

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: April 20, 2018
+ **W.P.(C) 3895/2018**

ISHU AGARWAL Petitioner

Through: Ms. Rani Chhabra, Advocate

versus

NATIONAL TEXTILE CORPORATION LIMITED AND ORS.

.....Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL)

1. On the charge of unauthorized absence from duty, petitioner, who was posted as Assistant Manager (Marketing) in respondent-Corporation in Delhi, was departmentally tried and since petitioner did not participate in the Inquiry, therefore, on the basis of *ex parte* inquiry, the Disciplinary Authority has inflicted the penalty of removal from service on 17th November, 2015. Petitioner's removal was to relate back to the date of unauthorized absence from duty i.e. 25th June, 2013. Against penalty order of 17th November, 2015 (*Annexure P-18*), petitioner had preferred statutory appeal (*Annexure P-23*), which stands dismissed vide impugned order of 26th August, 2016 (*Annexure P-26*).

2. To explain the delay in challenging impugned order of 26th August, 2016, petitioner's counsel has drawn attention of this Court to paragraphs No.55 to 59 of the writ petition, wherein it is averred that after receiving impugned order, petitioner had filed an application under *the Right to Information Act, 2005* (for short '*the RTI Act*') seeking certified legible photocopies of letters of 16th September, 2013 and 6th May, 2015, copy of

investigation report, copy of complete proceedings and addenda of 14th June, 2016. As per RTI Reply of 4th November, 2016 (*Annexure P-28*), the information sought was supplied. Attention of this Court is drawn to RTI Reply of 27th September, 2017 (*Annexure P-29*) to point out that Disciplinary Authority i.e., Sh. Y.S. Sirohi had already retired on 31st January, 2016 and so, there was no occasion for the Disciplinary Authority to have any discussion with the Appellate Authority on petitioner's appeal.

3. The challenge to orders of Disciplinary Authority as well as Appellate Authority by learned counsel for petitioner is on the ground that copies of the complete record of Inquiry including the correspondence between the Presenting Officer, Inquiry Officer and Disciplinary Authority was not furnished to petitioner. It is further submitted that petitioner was not made aware that 11th May, 2015 was the date fixed by the Inquiry Officer for *ex parte* hearing. It is also submitted on behalf of petitioner that evidence recorded does not substantiate the charge framed against petitioner.

4. The precise submission of petitioner's counsel is that due to illness of son, petitioner was forced to proceed on leave and could not join back the duty, while leaving her ailing son and that respondent ought to have sanctioned '*leave without pay*'. So, it is submitted that the penalty inflicted is too harsh and disproportionate as the leave was sought by petitioner on genuine ground. It is thus submitted by petitioner's counsel that impugned order mechanically rejects petitioner's appeal.

5. Despite service of advance notice, there is no Representation on

behalf of the respondents.

6. Upon hearing and on perusal of orders of Disciplinary Authority as well as Appellate Authority and the material on record, I find that although petitioner was *ex parte* during the Inquiry, but the case of petitioner ought to have been effectively considered by Appellate Authority, which has not been done in impugned order. It is not the case of respondents that petitioner had not applied for leave. Petitioner's applications for leave have been turned down without considering the aspect as to why she could not be allowed to proceed on leave of the kind due or even on '*leave without pay*'. Even, the aspect of proportionality of the punishment inflicted upon petitioner, is not dealt with in impugned order by Appellate Authority.

7. In the facts and circumstances of this case, it is deemed appropriate to dispose of this petition with direction to Appellate Authority of respondents to reconsider petitioner's appeal and to pass fresh order thereon, while dealing with the aforesaid aspects and in particular, to reconsider proportionality of the punishment inflicted. Let it be so done within a period of six weeks from today and its fate be intimated to petitioner within two weeks thereafter, so that petitioner may avail of the remedies as available in law, if need be.

8. With aforesaid directions, this petition is disposed of.

(SUNIL GAUR)
JUDGE

APRIL 20, 2018

S