

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1992 of 2003

New Delhi, this the 8th day of January, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE S.A. SINGH, MEMBER (A),

Smt. C.P. Gupta
308, Dr. Mukherjee Nagar
Delhi-110 009.

... Applicant

(By Advocate: Shri P.P. Khurana, Sr. Counsel with
Ms. Tamali Wad, Counsel)

Versus

1. Union of India through
Secretary to the
Government of India,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi.
2. Director General of Employment &
Training/Joint Secretary DGE&I,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi.
3. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.
4. Secretary,
Ministry of Social Justice and
Empowerment,
Shatri Bhavan,
New Delhi. ... Respondents

(By Advocate: Shri M.M. Sudan)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant Smt. C.P. Gupta has filed this OA, assailing order Anneuxre A-1 whereby after completion of the disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 the President has imposed the penalty of compulsory retirement on Smt. C.P. Gupta, the applicant with immediate effect.

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2. The main ground to challenge this impugned order is that the applicant had filed earlier an OA wherein a similar order was challenged as the applicant alleges that on the very same allegation an enquiry was held and order was passed on 22.2.2001, against which a review was filed by the applicant which was decided on 3.12.2001. Thereafter, the applicant filed OA 2322 of 2002. The said OA was allowed as there was some difference between the statement of imputations of misconduct/misbehaviour and in the Article of Charge framed against the applicant, it was mentioned that applicant had wilfully disobeyed accepting the orders when the posting order was issued and as such she had shown disregard and lack of devotion to duty in refusing the bona fide official duties but this fact was not mentioned in the Article of Charge. So the factual position was found to be correct as in the statement of imputation of misconduct said facts were not mentioned. The court came to the conclusion that a prejudice has been caused to the applicant as extraneous material was taken into consideration while amending penalty so the OA was allowed and the impugned orders were quashed. The matter was remanded back to the disciplinary authority who may, if so advised, pass a fresh order in accordance with law and it is thereafter respondents once again vide their order dated 30.6.2003 imposed a fresh penalty of compulsory retirement with immediate effect.

3. So it is now submitted that the bare perusal of the order indicates that it is nothing but a repetition of the order of compulsory retirement passed earlier in as such as much as " and also deliberately



avoided receiving the orders/communications from the department" were deleted but no fresh enquiry was held, hence it leaves no doubt that the disciplinary authority once again took into consideration the very same material including the earlier advice/recommendations tendered by the UPSC in a mechanical manner and came to the conclusion that the charges are proved against the applicant. Even in the fresh advice sought from the UPSC, the facts were reepeated.

4. Thus it is stated that the procedure followed by the disciplinary authority after remanding of the case is vitiated and the impugned order is liable to be quashed.

5. The learned counsel appearing for the respondents submitted that the revised order/impugned order dated 30.6.2003 has been issued in pursuance of the orders passed by the Court and it has been issued in supersession of the earlier orders and the same has been issued after following the due procedure so on same account the order could not be quashed.

6. Rebutting the same the learned counsel for the applicant submitted that even the reply of the respondents they have just repeated the offensive wording from the charges but they had not applied their mind. Even the reply to para 4.6 also suggest that the similar stand is being repeated and same advice of the UPSC has been imported into the impugned order.

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7. The earlier advice of the UPSC dated 18.7.2000 (pages 139 to 144 of the paper book) and the second advice dated 2.2.2001 (pages 145 to 147 of the paper book) contained the same extraneous factors which had been taken into consideration for which the earlier order of compulsory retirement was quashed by the Tribunal.

8. The comparison of these two advises would go to show that when the matter was referred second time to the UPSC the same extraneous material which were contained in the statement of imputation but were found missing in the charges levelled against the applicant were there and based on the same extraneous material, the UPSC has tendered the advice for imposing the penalty of compulsory retirement and so much so the Commission had reiterated their earlier advice also. Thus it appears that despite the directions given by this Tribunal vide its earlier order, the disciplinary authority had relied upon the same extraneous material to impose penalty upon the applicant which cannot be sustained because earlier also on the same the charges levelled on the same grounds were quashed. There does not appear to be any fresh application of mind as the observations made by the Tribunal has not been taken note of. The impugned order has been passed in a mechanical manner which ignores the observations made by the Tribunal in the earlier OA.

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9. Thus we are left with no option but to quash the impugned order and direct the respondents that the applicant be reinstated in service immediately in service in accordance with law, rules and judicial pronouncements on the subject. No costs.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUDL)

/Rakesh