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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2647/2003

New Delhi this the 19th day of January, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

Mrs. Abha Bhardwaj,
W/o Dr. R. Bhardwaj,
R/o A-2/25,
Shri Agersen Apartments,
Plot No.10, Sector-7,
Dwarka, New Delhi-110045.

-Applicant

(By Advocate Sh. B.B. Raval)

-Versus-

1. Commissioner, K.V.S.,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

2. Asstt. Commissioner,
K.V.S. JNU Campus (Delhi Region),
New Delhi-110067.

-Respondents

(By Advocate Shri S. Rajappa)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns show cause notice dated 15.9.2003, whereby a show cause notice under Article 81 (d) of the Education Code for confirmation of order of loss of lien has been served upon applicant.

2. At the time of first hearing of the matter the following orders have been passed:

"By virtue of the present application, the applicant seeks quashing of the order dated 15.9.2003 by which the applicant has been directed to make representation within ten days. It has been mentioned in the said impugned order that show cause notice is being served pertaining to abandonment of service by the applicant.

In the present application, even the vires of article 81(d) of the Education Code has been challenged.

We have heard the applicant's learned counsel. During the course of submissions,

Shri H.Jairaman, Advocate, appeared and stated that he has been authorised to make submissions that on 28.10.2003 a final order even has been passed. If that be so, the applicant may challenge the same in accordance with law and, therefore, we are not proceeding further on this controversy.

So far as the vires of article 81(d) of the Education Code is concerned, notice be issued on this short question only to the respondents returnable on 11.11.2003.

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3. Though applicant responded to the show cause notice by her reply dated 25.9.2003 the same culminated into a final order on confirmation of loss of lien on 28.10.2003. As per a notification dated 4.9.93 inserting Article 81 (d) against an order of confirmation of lien under clause 7 of Article 81 (d) an aggrieved employee may prefer an appeal within a period of 45 days. Thereafter under clause the 10 the same would be considered.

4. Applicant has also filed MA-2639/2003, inter alia, for staying the effect of the impugned order dated 15.9.2003 and status quo ante.

5. Shri B.B. Raval, learned counsel for applicant states that as per the settled law if there is no voluntary abandonment of service, which is a pre-condition for invoking Article 81 (d), show cause notice being a nullity the subsequent orders passed cannot be sustained and therefore his relief is maintainable.

6. Referring to several contentions it is stated that orders passed in RA-133/2002 on 16.7.2003 granting status quo ante restoring the stay already granted

applicant cannot be deemed to have voluntarily abandoned the service or absented, as she has deliberately not allowed to join duties.

7. On the other hand, respondents' counsel in so far as vires of Article 81 (d) is concerned, referring to the decisions of the High Court of Delhi in **Prem Juneja v. Union of India**, 2003 I AD (DELHI) 57 contends that the vires having been upheld is no more res integra.


8. In so far as present OA is concerned, it is stated that the same is pre-mature as applicant has not impugned the order confirming the loss of lien and also not preferred any appeal against the same, which is statutory and provided under the rules. This objection is taken on the strength of Section 20 of the Administrative Tribunals Act, 1985. Moreover, by referring to similar orders passed in OA-2453/2003 - **Bharat Bhushan Lakhina v. Commissioner of K.V.S. & Anr.** it is stated that in similar circumstances OA has been found pre-mature with liberty to file an appeal in the first instance.

9. On careful consideration of the above pleadings, without dwelling upon merits of the case we find that in so far as challenge to the show cause notice is concerned, the Tribunal in an earlier order dated 28.10.2003 had not entertained the above and has not proceeded further on the controversy, liberty has been given to challenge the order dated 28.10.2003 in accordance with law.

10. In so far as vires of Education Code is concerned, this is only the short question on which notice has been issued on the OA. Interfering with the show cause notice in any matter would amount to sitting in an appeal or reviewing the order passed by the Division Bench, which we are not competent as per law.

11. We also find that in pursuance of the show cause notice orders have been passed by the respondents confirming loss of lien. Aforesaid orders have not been impugned. It is provided under Section 20 of the Administrative Tribunals Act, 1985 that an OA cannot be entertained unless statutory remedy provided and available is exhausted. As we find from Article 81 (d) against an order confirming loss of lien an appeal is provided. In that event OA, without exhausting remedy is premature and cannot be entertained.

12. In the result, for the foregoing reasons, MA as well as OA are dismissed, with liberty to applicant to assail the orders of confirmation of loss of lien in an appeal, in accordance with law and thereafter to take appropriate legal remedy. We make it clear that we have not expressed any opinion on the merits of the case. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

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