

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 06.08.2018

ORIGINAL APPLICATION NO. 060/00118/2016

Chandigarh, this the 8th day of August, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

Sherly Kapoor w/o Sh. Rajiv Kapoor aged 47 years, presently working as Assistant (Group 'C') in the office of Regional Officer, Central Board of Secondary Education, Panchkula, Haryana-134152.

....APPLICANT

(By Advocate: Shri Jagdeep Jaswal)

VERSUS

1. Union of India through Secretary, Ministry of Human Resource Development, Headquarters- Shashtri Bhawan, Dr. Rajendra Prasad Road, New Delhi.
2. Secretary, Central Board of Secondary Education, Shiksha Kendra, 2, Community Centre, Preet Vihar, New Delhi-110096.
3. Joint Secretary (A&L), Central Board of Secondary Education, Shikhsa Kendra, 2, Community Centre, Preet Vihar, New Delhi-110096
4. Regional Officer, Central Board of Secondary Education, Panchkula Haryana 134152

....RESPONDENTS

(By Advocate: Shri Nitin Kant Setia)

ORDER

AJANTA DAYALAN, MEMBER (A)

Applicant Sherly Kapoor in the present Original Application (O.A.), has assailed impugned order dated 30.5.2014 (Annexure A-1) passed by the Disciplinary Authority and order dated 10.2.2015 (Annexure A-2) passed by Appellate Authority finally awarding

punishment of reduction of pay by two stages for a period of one year upon the applicant, the revised penalty order to take effect from the date of imposition of penalty by the Disciplinary Authority. Besides, order dated 17.7.2015 (Annexure A-3), treating the period of suspension of the applicant from 5.9.2008 to 8.2.2012 as 'Not-Duty' for all purposes and deciding that she will not be entitled for any pay and allowances for said period and her entitlement shall be restricted to the subsistence allowances already paid to her, is also sought to be set aside.

2. The counsel for applicant pleaded that the orders of the Disciplinary Authority and the Appellate Authority are bad in law and need to be quashed. The applicant worked as cashier in additional charge only for a short duration for 3 months from 26.3.2004 to 24.6.2004. She had no prior experience or training for handling cash. She was only a non-gazetted officer whereas the charge of Cashier could be given only to a gazetted officer, as per the applicant's interpretation of the relevant rule. She submitted the register and the cash-book every day to her superiors SAS Accountant and DDO who did not bring out any discrepancies during their attestation. No action has been taken against her superiors and only she has been singled out for major penalty.

3. The learned counsel for applicant also pointed out that some statements which were received by her 'went missing from Accounts Section' and 'duplicate computer generated statements were generated without proper authorization by DDO, whereas the original statements were verified by them on the basis of which

cash book was maintained, cross checked and attested by the DDO'. The learned counsel for applicant further stated that reconciliation of discrepancies is not sole responsibility of the cashier but was also the responsibility of the SAS Accountant and the DDO. Besides, she was initially given charge sheet for a minor penalty. However, the same was withdrawn and she was suspended vide order dated 5.9.2008 after a gap of 4 years. Later, a major penalty charge sheet was issued to her on a single article of charge. Detailed inquiry was held and the inquiry officer held that the charge was 'proved to the extent that she did not keep proper accounts of the bank instruments received and deposits made by her during her short stay of 3 months as Cashier in Regional Office, Chandigarh' vide inquiry report dated 1.10.2013 (Annexure A-9). It was also emphasized that in the inquiry report, the charged officer is not faulted with the discrepancies of Rs. 1,37,608/- as alleged and that the inquiry report also states that 'the slight negligence on her part does not amounts to misconduct'. It is also stated that for the sake of easy analysis, the inquiry officer divided the charge in five elements and she was found guilty only to the extent indicated above. It was also submitted that there is no allegation of misappropriate of money on the applicant and there has been no loss to the Organization as the instruments like DDs and IPOs are pre-paid instruments. It is further pleaded that the punishment is too harsh and the suspension from duty has effected her seniority adversely. She has lost out on promotion which some of her juniors have been granted.

4. It is also pleaded that the disciplinary authority and the appellate authority have not disagreed with the inquiry report. Still inspite of the above findings of the inquiry officer, they have punished her for major penalty affecting her career adversely. Thus she has been denied reasonable opportunity to defend herself. The orders passed by the disciplinary authority and the appellate authority are contradictory as on the one hand they have agreed with the inquiry report and on the other hand, they have termed the allegations as serious.

5. The respondents have filed the written statement denying the allegations and grounds contained in the O.A. and have prayed for its dismissal.

6. The main pleadings of the respondents with reference to the submissions made by the applicant are that the charge of the Cashier was given to her from 26.3.2004. It was not an additional charge as stated by the applicant nor was it only for a period of 3 months. In fact, her charge had to be changed after a short tenure only because she was not performing her duties properly. She looked after the charge till 24.6.2004 and for the period she continued as cashier, she was granted cash handling allowance. It is incorrect to say that the charge of the cashier cannot be given to non-gazetted officer. Note 1 in Chapter 2 of CBSE Financial Manual quoted in her support is for the functions incorporated under sub rules 22.2 to 22.7 on Head of the Office which can be entrusted only to a subordinate officer of gazetted status nominated by Head of the Office, and are not for the cashier. Both her predecessor

and successor were Junior Assistants like her. Though there is no misappropriation of funds allegation against her, it is incorrect to say that there was no loss to the Organization. She failed to keep proper accounts of cash and the valuable instruments received by her which led to discrepancy of Rs. 1,37,608/- and also loss to the Organization by way of interest besides the risk of loss of instruments . She herself has admitted that she deposited cash, DDs and IPOs on three different dates namely 26.6.2004, 30.7.2004 and 10.9.2004 - that is much after her handing over charge as cashier – indicating her casual approach. Further the applicant in her own statement has stated that during the period she functioned as cashier some of the instruments were missing which fact the respondents have held indicates that she did not take proper care of the valuables. She failed to enter the valuable instruments received by her in the cash book/register of the Board thereby not discharging the duty of the cashier properly. The respondents have stated that she continued to shirk the responsibility of reconciliation and maintained that it was the duty of her supervisors and she herself never took any steps to undertake bank reconciliation.

7. The counsel for the respondents further pleaded that the inquiry officer after detailed inquiry has not found her free of guilt but has proved the charge to the extent that she did not keep proper accounts of the bank instruments received and deposits made by her. The disciplinary authority agreed with the findings of the inquiry officer. But as the charge proved related to financial

irregularity, it was considered serious enough by the disciplinary authority and the appellate authority to impose major penalty on her. As both the disciplinary authority and the appellate authority accepted the findings of the inquiry officer, there was no question of issuing a dissent note. The punishment awarded by the disciplinary authority was considered by him as commensurate with the gravity of misconduct against the applicant. The penalty imposed by the disciplinary authority was reduction of pay by two stages for the period of 2 years. This was modified by the appellate authority to reduction of pay by two stages for a period of one year only vide its order dated 10.2.2015. The revised penalty was to take effect from the date of imposition of the penalty by the disciplinary authority. It is also noted that once the penalty period was over, she was promoted as Assistant on 6.8.2015 – that is much before filing of O.A. by the applicant. In the pleadings of the case, it is mentioned that the issues of non-maintenance of records and non-reconciliation with the bank were raised during audit whereafter a team had to be sent from CBSE HQs, New Delhi to Regional Office Chandigarh to establish facts based on preliminary scrutiny. The team submitted its report in 2008 wherein the applicant was *prima facie* found guilty of misconduct. On receipt of this report, minor penalty charge sheet was withdrawn and she was suspended. Later, after further verification of facts, a major penalty charge sheet was issued on 4.5.2010. Under the circumstances, there was a gap of 4 years from the period of incidence to her suspension.

8. We have heard the learned counsels for the parties and have gone through the records of the case including the O.A., the written statement and the rejoinder thereto, with their help.

9. We have given our thoughtful consideration to the entire matter and are of the considered view that many of the statements of facts made by the applicant are denied by the respondents. These include issues like her holding charge of cashier as an additional charge, there being no loss to the Origination due to her not depositing valuable instruments, and it not being her duty to take steps for bank reconciliation. The respondents have also denied that they have not relied upon the report of the inquiry officer. It has been pleaded by the respondents that they have accepted the findings of the inquiry officer who has proved the charge to the extent she did not keep proper accounts of the bank instruments and deposits made by her during the period she functioned as cashier. As the charge proved by the inquiry officer related to financial irregularities, the charge was considered serious enough by her punishing authorities to finally award her the penalty of reduction of two stages in pay for period of one year. As both the disciplinary authority and appellate authority agreed with the report of inquiry officer, there was no need for issue of dissent note to the applicant. It is also noted that once the penalty period was over, she was promoted as Assistant on 6.8.2015 (Annexure R-3) - that is well before filing of the present O.A. We have gone through the orders of the disciplinary authority and appellate authority and find that these are speaking and reasoned orders.

The orders of disciplinary authority and appellate authority can be interfered with mainly on the ground of mala fide. In the present O.A., no case is made out for attributing mala fide to the disciplinary and appellate authority.

10. Hence we find no merit in the O.A. and are not inclined to interfere with the impugned orders.

11. Therefore, the O.A. is dismissed being devoid of merits. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 08.08.2018
`SK'





