

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No. 060/00962/2015

Date of decision- 13.12.2017

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...
Paramjit Kaur, Ex-Lady Hostel Warden, PGI, Sector 12, Chandigarh, now resident of House No. 31, Phase 3-B-1, S.A.S Nagar Mohali, District, Mohali (Punjab).

...APPLICANT

BY ADVOCATE : Mr. Arvind Moudgil, Advocate.

VERSUS

1. Union of India through the President, PGIMER, Sector 12, Chandigarh.
2. Director, PGIMER, Sector 12, Chandigarh.
3. Mrs. Indarjeet Kaur Walia, W/o Sh. Gulzar Singh, Ex Principal College of Nursing, PGIMER, R/o House No. 2622, Sector 69, Mohali, Punjab.

...RESPONDENTS

BY ADVOCATE: Mr. Sanjay Goyal, Advocate.

ORDER

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SANJEEV KAUSHIK, MEMBER(J)

This O.A has been filed by the applicant challenging disciplinary proceedings against her including inquiry report and penalty order. She also seeks issuance of direction from this Court to reinstate her in service.

2. Brief facts which led to filing of the present O.A are that the applicant commenced her service with respondent department as Sister Grade II in Nursing Department, PGIMER Chandigarh on 06.12.1993. She impressed upon her qualification and acquired degree

of B.Sc. Nursing with 1st Division in the year 1999. On 04.06.2008, the applicant was appointed as Lady Hostel Warden in the National Institute of Nursing Education (in short 'NINE'), PGI, Chandigarh. While she was working as Warden in NINE, she was served with memorandum of Charge sheet on 10.02.2010 (Annexure A-13). She immediately challenged the charge sheet by filing O.A No. 765/CH/2010 before this Tribunal on the ground that the same was issued due to malafide of Mrs. Indarjeet Kaur Walia, Ex-Principal College of Nursing, PGIMER as she filed complaint against her in connection with the illegal fine being collected by Ex-Principal. Said O.A was disposed of vide order dated 25.01.2011 being premature.

3. On 20.02.2010, the applicant submitted reply to the said charge-sheet and has taken various grounds in rebuttal to charge-sheet. During the inquiry, the applicant submitted written statement on 09.02.2012. An inquiry was conducted and report of which was submitted by Inquiry Officer on 30.03.2012. Based upon, the inquiry report, the Disciplinary Authority vide order dated 11.10.2012 had inflicted the penalty of compulsory retirement upon the applicant. Aggrieved against that order, the applicant filed statutory appeal on 05.11.2012 and when the same was not decided, she submitted reminder on 24.12.2012 and also requested for grant of personal hearing to her. Finally, her appeal was rejected vide order dated 02.09.2014 which was communicated to her vide letter dated 10.10.2014. Thereafter, the applicant filed revision petition on 27.10.2014 and when the same was not decided, she approached this Tribunal by filing O.A No. 060/01107/2014 and during the pendency of O.A, the respondents produced an order dated 21.09.2015 (Annexure

A- 37) rejecting her revision petition and the O.A was disposed of having been rendered infructuous. Hence the present O.A.

4. The applicant has taken various grounds for invalidation of impugned order. Firstly that impugned order of compulsory retirement is outcome of malice and arbitrary exercise of power at the hands of the respondents. It is submitted therein that since the applicant has raised her voice against Mrs. Indarjeet Kaur Walia, Ex-Principal College for collecting illegal fine from the students of NINE and on her complaint, an inquiry was conducted wherein it has been established that the act of Mrs. Indarjeet Kaur Walia, was against the rule formulation, therefore, the respondents became biased against her. Not only this, one student of NINE namely, Ms. Anshu Mathew, M.Sc. (Nursing) committed suicide and there were allegations against Mrs. Indarjeet Kaur Walia, Ex-Principal College for torturing and few students also gave statement against Mrs. Walia, therefore, the respondents have targeted the applicant and started acting in a prejudicial manner and resultantly, the applicant was served with a false charge sheet in which the applicant had nothing to do.

5. It has also been submitted therein that based upon report dated 07.01.2010 prepared by Sh. P.C. Sharma, Chief Security Officer, PGI an inquiry was conducted by Senior AO (Vigilance) who submitted his report on 11.01.2010 and held the applicant guilty of charges and this report became the basis for issuance of memorandum of charge sheet and as a result of which, harsh punishment of compulsory retirement was awarded without considering her past service record of 19 years. It has further been submitted therein that in cross examination, it has been admitted by Chief Security Officer

that he was not an eye witness and despite this fact that Chief Security Officer was not there, his report was used against the applicant for inflicting punishment of compulsory retirement. At the time of inquiry, said Sh. P.C. Sharma, CSO admitted that on information received from few students, he had prepared the report. Based upon no evidence, the Disciplinary Authority held the applicant guilty.

6. It has also been submitted that other officials of the respondents who participated in the procession were left out and the applicant has been singly charge-sheeted for act in which she was not involved. Merely on the ground that she was rounded by the Police and allegations were there that she accompanied the students while taking procession, she could not be punished and accordingly, she alleged discrimination and violation of Articles 14 & 16 of the Constitution of India. Lastly, the applicant alleged that punishment of compulsory retirement does not commensurate with the charges levelled against her though it has totally been denied that the applicant has committed any act for which the respondents had inflicted the punishment of compulsory retirement.

7. Mr. Arvind Moudgil, learned counsel for the applicant argued in the same lines as noticed above. Apart from that, he placed reliance upon the following judgments:-

(i) **Meenglas Tea Estate Vs. The Workmen**, 1963 AIR (SC)

1719

(ii) **Bhagat Ram Vs. State of H.P & Ors.**, 1983 (2) SCC 442.

(iii) **Sengara Singh & Ors. Vs. State of Punjab & Ors.**, 1983

(4) SCC 225

(iv) **Ranjit Thakur Vs. Union of India & Ors.** , 1987(4) SCC 611.

(v) **Swinder Singh Vs. The Director, State Transport, Punjab Chandigarh and Another**, 1988 (7) SLR 112

(vi) **Ex-Naik Sardar Singh Vs. Union of India**, 1991 (3) SCC 213

(vii) **Kuldeep Singh Vs. The Commissioner of Police**, 1999(2) SCC 10

(viii) **M.V. Bijlani Vs. Union of India & Ors.** 2006 (5) SCC 88.

(ix) **Jai Bhagwan Vs. Commissioner of Police & Ors.**, 2013 (11) SCC 187

(x) **Sarabjit Singh Vs. State of Punjab and Ors.**, 2017(1) SCT 460.

8. The respondents while resisting the claim of the applicant filed detailed written statement wherein they submitted that based upon the report by the Chief Security Officer, Senior AO (Vigilance) was appointed as Inquiry Officer to look into the complaint against the applicant and based upon his finding, disciplinary authority issued her charge sheet and after due procedure under rule formulation, disciplinary authority inflicted the punishment of compulsory retirement which was also upheld by Appellate Authority.

9. Mr. Sanjay Goyal, learned counsel for the respondents has reiterated what has been stated in the written statement.

10. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record.

11. We are conscious of the fact that in disciplinary proceedings, Courts should not interfere unless it is proved that the respondents have violated the provisions of rules in conducting the enquiry or it is a case of no evidence. It has been held that the Courts will not sit as an appellate authority upon the decision passed by the disciplinary authority, but in exceptional case, the Courts can interfere as noticed above.

12. During the course of arguments, allegation of discrimination has been alleged against the respondents on the ground that other employees, namely, Ms. Sunita, Sister Grade II, Ms. Kavita Sister Grade II and Ms. Kiran who were part and parcel of procession, but they were left out and only the applicant has been singled out due to malice and departmental proceedings were initiated against her. The respondents were directed to file a specific affidavit rebutting these allegations.

13. An affidavit has been filed by Mr. Sudhir Kumar, Sr. AO (H) in the office of M.S (PGI) where instead of replying to the query raised by this Court with regard to discrimination amongst employees as alleged by the applicant, he tried to misled this Court by saying that since complaint has been registered by Sr. Security Officer which was been inquired by Sr. AO (V), therefore, disciplinary authority initiated the departmental proceeding. There is no whisper with regard to discrimination as alleged by the applicant. Be that it may, we proceed to decide the issue because the respondents have not come with fair stand with regard to discrimination.

14. Conjunctive perusal of the pleadings makes it clear that report dated 08.01.2010 by Chief Security Officer, PGI became the basis of an inquiry, conducted by Sr. AO (V) and based upon that, memorandum of charge sheet was issued on 10.02.2010. Perusal of representation makes it clear that on 07.01.2010 at about 4.30 pm, Mr. P.C. Sharma, C.S.O received information that few students of NINE have gathered near NINE Gate and they intended to take a procession to the Bhargava Auditorium/Kairon Block for giving memorandum to Director, PGI, against the Principal of NINE. The information was immediately cross checked and found that about 60-70 nursing students (some of them carrying banners) were raising slogans against the Principal for making atrocities on the students and also responsible for suicide committed by one of their fellow student.

15. The above passage taken from the report of Mr. P.C. Sharma, Chief S.O makes it clear that he was not present at that time and based upon the information received, he prepared the note/report. Even in the cross examination, he admitted that one Sh. G.S. Dhillon who was also Security Officer informed about the gathering of student near NINE gate. Said Sh. Dhillon has not been examined either by the applicant or by the respondents who was material eye witness of the incident. The report of Chief Security Officer became the basis for finalization of departmental proceeding against the applicant because this report was firstly examined by Sr. A.O (V) who instead of acting independently by conducting inquiry, based upon the report on note prepared by C.SO, have submitted its report holding that the applicant had acted against the department and recommended to proceed against the applicant.

16. Perusal of memorandum also makes it clear that report of Chief Security Officer dated 08.01.2010, note prepared by Vigilance Cell, PGI dated 11.01.2010 and DDR dated 07.01.2010 are the material documents used against the applicant. In the inquiry report, Inquiry Officer did not bother to call Mr. G.S. Dhillon who was an eye witness and also not bothered to call for DDR which was also used against the applicant. These two documents i.e. Annexure A-11 and Annexure A-12, report and findings on report submitted by Sr. AO (V), the applicant has been held guilty of charges and was served with the punishment of compulsory retirement. Pleadings are available on record regarding discrimination, but the same has not been rebutted by the respondents as to why the applicant was only targeted/punished whereas other employees who were there and whose names were also included in the report by Chief SO, have been left out without there being any defence. Specific word has been used by Chief S.O. against them that they were the ring leaders of the whole episode but no explanation has been given by the respondents for not taking action against them.

17. We are clear in our mind that there is an element of biasness against the applicant, though, we are not recording any finding to this effect. However, since the respondents have not examined the material witness i.e. Mr. G.S. Dhillon, who at the first instance reported the matter to Chief Security Officer regarding gathering of students at NINE gate, we feel that in absence of evidence, the applicant cannot be held guilty of charges, thus, there is violation of principles of natural justice. Even the enquiry report submitted by Sr. AO(V) (Annexure A-12) had also recorded a categorical finding that "*the representative of the students came to*

Kairon Block along with Security Officer Sh. G.S. Dhillon. As the other senior officers were attending function of New Academic Session at the Bhargawa Auditorium, the representatives were brought to my office to give the representation of their demands". Thus, it is clear that Mr. P.C. Sharma, Chief S.O. was not present at that time, then his report cannot be used independently without there being any proper inquiry. Therefore, we find that there are procedural irregularities while conducting the inquiry, accordingly, impugned order is set aside. The matter is remitted back to the respondents to conduct a fresh inquiry in the matter. If the applicant is found to be involved in the activities against the department, then proceed in accordance with law.

18. The present O.A is disposed of in above terms. No order as to costs.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated: 13.12.2017.

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