

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00954/2016

DATED THIS THE 30TH DAY OF MAY, 2018

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Vasundara Dharmaraj
W/o Shri Dharmaraj
Aged 53 years
Head of the Department
(now under orders of compulsory retirement)
Institute of Hotel Management
Catering – Technology & Applied Nutrition,
S.J.P. Campus, Near SKSJT Boys Hostel
K.R. Circle, Bangalore – 560 001
R/at No. 254, 15th Main Road,
Raj Mahal Vilas Extension,
Bangalore – 560 080.

... Applicant

(By Advocate Shri.P.M.Nayak)

Vs.

1. Shri V.R. Venkatadri
The Principal,
Institute of Hotel Management
Catering – Technology & Applied Nutrition,
S.J.P. Campus, Near SKSJT Boys Hostel
K.R. Circle, Bangalore – 560 001

2. Dr. S. Kannan
Secretary, Board of Governors,
Institute of Hotel Management
Catering – Technology & Applied Nutrition,
S.J.P. Campus, Near SKSJT Boys Hostel
K.R. Circle, Bangalore – 560 001

3. Shri Naveen Raj Singh, IAS,
Secretary, Department of Tourism
Government of Karnataka &
Chairman, Board of Governors,
Institute of Hotel Management

Catering Technology & Applied Nutrition,
S.J.P. Campus, Near SKSJT Boys Hostel
K.R. Circle, Bangalore – 560 001

4. Shri H U Talawar,
Director, Department of Technical Education
Tantric ShikshanBhavan,
Palace Road, Bangalore – 560 001
Member of the Board of Governors,
Institute of Hotel Management, Catering
Technology & Applied Nutrition, Bangalore

5. ShriRamiah Daniels
Director, Hospitality Paradigm
& Industry Expert,
K440, Brigade Courtyard, Jalahalli,
HMT Township, Bangalore – 560 022
Member of the Board of Governors,
Institute of Hotel Management, Catering
Technology & Applied Nutrition, Bangalore

6. Shri Sanjay Thakur,
Principal, Institute of Hotel Management Hyderabad &
Catering Expert,
F Row, DD Colony, Vidyanagar
Hyderabad -500 007, Andhra Pradesh,
Member, Board of Governors,
Institute of Hotel Management,
Catering Technology & Applied Nutrition, Bangalore

7. Smt. Padmavathi,
Special Officer Ex Officio,
Deputy Secretary (Pension)
Finance Department,
Government of Karnataka,
M.S. Buildings, AmbedkarVeedhi,
Bangalore – 560 001.
Member, Board of Governors,
Institute of Hotel Management,
Catering Technology & Applied Nutrition,
Bangalore 560 001

8. ShriR. Somashekar,
Deputy Secretary (H E & Universities)
Department of Higher Education,
Government of Karnataka, M.S. Buildings,
AmbedkarVeedhi,
Bangalore – 560 001.
Member, Board of Governors,

Institute of Hotel Management,
Catering Technology & Applied Nutrition, Bangalore

9. ShriShoebSamad
Regional Director South
India Tourism, Chennai
154, Anna Salai, Chennai – 600002,
Tamil Nadu
Member, Board of Governors,
Institute of Hotel Management,
Catering Technology & Applied Nutrition, Bangalore

10. Smt. Meenakshi Sharma, IA&AS,
Addl Director General (T),
Ministry of Tourism
Room No. 125, First Floor, Transport
Bhawan, 1, SansadMarg
New Delhi – 110 001
Member, Board of Governors,
Institute of Hotel Management, Catering
Technology & Applied Nutrition, Bangalore

11. ShriSanjeevRanjan, IAS,
AdditionalSecretary & FA,
Ministry of Tourism
Room No. 408, Transport Bhawan,
1, SansadMarg, New Delhi – 110 001.
Member, Board of Governors,
Institute of Hotel Management,
Catering Technology & Applied Nutrition, Bangalore

12. Director Studies,
NCHMCT&AN,A-34, Sector 62,
Institutional Area, Noida – 201 309
Member, Board of Governors,
Institute of Hotel Management,
Catering Technology & Applied Nutrition, Bangalore

13. Senior Vice President,
Taj Group of Hotels& Industry Expert,
Indian Hotel Company Limited
Oxford House, 15/17, N.S. Board
Colaba, Mumbai – 400 001
Member, Board of Governors,
Institute of Hotel Management, Catering
Technology & Applied Nutrition, Bangalore

14. The Union of India
Ministry of Tourism

By its Secretary,
Transport Bhawan,
Parliament Street,
New Delhi – 110011

...Respondents

(By Shri S. Prakash Shetty, Senior Panel Counsel &
Shri R. Muralidhar Rao, Counsel for the Respondent No.1)

ORDER

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The present OA have been filed by the applicant being aggrieved by the imposition of penalty of compulsory retirement by the respondent organization.

The facts in brief are as follows:

The applicant joined the Institute of Hotel Management and Catering Technology which is an autonomous body registered under the Karnataka Societies Registration Act and has been receiving 100% grant from the Central Government since 1984. The Institute of Hotel Management is administered by the Board of Governors and Executive Committee. The CCS (CCA) Rules are applicable mutatis mutandis to the employees of the society in all matters relating to the service condition. The applicant joined the institute as Assistant Lecturer-cum-Assistant Instructor on 1991. She got promotion to Lecturer-cum-Instructor and then as Senior lecturer-cum-Senior Instructor in 2005. She was then promoted as Head of the Department. For the period from 01.10.2010 to 21.02.2013 the applicant was placed in charge as Principal of the Institute and also held the post of General Manager of Executive Development Centre in the Institute. After relinquishing charge as Principal of the Institute, a show cause notice was issued to the applicant contemplating inquiry under CCS (CCA) Rules alleging dereliction of duties. She was also

placed under suspension on 25.11.2014. A charge memo was thereafter issued on 16.12.2014 containing 11 charges. Subsequently another charge memo was also issued containing one charge.

2. The matter relating to suspension as well as departmental proceeding was earlier agitated before this Tribunal as well as the Hon'ble High Court in several OAs and Writ Petitions. This Tribunal in its order dated 08.10.2015 in OA No. 768/2015 held vide para 3-5 as follows:

“3. The learned counsel for the respondents requests that a specific order be issued to the applicant not to seek unnecessary adjournments. He pointed out that out of 27 postings she had requested adjournments on 10 occasions. But then barring unforeseen and significant circumstances, we also hold that the applicant should not seek unnecessary adjournments. We also hold that the enquiry shall be held on all days whether it is holidays or working days so that the matter can be thrashed out in 12 days and after that the enquiry officer may appropriate take time to come to his findings and the disciplinary authority may take appropriate time. In this interregnum there will not be any need to keep the applicant under suspension.”

4. Therefore we issue a conditional order that after 12 days' time the suspension order of the applicant will remain quashed and extinguished and she will be put back to duty.

5. At this point of time the learned counsel for the respondents submit that one of the witnesses will come back only on 29th after Haj and for his examination it may be posted to 29th. We feel that it is a reasonable request, so that the time required for completion will be extended till 29th. Therefore on 30.10.2015 the suspension order against the applicant will be deemed as terminated and she will be taken back in service. But then in view of the charges and the necessity of maintaining the integrity in institution both enquiry officer and disciplinary authority are under a pious duty to exert themselves so that appropriate orders are issued as early as possible.”

3. The matter was taken to the Hon'ble High Court of Karnataka in Writ Petition No. 45936/2015 (S-CAT) and the Hon'ble High Court vide order dated 24.11.2015 held vide para 2-4 as follows:

“2. We do not find any ground to interfere in the impugned order. The records reveal that the order of suspension initially was issued against respondent No. 1 on 25.11.2014 and from that day onwards, the parties are litigating either before the Central Administrative Tribunal or before this Court. The respondent No. 1 has approached the Central Administrative Tribunal on two occasions as against the order of suspension, so also the petitioner herein has approached this Court on two occasions. In the meanwhile, i.e., during the interregnum the order of suspension is stayed by one forum or the other. Therefore, confusion is created from 25.11.2014 with regard to the aspect of service of 1st respondent. Ultimately the second suspension order was issued on 30.04.2015 and from that day also further litigations are generated before the Tribunal as well as before this Court. Ultimately, by the impugned order the Tribunal quashed the suspension order with a direction to the Enquiry Officer and the Disciplinary Authority to complete the process of disciplinary proceedings on merits at an early date.”

3. Since the impugned order is just and proper and as the impugned order sets at rest the confusion, we do not find any need to interfere in the impugned order. However, we desist to make any observations, if made, may affect either of the parties i.e. before the Enquiry Officer or before the Disciplinary Authority. Having regard to the totality of the facts and circumstances of the case and interest of justice would be met with, if the enquiry is completed as early as possible, but not later than end of December 2015.

We also make it clear that since certain allegations are made against the present Enquiry Officer another Enquiry Officer may be appointed to conduct further enquiry. Such newly appointed Enquiry Officer, if any, will continue the enquiry from the stage it stands as of now. He need not re-open the enquiry proceedings which are already conducted by the earlier Enquiry Officer. After completion and submission of Enquiry Report, it is open for the Disciplinary Authority to take action as per law as early as possible.

*4. With these observations, the writ petition stands **disposed off** accordingly.”*

4. A further Writ Petition was filed by the Principal of the Institute in Writ Petition No. 21056/2015. The same was disposed of by the Hon'ble High Court vide order dated 17.02.2016 with the following order:

“In view of the order dated 24.11.2015 passed in W.P. No.45936/2015, hearing of these petitions is totally unnecessary. This court, in W.P.

No.45936/2015, while confirming the order passed by the KAT in O.A. No.768/2015, has held that the entire Disciplinary Proceedings shall be completed within December 2015. Hence, these writ petitions are dismissed with an observation that the parties are bound by the order passed by this court on 24.11.2015 in W.P. No.45936/2015.”

The Hon'ble High Court of Karnataka subsequently vide order dated 19.12.2016 in I.A. No. 1/2016 extended time to complete the disciplinary enquiry till the end of March 2016. Further order was passed on 21.10.2016 extending time to 16.08.2016 since the Institute, i.e., the applicants therein contended that the enquiry have been completed by that time.

5. It is noted from the records that even though in terms of the orders passed by the Hon'ble High Court the Inquiry Officer was changed and another Inquiry Officer was appointed to continue the inquiry, the 1st Inquiry Officer also submitted his report in addition to the report submitted by the 2nd Inquiry Officer. The Disciplinary Authority and the Board of Governors took into consideration Inquiry Report submitted by the first Inquiry Officer as well and the Inquiry Report of the 2nd inquiry and imposed a penalty of compulsory retirement on the applicant. Aggrieved by the penalty imposed the applicant has filed the present OA.

6. During the hearing it was submitted by the learned counsel for the respondents that in terms of the order of the Hon'ble High Court of Karnataka in CCC No. 1379/2016 dated 10.08.2017 and 30.08.2017 the Board of Governors have withdrawn the order of penalty imposing the punishment of compulsory retirement on the applicant and the Board of Governors have decided to consider the matter afresh on merits from the stage of submission

of report by the 2nd Inquiry Officer with regard to the first disciplinary proceedings and submission of the report by the Inquiry Officer with regard to the second disciplinary proceedings without being influenced by the findings of the 1st Inquiry Officer in the first inquiry proceedings. Therefore the OA has become infructuous. However the learned counsel for the applicant submitted that the prayer seeking direction on the 3rd respondent to allow the applicant to resume duty for the post of Head of the Department still persists and requested for a direction of the same.

7. Since the penalty order has been withdrawn by the respondents the only issue that remains for consideration is whether the prayer for the applicant to resume duty can be considered or not.

8. The order passed by this Tribunal dated 08.10.2015 in OA No. 768/2015 as highlighted in the preceding paras is quite clear. It has laid down the timeframe for completing the enquiry and clearly indicated that thereafter the suspension order will be deemed as terminated and the applicant will be taken back in service. The respondents had approached the Hon'ble High Court of Karnataka against the said order of the Tribunal. The Hon'ble High Court in its order in Writ Petition No. 45936/2015 clearly mentioned that the impugned order is just and proper and sets at rest the confusion, and we do not find any need to interfere in the impugned order. The Hon'ble High Court in its order only directed for changing the Inquiry Officer as there was certain allegations made against the present Inquiry Officer and also extended the time for completing the inquiry upto December, 2015. Thereafter on two different

occasions, the time for completion of inquiry was extended, first to end of March 2016 and then to 16.08.2016 when the inquiry was completed. Therefore it is quite clear that the order of the Tribunal to reinstate the applicant back in service following the completion of the inquiry remained unchanged. We note that in spite of the specific direction by the Tribunal in its order dated 08.10.2015 the applicant was not reinstated in service till the penalty order imposing a penalty of compulsory retirement was issued on 19.09.2016, i.e., after a month from the date of completion of inquiry.

9. A contempt petition was filed before the Hon'ble High Court of Karnataka by the present applicant in CCC No. 1379/2016 against violation of Hon'ble High Court's order since even though the Inquiry Officer was changed on the direction of Hon'ble High Court he submitted a report which was taken into consideration for imposing the penalty. In the said contempt case, the Hon'ble High Court of Karnataka had made adverse remarks against the respondents for submission of report by the first Inquiry Officer though he was directed to be replaced by the Hon'ble High Court and consideration of the same by the respondents. The Hon'ble High Court in its order in CCC No. 1379/2016 had observed that the action of the respondents amounts to frustrating the order of the Court and amounts to contempt. Only thereafter, the respondents withdrew the order of penalty dated 19.09.2016 imposing a punishment of compulsory retirement. Thereafter in the final order in the CCC No. 1379/2016 the Hon'ble High Court had observed that as the punishment order is withdrawn the status of the complainant prior to 19.09.2016, i.e., when the penalty order was imposed stands restored. The order in the said

contempt case had also observed vide para 14 as follows:

“14. Under the above circumstances, we do not find that the present proceedings are required to be continued further. But, it is observed and directed that on the aspects of subsistence allowance or reinstatement on account of the quashing of the order passed by the Tribunal for suspension of the complainant as the contempt proceedings before the Tribunal are pending, the present order shall not prejudice the rights of either side in the contempt proceedings pending before the Tribunal. Suffice it to observe that rights and contentions of both the sides in the said proceeding shall remain open to be considered in accordance with law.”

10. We were informed during the hearing that even though the order of penalty was withdrawn vide order dated 20.09.2017, no further decision on the penalty has been taken so far even though 8 months has passed and the applicant continue to remain under suspension.

11. In the matter of suspension of the applicant, the earlier order of this Tribunal is very clear and unambiguous. It clearly stipulated that after the inquiry is completed, the applicant should be taken back in service. Hence logically the respondents should have revoked the suspension order when the inquiry was completed on 16.08.2016 and reinstated her in service. But they did not do so and proceeded to impose a penalty after a month without putting the applicant back in service. As the matter stands now the said penalty had been withdrawn when the issue of contempt was considered by the Hon'ble High Court. Since the penalty order was withdrawn the position prior to imposition of penalty stands restored as observed by the Hon'ble High Court. However the fact remains that the earlier order passed by this Tribunal and upheld by the Hon'ble High Court of Karnataka stands which means that the applicant should hence be taken back in service following the

completion of the inquiry. In fact this should have been done prior to imposition of penalty. We also note that even after withdrawing the penalty order the respondents have not taken any decision on penalty for the last 8 months and they continue to keep the applicant under suspension in spite of the earlier direction by this Tribunal. Since the inquiry stands completed, we reiterate the earlier order passed by the Tribunal in OA No. 768/2015 stipulating that following the completion of the inquiry the applicant shall be taken back in service. Therefore we direct the respondents to immediately withdraw the suspension order and reinstate the applicant in service. This will be done within a period of 7 days from the date of receipt of a copy of this order.

12. The OA is accordingly disposed off in terms of the aforesaid directions.
No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00954/2016

Annexure-A1: Copy of the suspension order dated 25.11.2014 issued by the first respondent.

Annexure-A2: Copy of the charge memo dated 16.12.2014 issued by the first respondent.

Annexure-A3: Copy of the reply dated 08.01.2015 submitted by the applicant to the charge memo.

Annexure-A4: Copy of the additional reply dated 26.06.2015 submitted by the

applicant to the charge memo

Annexure-A5: Copy of the order dated 12.01.2015 by the first respondent appointing the second respondent as presenting officer.

Annexure-A6: Copy of the interim order dated 10.02.2015 passed in OA No. 36/2015 by this Tribunal

Annexure-A7: Copy of the circular resolution dated 11.02.2015 by the member of the Board of Governors.

Annexure-A8: Copy of the final order dated 20.04.2015 passed in OA No. 78/2015 by this Tribunal.

Annexure-A9: Copy of the final order dated 20.04.2015 passed in OA No. 36/2015 by this Tribunal.

Annexure-A10: Copy of the suspension order dated 30.04.2015 issued by the then Chairman

Annexure-A11: Copy of the representation dated 27.05.2015 by the applicant to the members of the Board of Governors

Annexure-A12: Copy of the final order dated 08.10.2015 passed in O.A. No. 768/2015 by this Tribunal

Annexure-A13: Copy of the order dated 24.11.2015 passed in Writ Petition No. 45936/2015 by the Hon'ble High Court

Annexure-A14: Copy of the common order dated 17.02.2016 passed in Writ Petition No. 21056/2015 and Writ Petition No. 6177/2015 by the Hon'ble High Court

Annexure-A15: Copy of the charge memo dated 17.11.2015 issued by the first respondent.

Annexure-A16: Copy of the reply dated 27.11.2015 submitted by the applicant to the charge memo

Annexure-A17: Copy of the daily order dated 20.02.2016 recorded by the Inquiry Officer in the first enquiry proceedings.

Annexure-A18: Copy of the letter dated 04.04.2016 from the first respondent

Annexure-A19: Copy of the explanation dated 20.04.2016 by the applicant

Annexure-A20: Copy of letter dated 21.06.2016 by the first respondent informing the suspension.

Annexure-A21: Copy of the letter dated 17.08.2016 from the first respondent along with the Inquiry Report dated 16.08.2016

Annexure-A22: Copy of the explanation dated 27.08.2016 by the applicant

Annexure-A23: Copy of the impugned resolution dated 15.09.2016 by the second and third respondent

Annexure-A24: Copy of the impugned order dated 19.09.2016 by the second respondent

Annexure-A25: Copy of the letter dated 22.08.2016 by the applicant to the first respondent and Shri Jayachandra

Annexure-A26: Copy of the reply dated 07.09.2016 by Shri Jayachandra

Annexure-A27: Copy of the letter dated 26.09.2016 by the applicant to all the members of the Board of Governors.

Annexure-A28: Copy of the auditor's report dated 06.07.2014

Annexures with reply statement

Annexure-R1: Copy of the order passed by the Hon'ble High Court in Writ Petition No. 45926/2015

Annexure-R2: Copy of the order in OA No. 768/2015

Annexure-R3: Copy of the order issued to the applicant dated 19.09.2016

Annexure-R4: Copy of the letter issued to Umesh dated 31.12.2015

Annexure-R5: Copy of the charge memo dated 17.11.2015 issued to applicant

Annexure-R6: Copy of the order on I.A. 1/2015 in Writ Petition No. 45936/2015

Annexure-R7: Copy of the order on I.A. 2/2016 in Writ Petition No. 45936/2015 dated 21.10.2016

Annexure-R8: Copy of the order of suspension dated 30.04.2015 passed by BOG

Annexure-R9: Copy of the communication dated 04.04.2016

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