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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.218/ 2012

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Rubi Moitra,
Wife of Dipankar Saha,
Daughter of Paresh Chandra Moitra,
Aged about 32 years,
Residing at 44, Madhusudan Dutta Path,
City Centre, P.O. : Durgapur – 713 216,
District : Burdwan,
Dismissed Employee (Temporary) of Durgapur
Steel Plant under Steel Authority of India Ltd.,
was lastly posted at CHRD (M & HS)
Department as Temporary Unskilled Worker (Try. USW).

..... Applicant

-V E R S U S -

1. The Steel Authority of India Limited,
Service through the Chairman,
Having his office at "Ispat Bhawan",
5, Lodi Road,
New Delhi – 110 003.
2. Chairman,
Steel Authority of India Ltd.,
Having his office at "Ispat Bhawan",
5, Lodi Road,
New Delhi – 110 003.
3. Durgapur Steel Plant,
A subsidiary Unit of Steel Authority of India Ltd.,
Having its registered office at Main Administrative
Building, (Ispat Bhawan),
Durgapur – 713 203.
4. Managing Director,
Steel Authority of India Ltd.,
Durgapur Steel Plant,
Having his office at Main Administrative
Building, (Ispat Bhawan),

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Durgapur – 713 203,

District : Burdwan.

5. Executive Director (Personnel & Administrative) &
 Revisional Authority,
 Steel Authority of India Ltd.,
 Durgapur Steel Plant,
 Having his office at Main Administrative
 Building, (Ispat Bhawan),
 Durgapur – 713 203,
 District : Burdwan.

6. General Manager (P & A) &
 Appellate Authority,
 Steel Authority of India Ltd.,
 Durgapur Steel Plant,
 Having his office at Main
 Administrative Building,
 (Ispat Bhawan),
 Durgapur – 713 203,
 District : Burdwan.

7. Assistant General Manager,
 1/ c(CHRD) & Disciplinary Authority,
 Durgapur Steel Plant,
 P.O. – Durgapur – 713203,
 District : Burdwan.

Respondents.

For the applicant : Mr. I.N.Mitra, counsel

For the respondents : Mr. T.K. Banerjee, counsel
 Mr. A. Roy, counsel

Heard on : 31.08.2018

Order On : 26.9.18.

ORDER

Bidisha Banerjee, Judicial Member

The applicant in this O.A. has sought for the following reliefs:-

"8.(a) An order do issue for setting aside and/ or quashing the charge-sheet bearing no. CHRD/ Charge Sheet/ 1 (38) Jr.Tech. (Trainee)/02 dated 6.12.2010, issued by the AGM I/c & Disciplinary Authority, Durgapur Steel Plant, forthwith;

- (b) An order do issue directing the respondents to rescind, cancel and/ or withdraw the charge-sheet bearing no. CHRD/ Charge Sheet/ 1(38) Jr. Tech. (Trainee)/ 02 dated 6.12.2010, issued by the AGM I/c & Disciplinary Authority, Durgapur Steel Plant, forthwith.
- (c) An order do issue for setting, aside and/ or quashing the findings of the Enquiring Authority, forthwith;
- (d) An order do issue for setting, aside and/ or quashing and the order of dismissal bearing no. CHRD/ Charge Sheet/ 1(38) Jr. Tech. (Trainee) dated 9.6.2011, issued by the Deputy General Manager, (HRD), Durgapur Steel Plant, forthwith;
- (e) An order do issue directing the respondents to reinstate the applicant in his service, forthwith;
- (f) An order do issue directing the respondents to make payment of the back wages and other consequential benefits to the applicant, forthwith."

2. Case of the applicant in a nutshell is that her father, namely, Paresh Chandra Moitra, an employee of Durgapur Steel Plant, Ticket No.307504 breathed his last on 16.10.1997. He was survived by his widow, unmarried daughter i.e. the applicant and a married daughter. The name of father of the applicant was struck off from the Roll on 17.10.1997 in terms of Clause 5(iii) of NJCS Agreement, 1995 that was holding the field as on the date of death i.e. 16.10.1997. As per NJCS Agreement, 1995, one of the dependents of an employee who died or got permanently disabled due to accident arising out of and in course of employment, would be considered for employment assistance. On 10.11.1997 i.e. immediately after the death of her father her mother sought for her consideration for appointment on compassionate ground. In the meantime, the applicant got married in 2001. In 2010 i.e. after almost 13 years of death when the respondents forwarded an application format to seek employment assistance, the applicant declared her marital status as "unmarried" on a mistaken belief that she would have to declare her marital status as on the

date of death of the Government employee (her father). She was offered an appointment vide letter dated 11.08.2010 and she joined as Junior Technician (Trainee) in Durgapur Steel Plant on 12.08.2010. While the applicant was serving as Junior Technician (Trainee) in CHRD (NHS) Department, to her utter shock and surprise, she received a charge sheet dated 06.12.2010 levelling charges in regard to violation of Clause 29(ii) and 29(iv) of the Certified Standing Order of the company. The disciplinary proceeding against the applicant culminated into an order of dismissal from service dated 09.06.2011. Her appeal was turned down.

3. The legal lacunae in the conduct of the proceedings as highlighted by the applicant are as under:-

(i) The charges mentioned in the charge memo did not conform with the violations of provisions alleged therein. The charge sheet contained the following charges:-

"Clause 29(ii) : Dishonesty in connection with Company's business

Clause 29(iv) : Giving false information regarding your marital status in the application and affidavit at the time of employment for obtaining employment on compassionate ground."

While , Clause 29(ii) and Clause 29(iv) of the Certified Standing Order of Durgapur Steel Plant read something totally different and, therefore, the charge sheet was drawn up mechanically without application of mind. Clauses 29(ii) and 29(iv) of the Certified Standing Order read as under:-

"ACTS OF MISCONDUCT :

Without prejudice to the general meaning of the term "Misconduct" the following acts and omissions shall be treated as misconduct.

(i) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(ii) Theft, fraud or dishonesty in connection with the Company's business or property.

(iii)xx

(iv) Giving false information regarding one's name, father's name, age, qualifications, previous service, address etc. at the time of employment."

It was argued that the applicant having never committed any theft, fraud, dishonesty in connection with the company's business/property Clause 29(ii) of the Certified Standing Order was wrongly invoked.

Further, since the applicant never furnished any false information regarding her name, her father's name, age, qualification, previous service, address etc., it was argued that Clause 29(iv) was wrongly invoked.

(ii) In view of the judgment of the Hon'ble Apex Court in **Rasik Lal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation** reported in 1985(2) SCC 35 it is settled position that unless certified standing order or a service regulation mentions an act or omission as a misconduct, it is not open to the employer to fish out some conduct to punish the workman. Although the alleged conduct could not be comprehended as a misconduct and was not an enumerated misconduct yet the applicant was punished for the same.

(iii) The charge sheet did not contain the list of witnesses by whom the alleged charges were proposed to be sustained.

(iv) Further, the charge memo revealed that the disciplinary authority had already come to a conclusion and prejudged the issue which vitiated the entire proceedings.

(v) The applicant was not asked to submit representation to the charges levelled against her which violated the principles of natural justice.

(vi) The documents were exhibited by PW-I and not by prosecution which clearly vitiated the proceedings.

(vii) The dismissal from service was by an unreasoned order and, therefore, not sustainable in the eye of law.

(viii) Dismissal order dated 09.06.2011 issued by Deputy General Manager, HRD, Durgapur Steel Plant(DSP) was not sustainable since the Deputy General Manager, HRD was neither appointing authority nor the disciplinary authority.

(ix) The Disciplinary Authority acted as the Appellate Authority while affirming an order of dismissal which was not permissible under the rules.

(x) The authorities failed to consider that subsequent change of marital status could not debar her from legitimate right of appointment on compassionate ground.

Ld. counsel for the applicant would vociferously submit at hearing that the applicant was not guilty of any misconduct since she had disclosed her marital status as she had on the date of death of the employee. Her dismissal was bad.

4. Per contra, vehemently opposing the stand of the applicant the ld. counsel for the respondents would submit that not only the applicant gave a false declaration in the format declaring herself as "unmarried" daughter, she had also sworn a false affidavit in order to secure employment. Further, her mother herself informed the authorities about the change of her marital status and sought for appropriate action against her and that the dismissal was on the basis of her admission before the authorities.

5. At hearing, Id. counsel for the applicant would seek reliance upon a decision of this Tribunal dated 01.10.2015 in O.A.No.235/2014, a case where a divorced daughter had claimed herself as unmarried and used "Miss" and shown her marital status as "single". The Tribunal allowed her application and quashed the penalty order having noted that as a divorcee she could use a "Miss" and declare her status as "single" as she could validly remarry. The Id. counsel would place the following extract of the order and seek identical reliefs:-

"Thus the status as on the date of application or consideration was not material. The applicant was an unmarried daughter as on the date of death of the employee and fully dependent on him.

8. If the object of the compassionate appointment scheme is to provide succour to the family, while an imaginary qualification deprived a "married" or a "divorced" daughter to apply, we find no reasonable nexus between the purpose of the scheme/legislation and the qualification prescribed.

9. That apart the purpose of offering such appointment is to enable a family of a deceased employee to survive to provide a succour to the family by providing employment to a ward who can earn livelihood for the family and act as a bread winner. The said purpose itself would get frustrated if the means of livelihood is taken away.

10. From the aforesaid we notice that extenuating factors are galore why the applicant should not be condemned for having secured and employment on compassionate ground.

6. We have carefully considered that decisions cited by the respondents. The same are not applicable to the factual matrix of the case in hand.

7. Such being the position we find that the charges levelled against the applicant did not constitute a misconduct. Accordingly we have no hesitation to quash the penalty order with consequential reliefs."

Id. counsel for the applicant would submit that the order was upheld upto

the Hon'ble Apex Court and was implemented vide order dated 03.04.2017.

6. Id. counsel for the respondents would submit that the applicant stood on a different footing and observations made in the said order had no binding effect.

ld. counsel on the contrary cited the direction in O.A.1081 of 2011, a case where a son on employment assistance from DSP was dismissed due to suppression of the fact that his mother was already employed with the DSP, while she declared herself as "housewife".

7. We heard the ld. counsel for the parties and perused the materials on record.

8. We noted that the mother of the applicant had sought for consideration in 1997 itself when the applicant was unmarried. It was the respondents who were not able to provide her any employment assistance within a reasonable time. She got married after 4 years. Legitimately, it cannot be expected of an unmarried daughter to remain unmarried for ever in the hope of getting employed. Therefore, the applicant rightly got married in 2001 but when she filled in the format she declared her marital status as "unmarried". She might have acted under a mistaken belief that marital status as on the date of death of the employee had to be denoted but she also declared herself as "Miss". But the fact that she had duly sworn an affidavit before Notary on 01.07.2010 declaring herself unmarried stands unsubstantiated. The affidavit disclosed by respondents is of one, Samir Dhar. Nevertheless such declaration in the format has been regarded as a false declaration amounting to a misconduct and the applicant has been dismissed from service.

9. We noted that the applicant participated at the enquiry and was afforded all reasonable opportunities to put up her defence. She failed to highlight in what manner she was prejudiced.

It is trite, axiomatic and settled law that unless prejudice is shown to be caused to the charged officer technicalities shall not be allowed to prevail over the just cause. [as held in **Union of India & Ors. Vs. Bishamber Das Dogra, (2009) 13 SCC 102**].

In **Syndicate Bank & Ors. v. Venaktesh Gururao Kurati J T(2006) 2 SC 73** it was held as under:-

"To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

It is settled legal position that an order is required to be examined on the touchstone of doctrine of prejudice. A Constitution Bench of this Court in **Managing Director, ECIL v. B. Karunakar(1993) 4 SCC 727**, considered the issue at length and after taking into consideration its earlier judgment in **Union of India vs. Mohd. Ramzan Khan, AIR 1991 SC 471**, came to the conclusion that :-

".....Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.....It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment." (Emphasis added).

In **Haryana Financial Corporation v. Kailash Chandra Ahuja(2008)9 SCC-31**, this Court applied the law laid down in B. Karunakar case(supra) and observed as under:-

"It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside." (Emphasis added).

Further, we noted that the punishing authority was not junior to the appointing authority. The dismissal order was not issued by the Dy. General Manager but only communicated by him.

The Disciplinary Authority(G.M.) had not assumed the role of an appellate authority as wrongly claimed by the applicant. He merely communicated the order of the Appellate Authority vide his letter dated 11.12.2012, therefore, the Appellate Authority's order which was a well reasoned one, could not be faulted.

10. Be that as it may, we noticed that the Compassionate Appointment Scheme of D.S.P. debars consideration of married daughter for compassionate appointment whereas Hon'ble High Courts of the country have come to the aid of married daughters and have permitted them to be considered for employment assistance on compassionate ground and act as a bread winner for the family. Therefore, the bar is not a logical one.

11. We noticed that the applicant was unmarried when her father passed away. She was eligible then to be employed on compassionate ground.

12. It is also very strange to suggest that since the applicant got married, the widow's need for sustenance no more subsisted. However, in view of the strange circumstances, as the respondents have pointed out that vide letter dated 22.09.2010 the mother herself asked for investigation of the matter and in view

of the fact that the order dated 11.12.2012 was a communication of the appellate authority's order and not the order on appeal itself, the O.A. is disposed of with a direction to the applicant to prefer consideration before the higher authority, who, if approached, shall give a hearing to the applicant as well as to her mother and pass an order in accordance with law keeping in view Archana Mukherjee's case(cited supra), within a period of 8 weeks from the date of receipt of this order. Such order shall then govern the rights of the applicant. The present O.A. is accordingly disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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