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

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Date of Decision: 15.09.2014

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W.P.(C) 6140/2014

GOVT. OF NCT OF DELHI & ANR Petitioners
Through: Mr. Anjum Javed, Advocate.

versus

RITA VOHRA Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The petitioner, Government of National Capital Territory of Delhi (GNCTD), has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 28.03.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/Tribunal), whereby the Tribunal allowed the original application No.2473/2013 preferred by the respondent; quashed the order of suspension dated 04.06.2012; and also quashed the memorandum dated 09.10.2012, whereby the petitioner sought to initiate disciplinary proceedings against the respondent.

2. The respondent is employed as an Upper Division Clerk (UDC) in the Department of Irrigation & Flood Control under the GNCTD. On the

ground that she was suffering from Asthma and it was difficult for her to commute to attend to her duties, the respondent sought transfer from the Office of Deputy Commissioner, New Delhi District to any other place near her residence. This request was allowed by the Directorate of Services vide order No. 74 dated 03.04.2012, and she was transferred to Dr. Baba Saheb Ambedkar Hospital. The relieving order was sent on 11.06.2012 to her residence.

3. The respondent did not attend to her duties from 02:00 p.m. of 30.05.2012 till 04.06.2012. She reported for duty in Dr. Baba Saheb Ambedkar Hospital on 13.06.2012 upon receiving her transfer order. On account of her unauthorized absence for the aforesaid period of 5 ½ days, she was placed under suspension vide order dated 04.06.2012. Last Pay Certificate (LPC) was not issued to her by the Office of the Deputy Commissioner, New Delhi District on the ground that she had been placed under suspension.

4. She preferred O.A. No.3173/2012 before the Tribunal to seek revocation of her suspension. That Original Application was disposed of by observing that the extension of her suspension beyond the period of 90 days was in violation of sub-Rules (6) & (7) of the CCS (CCA) Rules, 1965. Accordingly, the same was quashed. She was deemed to have been reinstated in service with effect from 02.09.2012 with all consequential benefits, including full pay and allowances.

5. The respondent preferred another Original Application, i.e. O.A. No.251/2013 claiming full pay and allowances for the period from

04.06.2012 to 01.09.2012 along with the increment due on 01.07.2012. However, this Original Application was dismissed on the ground that the decision regarding the suspension period has to be taken by the competent authority after finalization of the disciplinary proceedings.

6. The respondent then preferred the third Original Application, i.e. O.A. No.2473/2013 seeking revocation of suspension order dated 04.06.2012. She also prayed for payment of full pay and allowances. The respondent pleaded that she had been subjected to undue persecution, which was writ large from the fact that merely because she had to leave the office being down with fever, she had been placed under suspension on account of her absence for 5½ days. She alleged that the said conduct of the petitioner demonstrated a biased mind and attitude.

7. The Original Application was contested on several grounds, including that of res judicata (since the respondent had not sought any relief in respect of her original suspension while filing O.A. No.251/2013). The petitioner also contended that the chargesheet was not even under challenge before the Tribunal and that until the disciplinary proceedings are finalized, the period of suspension cannot be regularized.

8. From the order of the Tribunal, it appears that the Tribunal while hearing the matter on 04.02.2014 expressed the view that, ex-facie, the absence of 5 ½ days did not justify institution of major penalty proceedings against the respondent and, consequently, her suspension was not justified. The matter was adjourned to 06.03.2014 to enable the disciplinary authority to examine the matter. However, the petitioner persisted with its stand by

claiming that the respondent had refused to receive the letter dated 01.03.2014 sent by the Inquiry Officer requiring the respondent to participate in the inquiry proceedings. She had also written a letter dated 06.03.2014 to the Executive Engineer, Mechanical Division-II, Irrigation & Flood Control, New Delhi that since her Original Application was pending before the Tribunal, the departmental proceedings could not be continued. On account of the said stand of the respondent, the petitioner claimed that it was not possible for the department to take a final view in the matter.

9. The Tribunal rejected the petitioner's plea regarding res judicata by holding that the order passed in O.A. No.251/2013 dated 09.07.2013 was an order without jurisdiction and could not operate as res judicata. Reliance was placed by the Tribunal on ***State of Madhya Pradesh Vs. B.R. Thakare & Others***, (2002) 10 SCC 338.

10. The Tribunal took note of the memorandum dated 09.10.2012, which contains the Articles of Charges leveled against the respondent. The said Articles read as follows:

“Article-I:

Smt. Rita Vohra while working as Grade-III (DASS)/UDC in the O/o Deputy Commissioner, New Delhi District, had left the office on 30.05.2012 at 02.00 PM without permission of the competent authority.

The above act of Smt. Rita Vohra, Grade-III (DASS)/UDC, has shown her dereliction of duty and thus she has acted in a manner of unbecoming of a Govt. Servant violating thereby provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

Article-II:

Smt. Rita Vohra while working as Grade III(DASS)/UDC in the O/o Deputy Commissioner, New Delhi District, absented herself from duties w.e.f. 31.05.2012 to 04.06.2012 without permission of the competent authority which is in violation of GID 3 (iii) below Rules 25 of CCS (Leave) Rules.

The above act of Smt. Rita Vohra, Grade-III(DASS)/UDC has acted in a manner of unbecoming of a Govt. Servant violating thereby provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

Article-III:

Smt. Rita Vohra while working as Grade-III(DASS)/UDC in the O/o Deputy Commissioner, New Delhi District, had refused to accept the Suspension Order dated 04.06.2012, which was delivered at her residence, thus causing misconduct of unbecoming of a Govt. Servant.

The above act of Smt. Rita Vohra, Grade-III(DASS)/UDC has shown disobedience towards the superiors and thus she has acted in a manner of unbecoming of a Govt. Servant violating thereby provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

Article-IV:

Smt. Rita Vohra, Grade-III(DASS)/UDC was placed under suspension vide order dated 04.06.2012 and during suspension she joined the Dr. B.S.A. Hospital on 14.06.2012 by concealing the fact that she was under suspension thus causing misconduct of unbecoming of a Govt. Servant.

The above act of Smt. Rita Vohra, Grade-III(DASS)/UDC has shown her willful concealment of the facts and thus she has acted in a manner of unbecoming of a Govt. Servant violating thereby provisions of Rule 3 of the CCS (Conduct) Rules, 1964.”

11. Thereafter, the Tribunal proceeded to consider the validity of the suspension order, and in this regard held as follows:

“16. Coming to the merit of the suspension order, as can be seen from the object to be achieved by placing a government servant under suspension, the suspension order may be issued under the following circumstances:

- (i) where his/her continuance in office is likely to seriously subvert discipline in the office in which he/she is working (e.g., apprehended tampering with witnesses or documents),*
- (ii) where his/her continuance in office is likely to seriously subvert discipline in the office in which he/she is working,*
- (iii) where his/her continuance in office will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal with officers involved in such scandals, particularly corruption,*
- (iv) where a preliminary inquiry revealed a prima facie case justifying criminal or departmental proceedings, which are likely to lead to his/her conviction and/or dismissal, removal or compulsory retirement from service; and*
- (v) where he/she is suspected to have engaged himself/herself in activities prejudicial to the interest of the security of the State.*

17. Besides the aforementioned circumstances/principles, suspension order can also be issued when the offence or conduct involve moral turpitude or there are allegations of corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain, serious negligence and dereliction of duty resulting in consideration loss to Government, desertion of duty, and refusal or deliberate failure to carry out written orders of superior officers.

18. In a case where a female employee suffering from asthma had approached the superior authorities to change her place of posting on account of her ill health and had to leave to the office being ill, the impugned order of suspension was wholly uncalled for. Besides, when the applicant remained absent from duty only w.e.f. 30.5.2012, by issuing the suspension order just within five days, the concerned authority had shown undue haste in issuing such order. The plea of the applicant that she was subjected to persecution merely because she approached the superior authorities for her transfer may also not be considered without substance. We also find infirmity in the order of suspension for the reason that having issued the said order, the respondents issued the charge sheet to the applicant after four months. The charges against her are not such that some in-depth study or investigation was involved in the matter. The only allegation is that she remained absent after 2.00 PM of 30.5.2012 and refused to accept the suspension order. It is also quite bizarre that when on 4.6.2012 the supervising authority issued the order of suspension of the applicant, on 11.6.2012 the Additional Secretary (Services), Government of NCT of Delhi, Services Department: Branch II ordered her transfer from Deputy Commissioner Office to Dr. Baba Saheb Ambedkar Hospital. Normally, the Headquarters of suspended employee is not changed. From the said factual position, it is clear that even the authorities at different hierarchy of Government of NCT were not also fully aware about what was happening in the Department. Moreover, once the applicant had been transferred from the Office of Deputy Commissioner, New Delhi District on 3.4.2012, she was under confusion regarding the place of her duty. No supervisory or controlling authority in Government Department should adventure to find out the ways and means to defeat the order of transfer issued by the superior authority by exercising the powers vested in it, i.e., the power to initiate disciplinary proceedings or to issue order of suspension. When such attitude is shown towards a female employee, it need to be dispelled. The applicant claimed that in her long service of 21 years she was never subjected to any disciplinary action far less placed under suspension. She also

submitted that the way the authority, which placed her under suspension and charge-sheeted her has acted, she has lost all faith in it and had to espouse her plea before the Tribunal only.”

12. The Tribunal also considered the plea of the petitioner that the chargesheet/ memorandum dated 09.10.2012 was not in question before the Tribunal and, therefore, the Tribunal could not interfere with the same. This plea was rejected by observing that the nature of allegations do not call for institution of major penalty proceedings and that the memorandum dated 09.10.2012 is absurd and could not survive.

13. The submission of learned counsel for the petitioners is that the memorandum/ chargesheet dated 09.10.2012 was not in question before the Tribunal and, therefore, could not have been set aside by the Tribunal since the only issue before the Tribunal was with regard to the validity of the suspension order.

14. We have heard learned counsel for the petitioners. A perusal of the chargesheet – as set out above in the factual background of the case demonstrates that the manner in which the petitioner proceeded against the respondent was unreasonably harsh. The case of the respondent for her absence for 5 ½ days was that she was not well. In fact, she had even earlier sought her transfer on account of being Asthmatic. Pertinently, this request of her's was granted. This itself is acknowledgement of the fact that she was suffering from the said disease and was finding it difficult to attend to her duties at her original place of posting, i.e. the Office of the Deputy Commissioner, New Delhi District on account of her ailment. She reported

for duty after 5 ½ days.

15. In these circumstances, to subject the respondent to inquiry appears to be unreasonable. Pertinently, it is not the petitioners' case that the respondent was engaged in discharging such crucial obligations and responsibilities which no other person could have discharged, or that the functioning of the petitioner department unduly suffered, or that she deliberately absented for the said period with a particular motive and to avoid a given situation. If the petitioner felt that the absence of the respondent was unauthorized, she could have been dealt with by treating her absence as 'leave without pay'. However, there was no justification in chargesheeting the respondent and also placing her under suspension, assuming that her conduct tantamounted to a misconduct.

16. The respondent was placed under suspension and her suspension was even continued illegally. The continuation of the suspension was set aside by the Tribunal in O.A. No.3173/2012. Even thereafter, she was not paid her full pay and allowances as well as the increment for the past period for which she again approached the Tribunal by filing O.A. No.251/2013. She thereafter preferred the Original Application in question. Therefore, the respondent has been subjected to three rounds of litigation before the Tribunal.

17. In our view, she has suffered enough. We wonder whether the petitioner deals with cases of such like absence of a few days in a similar manner in all cases. Our experience shows that this is not so. As to what impelled the petitioner to act in the manner that it did, in the case of the

respondent, is not clear. However, she has suffered more than her share of harassment.

18. In the aforesaid circumstances, we are of the view that the Tribunal was justified in quashing the charge sheet/ memorandum dated 09.10.2012 issued to the respondent. Even if it were to be accepted that there is some procedural illegality in the passing of the impugned order inasmuch, as, the memorandum dated 09.10.2012 was not the subject matter of challenge before the Tribunal, in exercise of our discretionary jurisdiction under Article 226 of the Constitution of India, we are not obliged to interfere with every order passed by the Tribunal below when, in our view, the Tribunal has rendered substantial justice in the matter.

19. Accordingly, we dismiss the present petition.

VIPIN SANGHI, J.

S. RAVINDRA BHAT, J

SEPTEMBER 15, 2014

B.S. Rohella