
(2013) 04 DEL CK 0345
In the Delhi High Court
Case No : LPA 213 of 2008

Shakuntla Navani

APPELLANT

Vs

Indian Institute of Technology

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 4 AD 233

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Anusuya Salwan, Ms. Renuka Arora and Mr. Vikas Sood, for the Appellant; Jyoti Tyagi, S.N. Pandey for Mr. Yeeshu Jain, for the Respondent

Judgement

1. The appellant who was working as Lower Division Clerk with the respondent Indian Institute of Technology, New Delhi did not attend her duty for the period from 1.8.1994 to 8.8.1994. No prior permission had been taken by her for remaining absent from duty during the aforesaid period. On joining of duty on 8.8.1994, she applied for grant of leave. At that time, 21 Earned Leaves and 91 Extraordinary Leaves were due to her. The leave was sanctioned to her and was duly debited to her leave account. However, a charge-sheet containing following three charges was served upon her on 12.9.1994, when she was also placed under suspension:

Article of Charge-I

That Ms. Shakuntla Navani while functioning as LDC in the IIT Hospital of the Institute absent herself from the duty without prior permission/sanction of leave w.e.f. 1.8.94. Ms. Shakuntla Navani by her above act failed to maintain proper conduct thereby contravening para 3(e) of the Conduct Rules given in Schedule "B" to the statutes of the Institute.

Article of Charge-II.

That Ms. Shakuntla Navani while functioning as LDC in the IIT Hospital of the

Institute did not observe the scheduled hours of work. Ms. Shakuntla Navani by her above act failed to maintain proper conduct thereby contravening para 3(d) of the Conduct Rules given in Schedule "B" to the statutes of the Institute.

Article of Charge-III.

That Ms. Shakuntla while functioning as Lower Division Clerk in the IIT Hospital of the Institute did not complete even a small work given to her.

The Inquiry Officer submitted his report on 21.12.1995 holding that only Charge No. 1 stood established and Charges No. 2 and 3 could not be established. Vide order dated 30.09.1996, the Disciplinary Authority imposed penalty of compulsory retirement from service upon the appellant. The appeal filed by her having been dismissed by the Appellate Authority, she filed W.P. (C) No. 1708/1999, challenging the penalty imposed upon her. A learned Single Judge of this Court, vide order dated 4.12.2003, noted that the appellant had unblemished record of service of more than 14 years, the only misconduct found was absent without prior sanction for 5 days, she had leaves to her credit, the reason given by her for taking leave without prior sanction i.e. sudden illness of her mother had not been disbelieved and held that such misconduct did not relate to grave misconduct and did not justify penalty of compulsory retirement from service. He accordingly quashed the penalty order dated 30.9.1996 as well as the order of the Appellate Authority dated 11.12.1997 and remanded the matter back to the Disciplinary Authority for levying a minor penalty. He also directed the Disciplinary Authority to decide afresh as to in what manner, the period of suspension of the appellant was to be treated. Vide a later order dated 17.12.2003, the learned Single Judge directed that in case suspension of the appellant was found to be unjustified, appropriate order relating to payment of her salary would also be passed, within the power of the Disciplinary Authority. The writ petition filed by the respondent against the order of the learned Single Judge was dismissed by a Division Bench of this Court vide order dated 25.11.2005. A SLP filed by the respondent IIT was dismissed by the Supreme Court vide order dated 20.2.2006.

2. Vide order dated 1.9.2006, the Disciplinary Authority imposed penalty of "censure" upon the appellant. Claiming that her suspension was wholly unjustified and, therefore, full period allowance under suspension period should be paid to her, the appellant filed a Contempt Petition, in which an order was passed by the learned Single Judge on 5.7.2007, directing the respondent to take a fresh decision as to whether it would like to treat the entire period of suspension of the appellant as justified or not. Since the appellant had, in support of her case, relied upon the Office Memorandum dated 3.12.1985 issued by the Government of India, the learned Single Judge also directed the respondent, while taking a fresh decision pursuant to his order, to take the aforesaid Office Memorandum into account. Vide order dated 21.8.2007, the respondent directed that the appellant would be paid subsistence allowance equivalent to 75% of the normal pay and allowance for the period from

12.12.1994 to 20.3.2006 and the aforesaid period will be treated as not spent on duty except for pensionary benefits. Being aggrieved from the aforesaid order passed by the respondent, the appellant filed W.P. (C) No. 3161/2008. The writ petition having been dismissed, the appellant is before us by way of this appeal.

3. Clause 13(14) of the Statutes of IIT, which was applicable to the case of the appellant reads as under:

(14)(i) When a member of the staff of the institute who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order;

(a) regarding the pay and allowance to be paid to the member of the staff of the institute for the period of his absence from duty; and

(b) whether or not the said period shall be treated as a period spent on duty.

(ii) Where such competent authority holds that the member of the staff of the Institute has been fully exonerated or in the case of suspension, that it was wholly unjustified, the member of the staff of the Institute shall be given the full pay to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be, together with any allowance of which he was in receipt prior to his dismissal, removal or suspension.

It would thus be seen that as per the aforesaid Rule, in the event of the employee subjected to an inquiry and suspension being exonerated or his suspension being found to be wholly unjustified, he is entitled to full pay to which he would have been entitled had he not been dismissed, removed or suspended, along with the allowance which he was receiving prior to his removal, or suspension.

4. The learned counsel for the appellant has drawn our attention to an Office Memorandum dated 3.12.1985 issued by Government of India which, to the extent it is relevant reads as under:

The undersigned is directed to invite attention to this Department OM No. 43/56/64-AVD dated 22.10.64 containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CC & A) Rules, 1965 had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side.

Accordingly, where departmental proceedings against a suspended, employee for the imposition of a major penalty finally and with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR (54-B) and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

The submission of the learned counsel for the appellant is that in the absence of any rule or decision to the contrary, the aforesaid OM would apply to the employees of the respondent and consequently, wherever an employee who is suspended pending inquiry is visited with a minor penalty, suspension is deemed to be wholly unjustified and consequently, she is entitled to full salary and allowances for the period of suspension this regard, she relied upon Resolution 34/65 of IIT whereby it was resolved that where no rule had been framed by the statute to deal with a particular matter, the Central Government Rules would become applicable. The alternative submission of the learned counsel for the appellant is that even if the aforesaid OM was not to be applied, the suspension of the appellant was otherwise wholly unjustified considering the fact that she was placed under suspension after she had already joined duty and the leave sought by her was duly sanctioned.

5. We find from a perusal of the order dated 4.12.2003 passed by the learned Single Judge in CWP 1708/1999, which was upheld not only by the Division Bench of this Court but also by the Supreme Court by dismissing the Special Leave Petition, that immediately on joining duty on 8.8.1994, the appellant applied for leave and the said leave was duly sanctioned to her thereby regularizing the period of absence of 5 days. As noted earlier by us, out of three Articles of Charge served upon the appellant, only the First Article was proved. The first Article was for remaining absent from duty without sanction of leave with effect from 1.8.1994. In our view, once the appellant had resumed duty on 8.8.1994 and had duly submitted the leave application, which later on came to be allowed, there could be absolutely no justification for suspension of the appellant. In fact, we are unable to comprehend as to what could be the possible justification for suspension of the appellant when she had already joined duty and applied for leave which was available to her credit, much before the order of suspension was passed. This aspect of the matter is to be viewed in the light of the fact that the appellant had an unblemished record of service for 14 years, as noted by the learned Single Judge in the order dated 4.12.2003. Therefore, we cannot see any justification for suspension of the appellant despite her having resumed duty on 8.8.1994. We are conscious that ordinarily the Court should not interfere with the view taken by the Competent Authority as to whether suspension of an employee was unjustified or not, but, at the same time the Court would be failing in its duty to protect the legal rights of the citizens, if it does not interfere, even on finding that the view taken by the Disciplinary Authority in this regard is wholly arbitrary and irrational and no reasonable person could, in the facts and circumstances of the case, have taken such a view.

We, therefore, are unable to uphold the view taken by the Disciplinary Authority in this regard.

6. Since, we are of the view that the suspension of the appellant was wholly unjustified, we need not go into as to whether the OM dated 3.12.1985 would apply to the case of the appellant or not. For the reasons stated hereinabove, the impugned order dated 25.4.2008 as well as the order of the Disciplinary Authority dated 21.8.2007 are hereby set aside and the respondent is directed to release full pay and allowance of the appellant with effect from 12.12.1994 to 20.3.2006 and treat the aforesaid period spent on duty. The arrears in compliance of this order would be released to the appellant within four weeks, but without any interest.

The appeal stands disposed of accordingly.