

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : January 23, 2013*
Judgment Pronounced on : January 28, 2013

+ **WP(C) 4952/2001**

DR.(MRS.) SUR BALA OBEJA Petitioner
Represented by: Mr.Vinod Kumar, Advocate.

versus

UNION OF INDIA & ANR. Respondents
Represented by: Ms.Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. Employed on a temporary basis as a Ayurvedic Physician in the Central Government Health Scheme on January 01, 1982 and being declared quasi-permanent the petitioner sought for and was granted leave on May 09, 1986 till June 02, 1986 as she had to proceed to Riyadh where her husband was employed and once in Riyadh she kept on sending applications with medical opinions recording she being unwell and this continued till August 18, 1989. We highlight that the petitioner remained unauthorizedly absent from June 03, 1986 till August 18, 1989 i.e. for a period of 3 years, 2 months and 16 days. During this period as and when the department received an application with a medical opinion enclosed that the petitioner was unwell, she was advised to contact the embassy which could direct her to a particular doctor for opinion. The reason was obvious. It is easy to bribe and obtain prescriptions from doctors, and when the so-called medical infirmity continues, not for days, not for weeks, not for months but for years together, it becomes

imperative for the employer that the employee presents herself before a doctor in whom the employer has confidence. The petitioner did not comply.

2. When the petitioner reported for duty on August 18, 1989, since she had been claiming that she was unwell for 3 years, 2 months and 16 days she was directed to get herself medically examined at Safdarjung Hospital and obtain an opinion certifying that she was fit to resume duties.

3. But what did the petitioner do?

4. She went back to her husband. She booked a return ticket and flew to Riyadh on September 13, 1989. Enjoying herself in the company of her husband in Riyadh she reported back on July 23, 1993 i.e. after 3 years and 10 months.

5. What else could the department do other than to take disciplinary action, which we would have expected the department should have done in the year 1986 itself when petitioner started overstaying leave from June 03, 1986. Suspending the petitioner on September 14, 1993 she was charge-sheeted on November 15, 1993 and suffice would it be to note that the petitioner received the charge-sheet and at the inquiry the department simply led documentary evidence to prove the unauthorized absence from June 03, 1986 till July 23, 1993 save and except for one day's attendance marked on August 18, 1989. The report of the Inquiry Officer dated June 15, 1996, which needs no guesswork for its conclusion, opined that the charge of indiscipline in the form of continued unauthorized absence was proved.

6. Proceeding to complete the procedural requirements of law, on March 11, 1996 the report of the Inquiry Officer was supplied to the petitioner for her response which she did on April 04, 1996 and

considering the same; and rejecting the same the Disciplinary Authority dismissed petitioner from service vide order dated December 18/21, 1998.

7. The onward march by the petitioner took her to the Central Administrative Tribunal where she challenged the order dismissing her from service. Her endeavour failed before the Tribunal when the Original Application filed by her was dismissed on March 07, 2001 and this explains the instant writ petitioner being before us.

8. At the hearing of the writ petition it was urged that it is settled law that the report of an Inquiry Officer has not to be mechanically relied upon by the Disciplinary Authority who must deal with the contentions urged in the reply/response filed by the Charged Officer to the report of the Inquiry Officer; and the grievance pressed was that in the instant case the Disciplinary Authority did not do so. With respect to the contention urged, we repeatedly asked learned counsel as to what were the contentions urged with respect to the report of the Inquiry Officer in the reply filed by the petitioner to the report of the Inquiry Officer on April 04, 1996. The learned counsel simply said that the 15 page response had enough points to be considered, but when called upon to crystallize the points one by one, the counsel remained hesitant.

9. The reason is obvious. Verbosity does not mean that there is content in the speech or the writing. There is no exact word to be found in the English language or even in the Hindi language as spoken by the educated people, but in slang Hindi language a very apt word exists which can describe the objections filed by the petitioner to the report of the Inquiry Officer : '*Khokha objections*'. It means objections without a head or tail; with no meaning, making it difficult for a writer to give any meaning worthy of being considered to the objections.

10. It is this which compelled us to record on January 23, 2013 after we heard arguments that we would be pronouncing our decision on January 28, 2013 because by the time hearing concluded it was 04:25 PM and the Court sitting time was being over in the next 5 minutes.

11. Commenting upon the report of the Inquiry Officer, we find that the petitioner has devoted the first 9½ pages to the part of the report of the Inquiry Officer where he narrated the facts and thereafter the next 5½ pages to the discussion of the evidence by the Inquiry Officer. The neither here nor there; the headless and tailless nature of the objection would be evidenced by drawing out a representative sample of the nature of objections. We highlight three:-

(i) That the Inquiry Officer has copied and repeated Annexure-II on page 9 of the report by adding tricky words to prove his worthiness and the words are : '*was under obligation to join duty*', which as per the petitioner do not exist in Annexure-II.

(ii) That the marked documents pertaining whereto witnesses were examined were not exhibited.

(iii) That the Inquiry Officer has referred to a letter received from the High Commission of India at Riyadh which makes a reference to a communication dated September 05, 1986 sent by the Ministry, ignoring that the letter in question was sent from the Central Government Health Scheme Official.

12. It would be useless for us to make a list of the remainder as we feel that three representative samples would be enough.

13. Now, dealing with the objection at Serial Number (i) above we find that in his report the Inquiry Officer, with reference to Annexure-II, which is the order sanctioning earned leave to the petitioner with permission to visit Saudi Arabia noted the condition that petitioner would

not extend leave and would draw her leave salary after joining; additionally will not send a resignation while abroad and will not accept any employment or job abroad, has recorded that in view of the language of the order sanctioning her leave and permitting petitioner to go abroad, she '*was under obligation to join duty*' on June 03, 1986. We just do not understand as to how come it can be alleged against the Inquiry Officer that he was proving his worthiness. It is apparent to any reader that the objection is neither here nor there : is without a head and without a tail.

14. Pertaining to the second of the three sample objections we have highlighted, suffice would it be to state that when a witnesses deposes with reference to a document, the document has to be identified. Conventionally, in Court proceedings, the document is exhibited upon being proved; and is assigned a mark if not proved. At a departmental inquiry the Inquiry Officer may not be knowing the nuances used in Courts. That apart, even in a Court it is not a document being marked or exhibited which determines its proof. The contents of the deposition of a witness does so. This then is the end of the second sample objection and we think that we have highlighted its neither here nor there : headless and tailless nature.

15. Coming to the third sample objection, merely because a letter sent by an official of the Central Government Health Scheme is referred to by an official of the High Commission of India at Riyadh as a communication sent by the Ministry is neither here nor there. It is just a slip of identification.

16. We find that the writ petitioner raised no meaningful contentions with reference to the report of the Inquiry Officer which were worthy of being dealt with by the Disciplinary Authority.

17. The writ petition has to be dismissed for the simple reason that the petitioner was happy and comfortable with her husband in Riyadh. She had no inclination to work. Availing leave till June 02, 1986 she reported back for duty on August 18, 1989 and keeping in view the fact that she had been claiming to be unwell all these years was directed to obtain a medical fitness; she flew back to her husband in Riyadh on September 13, 1989 and returned only on July 23, 1993.

18. During arguments we had asked learned counsel for the petitioner as to when the petitioner would superannuate if the petitioner was in service; and were informed that the petitioner turned 60 two years back and would have superannuated in the year 2011.

19. We wonder what relief can be granted to the petitioner who worked and served the nation only from January 01, 1982 till May 08, 1986. She was sanctioned leave from May 09, 1986 and thereafter she has never worked. If for some reason a technical default could be found in the inquiry and the dismissal order set aside, it would have to be without any back wages and the entire period would have to be treated as dies non; meaning thereby the petitioner being left with no pensionable service.

20. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

JANUARY 28, 2013
dk