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

+ **W.P.(C) 10590/2017**

SAGARIKA DAS

..... Petitioner

Through: Mr. Abir Phukan and Ms. Vaishali
Goyal, Advocates.

versus

THE SECRETARY TO THE GOVT OF INDIA & ORS

..... Respondents

Through: Mr. Kushal Kumar, Advocate for Ms.
Monika Arora, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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28.01.2020

CM APPL. 43351/2017 (additional documents)

1. For the reasons stated, the application is allowed.

W.P.(C) 10590/2017 and CM APPL. 10170/2018 (directions)

2. The Petitioner has challenged an order dated 24th March, 2017 passed by the Central Administrative Tribunal (CAT) by which CAT held the Petitioner to be ineligible for any promotion or appointment due to her unauthorised absence.

3. In brief, the facts are that the Petitioner joined Respondent No.2, the

Central Institute of Psychiatry, Ranchi on 28th May, 2001. In 2009-2011 the Petitioner obtained study leave for completing her post graduation education in Nursing. The Petitioner states that in May, 2010, the husband of the Petitioner joined Respondent No.2 organisation and had raised certain issues regarding corruption, which resulted in deep prejudice by Respondent No.2 towards the Petitioner.

4. The Petitioner was on maternity leave from 19th July, 2011 and on 20th August, 2011 and she gave birth to a pre-mature baby having various medical complications. On 30th August, 2011 the Petitioner received her degree in Master of Science in Nursing and she became eligible to apply for higher posts in hospitals as Nursing Superintendent.

5. On 21st September, 2011 the Petitioner addressed an e-mail to Respondent No.3, i.e. Director of Respondent No.2, informing him about result of her examination for which she had taken study leave. On 22nd September, 2011 the Petitioner sent a letter to Respondent No.3 informing him about the marks she obtained in M. Sc. Nursing.

6. The Petitioner states that from February, 2012 her salary was withheld illegally and her application for extension of maternity leave was also rejected without assigning any reasons. The Petitioner sent many representations/letters seeking extension of maternity leave on genuine and valid grounds but all these representations were rejected in mechanical manner without assigning any reasons.

7. In March, 2012, advertisements were issued by Respondent No.1 for the post of Deputy Nursing Advisor (DNA) and Deputy Assistant Director General (DADG). On 11th May, 2012 the Petitioner applied for permanent absorption in both the posts of DNA and DADG in the prescribed format. One copy of the application was sent to Respondent No.1 and other copy was marked to the immediate superior of the Petitioner, i.e. Respondent No.4 who refused to receive the application.

8. According to the Petitioner from 14th to 30th May 2012, she made multiple attempts to submit her application to Respondent No.4 who persistently refused to accept the application even sent through speed post. On 22nd June, 2012 the Petitioner addressed a letter to the Director, i.e. Respondent No.3 requesting him to issue certificates and other relevant documents to enable her to apply for the post of DNA and DADG. A copy of the application was also annexed.

9. The Petitioner received two memorandums dated 9th July, 2012 and 17th July, 2012 stating that the Petitioner was on unauthorised leave from 15th January, 2012. On 13th August 2012 a show cause notice (SCN) was issued by Respondent No.3 to the Petitioner to which Petitioner replied on 20th August, 2012 mentioning therein, that Respondent No.3 had already considered her leave since 15th January, 2012 as unauthorised leave even before issuing the SCN.

10. On 12th October 2012 Under Secretary to the Ministry of Health and Family Welfare wrote to Respondent No.3 seeking urgent dispatch of

Petitioner's documents and application for the advertised posts through proper channel. On 1st November, 2012 the Under Secretary again wrote to Respondent No.3, seeking urgent dispatch of Petitioner's documents.

11. On 9th December 2012, the Petitioner registered a complaint on the website of National Commission for Scheduled Castes (NCSC) narrating the details of the deadlock with the Respondent No.2 Institute and ill-treatment meted out to her on Respondent No.3. The Under Secretary to the Ministry of Health and Family Welfare, again wrote on 19th December, 2012 referring to his earlier communications to Respondent No.3, however, no response was forthcoming from Respondent No.3.

12. On 29th December, 2012 Respondent No.2 issued a memo against the Petitioner on the charge of lack of devotion to duty, gross insubordination and doubtful integrity. On 31st December, 2012 Respondent No.3 addressed a letter to the Under Secretary to the Ministry of Health and Family Welfare, referring to his letter dated 19th December, 2012 stating that the Petitioner had been absenting from active duties since 15th January, 2012 and an enquiry had been initiated against her and that was the reason for not forwarding the necessary documents of the Petitioner.

13. This prompted the Petitioner to file OA No.340/2013 on 23rd January, 2013 before the CAT challenging the inaction of Respondent No.3 in forwarding the necessary documents of the Petitioner to Respondent No.1.

14. The Petitioner also filed OA No.556/2013 before the CAT seeking

extension of maternity leave.

15. The CAT issued notice in OA No.340/2013 and observed that since the Petitioner has a *prima facie* case, she was eligible for grant of interim relief. The CAT directed that any selection made for the post of DNA/DADG shall be subject to the final outcome of the OA No.340/2013.

16. The Petitioner again sent a representation to Respondent No.2 requesting to keep the enquiry proceedings in abeyance. She resumed her duties on 25th November, 2013. She states that she was not paid any amount during her leave period. No travelling expenses were paid to her by Respondent No.2.

17. The enquiry report, received on 17th June 2014, held the Petitioner not guilty of the third charge meaning thereby, that her integrity was beyond any doubt; that she had not violated any rules by applying for the posts advertised by the Ministry of Health and Family Welfare, Government of India.

18. On 3rd July, 2014 the CAT dismissed the OA No.340/2013 due to lack of territorial jurisdiction. This order was set aside by this Court and the parties were directed to appear before the CAT on 16th September, 2014. On 5th January, 2015 the CAT was pleased to issue notice in MA No.3929/2014 and it was again directed that in selection made for the posts of DNA/DADG shall be subject to final outcome of OA No.340/2013.

19. The Disciplinary Authority (DA) after a lapse of almost one year, passed

an order dated 6th April, 2015 accepting the findings of the report of the Enquiry Authority and reduced the pay of the Petitioner to the stage of Rs.9,300/- with effect from 1st May, 2015 for a period of five years and it was further ordered that the Petitioner shall not earn increments for the period of reduction and her future increments will also be postponed.

20. An appeal was filed by the Petitioner against the order of the Disciplinary Authority on 30th May, 2015 before Director General of Health Services, Ministry of Health and Family Welfare, Government of India. On 11th December, 2015 the Appellate Authority reduced the penalty imposed on the Petitioner by ordering that her pay be reduced to the lowest stage of Rs.9,300/- with effect from 1st May, 2015 for a period of three years. The Petitioner was not to be given any increments for the said period. However, this would not have the effect of postponing her future increments.

21. The Petitioner assailed the order of the Appellate Authority by filing OA No.1006/2016 before the CAT which was rejected by the CAT. She then filed W.P. (C) No.6383/2016 before this Court. By order dated 25th July, 2016, the OA was ordered to be posted for hearing before Circuit Bench at Ranchi.

22. In the meantime, on 24th March, 2017 OA No.340/2013 was dismissed by the CAT holding that since the period of deputation was not to exceed three years and the said period has already expired, so the OA had become infructuous. It was further noted that since the Petitioner was facing the enquiry, so there was no question of her being considered for any promotion

or appointment.

23. On 19th April, 2017, Circuit Bench of CAT at Ranchi, was pleased to quash the charge sheet filed against the Petitioner as well as the consequent punishments imposed against her and it was also directed to pay her salary from 15th January, 2012 to 25th November, 2013.

24. These benefits were not extended to her, so she filed a contempt petition No.20/2017 before CAT Circuit Bench at Ranchi which was pending consideration. She filed an RTI application dated 12th July, 2017 and came to know that no appointments were made in respect of the post of DNA and DADG.

25. The impugned order of CAT in OA No.340/2013 has been challenged on the grounds that CAT had erred in holding that when she applied for the post of DNA and DADG, there was a departmental proceeding pending against her as she had applied in May, 2012 whereas, the first memorandum was issued to her only in July, 2012 regarding her unauthorised absence. The charge sheet was issued in December, 2012. It has been further submitted that CAT has failed to appreciate that the person has a right to be considered against a vacancy if he or she is eligible for the same and on the date when she applied for the posts, the Petitioner was eligible on all accounts and the purported taint/ineligibility only arose once the charge sheet was issued.

26. It has been also submitted that the CAT lost sight of its own interim order, where it was mentioned that any selection/appointment was subject to

final outcome of the OA. The enquiry proceedings were pending for nearly two years and no allowance was paid to the Petitioner during the said period, which is in direct contravention of the rules and the learned Circuit Bench of CAT at Ranchi, had considered all the averments and had exonerated the Petitioner and it was held that extension of maternity leave of the Petitioner was illegally denied by Respondent Nos.2 and 3. Under these circumstances, the Petitioner has prayed in the present petition for the following reliefs:

“(a) Issue a writ of mandamus or any other appropriate writ order or direction quashing the order dated 24.3.2017 passed by the Ld. Central Administrative Tribunal, Principal Bench dismissing the Petitioner's OA No. 340/2013;

(b) Direct Respondent No 2 to forward the necessary documents of the Petitioner indicated in letters dated 12.10.2012, 1.11.2012 and 19.12.2012 to Respondent No. 1 for consideration of her application to the posts of Deputy Nursing Advisor (DNA) and Deputy Assistant Director General (DADG) in the Ministry of Health & Family Welfare and/or direct Respondent No 2 to submit the necessary documents before this Hon'ble Court;

(c) Direct Respondent No 1 to take necessary action against Respondent No 2 for not forwarding the documents of the Petitioner as sought for by the Respondent No 1;

(d) Direct Respondent No 1 to consider the application of the Petitioner for the posts of Deputy Nursing Advisor (DNA) and Deputy Assistant Director General (DADG);

(e) Pass appropriate directions for payment of compensation of Rs. 5 Lakhs to compensate the hardships and agony suffered by the Petitioner in

defending herself against the disciplinary proceedings and also contesting litigations against the Respondents before the Ld. Principal Bench of the Central Administrative Tribunal and also this Hon'ble Court;

(f) Pass such other or further orders as this Hon'ble Court may deem fit.”

27. Notice was issued in the petition. On 30th November, 2017 this Court ordered that in the event a post of Deputy Nursing Advisor (DNA) in the Respondent No.1/ Ministry of Health and Family Welfare is lying vacant, as on date and the same shall be kept vacant till the next date. The interim order was further extended on 16th March, 2018.

28. A reply has been filed on behalf of the Respondents on 31st July, 2019 in which the stand taken is that Petitioner was supposed to submit the original certificates for updating her qualification in the service book which she never did. She was on unauthorised absence from 15th January, 2012 to 25th November, 2013. The Petitioner was required to submit her application through Respondent No.3 but she did not do so. The judgment of CAT dated 19th April, 2017 has been implemented and arrears of salary have been released to her after regularising the period of her absence. A reply was sent to the Ministry on 31st December, 2012 mentioning the fact that there was a disciplinary case pending against the Petitioner as she was absent from duty since 15th January, 2012 and a charge sheet was also issued to her.

29. We have heard arguments of counsel for the parties. It is pertinent to mention here that out of three charges framed against the Petitioner; she was

exonerated by the Enquiry Officer from the third charge as mentioned above. As far as the remaining two charges were concerned, vide order dated 19th April, 2017 in OA No.1006/2016 CAT Circuit Bench at Ranchi, had quashed the charge sheet and the punishments so imposed by observing as under:

“10. We are of the considered opinion that the respondents have acted in an arbitrary manner in rejecting her prayer for leave beyond 15.01.2012, (i.e. after the normal period of 180 days of Maternity Leave) without application of mind. This cannot be at the cost of a nursing mother who had a difficult pregnancy leading to the birth of an underweight and preterm child. Accordingly, we direct that she shall be entitled for grant of leave under Rule 43 (4) (b) in continuation of maternity leave granted under sub rule 43(1); Since the foundation on which the charge sheet has been framed does not exist, the charge sheet and the punishments imposed are-quashed and set aside.

11. Accordingly, she would be entitled to salary from 15.01.2012 upto 25.11.2013 in accordance with the period regularized under the above Rule 43(4)(b) of the said Rules; After adjusting all kinds of leave due, if no leave is available in her account, -the balance period shall be regularized as extraordinary leave without pay, but without break in service or any other adverse consequences. Thus, reliefs 8(1) to (iv) are allowed as per the above observations. Relief 8(v), 8(vi) and 8(vii) are not relevant to the present matter. Therefore, no order as to these reliefs. No order as to costs and interest.”

30. As mentioned in the reply by the Respondents, this order of the CAT, Circuit Bench, Ranchi has been implemented and the period of absence of the Petitioner has been regularised and even arrears of salary amounting to

Rs.13,17,302/- have been already released to her. Hence, it is to be taken as if there were no departmental proceedings pending against the Petitioner at any time as the charge sheet in question itself stood quashed. The Petitioner has already joined her duties.

31. It has been submitted by learned Counsel for the Petitioner that there is still one vacancy of Deputy Nursing Advisor available with Respondent No.1, i.e. Ministry of Health and Family Welfare and the Respondent Nos.2 and 3 are required to forward the application of the Petitioner as well as the documents asked for by the Ministry of Health and Family Welfare. The said documents are:

- i) Photocopies of the ACRs (5years)
- ii) Integrity certificate
- iii) Vigilance clearance certificates
- iv) No penalty certificate

32. The impugned order of the CAT is based upon surmises and conjectures. Para 9 of the said order, which is the basis of dismissal of the OA is reproduced here under:

“9. The original advertisement was issued to fill up the posts on deputation. Period of deputation was indicated as ordinarily not to exceed three years. The application had to be forwarded through proper channel. The three-year period is over in 2015. Therefore, in a sense, this OA has become infructuous. However, even if we look at the merits of the case, it is seen that the applicant was on unauthorized leave starting from 31.01.2012 till November 2013. For the unauthorized period of leave between 31.01.2012 till 31.08.2012, a Charge

Memorandum was issued to the applicant. Therefore, there was a departmental proceeding pending against her. Obviously, she could not be considered for promotion or appointed on deputation in face of the fact that there was a departmental proceeding pending against her. The inquiry report does indeed sets at rest the dispute between the parties as to whether the applicant has sent the application to the Director's office or not. As is evident from the documentary evidence, it had been sent. However, that no longer remains relevant as the applicant was facing departmental inquiry for unauthorized absence for a long period. Therefore, there was no question of her being considered for any promotion or appointment.”

33. Keeping in view the fact that one post of the Deputy Nursing Advisor is still lying vacant with Respondent No.1; the charge sheet against the Petitioner stands quashed vide order dated 19th April, 2017 of CAT Circuit Bench, Ranchi, so, the conclusion arrived at by CAT in the impugned order dated 24th March 2017 no longer holds good.

34. The petition is allowed. The impugned order of the CAT is set aside. The Petitioner's application shall be forwarded along with documents required within two weeks from today by Respondent No.2. to Respondent No.1 for consideration of Petitioner for appointment on deputation to the post of Deputy Nursing Advisor in the Ministry of Health and Family Welfare, and decision be taken by Respondent No.1 within four weeks thereafter. The decision will be communicated to the Petitioner within a further period of two weeks.

35. If aggrieved by such decision, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

S. MURALIDHAR, J

TALWANT SINGH, J

JANUARY 28, 2020
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