three orders have been passed by her, on the same date. Also that while on one hand the dates on which applicant was alleged to be absent are being treated as dies non, on the other hand salary for the same has already been paid to the applicant. The third argument advanced was that applicant has not been given an opportunity to submit her written statement of defence.

7. On perusal of the material placed on record, we are convinced that none of these grounds is tenable. The applicant was given an opportunity to submit her written statement of defence as is evident from the Charge Memorandum dated 05.12.2016 (page-18 of the paper-book). The applicant instead of availing of this opportunity chose to raise flimsy objections. Further, merely because three orders have been passed on the same day, it cannot be said that the respondent No.4 was acting in a biased manner. In fact, we find that all the three orders are interrelated and pertained to the disciplinary proceedings pending against the applicant. Thirdly, even if the order passed is wrong, it does not establish bias of respondent No.4. The applicant has ample opportunity to challenge any order, which is illegal or incorrect in her opinion by means of appropriate administrative or judicial proceedings.

8. Thus, in our view, no cogent reason has been advanced by the applicant in support of her claim. We are, therefore, of the opinion that this O.A. is not maintainable. Accordingly, the same is dismissed in limine.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/