
(2008) 09 DEL CK 0088
In the Delhi High Court
Case No : LPA No. 1139 of 2007

Sarita Sarangi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1), 5(2)

Citation : (2008) 09 DEL CK 0088

Hon'ble Judges : A.P. Shah, C.J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Geeta Luthra and Aanchal Mullick, for the Appellant; V. Shekhar Shilpa Singh and Yogesh Verma for UOI and Anuja Saxena, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

C.M. No. 10644 of 2007 (condonation of delay)

We have heard learned Counsel for the parties. For the reasons stated in the application, the delay in filing the appeal is condoned.

The application is disposed of.

LPA No. 1139 of 2007

1. This appeal is directed against the impugned order dated 30th May 2007 passed by the learned Single Judge dismissing the Appellant's Writ Petition (C) No. 23898 of 2005.

2. The Appellant was appointed as Deputy Director (Technical/ Programme Officer) of the Rehabilitation Council of India (RCI), Respondent No. 2 herein, pursuant to an advertisement issued for that purpose. On 15th June 1999 the Appellant joined the post. By a letter dated 22nd June 1999 the Respondent No. 2 informed her that her appointment to the post of Deputy Director with effect from 15th June 1999 was on probation for two years with an initial pay of Rs.

10,000 per month plus allowances in the pay scale of Rs. 10,000-15,200.

3. The Appellant availed of earned leave from 8 to 12th November 1999. She was on commuted leave from 20th December 1999 to 24th December 1999 on the ground of ill health for which she submitted an application for regularisation of leave along with medical certificate after rejoining duty on 27th December 1999. On 1st May 2000 she applied for 19 days earned leave from 22nd May to 9th June 2000 giving her leave address as Port Blair, where her husband, who was working with the Government of the National Capital Territory of Delhi, was transferred. This leave was sanctioned on 8th May 2000. An application was submitted by the Appellant on 9th May 2000 requesting for confirmation on the post of Deputy Director. Meanwhile on 9th May 2000 she applied for three days leave from 15th May to 17th May 2000. This leave was sanctioned.

4. The Appellant was informed by a letter dated 30th May 2000 by Respondent No. 2 that her request for confirmation would be considered after completion of the probation period. On 12th June 2000 she applied for extension of leave from 10th June to 19th June 2000 on the ground of sickness in the family. On 19th June 2000 she applied for further extension of leave for 15 days on medical grounds. She informed RCI that she would submit an illness certificate at the time of reporting for duty. On 24th July 2000 she intimated through fax message that her flight scheduled on 22nd July 2000 was cancelled and requested for extension of leave. She reported for duty on 31st July 2000 along with the original medical certificate. She again availed five days earned leave from 28th August to 1st September 2000. A memo seeking some clarification regarding her extension of leave was issued to her on 4th September 2000. On 5th September 2000 a memo was issued to her for leaving office on 25th August 2000 without prior permission of the higher authority and without informing her section. On 12th September 2000 the Appellant submitted an explanation and clarification. The Appellant's leave from 10th June 2000 to 30th July 2000 was regularized by an Office Order dated 27th September 2000 by granting her leave at her credit and extraordinary leave.

5. A memo was issued by the RCI to the Appellant on 27th September 2000 asking her to desist from such misconduct in future and to ensure that she took prior permission for availing any kind of leave failing which strict disciplinary action under the rules would be initiated against her.

6. The Appellant availed five days leave from 28th August 2000 to 1st September 2000 on medical grounds and again, four days' earned leave from 26th December to 29th December 2000 giving her leave address at Port Blair. This prompted a warning letter dated 11th December 2000 being issued to her. On 30th December 2000 she requested for extension of leave for one month on medical grounds without supporting medical documents. She submitted an application dated 28th January 2001 which was received on 5th February 2001.

7. Meanwhile on 29th January 2001 the Appellant was asked to intimate the date

of reporting so that RCI could arrange a second medical opinion. On 22nd February 2001 when she did not produce any medical documents a memo was given to her asking to produce a medical certificate and the full details of her illness. On 28th February 2001 the Appellant wrote to the RCI that she was suffering from hypertension with anxiety and was under treatment at the OPD of G.B. Pant Hospital, Port Blair with effect from 30th December 2000. She enclosed a certificate from the consulting doctor.

8. By a letter dated 14th March 2001 the RCI informed the Appellant that due to her long absence the work of the RCI was suffering and her request for extension of leave was refused. She was informed that the period of overstay would be treated as unauthorised absence. The Appellant again requested for extension of leave on 23rd March 2001. A report was received from G.B. Pant Hospital on the same date. By a memorandum dated 12th April 2001 the Appellant was informed that she had violated the Conduct Rule 3, Clause (ii) of Sub-rule (1) i.e. devotion of duty. She was asked to show reasons as to why disciplinary action under CCS (CCA) Rules should not be taken. In her explanation dated 30th April 2001 she referred to family problems. By an order dated 7th May 2001 the Chairman RCI terminated her services. The file was then sent to the Minister of State (MOS) for Social Justice and Empowerment (SJ&E) along with the request of the appellant that she be sent on deputation to Port Blair. On 21st June, 2001, the MOS made the following noting on the file:

Even if she is reinstated, she, I learn cannot go on deputation. Since she is not a person to be trusted with dedicated work let the termination stand.

9. The appellant submitted a detailed representation dated 24th July, 2001 to the MOS (SJ&E), Smt. Menaka Gandhi, in which she prayed that her "case may be reopened and I may be reinstated in service with full benefits as per CCS (Temporary Services) Rules 5(2) (iii)...." She also alleged that there were financial irregularities in the management of RCI and also prayed for an investigation by "an independent agency." Her allegation was that she was being victimized for speaking up against such irregularities. The appellant addressed further representations to the Union Minister, Dr. Satya Narayan Jatia, 5th March, 30th March and 30th April, 2002. She made a further representation on 3rd March, 2003.

10. In the meanwhile, on 27th August, 2002, the Union Minister Dr. Jatia passed an order on the file opining that the action taken against the appellant was disproportionate and in violation of the principles of natural justice and directed her reinstatement. This order was, however, not implemented. According to the appellant, the Union Minister reiterated the order of reinstatement on 1st September, 2003 but no action was taken.

11. The appellant has annexed the copy of a letter dated 15th May, 2004 written by the Union Minister Dr. Jatia to Mr. Bishnu Pada Ray, former MP from Port Blair that the former had "given a direction to the concerned officer for the

reinstatement of Smt. Sarangi in accordance with rules." The Ministry of Law, Department of Legal Affairs gave an opinion on 27th July, 2004 that the appellant's termination was not valid as the prior approval of the Central Government had not been sought. The appellant again represented to the MOS on 11th October, 2004 requesting reinstatement. However, RCI proceeded with advertising the vacancy of Deputy Director (Programme). The appellant shot off four more representations on 11th January, 24th May, 9th September and 24th October, 2005. She then filed W.P (C) No. 23898 of 2005 in this Court on 17th December 2005 challenging the order of termination dated 7th May 2001.

12. Before the learned Single Judge it was contended by the Appellant that the order dated 7th May 2001 was void ab initio since it was issued by an authority subordinate to the appointing authority. It was submitted that the appointment had to be made by the Chairman RCI with the prior approval of the Central Government. Accordingly the termination under Rule 5(1) of the Central Civil Services (Temporary Services Rules, 1965 ("CCS Rules")) ought to have been with the prior approval of the Central Government. It was next contended that as no opportunity of hearing was given to the Appellant before passing such order, it was violative of the principles of natural justice and therefore void.

13. After discussing Regulations 4 and 9 of the Rehabilitation Council of India (Conditions of Service of the Member-Secretary, Officers and other than Employees) Regulations, 1998, ("Regulations") and Rule 5(1) of the CCS Rules, the learned Single Judge concluded that the Chairman RCI was empowered in terms of the CCS Rules to terminate the services of the Appellant and no prior approval of the Central Government was required. Reference was made, among others, to the judgment of the Supreme Court in State of Assam etc. Vs. Kripanath Sarma and Others etc.,

14. As regards the factual aspect, the learned Single Judge noted that the MOS had while making her order on 21st June 2001 taken note of the fact that Petitioner's service stood terminated on 7th May 2001 and therefore "the subsequent approval of the termination of her services accorded by the Central Government cannot be faulted, the same having cured the irregularity, if any."

15. As regards the submission that the termination order was violative of the principles of natural justice, the learned Single Judge referred to the judgments in Municipal Committee, Sirsa Vs. Munshi Ram, Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna, and H.F. Sangati etc. Vs. R.G. High Court of Karnataka and Others etc., and concluded that the order was not punitive but was a termination simpliciter and therefore there was no violation of the principles of natural justice. The learned Single Judge further held that there was no provision in the Rules permitting the Union Minister to review the order of the MOS. Further, the proviso to Rule 5(2) of the CCS Rules which stipulates that no case shall be reopened after the expiry of three months was violated. It was therefore held that the order of the Union Minister directing the reinstatement of

the Appellant was without the authority of the law. The learned Single Judge held that the opinions of the Department of Legal Affairs, taking a contradictory stand, could not help the case of the Appellant as they were not consistent with the legal position emanating from the Rules.

16. We have heard the submissions of Ms. Geeta Luthra, learned Counsel for the Appellant at length. We have also considered the submissions of Mr. V. Shekhar learned Senior counsel appearing for the Respondents.

17. Learned Counsel for the Appellant reiterated the submissions made before the learned Single Judge. As regards the first submission that the order of termination was bad in law since it was issued without the prior approval of the Central Government, we are inclined to concur with the view expressed by the learned Single Judge that no such prior approval of the Central Government was required in terms of the applicable Rules. The judgment of the Supreme Court in Kripanath Sarma referred to by the learned Single Judge squarely applies to the facts of the case.

18. It was next submitted that the order was stigmatic and therefore violative of the principles of natural justice since no prior opportunity of hearing was afforded to the Appellant before it was made. On this point also we are in complete agreement with the view expressed by the learned Single Judge. The order dated 7th May, 2001 terminating her services reads thus:

In pursuance of the Proviso to Sub -rule (1) of Rules 5 of the Central Civil Services (Temporary Service) Rules, 1965. The Chairman, RCI, hereby terminates forthwith the services of Dr. (Mrs.) Sarita Sarangi and directs that she shall be entitled to claim a sum equivalent to the amount of her pay plus allowances for the period of notice at the same rates at which she was drawing them immediately before the termination of her service, or, as the case may be, for the period by which such notice falls short of one month.

19. The above order is certainly not stigmatic. There was no question of the RCI having to give a prior hearing to the appellant before passing such an order. The law in this regard is fairly well settled. In State of Punjab and Others Vs. Sukhwinder Singh, , in similar circumstances, it was held by the Supreme Court thus:

In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was a habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of the Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24

of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16-3-1990 was, in fact, based upon misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in *Ajit Singh v. State of Punjab* the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules.

The above law has been reiterated in a large number of judgments some of which have been referred to by the learned Single Judge.

20. The impugned order is one of termination simpliciter and not stigmatic. There was therefore no question of any violation of the principles of natural justice. The appellant was a probationer. The facts on record show that she was habitually absent on several occasions and very often without obtaining prior sanction of leave. In the circumstances, the decision not to confirm her services at the close of her probation could not be held to be unreasonable or irrational.

21. Learned Counsel for the Appellant made lengthy submissions on the notings made by the MOS on the representation made by the Appellant on 24th July, 2001 and the orders passed thereafter by the Union Minister. It was submitted that no order was actually passed by the MOS on the above representation made by the Appellant and therefore the order dated 27th August, 2002 passed by the Union Minister was not a 'review' of the order of the MOS.

22. We have been given an extract on the relevant notings made in the file by the MOS and the Union Minister. Incidentally, this file was also inspected by learned Counsel for the appellant. The record shows the MOS made an endorsement "File" on the representation dated 24th July 2001. It was sought to be contended by the learned Counsel for the Appellant that this noting only meant that the representation was to be placed on file and in any event since it did not bear any date it was not a decision by the MOS rejecting the representation. We are unable to agree with the submission. In the context in which the said noting has been made, it is clear that the representation dated 24th July, 2001 was rejected by the MOS. The word "file" in this context connotes that the representation should be consigned with no action to be taken thereafter on it.

23. What appears to have happened thereafter this is that the Union Minister (SJ&E) called for the file and passed the following order in Hindi on 27th August 2002:

Dr Sarita Sarangi ke virudh asthai seva niyam 5(1) ke antargat ki gayi karvai asamanupatic hai. Prakrutic nyaya sidhant ke antargat unhe sunwai ka awsar diyajana chahiye tha. Niyam sammat labh pradan karte hue unki punarvahali ke adesh diye jate hein.

The translation reads thus:

Action taken under Rule 5(1) of Temporary Service Rules against Dr Sarita Sarangi is disproportionate. She should have been afforded an opportunity of hearing under the principles of Natural Justice. It is hereby ordered that she be reinstated with benefits as admissible under rules.

24. The learned Single Judge has held that the above order resulted in the reopening of the case of the Appellant beyond three months after termination and did not conform to the requirement of the Rules. The relevant provision of the CCS Rules reads thus:

5(2) (a) Where a notice is given by the appointing authority terminating services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government in this behalf or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-open the case, and after making such enquiry as it deems fit:

- (i) confirm the action taken by the appointing authority;
- (ii) withdraw the notice;
- (iii) reinstate the Government servant in service; or
- (iv) make such other order in the case as it may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months-

- (i) from the date of notice, in a case where notice is given;
- (ii) from the date of termination of service, in a case where no notice is given.

The unambiguous requirement of the proviso is that reasons have to be recorded in writing in case the termination order is sought to be reopened beyond three months after the date of the termination. The order dated 27th August 2002 passed by the Union Minister on the file does not give the reasons in writing for the reopening of the case beyond three months.

25. Even the later order dated 1st September 2003 passed by the Union Minister reiterating his earlier order dated 27th August 2002 and asking for an explanation for the delay in its implementation does not record any reason for reopening the case beyond three months. The rough translation of the order dated 1st September 2003 passed in Hindi by the Union Minister reads thus:

Kindly see my order dated 27 August 2002. This order was given after due consideration of the representation of Dr Sarita Sarangi. Ministry's view that the representation of Ms Sarita Sarangi has been rejected after consideration is not based on fact as the order of the then Minister of State dated 21 June 2001 had been given one month before the said representation was submitted. Therefore order dated 27 August 2002 be complied immediately and I may immediately be appraised of the reason for delay for delay in implementation of the order.

26. In the considered view of this Court, the Appellant cannot seek to derive any support from the above orders passed by the Union Minister, which in the view of this Court were without the authority of the law. The view taken by the Union Minister that there was no rejection by the MOS of the appellant's representation dated 24th July 2001 is erroneous for the reasons already explained. Further, the decision of the Union Minister, which is in fact a review of the decision taken by the MOS rejecting the appellant's representation dated 24th July 2001, is unable to be justified with reference to any power in any of the CCS Rules or elsewhere. Learned Counsel for the appellant relied on the decisions of the Supreme Court in *Union of India and others Vs. Vinod Kumar and others*, and another dated 30th November 2007 in C.A. No. 5543 of 2007 (*Devisingh Meena v. Union of India*). These two decisions appear to have turned on the peculiar facts of those cases and do not help the appellant.

27. That apart, the orders of the Union Minister have proceeded on a misconstruction of the relevant legal provisions. As already noticed, in the instant case there is no question of any violation of the principles of natural justice particularly since the order of termination of the services of a probationer before the completion of the period of probation was an order of termination simpliciter without any stigma being attached. Viewed from any angle, the orders passed by the Union Minister on file were not sustainable in law. We therefore find no reason to differ with the impugned judgment of the learned Single Judge.

28. The appeal is without merit and it is dismissed as such with no order as to costs.