

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.423/2018
Date of Decision: 29th March, 2019**

**CORAM: R. Vijaykumar, Member (A)
R.N. Singh, Member (J)**

Mrs. Vijaya Chawak,
Wife of Kiran Chawak,
Date of Birth: 10.09.1962,
Age: 55 years 08 months,
Worked as : Secretary to
Chairman (CBFC) Mumbai
(Group "B" Post)
In the office of CBFC,
Film Division, Peddar Road,
Mumbai and residing at:
Flat No.A-401, SANI Park,
Ramesh Nagar, Amboli,
Andheri (West),
Mumbai-400 058,
State of Maharashtra.

...Applicant.

(By Applicant Advocate: Shri R.G. Walia).

Versus.

1. Union of India, Through
The Secretary, to the Ministry of
Information and Broadcasting,
Shastri Bhavan, "A" Wing,
NewDelhi-110001.
2. The Chairman,
Central Board of Film Certification,
Phase-1, 9th Floor,,
Films Division Complex,

24, Dr.G. Deshmukh Marg,
Mumbai-400026.

3. The Chief Executive Officer,
Central Board of Film Certification,
Phase-1, 9th Floor,
Films Division Complex,
24, Dr.G. Deshmukh Marg,
Mumbai-400026.

... Respondents

(Respondents by Advocate Ms.Vaisali Choudhari).

ORDER (Oral)

Per:- R.N. Singh Member (J)

This 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 will
be pleased to call for the record
which led to the passing of the
impugned order dated 17.04.2018 (i.e.
Annx. A1) and after going through its
propriety, legality and constitutional
validity be pleased to Order and
direct the Respondents to reinstate
the Applicant immediately with effect
from 17.04.2018 with all consequential
benefits of back wages, arrears of
salary, pay fixation, etc with 21%
interest on arrears of salary.

(b). Any other and further and
additional orders as this Hon’ble
Tribunal deems fit and necessary in

the nature and circumstances of the case may be passed.

(c). Cost of this application be provided for."

2. The facts of the case as contended by the Applicant are that the applicant was appointed under the Respondents on the post of Junior Stenographer in the year 1982. In view of outstanding service record and work she was promoted on various posts from time to time. While working as Secretary to the Chairman, CBFC at Mumbai a Charge-sheet dated 12.10.2015 was issued to the applicant with the following Article of charges;-

" That the said Smt.Vijaya K. Chawak while functioning as Secretary to Chairperson, CBFC, Mumbai during the year 01.01.2009 to 31.12.2009 had saw two movies (1st Gabriel and 2nd Three Can Play That Game) which were rejected (Refused Certificate) by the other committees. These movies were not re-applied later on. It appears that these movies were cleared by Smt. Vijaya K. Chawak with the intention of giving and taking favours from film producers.

The aforesaid act on the part of Smt. Vijaya K. Chawak, Secretary to Chairperson indicate that she had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of Government Servant and thereby contravened the provisions of Rule 3 (1) (i) (ii) (iii) of CCS (Conduct) Rules, 1964."

3. Immediately after issuing the charge-sheet on 12.10.2015 she was placed under suspension w.e.f. 15.10.2015. However, the same was revoked on 20.01.2016. She was also transferred from Mumbai to Trivandrum even though no post of Secretary to Chairperson existed at Trivandrum. Aggrieved with the aforesaid transfer order, she preferred an O.A.No.57 of 2016 before this Tribunal which was finally allowed by quashing and set aside the transfer order vide order dated 08.07.2016.

4. The respondents have appointed Shri T.B. Nanjudinaswamy, as an Inquiry Officer, who submitted his report on 30.05.2016. Thereafter, the Disciplinary Authority agreeing with the IO's report has passed the Punishment order dated 23.08.2016 (Annexure A-4) which reads as under:-

"21. AND WHEREAS as per the Vigilance Manual 2013, Chapter 27, para 8, the penalty of dismissal or removal from service is mandatory in Disciplinary Inquiry involving lack of integrity or corrupt practice (as per notification dated 11 October 2000 of Department of Personnel and Training). The case against Mrs. Vijaya Chawak falls under the category of grave misconduct involving lack of integrity. However,,

keeping in view her ill health and also her notice for VRS, in order to meet the ends of justice, the appropriate penalty under Rule 11 of CCS(Conduct) Rules would be removal from service (with all pensionary benefits) which shall not be a disqualification from future employment under the Government. Therefore, in virtue of the power entrusted to me as the disciplinary authority, I impose on the charged officer, Smt.Vijaya Chawak, the penalty of removal from service (with all pensionary benefits) which shall not be a disqualification from future employment under the Government."

5. The applicant has submitted her Appeal on 14.09.2016 (Annexure A-5) to the aforesaid order dated 23.08.2016.

6. The applicant has submitted her Appeal on 14.09.2016 (Annexure A-5) to the aforesaid order dated 23.08.2016. The appeal of the applicant was disposed of by the Appellate Authority vide order dated 17.04.2018 (Annexure A-1) which reads as follows:-

"

Confidential

**File No. M-No.M-11011/9/2015-DO(FC)
Government of India
Ministry of Information & Broadcasting
'A' Wing, Shastri Bhavan,
New Delhi-110 001**

New Delhi, dated 17 April, 2018

**Subject: Appeal Petition filed by Smt.
Vijaya K Chawak, Secretary to
Chairperson, CBFC. Mumbai (now under**

order of removal from service) under Rule 23(ii) of CCS (CCA) Rules against order of CEO CBEC Mumbai dated 23.8.2016.

ORDER

WHEREAS, Smt.Vijaya Chawak, Secretary to Chairperson, CBFC (now under order of removal of service) has filed an appeal petition to set aside the order of CEO, CBFC dated 23.8.2016 imposing the penalty of removal of service.

2. WHEREAS, the extant appeal of Smt. Vijaya Chawak falls under Rule 23(ii) of Central Civil Services (Classification, Control and Appeal) Rules, 1965, whereby the appeal may be made against the orders of Disciplinary Authority for imposition of any of the penalties in Rule 11 of the Rules. In pursuance of Rule 24 (1)(i)(b), the Appellate Authority in case of Smt. Vijaya K Chawak, Secretary to Chairperson, CBFC, a Group B Officer, the President is the Appellate Authority. As per Rule 27 (2), the Appellate Authority shall consider (a) whether the procedure laid down under these Rules has been complied with, (ii) whether the findings of the Disciplinary Authority are warranted by the evidence on the record, and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

3. WHEREAS, the application submitted by the appellant was duly examined in the Ministry of Information and Broadcasting in accordance with Rules 27(2) of the CCS (CCA) Rules. Since President is the Appellate Authority and there is a possibility of modification of quantum of penalty as imposed under Rule 11(viii), consultation with Union Public Service

Commission (UPSC) is necessary in accordance Vigilance Manual. With the approval of Hon'ble Minister of Information and Broadcasting the appeal filed by Smt. Vijaya Chawak was referred to UPSC.

4. AND WHEREAS Rule 27 (2) (a) of CCS (CCA) Rules, 1965 provides that "in case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider-

Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the constitution of India or in the failure of justice..."

5. WHEREAS, UPSC while examining the records of the case observed the following procedural deficiencies in the noted case on examination of the records and directed the Ministry to take appropriate action to rectify the procedural deficiencies in the case:-

(i) The general examination of the CO/Appellant as mandated under Rule 14 (18) of CCS (CCA) Rules 1965, was not carried out by the IO during the inquiry. Rule 14 (18) of CCS (CCA) Rules, 1965, provides that-"The Inquiring Authority may, after the Government closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him". The case records reveal that the IO has not fulfilled this mandatory requirement.

(ii) Further, the final defence brief of the CO/Appellant is also not available in the records. It appears that the CO/Appellant has not submitted a written brief. The records reveal that a copy of the written brief submitted by the PO was not made available to the CO/Appellant so as to enable her to prepare and submit her defence brief. In this regard, Government of India Decision No.29 under 29 under Rule 14 of CCs (CCA) Rules,1965 issued vide M.H.A. (D.P.& A.R.) O.M. No. 11012/18/77 Estt. (A), dated 02.09.1978, stipulates that- "In case he (IO) exercises the discretion of taking written briefs, it will be put fair that he should first take the brief from the Presenting officer, supply a copy of the same to Government servant and take the reply brief from the Government servant. In case the copy of the brief of the Presenting officer is not given to the Government servant, it will be like hearing arguments of the Presenting Officer at the back of the Government servant. In this connection, attention is also invited to the Judgment of the Calcutta High Court in the case of Collector of Customs vs. Mohd. Habtbul [(19730) 1 SLR 321 (Cal.)], in which it is laid down that the requirements of Rule 14(19) of the CCS (CCA) Rules, 1965 and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief." However, this procedural requirement has also not been observed by the IO.

(iii).It is also observed from the order dated 23.08.2016 of the DA that the penalty of "removal from service (with all pensionary benefits) which shall not be a disqualification

from future employment under the Government" has been imposed on the CO/Appellant. Such a penalty is not as per the provisions of Rule 11 of CCS (CCA) Rules, 1965. In this connection it may be stated that there is no provision under the rules for payment of full pensionary benefits in the case of award of the penalty of "removal from service". As per Rule 41 of CCS (Pension) Rules 1972, when a Government servant is removed or dismissed from service, he forfeits his pension and gratuity. In such cases, the competent authority can, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both. However, full pensionary benefit is not payable under the rules. Therefore, the penalty order of the DA is also not in accordance with the rules.

6. THEREFORE, taking into consideration the above stated procedural deficiencies as well as the subsequent penalty order of the Disciplinary Authority which is also not in accordance with the CCS (CCA) Rules, it has been decided to remit the case to the Disciplinary Authority under Rule 27 (2)(ii) of the CCS (CCA) Rules, 1965 with the direction to rectify the procedural deficiencies in the case and to take further action in accordance with the laid down procedures.

This issues with the approval of Secretary, I&B.

(P.K. Jha)

Under Secretary to the Government of India

To
Shri Anurag Srivastava,
Chief Executive Officer,
09th Floor, Films Division Complex,

24. Dr. G. Deshmukh Marg,
Mumbai-400026."

7. It is submitted on behalf of the applicant that his appeal has been decided after about 19 months and the Inquiry Officer's report and the punishment order have been set aside or deemed to have been set aside. However, the applicant has not received any order of reinstatement from the respondents. Moreover, she has to be restored to her original position and all her dues i.e. salary has to be paid by the respondents. The applicant has prayed for the following relief(s) in the present OA filed on 04.06.2018:-

"(a). This Hon'ble Tribunal will be pleased to call for the record which led to the passing of the impugned order dated 17.04.2018 (i.e. Annx. A1) and after going through its propriety, legality and constitutional validity be pleased to Order and direct the Respondents to reinstate the Applicant immediately with effect from 17.04.2018 with all consequential benefits of back wages, arrears of salary, pay fixation, etc with 21% interest on arrears of salary.

(b). Any other and further and additional orders as this Hon'ble Tribunal deems fit and necessary in the nature and circumstances of the case may be passed.

(c). Cost of this application be provided for."

8. Opposing the claim of the applicant and the respondents have stated therein that the statement of the applicant that her order for removal from service has been set aside is wrong. The appeal of the applicant has not been quashed or set aside but it has been sent to the Disciplinary Authority to rectify the procedural deficiencies in the case and to take further action in accordance with the laid down procedures. Further, the order of the Appellate Authority remanding the matter back to the Disciplinary Authority is in accordance with Rule 27 (2) (ii) of the CCS (CCA) Rules, 1965, the matter is pending with the Disciplinary Authority to carry out the directions and order of the Appellate Authority as such the matter is premature. The charge-sheet was issued to the applicant when it was confirmed that the applicant was involved in this forgery of documents. She was given sufficient opportunities to prove her innocence and after detailed inquiry and after considering all the aspect of the matter, she was awarded penalty of removal from service. She was transferred from

Mumbai so that she may not tamper with records or influence the witnesses. During the course of inquiry, two more files were recovered where similar type of forgery of documents was done, in these two additional filed also, the involvement of the applicant was prima-facie established.

9. During oral hearing the learned counsel for the applicant has placed record, a copy of the order dated 11.09.2018 on record, purportedly passed in pursuance of the appellate order. However, the aforesaid order was modified vide order dated 11.09.2018 which reads as under:-

"F No C-14019/1/2015-CEO
Govt of India
Ministry of Information and
Broadcasting
Central Board of Film Certification
9" Floor, Phase 1 building, Films
Division, Mumbai 400026

Date 11.09.2018

ORDER

Reference this office Order dated 23.8.2016 vide which Mrs Vijaya Chawak was awarded Major Penalty of removal from service (with all pensionary benefits) which shall not be a disqualification from future employment under the Government. The Ministry of

Inform and Broadcasting vide Order dated 17.4.2018 para 5(iii) pointed out that there is no provision in the Rule 11 of CCS (CCA) Rules, 1965 for payment of full pensionary benefits in the case of award of the penalty of "removal from service". In compliance of Order dated 17.4.2018 of Ministry of Information and Broadcasting, the para 21 of ORDER dated 23.8.2016 is modified as given below-

" 21.AND WHEREAS as per the Vigilance Manual 2013, Chapter 27, para 8, the penalty of dismissal or removal from service is mandatory in Disciplinary Inquiry involving lack of integrity or corrupt practice (as per notification dated 11 October 2000 of Department of Personnel and Training). The case against Mrs Vijay Chawak falls under the category of grave misconduct involving lack of integrity. Hence, the appropriate penalty under Rule 11 of CCS (Conduct) Rules would be removal from service (without pensionary benefits) which shall not be a disqualification from future employment under the Government. Therefore, in virtue of the powers entrusted to me as the Disciplinary Authority, I impose on the charged officer, Mrs Vijaya Chawak, the penalty of removal from service (without pensionary benefits) which shall not be a disqualification from future employment under the Government."

(Anurag Srivastava)
CVO & CEO, CBFO Mumbai

To,

Mrs Vijaya Chawak
A 401, Sani park, Ramesh Nagar,
Amboli, Mumbai-400058."

The learned counsel for the applicant submits that the Disciplinary Authority has passed the revised order dated 11.09.2018 and the same is illegal inasmuch as the Disciplinary Authority was required to conduct and complete the enquiry again from the stage wherefrom illegality or procedural deficiency has been found by the Appellate Authority. However, the order dated 11.09.218 has not been challenged by the applicant in the present OA.

10. We have gone through the O.A. along with Annexures A-1 to A-5 and Reply of the respondents.

11. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

12. In view of the aforesaid facts the issue has arisen as to whether in view of the Disciplinary order being remitted to the

Disciplinary Authority by the Appellate Authority vide his order to rectify the procedural deficiencies in the case and to take further action in accordance with law laid down and procedure, the applicant has become entitled to be reinstated in service w.e.f. 17.04.2018 i.e. date of the appellate order as prayed in the OA or any other date and for consequential benefits of back wages and arrears of pay etc. with interest thereon.

13. Undisputedly, the Appellate Authority vide his order dated 17.4.2018 (Annexure A-1) has remained the case to the Disciplinary Authority under Rule 27 (2)(ii) of the CCS (CCA) Rules, 1965 with direction to the rectifying procedural deficiency in the case and take further action in accordance with laid down procedures. As per Black's Law Dictionary Fifth Edition the word 'remit' means to send back, as to remit a check or refer a case back to a lower court for further consideration. To give up; to pardon or forgive; to annul; to relinquish; as to remit a fine, sentence, or punishment.

14. Thus, in view of the aforesaid, it is evident that the Appellate Authority has not found the disciplinary order dated 23.08.2016 imposing the penalty of removal from service in consonance with the relevant rules and procedure and act in law and has sent back the matter to the Disciplinary Authority with direction to rectify the procedural deficiencies and to take further action in accordance with laid down procedure. Meaning thereby that by virtue of passing of the Appellate order dated 17.04.2018, the order of penalty parsed by the Disciplinary Authority ceased to exist and this shall require the Disciplinary authority to reinstate the applicant in service.

15. Now the issue arise as on such reinstatement whether the applicant shall be entitled for pay fixation, arrears of salary with interest thereon w.e.f. 17.04.2018 i.e. the date of order of Appellate Authority or from the date of removal of her service i.e. 23.08.2016. In this regard, we may refer to the law laid down by Division Bench of Hon'ble High Court of Delhi vide order/judgment dated 13.01.2012 in Writ Petition No.(c) 265/2012 Titled **Union of**

India vs. Yogita Srwoop and Another reported in 2012 (scconline) Del.238. Para 5, 6 and 7 of which reads as under:-

"5. It is apparent that the advice of the UPSC has specifically been considered and the conclusion has been arrived at that the advice of the UPSC, insofar as the respondent No.1 is concerned, ought to be accepted. It is apparent that the advice of the UPSC has been relied upon entirely. The fact that the UPSC advice was not given to the respondent prior to the order dated 26.11.2009 being passed clearly indicates that she has been denied an opportunity to make a representation against the said advice and to submit her point of view. Consequently, insofar as the question of prejudice is concerned, it is writ large in the facts and circumstances of this case. The Tribunal's order, therefore, cannot be faulted on this aspect of the matter. However, while setting aside the order dated 26.11.2009, the Tribunal went on further and directed that the applicant shall be reinstated in service and the respondents shall have the liberty to proceed with the disciplinary case from the stage where the illegality has crept in. The Tribunal also directed that the competent authority would decide the case afresh without being biased and influenced by the earlier orders and while deciding the disciplinary proceeding against the respondent No.1, the competent authority was directed to decide the interregnum period from the date of the applicant's dismissal from service to the date she joins her service pursuant to the direction of the Tribunal.

6. The learned counsel for the petitioner has drawn our attention to the decision of the Supreme Court in the case of Union of India v. Y.S.Sadhu, Ex-Inspector: 2008 (12) SCC 30. In the said decision, the question

of reinstatement of the petitioner therein in service was considered by the Supreme Court for the purposes of completing the departmental proceedings. The Supreme Court referred to the earlier decision in Managing Director, ECIL, Hyderabad and Another v. B.Karunakar & Ors.: 1993 (4) SCC 727, wherein the Supreme Court had observed as under:-

"Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the backwages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

6. Another decision of the Supreme Court in the case of U.P.State Spinning Co. Ltd. v. R.S.Pandey and Another: 2005 (8) SCC 264 was also referred to in the said decision in Union of India v. Y.S.Sadhu(supra). In that case also, the Supreme Court followed the observations made in the case of ECIL v. B.Karunakar (supra) and held that the respondent No.1 therein shall be re-instated to service but without any back wages and other service benefits and his re-instatement shall be solely for the purpose of completing the departmental proceedings. It was also directed that his entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings.

7. Consequently, we feel that the direction of the Tribunal with regard to the reinstatement ought to be modified in terms of the decision of the Supreme Court on this aspect of the matter. Therefore, we direct that the respondent No.1 shall be re-instated to service but that would be without any back wages and other service benefits and her re-instatement shall be solely for the purpose of completing the departmental proceedings. Her entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings."

16. In view of the aforesaid facts and law, we are of the considered opinion that the OA is deserves to be partly allowed with the following directions:-

(i). The applicant is entitled to be reinstated in service w.e.f. 17.04.2018 but that would not automatically entitle the applicant

for back wages, fixation of pay and arrears etc. and other service benefits and her reinstatement is solely for the procedure for completing the disciplinary proceedings in accordance with the relevant rules and instructions on the subject and also keeping in view the findings and observations of the Appellate Authority in its order dated 17.04.2018.

(ii). With regard to fixation of pay, back wages and arrears etc. the same shall be considered in accordance with the provisions of FR-54.

(iii). The respondents are directed to pass appropriate necessary orders/orders in respect of the aforesaid within a period of six weeks from the date of receipt of a certified copy of this order.

17. We have not gone into the merits of the aforesaid order dated 11.09.2018 keeping in view the fact that the same is neither challenged in the present OA nor any prayer against the same has been made in the present OA. Accordingly, the applicant shall be at

liberty to challenge the same, if so advised in accordance with law.

18. In the facts and circumstances, there shall be no order as to costs.

(R.N. SINGH)
MEMBER (J)

(R. VIJAYKUMAR)
MEMBER (A)

Ak/-

JD
27/6/19

