

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3569/2013

With

O.A.No.4496/2015

M.A.No.4119/2015

Order reserved on 2nd November 2017

Order pronounced on 20th November 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

O.A. No.3569/2013

Nishi Suri w/o Shri Parmod Suri
325/29, Arun Vihar
NOIDA (UP)

..Applicant

(Mr. Susheel Sharma and Mr. Shrigopal Aggarwal, Advocates)

Versus

1. Government of NCT of Delhi
Through Secretary (Education)
Directorate of Education
Old Secretariat, Delhi – 110 054
2. Director of Education
Directorate of Education
Establishment Branch (E-II)
(Government of NCT of Delhi)
Old Secretariat, Delhi – 110 054
3. Deputy Director of Education
Distt. East, Directorate of Education
Anand Vihar, Delhi
4. Principal,
Govt. Girls Sr. Secondary School
Vivek Vihar, Delhi – 110 095

..Respondents

(Mr. Vijay Pandita, Advocate)

O.A. No.4496/2015

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325/29, Arun Vihar
NOIDA (UP) Pin : 201301

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3. Principal Secretary (Education)
Appellate Authority
Govt. of NCT of Delhi
Directorate of Education
Old Secretariat, Delhi – 110 054
4. Deputy Director of Education
East, Directorate of Education
Anand Vihar, Delhi – 110 092
5. Principal,
Govt. Girls Sr. Secondary School
C Block, Vivek Vihar,
Delhi – 110 095

..Respondents

(Mr. Vijay Pandita, Advocate)

ORDER**Mr. K.N. Shrivastava:**

The applicant has filed these two O.A. Nos. 3569/2013 and 4496/2015 under Section 19 of the Administrative Tribunals Act, 1985. Since common facts and issues are involved, it was decided to hear them together and dispose them of by a common order.

2. The factual matrix of O.A. No.3569/2013, as noticed from the records, is as under:-

2.1 The applicant was appointed as a Trained Graduate Teacher (TGT) (Science) on 08.01.1977. She joined the post under respondent No.2. On 25.04.1989, after she had acquired M. Com degree, she was promoted/appointed as Post Graduate Teacher (PGT) (Commerce).

2.2 She was posted as PGT (Commerce) at Kamla Nehru Government SKV, Jangpura, New Delhi. For her unauthorized absence w.e.f. 02.07.2003, a charge sheet dated 10.02.2005 was issued to her under CCS (CCA) Rules, 1972. Inquiry was conducted and the inquiry officer (IO) submitted his report to the disciplinary authority, who served its copy on the applicant inviting her written representation against it. She submitted her representation on 16.07.2005. After considering her representation and the findings of the IO, the disciplinary authority vide order dated 22.05.2006 imposed the penalty of dismissal from service on the applicant, and further ordered that the period of unauthorized period be treated as *dies non* for all purposes. Accordingly, her services were dispensed with vide order dated 09.06.2006.

2.3 The applicant appealed against her dismissal before the departmental appellate authority, who, vide order dated 30.05.2006, reduced the penalty of dismissal to compulsory retirement with effect from the date of the order of the disciplinary authority, i.e., 22.05.2006. The period of absence from 02.07.2003 to 21.05.2006 was, however, ordered to be retained as *dies non*, as had been ordered by the disciplinary authority in its order.

2.4 The applicant challenged the order dated 30.05.2006 passed by the appellate authority before this Tribunal in O.A. No.3418/2009, which was partially allowed vide order dated 12.05.2010 in the following terms:

“5. On careful consideration of the rival contentions of the parties, in the disciplinary proceedings, it is incumbent upon the disciplinary authority to pass a reasoned order on application of mind to the record of the inquiry. The applicant has been prejudiced, as her defence in the representation preferred on 27.12.2005 has not been considered, the order cannot be sustained in law as well as the appellate order converting the punishment into compulsory retirement on which we allow the OA to the extent that impugned orders are set aside. The applicant is directed to be reinstated forthwith. However, the respondents are at liberty to pass a fresh order, if so advised. The interregnum, including the period of absence and date of dismissal to the reinstatement shall be decided as per the outcome of the order to be passed by the respondents.”

2.5 In compliance with the order of the Tribunal dated 12.05.2010, respondent No.2 reinstated the applicant vide order dated 13.09.2010. No immediate action, however, was taken by the disciplinary authority to pass a fresh order in regard to the disciplinary proceedings as per the liberty granted by the Tribunal in its order dated 12.05.2010.

2.6 The applicant submitted representation to the respondents on 03.06.2013 stating that several TGTs, promoted as PGTs in the year 1989 with her, have since been promoted as Vice Principal, but the same has not been done to her. Even her name does not figure in the common seniority list of PGTs. This representation was followed by reminders dated 24.06.2013 and 19.07.2013. As no action has been taken on the representation of the applicant dated 03.06.2013, she filed O.A. No.3569/2013 praying for the following main reliefs:-

“(a) to direct respondent No.2 to approve the case of the applicant for inclusion of her name in the final seniority list of PGTs, as is recommended by respondent Nos.4 and 3.

(b) To direct the respondents to consider the case of the applicant for promotion to the post of Vice Principal.”

2.7 During the pendency of O.A. No.3569/2013, utilizing the liberty granted by the Tribunal in its order dated 12.05.2010 in O.A.No.3418/2009, the disciplinary authority, vide its order dated 22.01.2014 (Annexure R-1 in O.A.No.3569/2013), imposed the penalty of compulsory retirement on the applicant. The operative part of this order reads as under:-

“Now, therefore, I, Padmini Singla, Director (Education) being disciplinary authority in exercise of powers conferred upon me under Rule 12 of CCS (CCA) Rules, 1965 hereby impose the penalty of compulsory retirement from service with immediate effect and further direct that the period of unauthorized absence and period between date of dismissal to the date of reinstatement be treated as Dies Non for all purpose.”

2.8 The applicant preferred an appeal dated 07.03.2014 before the departmental appellate authority, who, vide order dated 13.11.2014 (Annexure R-2 in O.A. No.3569/2013), dismissed the appeal, the operative part of which reads as under:-

“11. The undersigned has carefully gone through the appeal submitted by the appellant, Smt. Nishi Suri, PGT (Commerce) and all other relevant records. After having gone through record of the case, I feel that the most of the issues raised by the appellant have already been discussed by Disciplinary Authority, while imposing penalty and no substantive ground has been adduced in the instant appeal which can be considered. It is also seen that appellant was punished earlier also for the same misconduct i.e. unauthorized absence from 18.8.2000 to 25.3.2001, which indicates her to be a habitual offender. I feel that the conclusions of the Disciplinary Authority are warranted by the facts and records. I am, therefore, of the opinion that the

contention raised by the appellant in her appeal, is devoid of merit and that the order dated 22.01.2014, passed by the Director (Establishment), being the Disciplinary Authority does not deserve interference. The appeal is, therefore, rejected.”

Aggrieved by the orders of the disciplinary and the appellate authorities, the applicant filed O.A. No.4496/2015 praying therein the following main relief:-

“(a) To quash and set aside the impugned orders dated 22.01.2014 and 13.11.2014 passed by the Disciplinary Authority and Appellate Authority respectively and grant all the consequential benefits including the pensionary benefits.”

3. The contention of the applicant in O.A. No.4496/2015 is as under:-

3.1 The Principal of Government Girls Senior Secondary School, Vivek Vihar, Delhi, where the applicant was working at the relevant point of time, had forwarded the case of the applicant for including her name in the final seniority list of PGTs / Lecturers vide letter dated 19.03.2012. Since other candidates promoted as PGTs along with applicant in the year 1989 have been promoted as Vice Principal, denial of said promotion to the applicant was not justified.

3.2 Non-inclusion of the name of applicant in the final seniority list of PGTs has caused great prejudice to her and has denied her legitimate claim for promotion to the post of Vice Principal.

3.3 Applicant's reinstatement was done by the respondents in compliance with the Tribunal's order dated 12.05.2010 passed in O.A. No.3418/2009

filed by her. The respondents did not pass any fresh order as per the liberty granted in the *ibid* order since they did not consider it necessary.

3.4 The orders dated 22.01.2014 and 13.11.2014 passed by the disciplinary and appellate authorities respectively, ordering compulsory retirement of the applicant from service, have been passed just to frustrate the relief claimed by the applicant for promotion to the post of Vice Principal in O.A. No.3569/2013.

3.5 In O.A. No.3569/2013, the respondents deliberately did not file any reply for one and half years. Even in their belated reply, they have not answered the grounds & averments mentioned by the applicant in the said O.A. Their entire reply is only based on the dismissal orders dated 22.01.2014 and 13.11.2014 passed by the disciplinary and appellate authorities respectively. The respondents have not explained the inordinate delay of 44 months in passing the impugned orders dated 22.01.2014 and 13.11.2014.

3.6 In their order by which the applicant was reinstated in service in compliance of the order dated 12.05.2010 passed by of this Tribunal in O.A. No.3418/2009, the respondents have not mentioned that any further action is contemplated against the applicant.

3.7 The disciplinary and appellate authorities have failed to appreciate that the applicant had to undergo multiple surgeries for hearing loss on account of which she was forced to remain absent from duty and for which she had already submitted the medical reports.

3.8 The applicant had suffered profound hearing loss while working at Kamla Nehru Government SKV, Jangpura, New Delhi, which entailed her to undergo surgeries.

4. The respondents in their reply have made the following significant averments:

4.1 The applicant has remained unauthorizedly absent from 02.07.2003 to 21.05.2006 when she was posted as PGT (Commerce) in Kamla Nehru Government SKV, Jangpura, New Delhi. She had applied for sanction of leave on medical grounds but the medical report submitted by her did not show that any medical rest had been prescribed to her for purported surgeries performed on her for the loss of hearing, as claimed by her.

4.2 Consequently, her leave application was rejected on 26.08.2003 and the same was communicated to her. Even after completion of one year leave period, which was of course not sanctioned, she did not establish any communication with her superior authorities. Her excuse is that she has not received communication regarding rejection of leave is not tenable. As a matter of fact, leave rejection order dated 26.08.2003 was sent to her vide UPC No.6672 dated 27.08.2003.

4.3 The applicant had also been charge-sheeted in the past for an unauthorized absence from duty for the period from 18.08.2000 to 25.03.2001, for which she had been punished with penalty of withholding of promotion for three years in terms of Rule 11 of CCS (CCA) Rules, 1965 vide order dated 13.08.2003. This would go to show that the applicant has a

history of being habitual absentee and has scant regard for the office rules and procedure.

4.4 The applicant was subjected to disciplinary inquiry for an authorized absence from 02.07.2003 to 21.05.2006. The disciplinary authority imposed the penalty of dismissal from service on her vide order dated 22.05.2006. The applicant filed appeal against the said penalty order. The appellate authority was pleased to reduce the quantum of punishment vide order dated 30.05.2006 and converted the punishment of dismissal from service to compulsory retirement from service.

4.5 The applicant challenged the aforesaid orders in O.A. No.3418/2009, which was partially allowed vide order dated 12.05.2010 to the extent that the orders passed by the disciplinary and appellate authorities were set aside and direction was issued for reinstatement of the applicant in service. The Tribunal felt that the punishment orders have been passed by the concerned authorities without considering her defence in her representation dated 27.12.2005. The Tribunal accordingly gave liberty to the respondents to consider her representation and pass fresh order, if so advised.

4.6 The respondents complied with the order of the Tribunal dated 12.05.2010 and reinstated the applicant in service vide respondent No.2's order dated 13.09.2010. Further, the disciplinary authority gave due consideration to the defence pleaded by the applicant in her representation dated 27.12.2005 and utilizing the liberty granted by the Tribunal, vide its new order dated 22.01.2014, imposed penalty of compulsory retirement on

her, which has been duly affirmed by the appellate authority vide order dated 13.11.2014.

4.7 The respondents have placed reliance on the following judgments of the Hon'ble Supreme Court to say that judicial intervention of this Tribunal cannot be invoked if the punishment has been imposed after holding proper disciplinary inquiry and that in disciplinary inquiry, the charge is not required to be proved beyond any reasonable doubt, on the contrary preponderance of probability is sufficient for awarding punishment in the disciplinary proceedings:

- i) **B C Chaturvedi v. Union of India & others**, 1996 AIR 484,
- ii) **Union of India v. Sardar Bahadur**, 1972 (2) SCR 225 and
- iii) **The Administrator, Union Territory of Dadra & Nagar Haveli v. Gulabha M. Lad**, (2010) 5 SCC 775

4.8 It is further stated by the respondents that in O.A. No.3455/2012 in the case of **Mrs. Arti Saini v. Govt. of NCT of Delhi & others** decided on 18.09.2014, this Tribunal has refused to intervene in an identical case wherein the issue of unauthorized absence was involved and the officer concerned was punished.

5. The applicant has filed rejoinder to the reply filed on behalf of the respondents, in which, by and large, the pleadings made in the O.As. have been reiterated.

6. On completion of pleadings, the O.As. were taken up for hearing the arguments of learned counsel for the parties on 02.11.2017. Arguments of

Mr. Susheel Sharma with Mr. Shrigopal Aggarwal, learned counsel for applicant and that of Mr. Vijay Pandita, learned counsel for respondents were heard.

7. Learned counsel for applicant, besides drawing our attention to the averments made in the O.A. and the grounds pleaded therein, submitted that the Tribunal, in its order dated 12.05.2010 in O.A. 3418/2009 filed by the applicant, had quashed and set aside the penalty orders passed by the disciplinary and appellate authorities and had ordered her reinstatement in service. However, the Tribunal had given a liberty to the respondents to pass a fresh order, if so advised, after considering her defence in the representation preferred on 27.12.2005.

8. Mr. Sharma vehemently argued that the respondents have miserably failed in utilizing the liberty granted. Much belatedly, after a lapse of almost 44 months, the disciplinary authority has passed the impugned order dated 22.01.2014 imposing the penalty of compulsory retirement on the applicant, which has been affirmed by the appellate authority vide order dated 13.11.2014, which is not permissible under law.

9. Mr. Sharma drew our attention to the instructions of Department of Personnel & Training (DoPT) O.M. dated 14.08.1987 in regard to the compliance of judgments/orders of this Tribunal, prescribing a time limit of 6 months for implementation of judgment, in case the judgment itself does not prescribe the time limit. This O.M. reads as under:-

“(1) Judgments of the CAT be final and to be complied with within the stipulated time limit.- 1. This Department is getting a number of references regarding implementation of the judgments pronounced

by the various Benches of the Central Administrative Tribunal. It may be mentioned that the Central Administrative Tribunal was established with effect from 1-11-1985, with a view to provide speedy and inexpensive relief to the Government servants in the matter of deciding their complaints and grievances on recruitment and conditions of service. With this end in view, it was, inter alia, mentioned in this Departments O.M. No. A-11019/ 37/85-AT, dated the 13th August, 1985 (Section 1) vide paragraph (13) which is reproduced below-

“The orders of the Tribunal shall be final and binding on both the par-ties. The order of the Tribunal should be complied with within the time-limit prescribed in the order or within six months of the receipt of the order where no such time-limit is indicated in the order.”

2. It is once again brought to the notice of Ministries/Departments of the Government of India that the judgments of the Central Administrative Tribunal should be complied with as promptly as possible within a minimum period of time. The orders of the Tribunal should be implemented within the time-limit prescribed by the Tribunal itself or within six months of the receipt of the order where no such time-limit is indicated by the Tribunal.

3. It is requested that the contents of this OM may kindly be brought to the notice of all concerned and compliance ensured.”

10. Mr. Sharma further submitted that the disciplinary authority has relied on some extraneous materials, which was not part of the disciplinary proceedings, in imposing the penalty of compulsory retirement vide order dated 22.01.2014. In this regard, he drew our attention to the following extract from the order of the disciplinary authority dated 22.01.2014 (page 44 of O.A. No.3569/2013):

“Perusal of the records and past history of the Charge Official reveals that she had been charge sheeted previously also for unauthorized absence from duty for the period of 18.08.2000 to 25.03.2001 for which she had been imposed the penalty of withholding of promotion for three years in terms of rule 11 of CCS (CCA) Rules, 1965 vide order dated 13.08.2003. This shows that the CO has a history of being habitual absentee and has scant regard for the office rules and procedure...”

11. Elaborating further, Mr. Sharma argued that the punishment accorded to the applicant in the past, referred to hereinabove, has neither been referred to in the charge sheet dated 10.02.2005, nor it finds any mention in the statement of imputation. Hence, it is established that the disciplinary authority has relied upon some extraneous material and prejudiced its mind against the applicant while passing the impugned penalty order. Mr. Sharma drew our attention to a judgment of Hon'ble Delhi High Court in this regard in the case of **Delhi Administration & another v. Constable Yasin Khan**, (2000) DLT 144, wherein it has been observed as under:-

“3. Before the Tribunal it was the case of the respondent that the initiation of departmental proceedings itself is bad as the Deputy Commissioner of Police was not competent to order holding of a departmental inquiry. The second contention, that the order of punishment itself treats the absence as "leave without pay" and, therefore, cannot be considered as a "leave without pay" and, therefore, cannot be considered as a "default". Thirdly, it was contended that the charge of previous acts of remaining absent were not included in the Memo of Charges and, therefore, could not have been taken into consideration for the purposes of awarding penalty. Arguments were raised before the Tribunal in support of the above three contentions. The Tribunal by its order dated 17th March, 1999, come to a finding that the Deputy Commissioner in Delhi Police is competent to appoint officials even to the rank of Sub-Inspector and, therefore, was competent to initiate departmental proceedings against the respondent. As regards the contention of the respondent of non-inclusion of previous record in the charge-sheet, it was held by the Tribunal that a bare reading of the Memo of Charges shows that previous conduct was not included as one of them. Rule 16(11) of the Rules makes it obligatory for the disciplinary authority to specifically include the previous bad record in the Memo of Charges itself as a definite charge if it is to be considered while awarding punishment and adequate opportunity to the delinquent official to defend himself against that charge is required to be given. The absence of a specific charge regarding past conduct cannot be relied upon by the disciplinary authority while awarding punishment. As such the order of punishment was bad on this count. The last contention, namely, that the period of absence having been treated as "leave without pay" ipso facto set at naught any misconduct, found favour with the Tribunal which relied upon the judgment of the High Court of Punjab

and Haryana in State of Punjab Vs. Charan Sing and, therefore, held that the observation of the punishing authority treating the period of absence to be "leave without pay" amounted to regularising the absence which view was also followed by the Delhi High Court in Satya Pal Yadav Vs. Union of India and further by the Supreme Court in State of Punjab and Others Vs. Bakshish Singh, and, consequently, went on to allow the O.A. with the directions as already stated.

4. We have heard learned counsel for the parties and gone through the record of the case, considered the precedent cited at the bar. We are in agreement with the Tribunal inasmuch as rule 16(11) of the rules makes it obligatory for the disciplinary authority to specifically include the previous bad record in the Memo of Charges as a definite charge in the event the disciplinary authority wishes to rely upon it for the purposes of imposing penalty. In the present case, the absence of specific charge to the effect that the respondent has previously also been absenting himself without leave, could not have been relied upon by the disciplinary authority while awarding punishment of dismissal from service. It is difficult to say as to what extent the previous conduct of the respondent influenced the mind of the disciplinary authority and, therefore, the awarding of penalty, based on previous conduct, has rightly been disallowed by the Tribunal. As regards the question of treating the period of absence as "leave without pay", recorded in the dismissal order, is, to our mind, only by way of completing service record, as has been held in the case of State of M.P. Vs. Harihar Gopal, 1969 SLR 274.

5. We have already held in C.W.P. No. 2611 of 1999 (Deputy Commissioner of Police Vs. Jorawar Singh & Another) that the order of dismissal does not get vitiated merely because the absence from duty has been converted to "leave without pay". We have held that Supreme Court's judgment in Harihar Gopal's case is the law to be followed. In this view of the matter, the finding of the Tribunal to the contrary is set aside. The respondent having been held guilty by the Enquiry Officer, it would be open to the disciplinary authority to award penalty commensurate with the misconduct. This we hold in view of the fact that the findings of the Enquiry Officer have not been interfered with neither by the Tribunal nor by us. The misconduct, therefore, remains and can be dealt with by the disciplinary authority. For this we draw upon the wisdom of the Supreme Court in State of Punjab and Ors., Vs. Dr. Harbhajan Singh Greasy, 1996 (4) SLR 30. With these observations, the writ petition is disposed of. No order as to costs."

12. *Per contra*, Mr. Vijay Pandita, learned counsel for respondents submitted that the applicant has been punished for her unauthorized absence. The impugned orders dated 22.01.2014 and 13.11.2014 passed by

the disciplinary and appellate authorities respectively have been passed availing the liberty given by this Tribunal in its order dated 12.05.2010 in O.A. No.3418/2009. Mr. Pandita said that there is no limitation of time for availment of such liberty. He further submitted that the applicant has been indulging in unauthorized absence on specious grounds. Her contention that she absented from 02.07.2003 to 21.05.2006 on the ground that she had to undergo surgery for hearing problem is not borne out from the medical records submitted by her, as no medical test has been prescribed in such medical records.

13. We have considered the arguments of learned counsel for the parties and have perused the pleadings and documents annexed thereto.

14. We are conscious of the fact that the scope of judicial review in disciplinary inquiry matters is very limited. In disciplinary inquiry cases, the Courts/Tribunals are required to determine whether inquiry was held by a competent officer and whether the rules of natural justice have been complied with and whether the findings and conclusions are based on some evidence. In the instant case, we observe that the proper inquiry was conducted against the applicant and copy of IO's report was made available to the applicant for her comments / representation, and after considering such representation and acting on the findings of the IO, the disciplinary authority had imposed the penalty of dismissal from service on the applicant vide its order dated 22.05.2006, which, in appeal, was modified by the appellate authority, vide order dated 30.05.2006, by way of reducing the quantum of punishment from dismissal from service to compulsory retirement. When these orders of disciplinary and appellate authorities

were challenged by the applicant in O.A. No.3418/2009 before the Tribunal, the Tribunal felt that the defence pleaded by the applicant in her representation dated 27.12.2005 had not been considered by the disciplinary and appellate authorities in passing those orders. Accordingly, the orders were set aside by the Tribunal vide order dated 12.05.2010 and it was ordered therein to reinstate the applicant. The Tribunal had given liberty to the respondents to pass a fresh order after considering the defence of the applicant in her representation dated 27.12.2005. The Tribunal's order dated 12.05.2010 in O.A. No.3418/2009, of course, did not provide any limit for its implementation. The respondents in compliance of the said order reinstated the applicant vide order dated 13.09.2010 but did not utilize the liberty given for passing fresh order in disciplinary proceedings immediately thereafter. They, however, utilized the liberty granted much later and have passed fresh impugned orders; dated 22.01.2014 by the disciplinary authority and dated 13.11.2014 by appellate authority ordering compulsory retirement of the applicant from service. In the disciplinary authority's order, a reference has also been made to an earlier penalty imposed on the applicant for the unauthorized absence from 18.08.2000 to 25.03.2001 by way of withholding her promotion for 3 years. Admittedly, this earlier punishment inflicted on the applicant has not been referred to in the charge memo dated 10.02.2005.

15. We have perused the penalty order dated 22.01.2014 passed by the disciplinary authority, in which a reference has been made to the earlier punishment inflicted on the applicant for her past unauthorized absence. This is only a passing reference and a statement of fact. The action of the

disciplinary authority in imposing the penalty is for her unauthorized absence during the period 02.07.2003 to 21.05.2006 mentioned in the charge sheet. Hence, we are of the view that the contention of learned counsel for applicant that the previous conduct of the applicant is also one of the basis for passing the penalty order dated 22.01.2014 is unfounded.

16. As regards the time limitation for availing the liberty granted to the respondents in Tribunal's order dated 12.05.2010 in O.A. No.3418/2009, we are of the considered view that there is no time limit prescribed under the statute for exercising such liberty. The six months' period envisaged in DoPT O.M. dated 14.08.1987, referred to above, is with regard to implementation of Tribunal's order. It is only an Executive order. The pith and substance of Tribunal's order dated 12.05.2010 in O.A. No.3418/2009 was that the orders dated 22.05.2006 and 30.05.2006 passed by the disciplinary and appellate authorities respectively were set aside and the respondents were directed to reinstate the applicant. Compliance to this order was done by the respondents on 13.09.2010 itself by way of reinstating the applicant in service.

17. As regards the liberty granted, it is understandable that such liberty should be exercised in a reasonable period of time but certainly the attempt by the applicant to straitjacket the limitation period of 6 months prescribed in DoPT O.M. dated 14.08.1987 to the liberty granted, is not in order. In the instant case, it is to be appreciated that the disciplinary and appellate authorities for the applicant were Director of Education – respondent No.2 and Principal Secretary (Education) – respondent No.3 respectively. The

applicant on reinstatement was posted to a school. There are levels involved before the disciplinary matter of the applicant could reach the disciplinary and appellate authorities. Hence, it took much longer time for them to pass the impugned orders. Also to be noted is that such authorities are also burdened with other multifarious responsibilities. Hence, we are of the view that the time taken by the disciplinary authority and thereafter by the appellate authority in exercising the liberty granted by the Tribunal cannot be construed as unreasonably long. Accordingly, we reject the plea of the applicant that the respondents have failed to exercise the liberty granted within the limitation of time.

18. We have already noted that the applicant has been subjected to disciplinary inquiry and same has been conducted in accordance with the law and principles of natural justice. Proper opportunity has been granted to the applicant at every stage of disciplinary proceedings to plead her case as also to represent against the IO's report. The representation of the applicant against IO's report has also been considered by the disciplinary authority. The unauthorized absence of the applicant has been established in the inquiry report. Hence, we do not find any flaw in the conduct of the inquiry.

19. On the issue of misconduct of unauthorized absence, the Hon'ble Supreme Court in the case of **Mithilesh Singh v. Union of India & others**, AIR 2003 SC 1724 has held that absence from duty, without prior intimation, is a grave offence warranting removal from service.

20. In the conspectus of discussions in the pre-paragraphs, we do not find any merit in both the O.As. and accordingly they are dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/sunil/