

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4323/2012
with
O.A.No.4350/2012
and
O.A.No.376/2013

Order Reserved on: 05.09.2016
Order pronounced on 28.11.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K.N.Shrivastava, Member (A)

O.A.No.4323/2012

Ms. Neelam Malhotra, Aged about 53 years
W/o Sh. Shushil Kumar Malhotra
H.No.J-73, GF, Vikaspuri
New Delhi – 110 018.

...

Applicant

(By Advocate: Sh. Malaya Chand)

Versus

1. Secretary to Govt. of India
Ministry of Labour & Employment
Shram Shakti Bhawan, Rafi Marg
New Delhi – 110 001.

..

Respondent No.1

2. Presiding Officer (Dr. R.K.Yadav)
CGIT cum Labour Court No.1
Room No.38, Karkardooma Courts
Shashdra, Delhi – 110 032.

..

Respondent No.2

(By Advocate: Sh. Hilal Haider)

with

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(By Advocate: Sh. Hilal Haider)

O R D E R (Common)

By V. Ajay Kumar, Member (J):

O.A.No.4323/2012:

Heard Shri Malaya Chand, the learned counsel for the applicant and Shri Hilal Haider, the learned counsel for the respondents and perused the pleadings on record. Since in all the aforesaid OAs, the applicant is the same and the subject matters are inter connected, with the consent of both the counsel, they are being disposed of by this common order.

2. The applicant, an LDC, in the 2nd respondent-Central Government Industrial Tribunal-cum-Labour Court No.1, New Delhi, was placed under suspension vide the order dated 30.07.2010 of the 2nd respondent, in contemplation of disciplinary proceedings against her. A chargesheet dated 01.09.2010 was issued to the applicant and the gist of the charges is as under:

- (i) "During the period of October, 2009 to July, 2010, acted in a highly negligent manner in respect of the duties for which she was engaged and failed to maintain the required standard of duties. She failed to enter 26 books in relevant library register despite being directed twice in writing and orally on 29.07.010.

- (ii) While working as dealing official (purchase) during the period from October, 2004 to May, 2009, she caused a loss to the Public Exchequer in purchase of locks, note sheet pads etc. and refilling of printer cartridges.
- (iii) While working as dealing official (purchase), she had claimed excess bill for conveyance charges.
- (iv) Misused her official position as Dealing Official (Purchase) by putting misleading notes to her superiors for purchase of new photocopier.
- (v) While working as dealing official, she destroyed/taken away official records from file.
- (vi) She did not improve her working and continued to be an average employee.
- (vii) She was found to be negligent, work shirker and exhibited lack of devotion to duties."

3. Thereafter, an inquiry was conducted against the applicant by the 2nd respondent himself, acting as an Enquiry Officer, and in pursuance of the inquiry report, the applicant was dismissed from service by the 2nd respondent, in his capacity as disciplinary authority, vide Order dated 30.11.2010. However, the appellate authority vide appellate order dated 23.01.2011/ 23.01.2012, set aside the dismissal order dated 30.11.2010, and directed to recover the purported loss of Rs.1378/- from the applicant and also imposed a penalty of reduction of pay by three stages in the time scale of pay for a period of 5 years with further direction that the applicant will not earn increment during the period of reduction and the reduction will not have effect of postponing the future increments of her pay after expiry of the period of five years.

4. In pursuance of the aforesaid appellate order, the applicant was reinstated into service, however, she was again placed under suspension w.e.f. 30.11.2010, vide Order dated 31.01.2012, as amended vide Order dated 27.03.2012. The appeal preferred by the applicant, against the said suspension orders, is unanswered.

5. The applicant filed O.A.No.4323/2012 on 14.12.2012, seeking the following reliefs:-

- (a) "To set aside and quash the order 31-01-12 and 27-3-2012 and Order dated 30-11-2010 as mentioned in **Annexure A-1 Colly** and Direct the Respondent to allow the applicant to resume the duties with the office of Respondent No.1 for further posting.
- (b) Direct the Respondents to pay the difference of salaries from the date suspension i.e. 30-07-10 to date along with 12% interest of unpaid amount with in one month.
- (c) Pass any other order(s) as deemed fit & proper in the facts and circumstances of the case."

6. The challenge made to the suspension order dated 30.11.2010, (May be wrongly mentioned as 30.11.2010 instead of 30.07.2010 which is Page No. 17 in O.A.No.4323/2012, and no order dated 30.11.2010 is on record in any of the three OAs.), become infructuous, since the applicant was reinstated into service by virtue of the Order dated 23.01.2011/ 23.01.2012 of the appellate authority. The applicant further questioned the suspension order dated 31.01.2012, as amended by order dated 27.03.2012, placing the applicant again under suspension w.e.f. 30.11.2010, inter-alia, on the following grounds.

- i) As per Rule 10(6) and (7) of the CCS (CCA) Rules, 1965, an order of suspension made or deemed to have been made under Sub-Rule (1) or (2) of Rule 10 shall not be valid after a period of 90 days, unless it is extended after review by the review committee, before the expiry of 90 days from the effective date of suspension.
- ii) The suspension is illegal, arbitrary, and mala fide since the Dr. R.K.Yadav, who is the disciplinary authority himself conducted the inquiry and himself imposed the penalty of dismissal and also the dismissal order was set-aside by the appellate authority, again suspended the applicant with retrospective date.
- iii) There cannot be any retrospective suspension, unless the same was due to detention in a Jail beyond the period of 48 hours.

7. This Tribunal by its Order dated 04.01.2013, after hearing both sides, stayed the operation of the impugned suspension order dated 31.01.2012 read with order dated 27.03.2012, and directed the respondents to allow the applicant forth with to resume her duties. Accordingly, the applicant was allowed to join duty and later she was transferred to the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi and accordingly, stood relieved from the 2nd Respondent-CGIT No.1, with effect from 29.01.2013.

8. A careful examination of the counter of the respondents, reveals that the respondents failed to deny the contention of the applicant that

no review for the suspension of the applicant was done before the stipulated period of 90 days by any Review Committee. This Tribunal in various decisions has categorically declared that any suspension of a public servant without complying Rule 10(6) and (7) of the CCS (CCA) Rules, 1965, is not valid w.e.f. the date of expiry of 90 days from the effective date of suspension. Accordingly, as observed above, as the respondents failed to show whether any review of the suspension of the applicant was done before the expiry of 90 days from the effective date of her suspension, the OA is liable to be allowed. In this view of the matter, there is no necessity to examine the other grounds raised by the applicant for the purpose of this OA.

9. In the circumstances and for the aforesaid reasons, the OA No.4323/2012 is allowed and the impugned orders dated 31.01.2012 and 27.03.2012 are quashed and the applicant is entitled for full salary and allowances, as per rules, from the date of expiry of 90 days from the effective date of her suspension, till the date of her reinstatement, in pursuance of the order of this Tribunal dated 04.01.2013. However, in the circumstances, the applicant is not entitled for any interest on the arrears. Further, the treatment of valid period of suspension i.e. 90 days, shall be dependent on the final disciplinary orders to be passed in pursuance of the pending charge sheets against the applicant. No costs.

O.A.No.4350/2012:

10. The applicant filed the OA No.4350/2012 questioning the Annexure A1-Memorandum of Charges dated 01.11.2010. The said Charge Memorandum contains the following charge:

"That Ms. Neelam Malhotra, LDC, presently under suspension, during month of September, 2010, acted in most objectionable manner when she wrote to the Secretary, Ministry of Labour and Employment, Govt. of India, New Delhi, on 1.9.10 and 3.9.10, asking him to supply certain information (copy of the applications attached), by passing CPIO and Appellate Authority under RTI Act, which were prescribed channel of communication and she very well knew that Appellate Authority under the RTI Act, is her Head of Department, without whose permission she can not address any communication to the Secretary, Ministry of Labour & Employment, Govt. of India, New Delhi or any other authority of Govt. of India, and by communicating directly to the Secretary, Ministry of Labour & Employment, Govt. of India, New Delhi, she acted contrary to official propriety and subversive of good discipline.

Ms. Neelam Malhotra, LDC, presently under suspension, addressed a communication dated 13.10.2010 (copy attached) to the Secretary, Ministry of Labour and Employment, Govt. of India, New Delhi, by passing the prescribed channel viz. her Head of Department, which fact has been clearly deciphered by her, in her written brief (arguments) submitted on 27.10.2010 in departmental enquiry being conducted against her and thus acted in most objectionable manner, contrary to official propriety and subversive of good discipline.

The above acts of Ms. Neelam Malhotra, LDC, amount insubordination, which is unbecoming conduct, attracting the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964, and constitute misconduct, hereby she rendered herself liable for disciplinary action under Rule 14 of the CCS (CCA) Rules, 1965."

11. This Tribunal, by its Interim Order dated 10.01.2013, stayed the impugned charge memorandum dated 01.11.2010, initially for a period of two weeks and the same has been extended from time to time.

12. The applicant questioned the impugned charge memorandum mainly on the ground of mala fide action of the 2nd Respondent-Dr. R.K.Yadav, who was the Presiding Officer of the CGIT No.1, in which the applicant was working, by submitting various acts of the said Dr.

R.K.Yadav in placing the applicant under repeated suspensions and issuance of various chargesheets on alleged trivial and frivolous reasons, as malafide. Though personal mala fides were attributed against Dr. R.K.Yadav, 2nd Respondent, but he has not chosen to file any personal affidavit denying the same.

13. Ordinarily, this Tribunal shall not exercise its jurisdiction in respect of a charge sheet or a show cause notice, as the delinquent employee will be given an opportunity to defend his/her case in a departmental inquiry. But the main thrust of the contention of the applicant is that the mala fide intention of the 2nd Respondent, i.e., Dr. R.K.Yadav, the Presiding Officer and Disciplinary Authority, is the sole cause, for initiating the disciplinary proceedings against her. Now, admittedly, the applicant was transferred to CGIT No.2, w.e.f. 29.01.2013, the ends of justice would be met, if the disciplinary inquiry is conducted and a disciplinary order is passed, by an authority other than the 2nd Respondent.

14. In the circumstances and for the aforesaid reasons, the interim stay is vacated and the OA No.4350/2012 is disposed of by directing the respondent No.1 to proceed with the impugned charge memorandum, from the stage where it was stopped, after giving full and fair opportunity to the applicant as per rules, and by conducting the departmental inquiry and by passing the disciplinary orders in pursuance thereto, by a competent authority other than the 2nd Respondent-Dr. R.K.Yadav. The applicant is at liberty to raise all the grounds available to her, by submitting her defence statement to the

charge memorandum, if not already submitted or at all stages of the disciplinary proceedings. This exercise shall be completed within four months from the date of receipt of a copy of this order. No costs.

O.A.No.376/2013:

15. This OA has been filed questioning the Annexure A1, Appellate Order dated 23.01.2011/23.01.2012, whereunder the disciplinary order of dismissal was set aside and ordered to recover the purported loss of Rs.1378/- from the applicant and in imposing a penalty of reduction of pay by three stages in the time scale of pay for a period of 5 years with further direction that the applicant will not earn increment during the period of reduction and the reduction will not have effect of postponing the future increments of her pay after expiry of the period of five years.

16. Admittedly, the 2nd Respondent-Dr. R.K.Yadav, who is the disciplinary authority himself, conducted the inquiry and himself imposed the penalty of dismissal. As observed above, though serious personal mala fides were alleged, he has not chosen to deny the same by filing any personal affidavit. The appellate authority having noticed that the Disciplinary Authority himself acted as Enquiring Authority, and on the face of serious malafides alleged, instead of setting aside the order in toto, and order for fresh inquiry, imposed the aforesaid

punishment on the applicant, which, in our considered view in the peculiar facts of this case, is unsustainable.

17. In the circumstances and for the aforesaid reasons, the OA No.376/2013 is allowed. The impugned order dated 23.01.2011/23.01.2012 is quashed and set aside and the respondents are directed to proceed with the charge memorandum dated 01.09.2010, from the stage of conducting fresh inquiry and to pass appropriate disciplinary orders, by a competent authority other than the 2nd Respondent- Dr.R.K.Yadav, in accordance with law. This exercise shall be completed within four months from the date of receipt of a copy of this order. The benefits, if any, consequential to the quashing of the order dated 23.01.2011/23.01.2012, are dependent on the fresh disciplinary orders to be passed as above. It is needless to mention that the applicant shall co-operate with the inquiring authority in order to complete the inquiry, as per the time fixed as above. No costs.

(K. N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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