CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.147/2003
2. OA No.1307/2003

New Delhi this the 6th day of January, 2004.

(28)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. SARWESHWAR JHA, MEMBER (ADMNV)

Smt. Swaran Bala Kumar,
W/o Sh. C.B. Kumar,
C/o Dr. Sanjeev Popli,
16/30, East Patel Nagar,
New Delhi-110016. -Applicant

(By Sh. G.D. Gupta, Senior Counsel with Sh. S.K. Gupta, Counsel)

-Versus-

1. Kendriya Vidyala Sangathan,
through its Chairman,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.

2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.

3. The Joint Commissioner (Admn),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.

4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Delhi Region,
JNU Campus,
New Mehrauli Road,
New Delhi-110067. -Respondents

(By Advocate Shri S. Rajappa)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

As the issue involved rests upon common question of facts and law and by application of law reliefs prayed for are consequential, in the interest of justice and to avoid multiplicity, the OAs are disposed of by this common order.

2. At the outset vires of Article 81 (d) of the

Education Code of KVS is no more res integra in the light of the decision of the High Court of Delhi in **Prem Juneja v. Union of India, 2003 I AD (Delhi) 57.** However, retrospectivity of notification dated 4.9.2000 bringing in Article 81 (d) in the Education has not been gone into by the High Court and the issue is still open. The question as to compliance of procedural safeguard laid down under Article 81 (d) is in issue keeping in view the principles of natural justice.

3. Before highlighting the factual matrix in OA-1307/2003 applicant impugns the appellate order dated 15.5.2002 where her request prior to loss of lien for voluntary retirement has been rejected as well as inaction on the part of the respondents to count towards qualifying service the previous service rendered by applicant under the State Government.

4. In OA-147/2003 applicant has sought quashing of the notification dated 4.9.2000 inserting Article 81 (d) in the Kendriya Vidyalaya Sangathan (KVS) Education Code, memorandum dated 2.3.2001, confirming the loss of lien and the appellate order dated 15.5.2002 passed in appeal, affirming the order.

5. Applicant joined as Science Mistress under the Government of Haryana on 26.7.69, where she had worked till 30.9.1975.

6. On application for the post of TGT (Science) under KVS on 10.7.75 on her submission of technical resignation to the Government of Haryana, which was

accepted on 22.10.1975 applicant joined KVS on 24.10.1975 as TGT (Science) where she was promoted as TGT (Senior Scale) on 24.10.1987.

7. Daughter and son of applicant were residing in USA and in the past she was sanctioned leave from 18.8.92 to 25.2.96 and from 5.5.96 to 16.9.98 to visit USA. On 6.11.89 and 22.10.90 options had been sought from the employees of KVS who had earlier worked in Central/State Governments to count their service as qualifying service for grant of pension. In pursuance of the above as the circulars were not published as alleged by applicant. On knowledge of these circulars she applied for counting of her service with the State Government towards qualifying service vide her application dated 5.4.93. Her case was forwarded by the Assistant Commissioner on 22.4.1993. Despite expiry of number of years nothing was heard about the application.

8. During the summer vacation in May, 2000 applicant has sought permission to visit her son and daughter in USA which was accorded on 24.5.2000 by issuance of a no objection certificate. The sanction was dated 26.6.2000.

9. On visit to USA alongwith her husband medical emergency on account of gallstone pancreatitis forced her husband to be hospitalised and ultimately he was operated upon on 4.6.2000. Having been 66 years old he was advised complete bed rest.

10. Well before expiry of leave period on 26.6.2000 applicant applied for extension of leave w.e.f. 26.6.2000 to look after her husband who required regular medical check up through her application dated 13.6.2000 attaching the relevant medical record. Again applicant applied for extension of leave on 7.7.2000 for about two years. As nothing was heard till 7.8.2000 when a memorandum was issued to applicant directing her to join duties, failing which to face disciplinary action, vide communication dated 1.9.2000 applicant informed her new address to the respondents at USA and requested for grant of extension of leave, failing which she has sought retirement w.e.f. 1.7.2000 as in a critical condition it was not possible for her to leave her husband as none was there to look after. Simultaneously, applicant had requested for counting of her service as qualifying service for the purpose of voluntary retirement rendered in State Government. On 2.10.2000 applicant's husband was admitted in an emergency ward where he undergone treatment for complications.

11. By an order dated 26.4.2001 by the Principal, KVS. R.K. Puram where applicant was last posted applicant was intimated about loss of lien and dispensation of service. Punishment of removal was inflicted with retrospective date, i.e., 26.6.2000, from the date she was to join duties.

12. Applicant on receipt of the letter had informed the Assistant Commissioner the details of her husband and ailment and operation and also prayed for revocation of termination, which was re-iterated in her

communication dated 22.9.2001. As no show cause notice was served upon applicant and she has been denied an opportunity nor provisions of Article 81 (d) of the Education Code had been published or informed to applicant, on a personal hearing given by the Commissioner (Admn.) representations were treated as appeal and by an order dated 15.5.2000 her request for re-instatement and voluntary retirement had been rejected, giving rise to the present OA.

13. Learned Senior Counsel appearing alongwith Sh. S.K. Gupta raised the following issues for our consideration:

i) vires of Article 81 (d) of KVS Education Code.

ii) Whether notification inserting Article 81 (d) an administrative instruction can be operated retrospectively.

iii) Whether the provisions of Article 81 (d) were published and is there any obligation upon respondents to have communicated the same to the employees of KVS.

iv) Whether show cause notice as envisaged in Article 81 (d) is mandatory to be served upon an employee whose lien is to be terminated.

v) Whether before issuing show cause notice is it incumbent upon the authorities to verify at a satisfaction as to the justified reasons for absence tendered by the concerned employee.

vi) Whether the appellate authority is mandated to consider the contentions put-forth and to pass a reasoned order.

14. Sh. G.D. Gupta concedes that having regard to the decision of the Delhi High Court in Juneja's case (supra) vires of Article 81 (d) is no more in dispute but contends that as an administrative instruction and not a legislation or subordinate legislation made under Article 309 of the Constitution of India notification dated 4.9.2000 being an executive/administrative instruction cannot supplant the rules and also cannot be given retrospective effect. In this backdrop it is stated that notification has come on 4.9.2000 whereas the lien of applicant has been terminated from KVS w.e.f. 26.6.2000 when the aforesaid instructions were not even in existence. According to Sh. Gupta aforesaid issue has not been dealt with by the High Court of Delhi in Juneja's case (supra) and as such the same is open for challenge.

15. Sh. Gupta further states that the absence which might have commenced prior to the notification is covered as per the notification, yet loss of lien should be from the prospective date beyond 4.9.2000.

16. Shri Gupta while referring to Article 81 (d) contends that the provisional lien lies on the post only when the concerned employee is apprised of the action and then he does not return within 15 days. However, inability to return is preceded by a satisfaction to be arrived at by the appointing authority that the return and expiry of

leave were for the reasons beyond the control of employee. The voluntary abandonment cannot be deemed on justifiable and mitigating circumstances and as the satisfaction has not been arrived at as the medical record of husband of husband of applicant and her request sent through letters in June, 2000 before expiry of leave in July as well as on 1.9.2000 have not been paid any heed but there not valid compliance of the rules, which is a condition precedent for invoking Article 81 (d).

17. Learned counsel for applicant further stated that notification dated 4.9.2000 has not at all been communicated to applicant as an exception to the regular procedure of dealing with for a misconduct of remaining absent and in the line of provisions of Rule 19 of the CCS (CCA) Rules, 1965 where enquiry is dispensed with and having consequences of terminating the lien and deprivation of pensionary benefits as an evil consequence it has to be preceded by knowledge. As such a stringent provision should have been brought to the knowledge of the concerned employees. In furtherance of this submission drawing our attention to the endorsement in notification dated 4.9.2000 it is stated that the notification has been directed to be circulated among the Ministries/employees including those on leave and in token of receipt their acknowledgement by signature are to be taken. As applicant's address was known to respondents yet the aforesaid notification has not been put to her notice.

18. Learned counsel further states that after the provisional loss of lien as per Article 81 (d) (3) the aforesaid proposal is to be communicated to the employee

concerned at the address available in the Service Book or the last known address, which gives a reasonable opportunity to the employee to show cause to enable respondents to take a different decision. In this conspectus it is stated that whereas the copy of the show cause notice was served upon the Delhi address despite the fact that applicant in her communication in July, 2000 as well as 1.9.2000 which was duly received and communicated to applicant the new address of applicant was known to respondents yet the service has not been effected on the address with the result loss of lien was confirmed exparte without hearing applicant and this has greatly prejudiced her and deprived her a reasonable opportunity, which has the effect of doing away her services and is a glaring example of unfairness and the action is violative of principles of natural justice. However, it is contended that after the show cause notice order dated 2.3.2001 where loss of lien was confirmed and applicant was removed from service. Aforesaid letter was sent to the changed address. This implies knowledge of respondents to her correct address. He alleges arbitrariness and mala fides in the action of respondents.

19. Learned counsel Sh. Gupta further stated that loss of lien and abandonment of service voluntarily on remaining absent beyond the sanctioned leave, at best be a case of over-stayal of leave and absence on justified medical grounds and in mitigating circumstances cannot be assumed to be a wilful absence or voluntary abandonment of service. Giving factual background of the case it is stated that with due sanction to proceed USA upto 26.6.2000 applicant before expiry of leave due to extenuating

circumstances occurred due to medical emergency where aged husband of applicant was hospitalised and undergone operation applicant requested respondents to extend leave as no refusal for extension has come-forth the aforesaid circumstances cannot bring the case applicant as voluntarily abandonment of service. At best the same is simple absence on medical grounds of husband of applicant. The aforesaid facts have not been appreciated, considered and elaborated in any of the orders passed by respondents.

20. Learned counsel further states that though Article 81 (d) authorises confirmation of loss of lien but any executive order passed in the capacity of a quasi judicial authority is to be supported by reasons. The order dated 2.3..2001 is mechanical and bald containing no reasons.

21. Lastly, what has been contended by Sh. Gupta is that though applicant has not preferred an appeal as prescribed under the rules but his request in the form of representation has culminated into a personal hearing and the appellate authority while dealing with the case of applicant had not recorded any reasons and passed a bald order, which, by no stretch of imagination can be sustained in the conspectus of cardinal principles of reasonable opportunity and fair play.

22. Taking resort to OA-1307/2003 it is contended that in the light of circulars dated 6.11.89 and 20.10.90 which have not been given due publication the respondents had not at all considered counting of previous service of applicant rendered in State Government, which is

admissible and permissible under the circulars. The request of applicant for voluntary retirement had preceded the show cause notice and satisfaction of loss of lien. Had this service been counted applicant would have voluntarily retired and would not have been deprived of her terminal benefits which have been forfeited for loss of lien.

23. Sh. S. Rajappa, learned counsel for respondents in reply to counting of service has filed short reply wherein it is contended that applicant on loss of lien is not in service and unless she is restored as an employee of the KVS this issue cannot be gone into. However, it is stated that he may be allowed to submit further reply and produced documents, which we not acceded to and the matter is ripe for hearing and the issue can be disposed of in the light of the circulars.

24. Learned counsel for respondents while opposing the contentions put-forth in OA-174/2003, at the outset, states that vires of Article 81 (d) is applicable to the Teachers whose absence might have commenced from the date of notification, as such the same is retrospective in nature.

25. As applicant had remained absent from 26.1.2000 without sanction of leave and despite communication dated 7.8.2000 to join, it is stated that the knowledge of loss of lien and penal consequence was implied. As applicant thereafter had not joined shows that she has abandoned her service.

26. In so far as show cause notice addressed at Delhi address and not sent to USA address is concerned, it is stated that address left behind by applicant the communication was sent there and as applicant had not returned back for duty no reasonable opportunity has to be given further and the decision was taken as per rules..

27. Learned counsel for respondents further states that denial of reasonable opportunity and show cause notice is not necessary in the wake of decisions of the Apex Court in **Aligarh Muslim University & Others v. Mansoor Ali Khan, 2000** SCC (L&S) 965.

28. He further states that the show cause notice had merged into the appellate order and at this stage of appeal not only the representation was considered but also applicant was afforded personal hearing, as such she has been given all the consideration and opportunity. The appellate authority who had co-terminus powers with the power of the disciplinary authority has considered the matter which is a sufficient compliance..

29. Regarding medical ground it is stated that mere request for extension of leave cannot confer a right to avail leave or even grant of leave. The defence is an afterthought.

30. In the rejoinder the pleas taken in the OAs are re-iterated.

31. We have carefully considered the rival contentions of the parties and perused the material on record.

32. In so far as counting of service of applicant in State of Haryana towards qualifying service for the purpose of voluntary retirement is concerned, respondents, admittedly considered the aforesaid request earlier to confirming loss of lien in the order dated 15.5.2002 but the same was rejected.

33. It is also not in dispute that the KVS had adopted Govt. of India's instructions on 6.11.89 and 20.10.90 as per the request made by applicant for counting the aforesaid service in 1993 but the same had not been acted upon.

34. Applicant is fully eligible to count the aforesaid towards qualifying service and as the same has not been considered the same has to be acted upon in the light of circulars of the KVS dated 20.10.1990 though the circular was made aware to applicant and immediate he made a request.

35. As regards loss of lien is concerned, the first issue emanates from the retrospectivity given to the provisions of Article 81 (d) promulgated w.e.f. 4.9.99 applicant's loss of lien was confirmed after show cause notice w.e.f. 26.6.2000 whereas the order has been passed from 2.3.2001. The contention put-forth by respondents that in the meeting of the Board of Governors the provisions of Article 81 (d) would apply to the absence

commenced prior to the notification would not mean that the loss of lien would relate back to the date of absence. It is settled principle of law that in a case of dismissal, removal or any order dispensing with the service same has to be given effect from the date of the issuance.

36. KVS had adopted with slight modification CCS (CCA) Rules, 1965 and Article 81 (d) of the KVS Code and their instructions issued on 4.9.2001 are merely administrative or executive instructions they cannot take place of statutory rules framed under Article 309 of the Constitution of India. Accordingly the aforesaid instructions cannot be operated retrospectively. Even in case of statutory rules unless specifically provided the rules would not operate retrospectively. There is nothing in the notification which tends to operate Article 81 (d) from the retrospective date.

37. We, in our aforesaid conclusion are fortified by the decision of the Apex Court in **D.N. Sinha v. State of Bihar**, 1995 (1) SCSLJ 27, where it is held that by an executive order no retrospective effect can be given to it. As such the aforesaid illegality vitiates the order and hence the same is not sustainable, but in such like cases it is curable which can be rectified by operating the order prospectively, i.e., from 3.10.2000.

38. In so far as the issue whether the provisions of Article 81 (d) were published or brought to the notice of all concerned, including applicant, we find that in the notification inserting Article 81 (d) in the Code in the endorsement it is made clear that all the

Principals of KVS may circulate among all the Teachers and employees, including those on leave the aforesaid instructions and obtain signature in token of their acknowledgement. This has reasonable nexus with the object sought to be achieved. As the provisions are a deviation and keeping in view the magnitude and non-availability of Teachers a stringent measure of dispensing with the regular enquiry to do away with the service s of employees of KVS is resorted to, it is important to bring it to the notice of the concerned employees/Teachers.

39. The Apex Court in **S.I. Rooplal v. Lt. Governor**, 2000 (1) SCC 644 while dealing with the OM of 1959 relating to counting of service on deputation clearly observed that OM of 25.8.96 has neither been made public nor was in existence before being known to any body concerned, as such no reliance can be placed. In nutshell publication of notification and knowledge of the concerned is a sine qua non of its operation. As respondents have failed to bring the provisions of this notification to the knowledge of applicant as assuming she was absent or on leave on 4.9.2000 the circular should have been served upon her and her signature as token of receipt should have been acknowledged. Having no provision of its publication and circulation on receipt of service and knowledge of applicant the same cannot be acted upon. Moreover, even while in USA applicant though was served with a communication to report back, failing which a disciplinary action would be taken the same is silent on the provisions of this circular, as the aforesaid stringent provision has not been made known to applicant the same has no legal sanctity.

40. We are conscious that the vires of Article 81 (d) has been upheld by the High Court in **Prem Juneja's** case (supra) but we are dealing with those aspects which have not been adjudicated and these are the consequences of application of the provisions of notification and Article 81 (d). The case is decided in the peculiar facts and circumstances of the OA.

41. In our considered view, we resepct and follow the decision of the High Court of Delhi (supra) in so far as vires is concerned but the action should be in consonance with the provisions of Article 81 (d) with due regard to the principles of natural justice and fair play.

42. As regards service of show cause notice is concerned, a show cause notice has to be served upon persons with due opportunity to effectively defend and to rebut the provisional conclusion as to provisional loss of lien. A 10 days time is given to make representation and on receipt of the representation material available on record on consideration a final order of confirming the loss of lien is to be passed. We find from the record that the show cause notice issued to applicant had been sent to the KVS, R.K. Puram, New Delhi and was served upon the residential address of applicant and the last known address as alleged. What we find from the record that while making a prayer for extension of leave on 7.7.2000 and earlier as well as on 1.9.2000 new address of applicant was duly communicated to respondents. This is corroborated from the fact that the order dated 2.3.2001 had been sent to the changed address. This is a deemed knowledge of applicant's

address and the contention taken in this behalf by applicant in her OA has not been rebutted by respondents. We find that the show cause notice has come back undelivered and the disciplinary authority holding that no reply has been received from applicant without assailing the due and valid legal service of the notice proceeded exparte to decide the issue. A valid service of the show cause notice is in consonance with the principles of natural justice and as per clause 3 of Article 81 (d) of the KVS Code an order regarding provisional loss of lien shall be made and communicated to the employee concerned either at the address recorded in the Service book or last known address. The last known address of applicant was admittedly in the knowledge of respondents but yet communication of provisional loss of lien has not been made known at the available address with the result show cause notice had never been served upon and she has been condemned unheard. Audi alteram partem has not been followed. When by an extreme action of respondents which has an effect of dispensing with the service of an employee it has to be ensured in fair play and in consonance with the principles of natural justice that the show cause notice is validly served. Having failed to establish that the service was sent on the last known address the show cause notice, in our considered view, has never been served upon applicant, which is a sine qua non before resorting to confirmation of loss of lien.

43. The Apex Court in **Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Others**, (2001) 1 SCC 182, has held as under:

> "20. It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependent upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. Entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste: this is however, apart from the issue of bias which would be presently dealt with hereinafter. It is on this context, the observations of this court in the case of Sayeedur Rehman v. State of Bihar, (1973) 3 SCC 333) seem to be rather apposite. This Court observed: (SCC p.338, para 11)
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> 'The omission of expressed requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, date 22-4-1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi judicial authorities when deciding controversial points affecting rights of parties."

44. If one has regard to the above the applicant who from time to time informed respondents about the critical condition of her husband and the fact of medical treatment rendered and his admission in the hospital the aforesaid defence for want of show cause notice and reasonable opportunity could not be placed before the authorities. This has gravely prejudiced applicant. She has been deprived of an opportunity to effectively defend the proposal as such the same cannot be countenanced in the light of cardinal principle of fair play in action of the administrative authorities while exercising quasi judicial functions.

45. As regards satisfaction to be arrived in so far as voluntary abandonment of service is concerned, as per Rule 81 (d) (1)(b) condition precedent for treating the absence as voluntary abandonment of service and provisional

loss of lien on the post is satisfaction to be arrived at by the appointing authority that the absence or inability to return on expiry of the leave was for the reasons beyond the control of the concerned employees/Teachers. The present is a case where applicant was permitted to go to USA from 25.4.2000 to 26.6.2000. The husband of applicant was operated in USA for an emergency on account of gallstone pancreatitis. Applicant before expiry of leave on 30.6.2000 applied for extension of leave and was informed on 7.7.2000 that regular medical check up is necessary to save the life of her husband she applied for extension of leave two years w.e.f. 15.7.2000. However, vide communication dated 7.8.2000 her application for extension was not acceded to and she was directed to report for duty.

46. On 1.9.2000 applicant again requested the authorities to permit her husband in a critical condition. Accordingly she in the alternatively prayed for voluntary retirement for treating the period of State Service to be reckoned as qualifying service. Applicant again requested the authorities and she was shocked to receive the order, confirming the loss of lien. In our considered view though not expressing any opinion on the merits of the case we are prima facie of the view that the present case is a case where before satisfying as to voluntary abandonment of service satisfaction has not been rightly arrived at by the authorities as inability of applicant to return and overstayal of leave was due to reasons beyond her control on account of mitigating circumstances which had arisen due to sudden continued illness of her husband. Article 81 (d) (1)(b) has not been followed in its true letter and spirit

and we find non-application of mind and a mechanical order passed by the respondents issuing show cause for provisional loss of lien.

47. We also find that the order passed by the authorities on 2.3.2001 though the show cause notice was not served and no reply had come-forth, yet without passing a speaking order without dealing with the contention of applicant and also without taking into account the factum of reasons beyond her control in the form of critical illness of her husband for which evidence has already been sent and in the possession of respondents the order is ex facie and an order non-speaking showing non-application of mind. Though the rules provide that the appointing authority has to arrive at a satisfaction that provisions of Article 81 (d) would not apply in the case, i.e., circumstances beyond the control but we do not find any whisper about such consideration in the order. As such the order passed is not in conformity with the rules.

48. The last issue raised is that it is incumbent upon the appellate authority to consider the contentions put-forth and the contentions raised by Sh. S. Rajappa assuming that no reasons and opportunity had been given by the respondents and reasons have not been recorded in the order of confirmation of loss of lien but yet the appellate authority having considered the contentions put-forth by applicant has complied with the minimum requirement of principles of natural justice and on the theory of merger applicant has not been prejudiced. The resort to decision in **Aligarh Muslim University** 's case (supra) has been stressed upon. It is also stated that in

OA-3267/2002 in **Ritu Srivastava v. KVS**, a coordinate Bench has upheld the loss of lien as well as in **Shankar Sharma v. The Commissioner KVS**, CWP No.1700/2003 decided by the High Court of Delhi on 5.3.2003.

49. — The cases cited cannot be a precedent as decided on peculiar facts and circumstance of the case. However, we find that applicant has only made a representation and has not filed any statutory appeal. However, in the representation also denial of reasonable opportunity and other contentions of defence in so far as non-existence of voluntary abandonment of service existed the appellate authority though benevolently treated the representation as appeal and condoned the delay, shall have to consider the requirement in sub clauses 1, 3, 5 and 6 to ensure that non-application has not resulted in failure of justice and whether consequent removal of service is warranted on record. In the backdrop of the aforesaid reference under consideration we have perused the order passed by the appellate authority. The authority oblivious of the fact that publication of notification dated 4.9.2000 and provisions of Article 81 (d) have not been brought to the knowledge and show cause notice was not validly served upon applicant to produce her defence, with a closed mind observed that procedure prescribed has been followed without considering the mitigating circumstances beyond the control of applicant, which resulted in over-stayal of leave on medical grounds of husband of applicant. As such the appellate authority who as a quasi judicial authority is mandated to record reasons, as recording of reasons is an essence of an order passed by administrative authority while acting as a quasi-judicial authority. Unless the

requirement of recording reasons is specifically dispensed with it has to be read in the rules and one is obligated to pass a speaking order.

50. Coming to the facts of the case the appointing authority's order on the face of it is a non-speaking order without dealing with the contentions and following the requirement of the rules. It was more onerous upon the appellate authority to have considered the aspects as laid down under rules while considering the appeal. The defence contentions and the reasons for over-stayal of leave have not at all been considered, which vitiates the order.

51. Having regard to the aforesaid conclusion, we have no hesitation to set aside the impugned orders which are not sustainable in the eye of law. Accordingly, OA-147/2003 is partly allowed. Impugned show cause notice confirming loss of lien and the appellate order are quashed and set aside. Respondents are directed to reinstate applicant in service forth-with. However, this shall not preclude them from taking up appropriate proceedings from the stage of show cause notice as per rules and keeping in view our observation, if so advised. The intervening period would be operated as per the relevant FR.

52. In so far as OA-1307/2003 is concerned before proceeding afresh, respondents shall consider the request of applicant for counting of applicant's service rendered in State Government towards qualifying service in the light of their Notifications issued in 1989 and 1990 and thereafter to consider her request for voluntary

retirement. The aforesaid exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order.

53. The OAs stand disposed of accordingly. No costs.

Let a copy of this order be placed in the case file each OA.

(Sarveshwar Jha)
Member (A)

(Shanker Raju)
Member (J)