

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.172/2017

Dated this Wednesday the 13th day of March, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
 RAVINDER KAUR, MEMBER (J)

Smt. Swati Bhalchandra Nilegaonkar
 Age 61 years, Indian Inhabitant,
 Working was as Assistant Nursing
 Officer, Dr. Babasaheb Ambedkar
 Hospital, Central Railway,
 Byculla, Mumbai - 400 027
 And presently residing at
 Flat No.12, Nathpriyama Apartment,
 Mayour Bungalow, Opp. Railway Line,
 Solapur - 413 001,
 State of Maharashtra ... **Applicant**
 (By Advocate Shri Ankush B. Hotkar)

VERSUS

1. Union of India
 Through the General Manager,
 Central Railway, Headquarters
 Office, CST, Mumbai - 400 001.
2. The General Manager,
 Central Railway, Headquarters
 Office, CST, Mumbai - 400 001.
3. Joint Secretary/Estt.II,
 Railway Board, Rail Bhavan,
 New Delhi - 110 001.
4. Divisional Railway Manager
 Central Railway, CST, Mumbai
 Pin Code - 400 001.
5. Medical Director/Chief Medical
 Director, Dr. Babasaheb Ambedkar
 Central Railway Hospital,
 Byculla, Mumbai - 400 007. ... **Respondents**
 (By Advocate Shri R.R. Shetty)

ORDER
Per: Ravinder Kaur, MEMBER (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(a) This Hon'ble Tribunal be pleased to call for the records and proceedings which led to the passing of the impugned orders dated 24.07.2015 passed by the respondent No.3 as per Advice letter dated 17.04.2015 issued by UPSC in the Appeal dated 28.03.2013 filed by the applicant before the Hon'ble President of India against order dated 06.02.2013 passed by the respondent No.3 in disciplinary proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rule 1968 filed against the applicant by the respondent No.2 and after considering this constitutional, propriety, legality and validity and genuineness thereof be quashed and set aside impugned orders and VRS given by the applicant is valid and binding upon the respondents.

(b) This Hon'ble Tribunal be pleased to direct the respondents to pay with all retirement benefits namely outstanding payment of salary, Pension, gratuity and other dues with extra work done by the applicant after VRS and as per request made by the respondents to continue work after VRS till sanctioning the same and other benefits with interest at 18% p.a. from the date of VRS including Railway passes as per grade of the applicant.

(c) Any other and further reliefs as to this Hon'ble Tribunal may deem fit and proper may be passed in the circumstances of the case and in the interest of justice.”

2. The facts are that the applicant was working with respondent No.5 as Assistant Nursing Officer. She was removed from service by the respondents vide impugned orders on the

complaint filed by her rivals. She was initially appointed in the Railway Hospital at Solapur on 01.12.1983 as Public Health Nurse and thereafter she was posted at Dr. Babasaheb Ambedkar Memorial Hospital at Byculla, Mumbai as Assistant Nursing Officer. She was promoted to the post of Assistant Nursing Officer on 28.08.2002. It is stated that she had completed her qualifying service of 30 years with respondent No.5 and since her son is suffering from Tuberculosis Pleural effusion with peritoneal effusion and is in need of constant attention, the applicant decided to take voluntary retirement to look after him. She tendered her application dated 16.09.2009 (Annex A-5) to the respondents stating that due to unavoidable domestic problems, she was unable to continue her services and requested for voluntary retirement. She has placed on record the disability certificate dated 02.02.2012 of her son showing that he is suffering from 85% mental retardation after he was examined by committee of expert Doctors of General Hospital, Ratnagiri. After she tendered her application for Voluntary retirement, she did not attend her duty and waited for release.

of her retirement benefits.

2.1 It is stated by the applicant that at the relevant time it was period of State Assembly elections and it was a mere coincidence that the applicant was offered a ticket of MLA election by Republican Party of India (RPI) for contesting election for Khed Alandi constituency as there was no other female candidate for reserved candidates in assembly election. The national policy of Women's Empowerment had taken a boost as such the applicant had decided to accept the same and filled up nomination form on 24.09.2009.

2.2 The applicant claims that it is the duty and obligations of the respondents to allow her application for voluntary retirement dated 16.09.2009 and to release her entire retirement benefits. However, instead of releasing her retirement benefits and relieving her from service w.e.f. 16.09.2009, the respondent No.4 issued letter dated 12.11.2009 (Annex A-8) to the effect that their office was under process for collection of details of her qualifying service from Sr. DFM and acceptance of Competent Authority i.e. CPO, CSTM and told her to attend daily duty routine at Byculla

Hospital till the date she receives sanction from the competent authority. On the basis of this letter, the applicant in good faith joined her duty on 16.11.2009 without prejudice to her right and contentions as made in application dated 16.11.2009 (Annex A-5). The applicant did not receive any sanction letter either from the competent authority or Divisional Railway Manager. Later on, She received letter dated 28.12.2009 (Annex A-9) from respondent No.5 whereby she was informed that a complaint was received against her and she was required to attend the inquiry on 28.12.2009 itself. She attended the inquiry whereby she was questioned with regard to her contesting State Assembly Elections 2009 and if so, whether she had taken any permission from the Competent Authority. She admitted that she had contested the election without taking any permission but under the impression that since her application for voluntary retirement from service was forwarded on 16.09.2009, she assumed that she was free from the service. In this inquiry, she also admitted that she had received a letter from the DRM, BB and was also told by Chief Physician Dr S.B. Gupta to join duty till she

gets retirement letter.

2.3 It is further stated that she had taken leave from 22.09.2009 onwards. Thereafter, she attended her duty till sanctioning of her VRS. She has placed on record the minutes of the fact finding committee dated 28.12.2009 as Annex A-10 which were sent to her vide covering letter dated 29.12.2009 (Annex A-11) in reference to letter dated 14.12.2009. Thereafter, vide letter dated 30.12.2009 (Annex A-12) issued by respondent No.4, the applicant was directed to submit property returns for the years 2005 to 2008. Consequently, she filed the same on 04.01.2010.

2.4 The preliminary inquiry was conducted against the applicant on 28.01.2010, an extract of its report has placed on record as Annex A-13. She was served with Memorandum dated 31.08.2010 (Annex A-14) by respondent No.2 proposing to hold an enquiry against her under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 with the following statement of Articles of Charge:-

"Article I: She has contested Assembly Election from Constituency No.197 (Khed- Alandi) of Maharashtra State on 13.10.2009 without intimation to the Railway Administration.

Article II: She has not intimated the purchase of immoveable

property of Rs.25,00,000/- which is mentioned in her name, in the nomination form submitted to returning officer, Khed Constituency. Intimation of purchase of immovable property is mandatory as per Conduct Rule 18. She failed to submit her APR for the year 2005 to 2009 in time and submitted the same in a bulk on 04.01.2010 after vigilance investigation.

Article III: She has submitted private Medical Certificate, for the period of absence from 24.08.2009 to 08.09.2009. As per Medical Manual, PMC is not permitted in case of Gazetted Officers. She had been absent from work for long periods during August-09 to October-09, without getting her leave sanctioned. She also did not have leave balance, in her account, however she received full payment during this period.

Thus by the aforesaid acts of omission and commission, Smt Swati Bhalchandra Nilegaonkar has failed to maintain absolute integrity, devotion to duty and behaved in a manner of unbecoming of a Railway servant and thereby contravened the provisions of Rule 3(1)(i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966. She has also contravened Rule 5 & 18 (1) of Railway Services (Conduct) Rules, 1966."

The applicant submitted her defence brief dated 21.12.2011 (Annex A-16) and denied the charges framed against her.

2.5 Vide Inquiry report dated 30.12.2011 (Annex A-17), the articles of charge I and charge II were established whereas article of charge III was partly established. Thereafter, the respondent No.2 issued Memorandum dated 11.04.2012 (Annex A-18) whereby he agreed with the findings of the Inquiry Officer in respect of Articles of charge I and II but did not agree with his findings in respect of article charge III and while giving reasons

for disagreement was of the view that article of charge III against the applicant has been proved and substantiated. She filed her reply dated 04.05.2012 (Annex A-20). Thereafter the Disciplinary Authority vide impugned order dated 06.02.2013 (Annex A-3) imposed on the applicant penalty of removal from service. Against this order, the applicant preferred an appeal dated 28.03.2013 (Annex A-21) before the President of India. The advice of UPSC was sought in the matter which was given vide letter dated 17.04.2015 (Annex A-2) and thereafter the appeal was dismissed vide order dated 24.07.2015 vide Annex A-1 the impugned order. Thereafter vide letter dated 12.12.2015 (Annex A-22) the applicant approached the Minister of Railways, Government of India, New Delhi to set aside the penalty of removal from service and to reinstate her. However, she did not receive any reply to the same.

2.6 The applicant has challenged the impugned orders on the following grounds :

- (i) That a false and fabricated complaint was filed against her by her rivals and that there was no misconduct on her part nor any fault was committed by her.

(ii) The impugned orders are illegal, erroneous, bad in law and without application of mind.

(iii) The appellate authorities failed to consider that the applicant had tendered VRS application on 16.09.2009 to the respondents from her service due to domestic problem.

(iv) The concerned authorities failed to consider that after VRS the applicant did not attend her duty and at the relevant period there was election of State Assembly and the said election was contested by the applicant by filling up nomination form on 24.09.2009 as she had already tendered VRS application to the respondent on 16.09.2009.

(v) The concerned authorities also failed to consider that even after the applicant lost in the said assembly election, she did not attend her duty as she was under the impression that her VRS would be sanctioned and she would be relieved from service after releasing her entire retirement benefits from the date of tendering said VRS application.

(vi) The concerned authorities also failed to consider that the respondent has issued

letter dated 12.11.2009 to the applicant thereby requesting the applicant to attend her duty till sanction of said VRS application from higher authorities.

Accordingly, the applicant attended her duty subject to sanctioning of the said VRS application. However, the said VRS application is not sanctioned.

(vii) That the authorities failed to consider that the applicant should have been relieved from service from the date of filing the application for voluntary retirement on 16.09.2009 and that for contesting the application on 24.09.2009 when she was not on duty, no permission from the respondents was required.

(viii) That the respondents did not comment on the issue of VRS application tendered by the applicant on 16.09.2009 and if the VRS is granted on 16.09.2009 and the provisions of Rule 67 para 2 Pension Rules, 1993 are taken into consideration, then the applicant is deemed to have voluntarily retired from the date of application and she was not required to attend her duty.

(ix) Regarding her non-filing of the property returns within time, it is claimed that due to intensive nature of her duty, she could not file the same with the respondents.

(x) Regarding article of charge III it is stated that the medical certificate was issued by the MD and not by PMC.

3. Alongwith the OA, MA No.203/2017 seeking condonation of delay has also been filed. The only ground on which the applicant is seeking condonation of delay of 5 months is that after receipt of the impugned order dated 24.07.2015 vide covering letter dated 07.08.2015, she had sent letter dated 12.12.2015 to the Minister of Railways, Government of India, New Delhi to look into the matter and pass an appropriate order. However, she waited for the reply to the said letter which she never got and consequently there was delay in filing the present OA.

4. The respondents have filed detailed affidavit in reply.

5. We have heard the arguments addressed by Shri Ankush B. Hotkar, learned counsel for the applicant and Shri R.R. Shetty, learned

counsel for the respondents and have gone through the materials available on record.

6. The respondents have submitted that the applicant had contested the Assembly Election from Khed Alandi Constituency on 13.10.2009 when she was in service based on her application for voluntary retirement dated 16.09.2009 with a request to voluntarily retire her on reasons of domestic problems. The applicant never waited to find out as to whether her application for VRS was accepted or otherwise. Further, the voluntary retirement could take effect only upon completion of three months from the date of request i.e. 3 months from 16.09.2009 which is 17.12.2009. Whereas the applicant had already filed her nomination on 24.09.2009 and contested the Assembly Election on 13.10.2009. Thus the applicant had clearly violated Rule 5 of the Railway Services (Conduct) Rules, 1966.

7. It is further submitted that the vigilance branch initiated the case against the applicant on the basis of complaint and after investigation report, departmental proceedings were conducted. That the charges against the applicant have been proved on the

basis of overwhelming evidence against her which invites no penalty other than removal from service. That the order of penalty imposed does not warrant any interference at the hands of this Tribunal as this Tribunal in its power of judicial review can only envisage whether the procedure is properly followed in holding the enquiry and the principles of natural justice have been duly complied with.

It is submitted that the Hon'ble Supreme Court in a catena of judgments has held that when the statutory rules so framed for conduct of disciplinary proceedings are quasi judicial in nature, the same are not open to scrutiny by a court of law to reassess the evidences on record and arrive at an altogether different conclusion unless it shocks the conscience of the Court.

8 The respondents have submitted that the application of the applicant for voluntary retirement could only take effect on completion of three months from the date of request i.e. from 16.09.2009 which comes to 17.12.2009. That prior to that vide letter dated 12.11.2009, the respondents had advised the applicant to attend to daily duty till

date of receipt of competent authority's sanction to voluntary retirement request which was under process. The applicant filed her candidature for contesting the election on 24.09.2009 during the voluntary retirement notice period without awaiting acceptance /rejection of her said application and without intimation to the Railway Administration. In fact she had sought voluntary retirement on account of domestic issues but actually she contested the Assembly election.

9. As per perusal of record, the applicant was appointed in the Railway Hospital at Solapur on 01.12.1983 as Public Health Nurse. She applied for voluntary retirement from service vide application dated 16.09.2009 (Annex A-5). As such, on 16.09.2009 she had qualified service of less than 26 years. The contention of the applicant is that when she applied for voluntary retirement, she had completed 30 years qualified service is incorrect statement on affidavit. In this manner she has not only tried to mislead the respondents but also this Tribunal. Rule 67 of Railway Services (Pension) Rules 1993 is applicable to the present case and is

reproduced as under for better understanding:-

“67. Retirement on completion of 20 years qualifying service – (1) At any time after a railway servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to appointing authority retire from service.

Provided that this sub-rule shall not apply to a railway servant including Scientists or technical expert who is -

- (i).....
- (ii).....
- (iii).....

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the said period.

(3)(a) A railway servant referred to in sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

- (4).....
- (5).....
- (6).....”

10. Rule 67 thus clearly lays down that a Railway servant after he completes 20 years of qualifying service, can apply for voluntary retirement by giving notice of not less than three months in writing. However, a notice is

required to be accepted by the Appointing Authority. It is also provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of notice period, in those circumstances the retirement shall become effective from the date of expiry of the said period. The plea of the applicant that since she had applied for voluntary retirement on 16.09.2009, therefore, it was obligatory on the respondents to relieve her from service from the said date itself, is of no consequence in view of Rule 67 referred to above. Merely by submitting application of voluntary retirement, a Railway employee is not relieved from service as it is the discretion of the Appointing Authority to accept or refuse voluntary retirement before the expiry of the notice period. In case neither it is accepted nor refused before the expiry of notice period, the retirement becomes effective from the date of expiry of the said period. In the present case, the applicant applied for Voluntary retirement on 16.09.2009 and therefore she was required to wait for the acceptance or refusal of

permission for voluntary retirement during the period of notice. In case she was not communicated acceptance or refusal to grant the permission before expiry of the notice period, she would have retired from the date of expiry of the said period, which in the present case would have been 15/16.12.2009. It is admitted case that on 24.09.2009 the applicant filled her nomination form and on 13.10.2009 she contested the Assembly Election from Constituency No.197 (Khed-Alandi) of Maharashtra. Till that time the period of notice had not expired and she continued to be in service and is thus guilty of contesting the election without any intimation to the Railway Administration. In the circumstances, the plea of the applicant that she had applied for VRS on 16.09.2009 as such she was relieved from service w.e.f. that date itself is of no consequence. Moreover, the applicant herself has admitted in the OA that after issuance of notice on 16.09.2009, she proceeded on leave w.e.f. 22.09.2009 and then again joined office on 16.11.2009. This itself shows that she was very much aware that she was still in service as period of notice for voluntary retirement

had not expired. The applicant vide her vague pleas has tried to mislead not only the respondents but this Tribunal as well.

11. The applicant participated in the preliminary enquiry, held on 28.01.2010 which is on record as Annex A-13 wherein she has categorically admitted that she had contested the Maharashtra Assembly Election 2009 from Constituency No.197 Khed-Alandi of Pune District for which she had filled nomination form on 24.09.2009.

12. In reply to question as to whether she had informed Railway Administration before contesting the Assembly Election, the applicant very cleverly gave reply that before contesting the said Election she had submitted her VRS. Indirectly it is admitted by her that she had not informed the Railway Administration in this regard. Even in response to Memorandum dated 31.08.2010 (Annex A-14), the applicant gave her defence brief dated 21.12.2011 (Annex A-16) wherein she has categorically admitted that after she tendered her VRS application on 16.09.2009, the Assembly Election in Maharashtra State was declared and being actively involved in social

work and due to National Policy of "Women Empowerment" she was offered a ticket from RPI (Ridolos) for contesting the Election from Khed Alandi Constituency and as she had already tendered her VRS on 16.09.2009 and she had not received any negative communication from Administration, she accepted the offer of contesting the Election.

13. The perusal of the application dated 16.09.2009 (Annex A-5) moved by the applicant seeking voluntary retirement shows that she had sought her voluntary retirement w.e.f. 31.12.2009 on the grounds of domestic problems. The contents of this application itself show that she was well aware of the fact that three months notice was required to be given to the Appointing Authority for obtaining VRS and that she herself had sought voluntary retirement w.e.f. 31.12.2009 and thus she was well aware of the fact that on 24.09.2009 when she filled her nomination form for contesting the Election, she was still in service. Therefore it does not lie in her mouth that once she had moved her application for VRS on 16.09.2009, she was relieved from the service on that day itself.

14. The departmental enquiry report (Annex A-17) has been perused and it is observed that all the facts and circumstances have been duly taken into consideration by the Inquiry Officer and it is observed in the report that though the applicant in her application for VRS had mentioned the ground as domestic problem but in fact she was physically canvassing for the Assembly Election in Khed-Alandi Constituency. It is clearly in violation of Rule 5 of Railway Services (Conduct) Rules, 1966. Rule 5 of Railway Services (Conduct) Rules, 1966 is reproduced as follows:-

"5. Taking part in politics and elections:-

(1) No railway servant shall be a member of or be otherwise associated with any political party or any organisation which takes part in politics nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity.

(2) It shall be the duty of every railway servant to endeavor to prevent any member of his family from taking part in, subscribing in aid, of or assisting in any other manner any movement or activity which is, or tends directly or indirectly to be subversive of the Government as by laws established and where a railway servant is unable to prevent a member of his family from taking part in, or subscribing in aid of or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

(3) If any question arises whether a party is a political party or whether any organisation takes part in politics or whether any movement or activity falls within the scope of sub-rule(2) the decision of the Government thereon shall be final.

(4) No railway servant shall canvass, otherwise interfere

with, or use his influence in connection with or take part in, an election to any legislature or local authority.

Provided that —

- (i) *a railway servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;*
- (ii) *a railway servant shall not be deemed to have contravened the provisions of this sub-rule by reason only that he assists in the conduct of an election in the performance of a duty imposed on him by or under any law for the time being in force.*

Explanation: The display by a railway servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule

Railway Ministry's decision:- (1) Railway servants wishing to join the Bharat Sevak Samaj should obtain prior permission from the Head of the Department. This permission will not, however, absolve them from the observance, at all times, of the rules and instructions relating to the conduct and behaviour of the Railway servant. (E(D&A)64 GS1-4 dt. 27.5.1964)

Railway Ministry's decision:- (2) The Railway servants should not only be impartial but they should appear to be impartial in relation to the elections. They should not take part in any election campaign nor should they canvass. They should always take scrupulous care not to lend their names, official position of authority to assist one group as against another. Any disregard of these instructions will be considered as serious act of indiscipline. Their attention is drawn to the provisions in section 134-A of the Representation of the People Act, 1951 which reads as under: "If any person in the service of the Government, acts as an election agent or a polling agent or a counting agent of a candidate at an election he shall be punishable with imprisonment for a term which may extend up to 3 months or with fine or with both". (E(D&A)66 GS1-15 dt.27.12.1966)

Railway Ministry's decision:- (3) Political neutrality of Railway servants - It is essential that Railway servants should not only maintain political neutrality but should also appear to do so and they should not participate in the activities of, or associate themselves with any organisation in respect of which there is the slightest reason to think that the organisation as a political aspect or with organisations

*banned by the Government. (E(D&A)69 GS1-25 dt. 31.1.1970)
(NS Policy/19 dt. 11.3.1976) "*

15. Thus it is clear from Rule 5 of Railway Services (Conduct) Rules, 1966 that a Railway servant cannot associate with any political party or any organisation which takes part in politics. He/she is also prevented from taking part in any manner, in any political movement or activity. A Railway servant also cannot canvass or otherwise interfere with or use his influence in connection with an election to any legislature or any local party. Rule 5 sub rule (2) has even gone to the extent that a Railway servant shall make all possible endeavour to prevent his family members also from taking part in, subscribing in aid, of or assisting in any other manner any movement or activity which directly or indirectly is subversive of the Government by law established. If the Railway servant is unable to prevent his family member from any such movement or activity, he is required mandatorily to submit a report to this effect to the Government.

16. Thus there is no doubt that the applicant has violated Rule 5 of Railway

Services (Conduct) Rules, 1966. Article I against the applicant has been proved on record by sufficient evidence and including her own admission that she had contested the Election during the period of notice for VRS without informing the Railway Administration. We do not find any infirmity in the order of the Disciplinary Authority dated 06.02.2013 upheld by the Appellate Authority vide order dated 24.07.2015.

17. Rule 18 of Railway Services (Conduct) Rules, 1966 deals with submission of return of assets and liabilities by the Railway servant on his appointment to the Railway service in the prescribed form. As per Rule 18 Note 3 (2) a Railway servant cannot acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any of the family members except with the previous knowledge of the Government. The relevant portion of Rule 18 is extracted as below:-

18. *Movable, Immovable and Valuable Property:*

(1) (i) *Every railway servant shall on his first appointment to the railway service submit a return of his assets and liabilities, in such form as may be prescribed by the Government, giving full particulars regarding—*

(a) the immovable property inherited by him, owned or acquired by him or held by him on lease or mortgage, either

in his own name or in the name of any member of his family or in the name of any other person;

(b) the shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired, or held by him;

(c) other movable property inherited by him or similarly owned, acquired or held by him; (d) debts and other liabilities incurred by him directly or indirectly.

Note:1.....

Note:2.....

Note:3 (1)(i).....

(ii).....

(2) No railway servant shall, except with the previous knowledge of the Government acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family;

Provided

(3).....

Note:1.....

Note:2: (i)(ii).....

(4)(5).....

18. As per Article II of charge, in the nomination form filled by the applicant she mentioned about immovable property of Rs.25 lakhs in her name regarding which she had not given any intimation to the Railway Administration as per Conduct Rules 18 of Railway Services, 1966. She also failed to submit with the office her annual property returns for the years 2005 to 2009 and it is only after vigilance investigation she filed the annual property returns.

19. As per 18(1) of the Railway Services (conduct) Rules, 1966 it is mandatory to file Annual Property Returns owned by the Railway

servant every year, giving details of the property. The applicant, continuously for the period of five years, failed to submit her annual property returns. In the circumstances, we find no infirmity in the findings given by by the Disciplinary Authority as well as the Appellate Authority with regard to charge Article II.

20. The applicant also faced enquiry under charge article III with the allegations that as per the Medical Manual, the Gazetted officers are not permitted to produce certificate of Private Medical Practitioners. However, the applicant produced certificate dated 22.10.2010 that she was under treatment with MS Civil Surgeon Sub Divisional Hospital Karjat, District Raigad w.e.f. that date.

21. Here we take note of the fact that the powers of the Tribunal for judicial review are limited. It is settled law that in judicial review the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial Review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to

ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in view of the Court or Tribunal. It is held by the Hon'ble Apex Court in the case of State of T.N. And Another Vs. S. Subramaniam, 1996 STPL 1373 SC that when the conclusion reached by the authority is based on evidence, the Tribunal is devoid of power to re-appreciate the evidence and to come to its own conclusion on the proof of charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence.

22. In the present case, keeping in mind the principle of law on judicial review as laid down by the Hon'ble Apex Court, we do not find any merit on record to interfere with the conclusion in the departmental enquiry drawn by the authorities. The applicant herself has admitted that before the expiry of period of notice seeking voluntary retirement from service, she contested the election for membership of the State Assembly from Khed

Alandi Constituency on behalf of republican party of India which is violative of Rule 5 of Railway Services (Conduct) Rules, 1966 and unbecoming of a Government servant. Similarly, other two charges under Article II and III also stand proved against the applicant and need no interference.

23. In the facts and circumstances of the case, in view of above discussion, the Original Application being devoid of merits is dismissed. MA No.203/2017 for condonation of delay stands closed. No order as to cost.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

ma.

14/03
Jd.

