

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 3140/2014

This the 19th day of September, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Kiran Lata Kaushik, Age 57

W/o. Sh. P. K. Kaushik,

R/o. 388, Sector-5,

R. K. Puram, New Delhi.

...Applicant

(By Advocate : Mr. Yogesh Mahur with Mr. Harkesh Parashar)

Versus

1. Union of India

Through Secretary,

Ministry of Family & Health Welfare,

Nirman Bhawan, New Delhi.

2. The Director,

All India Institute of Medical Science,

New Delhi.

...Respondents

(By Advocate : Dr. Swati Jindal for Ms. Preeti Singh)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman :

The applicant was appointed as Receptionist in the All India Institute of Medical Sciences under the second respondent in the year 1987. She was assigned duty on Reception in the Cardio Neuro Centre. She was issued charge memo dated 24.06.2003, in which it was alleged that the applicant has entered another office un-

authorisedly and took away a diary, she remained absent on one of the occasions and despite her transfer to another section, she did not report to the post there and that she borrowed amounts from private individuals, without intimation to the employer. Some other similar allegations were also made. The applicant submitted her explanation to the charge memo. The disciplinary authority was not satisfied with the same and appointed an inquiry officer. Through his report dated 10.06.2004, the inquiry officer held Articles 1 and 4 of the charge memo as not proved and the other Articles of charge, as proved. Taking the same into account, the disciplinary authority passed an order dated 05.10.2005 imposing the punishment of removal from service. It is stated that an appeal was preferred against the order of punishment.

2. The applicant filed the O.A No. 3867/2011 challenging the order of removal. The O.A was dismissed on 01.11.2011 as barred by limitation. Aggrieved by that, the applicant filed W.P. No. 1373/2013, which was disposed of on 01.03.2013, directing that the appeal preferred by the applicant, be forwarded to the appellate authority for necessary consideration. In compliance with the same, the appeal preferred by the applicant was taken up and through an order dated 31.03.2014, it was rejected.

This O.A is filed challenging the order of removal as affirmed in the order of appeal dated 31.03.2014.

3. The applicant contends that the allegations made against her in the charge memo are frivolous in nature and are motivated. It is stated that the Articles of charges that were framed against her and held proved, do not constitute any act of indiscipline and imposition of capital punishment of removal, is totally without basis. The applicant further contends that the appellate authority did not discuss any grounds urged by her and has summarily rejected the appeal.

4. Respondents filed counter affidavit opposing the O.A. It is stated that once the O.A No 3867/2011 was dismissed on the ground of limitation, this O.A is not maintainable. It is also stated that the disciplinary authority has taken into account, the report submitted by the inquiry officer and imposed the punishment which is commensurate with the gravity of the charges proved. Various other contentions of the applicant are opposed.

5. We heard Mr. Yogesh Mahur, learned counsel for applicant and Dr. Swati Jindal for Ms. Preeti Singh, learned counsel for respondents.

6. This is the second round of litigation by the applicant. Feeling aggrieved by the order of removal dated 05.10.2005 she filed O.A No. 3807/2007, and it was dismissed by this Tribunal, on 01.11.2011 solely on the ground of limitation. The fact that the applicant preferred an appeal against the order of removal and the same was not disposed of, did not call for consideration of the Tribunal. In W.P. No. 1373/2013, the Hon'ble High Court of Delhi took note of the fact that some uncertainty is there as to the very appellate authority and ultimately directed that the appeal be forwarded to appropriate appellate authority. It was in this background that the appellate authority passed an order dated 31.03.2014. In view of these developments, the dismissal of O.A No. 3867/2011 cannot be treated as constituting *res judicata* or barring the present O.A.

7. The applicant joined the service of second respondent way back in the year 1987. On 24.06.2003, she was issued a charge memo, which contained the following Articles of charges :-

“ARTICLE OF CHARGE-1 :

That the said Smt. Kiran Lata Kaushik while working as Receptionist entered in the office of Public Relations on 09.10.2002 unauthorisedly and took away a black diary intentionally wherein telephone number of all the Members of Parliament and the VIPs were written by the office of Public Relations. Such act has not only disturbed the smooth functioning of the P.R.O. office, and has taken away the black diary without permission of the officer-Incharge of P.R.O. office.

ARTICLE OF CHARGE-2 :

That the said Smt. Kiran Lata Kaushik while working as Receptionist was transferred/posted vide O.M. No. F-25-1/97-Estt.I dated 27.11.2002 to work as Receptionist at Receptionist at P.C. Block, Foyer under the supervision of the Dy. Chief Security Officer, (DO), but she has failed to comply with the orders of the competent authority. She has not reported for duty since then. This amounts to disobedience of orders on her part and unbecoming of an Institute employee.

ARTICLE OF CHARGE-3 :

That the said Smt. Kiran Lata Kaushik while working as Receptionist, even after her posting to work as Receptionist at P.C. Block, Foyer under the supervision of Dy. Chief Security Office, she has written her name in the Attendance Register and started marking her attendance off and on in the Establishment Section instead of reporting for duty at her place of posting at P.C. Block, Foyer. She is also in the habit of coming late and after marking her attendance she goes out without prior permission of the supervisors and thereafter her whereabouts are not known. This amounts to disobedience of orders on her part and unbecoming of an Institute employee.

ARTICLE OF CHARGE-4.

That the said Smt. Kiran Lata Kaushik working as Receptionist in C.N. Centre on Shift duty at night from 9.00 PM to 7.00 AM in the month of November, 1996, she failed to attend her duty on 01.11.96 and remained absent from duty unauthorisedly. Such act disrupted the smooth functioning of the patient care services and dereliction of duty.

ARTICLE OF CHARGE-5 :

That the said Smt. Kiran Lata Kaushik while working as Receptionist in AIIMS Hospital on 12/13th November, 1997 and 03.12.97 and 06.12.97 left for home without any information or prior approval of the competent authority leaving behind blank signed admission face sheets with her husband to do the duties on her behalf in the Central Office in her absence. Her husband was caught red-handed by Dr. I.B. Singh and Mr. J. K. Jain for the trespassing and unauthorisedly entry into the Central Admission and Inquiry Office. This amounts to dereliction of duties, abdication of official function, mishandling of public money and misconduct on her part and unbecoming of an Institute employee.

ARTICLE OF CHARGE -6 :

That the said Smt. Kiran Lata Kaushik while working as Receptionist at the Institute has violated Rule 16 of CCS (Conduct) Rules by taking loan from the various banks/financial institutions without taking prior

information of the competent authority. As per the provisions of Rule 16 of the CCS (Conduct) Rules, 1964, a Government servant should not lend or borrow or deposit money, as a principal of an agent to, or from or with, any person or firm or private limited company within the local limits of his authority or with whom he is likely to have official dealings or otherwise place himself. Under any pecuniary obligation to such person or firm or private limited company; or lend money to any person at interest or in a manner whereby return in money or in kind is charged or paid. For the purpose, prior permission is essential. She is habitual to take loan from various banks/other organisations and thus violated Rule 16 of CCS (Conduct) Rules, which amounts to misconduct on her part and has acted unbecoming of an Institute employee.

ARTICLE OF CHARGE-7 :

That the said Smt. Kiran Lata Kaushik while working as Receptionist at the Institute has violated Rule 17 of CCS (Conduct) Rules as she has taken loan/borrow money from various organisation/banks and she has failed to return the same on time and the Hon'ble Courts have directed in three case for recovery of money from her salary. The Rule 17 of CCS (Conduct) Rules, a Government servant shall manage his private affairs as to avoid habitual indebtedness or insolvency whereas Smt. Kiran Lata Kaushik has failed to do so and she is habitual to take loan from various banks/other organisations and thus violated Rule 17 of CCS (Conduct) Rules, which amounts to misconduct on her part and has acted unbecoming of an Institute employee.

ARTICLE OF CHARGE-8 :

That Smt. Kiran Lata Kaushik while working as Receptionist has taken loan from M/s. Dewan House Development Finance Ltd., Nehru Place, for purchasing of house without taking prior approval/permission of the competent authority. As per Rule 18 of the CCS (Conduct) Rules, 1964, a Government servant shall not except with the previous knowledge of the prescribed authority, 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 whereas Smt. Kiran Lata Kaushik has not given any intimation to the office regarding purchasing of house and therefore responsible for misconduct on her part and unbecoming of an Institute employee."

8. The content of Charge-1 is that she has taken a telephone directory from the office of Public Relations. The second charge is about her failure to join the duty at the place to which she was transferred. The third is connected

with the second one and it is alleged that the applicant continued to write her name as though she is in the Establishment Section. The 4th charge is about her alleged absence on 01.11.1996. The 5th charge is about leaving the office on 06.12.1997 even while her husband remained in the office. The charges 6 and 7 are about borrowing of loans by the applicant and the last charge is about taking of loan for the purpose of purchasing a house. The charges 1 and 4 were held not proved. It has already been observed that charges 2 and 3 are about the alleged refusal to comply with the order of transfer and charges 6, 7 and 8 are regarding the borrowing of the loans. Charge 5 is as to the leaving the premises without permission. The applicant filed her comments to the report of the inquiry officer. The disciplinary authority passed an order dated 05.10.2005 removing the applicant from service.

9. We are aware of the fact that the Tribunal cannot sit as an appellate authority on the findings of the inquiry officer or for that matter the quantum of punishment. Where however, the findings are in relation to the allegations, which, even if held proved, cannot be taken as constituting any serious misconduct, the career and future of an employee cannot be left to the whims of the disciplinary authority, so is the case of the proportionality

of the punishment. One must find objectivity and impartiality in the entire exercise.

10. In the instant case, the charges 1 and 4 were so unrealistic and so trivial that the inquiry officer held them as not proved. In respect of charge no. 2, the applicant stated that she was not in the cadre to which she was posted, and accordingly, she reported to the Establishment Section where she was allowed to mark her attendance. The record discloses that nobody from the Establishment Section was examined as witness. Though, it is elaborated in the inquiry report that the applicant did not join till 30.12.2002, that is not the part of the allegation in the charge, nor it was stated that she claimed any salary for that period. It was not that the transfer was to a distant place but it was in the same premises. The applicant did make an effort to join the office where she was posted but, since it was not part of her cadre, and she reported to the Establishment Section. Even if this is true, it cannot be treated as a severe violation, much less an act of misconduct.

11. The charge 5 makes an interesting reading. The allegation is that the applicant, while working as a Receptionist on the night intervening 12th and 13th of November 1997 left for home without any intimation or

prior approval of the competent authority and left behind blank signed admission face (case) sheets. If it were to be a severe violation, action should have entailed then and there. They have chosen to issue a charge memo in the year 2003. It was also mentioned that the husband of the applicant was found in the premises in the Central Admission Office and the expression such as “caught red handed” was employed. A hospital, which is visited by thousands of patients and their attendants, cannot be treated as a secret place, much less, the spouse of an employee cannot be prohibited from entering. Further, it was not even a sensitive place like an operation theatre. The explanation offered by the applicant was that she got an asthmatic attack and called her husband to assist her. The charges 6, 7 and 8 are about borrowing of amounts from various banks. The charges are bereft of any substance and it was not even alleged that the respondents had to incur any loss on account of the decrees if any, passed against the applicant. The legal system itself provides for the decree being passed against an employee and deduction being made in accordance with Section 60 of the CPC. The respondents cannot treat the same as a serious misconduct entailing in the punishment of removal.

12. We find that there was absolutely no basis for imposition of the punishment. Whether from the point of gravity of the charges or from the level of proved misconduct before inquiry officer, none of the allegations were severe in nature warranting such a punishment. We are of the view that the ends of the justice would be met, if the order of punishment is set aside and the applicant is deemed to have retired on attaining the age of superannuation but, denying her the benefit of arrears of salary.

13. We, therefore, allow the O.A and set aside the order of punishment, as approved by the appellate authority. The applicant shall be deemed to have retired from service on attaining the age of superannuation and shall be entitled to payment of the pension and other retirement benefits. However, she shall not be entitled to arrears of salary from the date of the order of punishment, till the date of superannuation. The determination of pension and payment of amount from the date of retirement shall be completed within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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