

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00634/2018

Chandigarh, this the 28th day of May, 2018

...
**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. P.GOPINATH, MEMBER (A)**

Jyotsana Varma IAS (JH-92), aged about 49 years, D/o Sh. R.S. Varma, R/o Flat No. 131, Shikhar Apartment, Mansa Devi Complex, Panchkula.

...
.... **APPLICANT**

(Argued by: Mr. Kamal Sehgal, Advocate)

VERSUS

1. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pension, Deptt. of Personnel & Training, CGO Complex, New Delhi.
2. State of Jharkhand through its Chief Secretary, Govt. of Jharkhand, Ranchi – Jharkhand – 834002.
3. The Deputy Secretary, Govt. of Jharkhand, Deptt. of Personnel Administrative Reforms & Rajbhasha, Ranchi – Jharkhand-834002.

....**RESPONDENTS**

ORDER (Oral)

JUSTICE M.S. SULLAR, MEMBER (J)

1. The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the instant controversy of territorial jurisdiction of this Tribunal, and emanating from the record, is that applicant Jyotsana Varma, is IAS, of 1992 batch of Jharkhand cadre, who remained posted at various places in Bihar, prior to bifurcation of the State, and thereafter in Jharkhand. She was deputed on foreign assignment w.e.f. 26.10.2009 to 19.12.2011, but she did not report back to her duty with the Jharkhand Govt.

2. As such, the Governor of Jharkhand proposed to hold an inquiry against her, vide Memorandum dated 22.03.2017

(Annexure A-2). As a consequence thereof, the following articles of charges were framed, against her.

“ Article of Charges

(Annexure-I)

Statement of articles of charge framed against Smt. Jyotsana Varma Ray, IAS (JH-92), Secretariat Specialist (Information Management), Asian Development Bank, Manila, Philippines, at present.

Article-I

That Smt. Jyotsana Varma Ray, IAS (JH-92) was deputed on foreign assignment as Secretariat Specialist (information Management), Asian Development Bank, Manila, Philippines by the Ministry of Personnel, PG & Pension, Govt. of India. Before this she was on Central Deputation from 20.12.2004. Smt. Jyotsana Varma Ray has not reported back to the cadre from the foreign assignment even after the expiry of deputation period (19.12.2011). This is the violation of Govt. of India's letter no. AB-14017/30/2006-Estt.(RR) dated 29.11.2006 and Rule 7(2)(a)(b)(c) of the AIS (Leave) Rules, 1955. Smt. Jyotsana Varma Ray is deemed to have resigned from service as she is absent without authorization for a period exceeding one year/s absent from duty exceeding five years/continued foreign service beyond the period approved by the Central Government.

Article – 2

That Smt. Jyotsana Varma Ray was asked to join the cadre and to explain about her unauthorized absence vide letter no. 3018 dated 26.03.2014, 9456 dated 22.09.2014, 534 dated 21.01.2015, 1702 dated 23.02.2015, 3929 dated 29.04.2015 and 4951 dated 04.06.2015 of the Personnel, Administrative Reforms & Rajbhasha Deptt. Govt. of Jharkhand, but she did not reply or join the cadre and failed to submit her show cause. That this conduct is unbecoming of a Government servant and more so in the case of an All India Service Officer. She joined in the cadre on 11.08.2015 and applied for her voluntary retirement. Voluntary retirement application is not considerable as she is unauthorizedly absent from the cadre since 20.12.2011. Joining on 11.08.2015 and giving an application for voluntary retirement and requesting for regularization of the period for which she was unauthorizedly absent from duty, she once again left the cadre without any information. Thus without acceptance of joining she has left the cadre.”

3. In pursuance thereof, the applicant demanded certain documents, vide letter dated 31.03.2017 (Annexure A-3). Not only that, Show Cause Notices (for brevity SCN) dated 10.04.2017 and 11.05.2017 (Annexures A-4 and A-5), for submitting written statement of defence, against the departmental proceedings – deemed resignation of unauthorized absence- were issued to her. She also filed reply dated

13.05.2017 (Annexure A-6) in this regard. The case of the applicant for deemed resignation was processed, vide impugned letter dated 29.05.2017 (Annexure A-8). The applicant requested Respondent No. 1 to provide her an opportunity of personal hearing, vide letter dated 23.06.2017 (Annexure A-9).

4. Meanwhile, the request of the applicant for voluntary retirement was rejected, on the ground that since she has been on unauthorized absence since 20.12.2011, so she has not completed 20 years of qualifying service, in terms of Rule 16 of IAS (DCRB) Rules, 1958, vide impugned letter dated 26.07.2017 (Annexure A-10), conveyed to her vide impugned letter dated 10.08.2017 (Annexure A-11), by the Competent Authority. Her request for personal hearing was rejected and a decision was taken to treat the period of her unauthorized absence from 20.12.2011 to 10.08.2015, as dies non, vide impugned letter dated 15.09.2017 (Annexure A-12), by the Govt. of India. Ultimately, she was treated as 'deemed to have resigned' from the IAS w.e.f. 12.08.2015, vide impugned order dated 17.09.2017 (Annexure A-13), which was conveyed to her vide impugned letter dated 12.10.2017 (Annexure A-14), by the Competent Authority.

5. Aggrieved thereby, the applicant has preferred the instant Original Application (O.A.), challenging the validity of the impugned orders (Annexures A-8 and A-10 to A-14), on various grounds, mentioned therein and in the manner indicated herein below.

6. Having heard learned counsel for the applicant and having gone through the record, with his valuable help, and after

considering the entire matter, we are of the firm view that this Tribunal at Chandigarh has no territorial jurisdiction, to entertain the present case, for the following reasons.

7. What cannot possibly be disputed here is that the applicant is a Member of IAS cadre of Jharkhand. She was sent on deputation on foreign assignment, for a period of two years i.e. from 26.10.2009 to 19.12.2011, but as she did not report back, so she was issued a charge sheet for her unauthorized absence, to which she duly filed reply. She was issued two SCNs for filing written statement of defence against the departmental proceedings – deemed resignation for her unauthorized absence. She made a request for personal hearing, which was rejected. Her prayer for voluntary retirement was also rejected by the State Govt. due to her incomplete qualifying service. Even she has challenged the order of deemed resignation in lieu of unauthorized absence, and claimed voluntary retirement. Be that as it may, the fact remains is that the applicant is still a Member of IAS cadre of Jharkhand State. Meaning thereby, all the proceedings were initiated and completed by the State of Jharkhand, and no cause of action, whatsoever, has arisen at Chandigarh.

8. Ex-facie, the argument of learned counsel that since the applicant is presently residing in Flat No. 131, Mansa Devi Complex, Panchkula, so this Tribunal has territorial jurisdiction is neither tenable, nor the observations of the Hon'ble Calcutta Bench in the case of **Union of India & Ors. Vs. Smt. Meena Oraon & Anr.**, MANU/WB/0208/2012 are at all applicable to

the facts of the present case, wherein it was observed that an application is required to be filled before the Bench of Tribunal within whose jurisdiction the applicant is posted or where the cause of action either wholly or in part has arisen. However, under sub-rule 2 of Rule 6 of Central Administrative Tribunal (Procedure) Rules, 1987, persons who had **ceased to be in service** (emphasis applied) by reason of their retirement, dismissal or termination of service had option to file an application before Bench within whose jurisdiction they ordinarily resided at time of filing of application, and the same analogy would apply equally to heirs of a deceased employee claiming family pension or other retiral dues or compassionate appointment.

9. Possibly no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the applicant in the present controversy, wherein she is still claiming herself to be in service of IAS cadre of Jharkhand State and all the indicated proceedings were initiated by the Jharkhand Govt. Rule 6 (1) of C.A.T. (Procedure Rules), 1987 postulates that an application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction the applicant is **posted** (emphasis supplied) for the time being, or the cause of action wholly or in part has arisen. Sequel, sub-rule 2 of Rule 6 further posits that notwithstanding anything contained in sub-rule 1, a persons who have **ceased to be in service by reason of retirement, dismissal or termination of service** (applicant is still claiming

herself to be a Member of IAS cadre of Jharkhand State) may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application, and not otherwise.

10. It is not a matter of dispute that the applicant is still claiming herself to be in service of IAS cadre of Jharkhand Govt., so in that eventuality, she can only file an application at the place where she is posted or where cause of action wholly or in part has arisen, as contemplated under Rule 6(2) *ibid.* Otherwise also, as per general law such suits can only be instituted where cause of action has arisen or in some cases where defendants reside. The mere fact that the applicant is presently residing at Mansa Devi Complex, Panchkula, *ipso facto*, is no ground, much less cogent, to confer territorial jurisdiction on this Tribunal. As such, this Court having no territorial jurisdiction cannot, and indeed should not decide the validity and legality or otherwise of the impugned orders (Annexures A-8 and A-10 to A-14), passed by the relevant authorities, based on record, which is already in the custody of the Govt. of Jharkhand. It remains an unfolded mystery as to why the applicant is feeling shy in filing the O.A. at appropriate place, where she is serving and actual cause of action has arisen, to claim the indicated reliefs.

11. Therefore, it is held that since the applicant is still a Member of IAS cadre of Jharkhand State and cause of action has arisen at Jharkhand, and as nothing has happened at Chandigarh, so

this Tribunal at Chandigarh has got no territorial jurisdiction to entertain the instant O.A.

12. In the light of the aforesaid reasons, and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of further hearing, at appropriate forum, the instant O.A. is hereby returned to enable the applicant to file it at appropriate forum, having territorial jurisdiction, for claiming the indicated reliefs. No order as to costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 28.05.2018

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