

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.32163 of 2012

Judgment reserved on 27.06.2019	Orders pronounced on 26.08.2019
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Babitha

...Petitioner

Vs.

1. The Commandant
Central Industrial Security Force (CISF)
(Disciplinary Authority)
Department of Atomic Energy (DAE)
Ministry of Home Affairs,
Kalpakkam - 603 102.
Kancheepuram District, Tamil Nadu.

2. Deputy Inspector General
Central Industrial Security Force (CISF)
(Appellate Authority) Zonal Head Quarters
NFC Complex, ECIL - P.O., Hyderabad - 62.

3. The Inspector General
Central Industrial Security Force (CISF)
(Revision Authority) Western Sector - 35
Navi, Mumbai - 400 210.

4. The Director General
Central Industrial Security Force (CISF)
Block No.13, CGO Complex,
Lodhi Road, New Delhi - 110 003.

5. Government of India,
rep.by Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi - 110 001.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of removal bearing ref.No.V-15014/DAE CK) Maj.03/BB-Disc/201-4997

dt.05.11.2011 issued by the 1st respondent as confirmed by the 2nd respondent, Appellate Authority by his order No.V-11014/A-01/2011/L&R/DAE/641 dt.28.1.2012 read with order of the 3rd respondent bearing No.15012/12-5037 dt.4.6.2012 rejecting the petitioner's revision, filed and marked as Exhibits A, B & C respectively and quash the same.

For Petitioner : Mr.NGR Prasad
for M/s.Row & Reddy

For Respondents : Mr.T.L.Thirumalaisamy
Central Govt. Standing Counsel

O R D E R

This writ petition is filed for issue of a Writ of Certiorarified Mandamus, calling for the records relating to the order of removal bearing ref.No.V-15014/DAE CK) Maj.03/BB-Disc/201-4997 dt.05.11.2011 issued by the 1st respondent as confirmed by the 2nd respondent, Appellate Authority by his order No.V-11014/A-01/2011/L&R/DAE/641 dt.28.1.2012 read with order of the 3rd respondent bearing No.15012/12-5037 dt.4.6.2012 rejecting the petitioner's revision, filed and marked as Exhibits A, B & C respectively and quash the same.

2. The petitioner joined the Central Industrial Security Force (CISF) on 27.09.2007 at Barwaha, Madhya Pradesh. After completion of her training for nine months, she was posted at CISF Unit, Jaduguda, State of Jharkhand in March 2008. Again, she was transferred from the State of Jharkhand to Department of Atomic Energy (DAE), Kalpakkam (1st respondent) on 10.06.2009. She joined duty at the 1st respondent unit on 06.07.2009. She got married to one Shri Vikas Chowdary on 17.02.2010. On 17.03.2010, one S.P.Khilare, Asst. Commandant misbehaved with the petitioner and the same was witnessed by one Vedpal Boora, Inspector of CISF Unit of the 1st respondent. The petitioner gave complaint against the said Khilare to her superior, the first respondent herein. The said Inspector Vedpal Boora also gave statement to that effect to the 1st respondent. Instead of taking action against the said Khilare against the complaint given by the petitioner, by order dated 23.03.2010, the petitioner was transferred from 1st respondent unit to RTC, Barwaha, Madhya Pradesh and the higher officials insisted the said Vedpal Boora, Inspector to withdraw the statement. When he refused to with the statement, charges were framed against him and he was ultimately dismissed from service on 10.05.2011. He filed W.P.No.24618 of 2011 before this Court and in the said writ petition, he made specific reference about the incident happened to the petitioner.

2(i) The petitioner sent number of representations to the respondents for cancellation of the transfer order on medical ground as there was no medical facility at Barwaha, Madhya Pradesh. In the said representation, as an alternative, the petitioner has sought for transferring her to the nearest CISF unit at Delhi. The respondents deliberately refused to transfer the petitioner to CISF Unit, Delhi. The transfer order dated 23.03.2010 was kept in abeyance on the basis of petitioner's representations. On 12.05.2010, the Medical Board constituted by the respondents gave opinion that the petitioner has got number of medical complications like depression, migraine and frequent miscarriages. On 13.05.2010, maternity leave was sanctioned to the petitioner till 12.06.2010 for her miscarriage. On 28.11.2010, one Prabakar, Inspector of the 1st respondent unit misbehaved with the petitioner. On the next day, she gave complaint to the police and also to the 1st respondent Authority. On 10.12.2010, the petitioner requested the 4th respondent to give her a personal hearing and consider her request to transfer her to Delhi from the 1st respondent unit. By order dated 31.12.2010, the petitioner was transferred to 1st Reserve Battalion at Barwaha, State of Madhya Pradesh.

2 (ii) On 05.01.2011, the petitioner gave representation to the respondents to cancel her transfer on medical grounds. Again, on 10.01.2011 & 11.01.2011, she made written representations to take action against the officials of the 1st respondent namely Khilare, Asst. Commandant and Prabhakar, Inspector who misbehaved with her. Challenging the order of transfer, the petitioner filed W.P.No.2152 of 2011 before this Court. The said writ petition was dismissed by this court on 04.03.2011. Against the said order, the petitioner filed W.A.No.747 of 2011 which was also dismissed by the Division Bench of this Court on 09.06.2011. On 23.03.2011, the order of transfer was affixed on the door of the hostel room of the petitioner. On 08.05.2011, the petitioner came to know that she was pregnant and intimated the same to the respondent by e-mail communication dated 10.05.2011. The petitioner further contended that she is protected under Section 12 of the Maternity Benefit Act, 1961. While so, without considering the above facts, on 29.06.2011, the 1st respondent issued a charge memo to the petitioner for not obeying the order of transfer dated 23.03.2010. The said charge memo was received by the parents of the petitioner on 30.07.2011. The petitioner, by e-mail communications dated 31.07.2011, 01.08.2011 and 03.08.2011 denied the charges. She gave explanation to the charge memo stating that she was harassed by two officials and she was having medical complications like depression, migraine, frequent miscarriage, etc. and hence she could not join at 1st Reserve Battalion, Barwaha, State of Madhya Pradesh. The petitioner further contended that her husband repeatedly sent e-mail

communications to the respondents about the depressed state of mind of the petitioner due to misbehaviour of two officials of the 1st respondent unit.

2(iii) A domestic enquiry was conducted against the petitioner at Kalpakkam and due to the ill-health and frequent miscarriages, the petitioner could not attend the enquiry. The petitioner was set exparte in the domestic enquiry and she was removed from the services on 05.11.2011. Against the said order of dismissal, the petitioner filed appeal on 22.11.2011 and the same was rejected by the 2nd respondent by order dated 28.01.2012. The revision preferred before the 3rd respondent was also rejected by order dated 04.06.2012. Against the impugned order of the respondents 1 to 3, the petitioner has come out with the present writ petition.

3. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner contended that the 1st respondent has no jurisdiction to issue charge memo dated 29.06.2011 to the petitioner for not obeying the order of transfer dated 23.03.2010 from 1st respondent unit to 1st Reserve Battalion at Barwaha, Madhya Pradesh. The petitioner was relieved w.e.f. 23.03.2010 by the 1st respondent and thereafter the petitioner came under the jurisdiction of Commandant, 1st Reserve Battalion at Barwaha, Madhya Pradesh who became the Disciplinary Authority. The order of removal by the 1st respondent is illegal and without jurisdiction. The learned counsel for the petitioner further contended that the petitioner was having number of medical complications like depression, migraine and frequent miscarriages. The Medical Officer of the first respondent issued certificate enumerating the medical problem and granted maternity leave to the petitioner due to her miscarriage. The Medical Board constituted by the respondents gave an opinion dated 12.05.2010 to the effect that the petitioner is having irregular cycle of mensuration. In addition to the above, due to the misbehaviour / molestation by two officials namely S.P.Khilare, Asst. Commandant and Prabhakar, Inspector and inaction of the respondents to take action against the said officials, the petitioner became depressed and was suffering from frequent miscarriages and migraine. The doctors have also certified to that effect. The respondents, knowing fully well that the petitioner was pregnant and the medical condition of the petitioner, set her exparte in the domestic enquiry and removed her from the services on 05.11.2011.

3(a) The learned counsel for the petitioner contended that the petitioner is entitled to protection under Section 12 of the Maternity Benefit Act. Conducting domestic enquiry and taking departmental proceedings against the petitioner when she was pregnant, is contrary to the provisions of the Maternity Benefit

Act. The petitioner and her husband were repeatedly sending e-mail communications to the respondents stating about the ill-health condition of the petitioner. The learned counsel for the petitioner also referred to the discharge summary issued by St.Stephen Hospital, Delhi dated 12.01.2012 wherein it has been stated that the petitioner delivered a male child on 07.01.2012, treatment given by the said hospital to the petitioner and advised the petitioner to report OPD for review after six weeks. Transferring the petitioner to 1st Reserve Battalion, Barwaha, Madhya Pradesh, without understanding the medical condition is arbitrary, vindictive and contrary to the provisions of Maternity Benefit Act. The impugned order of the respondents 1 to 3 are contrary to the principles of natural justice and prayed to quash the impugned orders of the 1st respondent dated 05.11.2011, confirmed by the 2nd respondent by order dated 28.01.2012 read with order of the 3rd respondent dated 04.06.2012 rejecting the revision as well as appeal.

4. The respondents filed counter affidavit and denied the allegations that no action was taken against the Asst. Commandant, S.P.Khilare and Inspector, Prabhakar. An enquiry was conducted and it was established that the petitioner's complaint on the said Khilare was false. The petitioner was transferred to 1st Reserve Battalion, Barwaha, Madhya Pradesh as she has requested to post her to CISF unit near to Delhi. The posting in the unit at Delhi was not considered because of the posting policy as she has not completed her out of home zone tenure. The petitioner, being a member of the Force is liable to be posted anywhere in India. She has given a declaration at the time of appointment in CISF that "I accept the liability to serve anywhere in INDIA". The writ petition and writ appeal filed by the petitioner challenging the order of transfer were dismissed by this court. In the present writ petition, she is taking the same stand with slight modification as of the stand taken by her in the writ petition challenging the order of transfer.

4(a) This court ultimately discussed the various contentions raised by the petitioner in the writ petition as well as writ appeal and both were dismissed. The petitioner now has taken an additional plea of her pregnancy during the time of departmental enquiry which is aftermath of her wilful and deliberate overstaying from joining time when she was relieved on 23.03.2011 and posted to 1st Reserve Battalion Barwaha. The allegation that one Prabhakar, Inspector of 1st respondent Unit misbehaved with the petitioner is false. The complaint given by the petitioner was enquired by Inspector / Exe Shoba, I.P. of 1st respondent unit and it was established in the enquiry that the petitioner's complaint was made with malicious intention to tarnish the image of the senior officer by taking advantage of

being lady member of the Force. There is no truth in the allegations of sexual harassment made by the petitioner and denied that the petitioner was removed from service only for overstaying from joining time.

4(b) On 23.03.2011, the transfer order was affixed on the door of the hostel room of the petitioner and she ought to have joined during the first week of April 2011. After joining in the place of posting, she could have availed medical leave. The petitioner, without any justifying reason, has not joined in her new transfer place but filed writ petition. The allegation that the first respondent unit did not have jurisdiction to issue charge sheet is not correct. She was relieved by the 1st respondent with effect from 23.03.2011 but she did not report at her new place and join in the transferred place and therefore, the 1st respondent who is the Disciplinary Authority for the petitioner till joining of duty in the new place, has jurisdiction to initiate disciplinary proceedings against the petitioner.

4(c) The respondents denied the allegation that petitioner was not paid salary from January 2011 and maternity benefit. The petitioner claimed salary for January 2011 and it was paid to her. The respondents, after issuing charge memo, conducted enquiry following the principles of natural justice. Though ample opportunity was given to the petitioner, she did not participate in the domestic enquiry and hence she was dismissed from the services. The petitioner was transferred to a new unit much earlier to her pregnancy and hence the contention of the learned counsel for the petitioner that order of removal from service is against the provisions of Section 12 of the Maternity Benefit Act is not correct. The petitioner has not obeyed the order of transfer even after dismissal of writ petition and writ appeal filed by her before this court challenging the order of transfer. The charge memo was issued for not joining in the transferred posting unit. After giving opportunity and conducting enquiry, the impugned order was passed removing her from the services. The petitioner is not entitled to the relief sought for in the writ petition and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner as well as respondent and perused the materials available on record.

6. It is seen from the records that the petitioner, after the training period of nine months, was posted at CISF Unit, Jaduguda, State of Jharkhand and thereafter transferred to the 1st respondent unit on 10.06.2009. From the materials on record, it is seen that the petitioner was suffering from

various medical complications like depression, migraine and frequent miscarriages. The petitioner was treated in the hospital run in the 1st respondent unit and Chettinad Hospital, Chennai. While she was on medical leave and subsequent to her treatment, she was transferred to RTC, Barwaha, Madhya Pradesh on 23.03.2010. On her representation, the order of transfer was kept in abeyance. Subsequently, she was transferred to 1st Reserve Battalion, Madhya Pradesh. The petitioner, challenging the order of transfer dated 31.12.2010, filed W.P.No.2152 of 2011 before this court. The said writ petition was dismissed by this court on 04.03.2011. Writ Appeal No.747 of 2011 filed by the petitioner was also dismissed by the Division Bench of this Court on 09.06.2011.

7. It is seen from the records that after dismissal of the writ petition on 04.03.2011, the order of transfer dated 31.12.2010 was affixed on the door of the hostel room of the petitioner on 23.03.2011 at CISF Unit, DAE, Kalpakkam. According to the petitioner, she was forcefully thrown out of her hostel room. But except sending e-mail communication making such allegation, the petitioner has not filed any material to substantiate the same. It has to be taken note of the fact that the petitioner, by her e-mail dated 10.05.2011 had informed the respondents that she came to know about her pregnancy on 08.05.2011. In spite of the 1st respondent knowing well that the petitioner is suffering from various medical complications like depression, migraine and frequent miscarriages, transferred her to RTC, Barwaha, Madhya Pradesh. It is also to be taken note that the petitioner has given complaint against two officials namely S.P.Khilare, the Asst. Commandant and Prabhakar, Inspector of 1st respondent unit. In the counter affidavit filed by the respondent, it has been stated that both the complaints were enquired into and both were established as false. The respondents have not furnished any details as to whether the petitioner was given any opportunity to substantiate her claim in the enquiry and the person or persons who were examined in the enquiry. That apart, the petitioner had informed the respondents that she is pregnant and that she cannot join in the transferred place as there is no medical facilities. The charge memo was dated 29.06.2011 and the same was served on the petitioner's parents on 30.07.2011. The said charge memo was issued after the respondents were aware of the fact that the petitioner was pregnant. In such circumstances, the contention of the learned counsel for the petitioner that the petitioner is entitled to provision of Maternity Benefit Act is well founded. Section 12 (1) of the Maternity Benefit Act is applicable to the facts of the present case which reads as follows -

12. Dismissal during absence or pregnancy
- (1) Where a woman absents herself from work

in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

8. The petitioner after receiving the charge memo had sent number of e-mail communications to the respondents informing about her health problem and the treatment taken at Delhi. The petitioner was set exparte in the domestic enquiry and impugned order of removing the petitioner from service was passed by the first respondent on 05.11.2011. The petitioner has produced the discharge summary dated 12.01.2012 issued by St.Stephen Hospital, Delhi which shows that the petitioner has taken treatment from 19.05.2011 on various dates for her pregnancy and she had delivered a male child on 07.01.2012. The petitioner was advised to attend OPD after six weeks for review. The discharge summary shows that the petitioner was in the advance stage of pregnancy when the domestic enquiry was conducted and the impugned order of removal from service dated 05.11.2011 was passed.

9. Further, it is seen that the first respondent relieved the petitioner on 23.03.2011 from the 1st respondent unit. The charge memo is based on the information given by the Commandant 1st Reserve Battalion, Barwaha, Madhya Pradesh that the petitioner did not report for duty even after expiry of joining time allowed. The Senior Commandant, 1st Reserve Battalion, Barwaha, Madhya Pradesh has informed the 1st respondent by letter dated 07.05.2011 that the petitioner did not join the unit. The Senior Commandant, 1st Reserve Battalion, Barwaha, Madhya Pradesh in such circumstances only has jurisdiction to initiate departmental proceedings against the petitioner for not having joined duty at the transferred place. The 1st respondent, having relieved the petitioner on 23.03.2011 has lost control over the petitioner and the charge memo issued and departmental proceedings conducted by the 1st respondent are without jurisdiction.

10. The contention of the learned counsel appearing for the respondents that till the petitioner joined in new unit, the 1st respondent is the disciplinary authority is without merits. From the above facts, it is clear that the provisions of Section 12 of the Maternity Benefit Act is applicable to the petitioner and the 1st respondent, without jurisdiction had issued charge memo and ordered and conducted domestic enquiry which are invalid and illegal. From the materials available on record, it

is seen that the petitioner is not keeping good health and she was having medical complications like irregular cycle of mensuration, depression, migraine and frequent miscarriages and was pregnant. She had been granted medical leave when she suffered abortion. In addition to that, the petitioner was transferred to RTC, Barwaha, Madhya Pradesh within few days of her making complaint against S.P.Khिलारे, Asst. Commandant and Prabhakar, Inspector. On the request of the petitioner, the said transfer was kept in abeyance. Subsequently, without taking into consideration the illness of the petitioner, she was transferred to 1st Reserve Battalion, Barwaha, Madhya Pradesh.

11. This court dismissed the writ petition as well as writ appeal filed by the petitioner challenging the order of transfer. It is no doubt true that the petitioner is liable to be transferred to any one of the CISF Unit throughout India. In the present case, the respondents could have kept the transfer of the petitioner from Kalpakkam to RTC, Barwaha, Madhya Pradesh in abeyance or could have transferred to Delhi relaxing the posting policy that she did not complete her out of home zone tenure and posted her to nearest place where her husband is working, taking into consideration the ill health of the petitioner. The contention of the learned counsel for the respondents that the petitioner was transferred to 1st Reserve Battalion at Barwaha, State of Madhya Pradesh which is nearer to Delhi is unjustifiable. The distance between Barwaha, Madhya Pradesh and Delhi is about 900 kms. The petitioner has proved that she was pregnant and was taking treatment in St. Stephen Hospital, Delhi and that she could not travel from Delhi to the 1st respondent unit to attend the domestic enquiry. The request of the petitioner for postponing the domestic enquiry was not accepted by the respondents on the ground that the said request was not supported by medical certificates. From the discharge summary dated 12.01.2012, it is clear that the petitioner delivered a male child two days after the date of the order dismissing her from service. The above vital materials were not properly appreciated by the respondents while setting aside the petitioner exparte in the domestic enquiry and dismissing her from service.

12. For the above reasons, I hold that the first respondent did not conduct the domestic enquiry in a fair and proper manner and has not followed the principles of natural justice and did not give proper opportunity to the petitioner to defend herself in the domestic enquiry. Further, the first respondent did not have jurisdiction after relieving the petitioner and the petitioner is entitled to protection as per Section 12 of the Maternity Benefit Act.

13. In the result, the order of the respondents 1 to 3 are set aside and this writ petition is allowed as prayed for.

rg

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commandant
Central Industrial Security Force (CISF)
(Disciplinary Authority)
Department of Atomic Energy (DAE)
Ministry of Home Affairs,
Kalpakkam - 603 102.
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Government of India,
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+1cc to M/s.Row & Reddy, Advocates, SR.No.73203
+2cc to Mr.T.L.Thirumalasamy, Advocate, SR.No.72282

W.P.No.32163 of 2012

Kak (27/08/2019)