
(2012) 10 DEL CK 0359

In the Delhi High Court

Case No : Writ Petition (C) 4458 of 1997

Union of India and Others

APPELLANT

Vs

Smt. Savitri Sharma

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19(4)

Citation : (2012) 10 DEL CK 0359

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Saqib, with Mr. Akshay Chandra, for the Appellant; Jyoti Singh, With Mr. Manjeet Singh Reen, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 11.04.1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in OA No. 1379/1995 whereby the respondent has been directed to be reinstated with all consequential benefits with effect from 12.05.1984. The facts in brief are that the respondent was appointed as a Lower Division Clerk (LDC) in the office of the Land & Development Officer (L&DO) on 06.04.1971. She was confirmed on 27.07.1974. Subsequently, she was transferred to the administration section on 1981. On 20.02.1985 a charge sheet was issued to her essentially on the allegation that she had remained unauthorisedly absent from duty. The Inquiry Officer submitted his report on 26.05.1993 whereby the charges leveled against the respondent were found to have been established. The disciplinary authority by virtue of its order dated 10.11.1984 agreed with the report of the Inquiry Officer in the following manner:-

And whereas the undersigned after perusal of the Inquiry report and the records pertaining to the disciplinary proceedings of Smt. Savitri Sharma as also her representation dated 2.12.93, agrees with the findings of the Inquiry Officer that the charge of unauthorised absence from duty w.e.f. 2.1.1984 to 20.2.1985 is

proved against Smt. Savitri Sharma, L.D.C. which is grave enough to warrant imposition of a major penalty on Smt. Savitri Sharma.

Now, therefore, having been satisfied with the material available on record and the inquiry report the undersigned has come to the conclusion that the ends of justice would be met in this case if the penalty of "removal from service" is imposed on Smt. Savitri Sharma. Accordingly, the undersigned orders and imposes the penalty of "removal from service" on Smt. Savitri Sharma, L.D.C. with immediate effect.

2. Being aggrieved thereby, the respondent filed an appeal before the appellate authority. However, since the appeal was not being decided the respondent filed the said OA No. 1379/1995. The Tribunal admitted the appeal for hearing and as a result of which section 19 (4) of the Administrative Tribunal's Act, 1985 was triggered and the appeal filed by the respondent abated.

3. The Tribunal came to the conclusion that the present case was one of non-application of mind and that the orders passed by the authorities below were perverse on the face of it and consequently quashed the disciplinary proceedings and the order of the disciplinary authority.

4. We, however, are not examining that aspect of the Tribunal's order and the present decision of ours ought not to be construed as one confirming the reasoning adopted by the Tribunal. We have taken an entirely different route in view of the recent decision of the Supreme court in the case of Krushnakant B. Parmar Vs. Union of India (UOI) and Another, . In the said decision the Supreme Court has clearly held that in a departmental proceeding, if the allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful and if there is no such finding, the absence would not amount to misconduct. In the present case we find that the disciplinary authority has not examined the question as to whether the absence was willful or not. In any event, there is no finding that the unauthorised absence was willful. Since there is no such finding, the order of the disciplinary authority dated 10.11.1994 cannot be sustained on this ground alone in view of the Supreme Court decision in the case of Krushnakant B. Parmar (supra). It is for this reason that we are not going into the other aspects of the matter. We agree with the conclusion arrived at by the Tribunal but on an entirely different reasoning.

5. The learned counsel for the respondent states that since the respondent had not worked throughout the period and since she had also expired on 25.11.1997, she is not claiming any back wages.

6. As a result of the foregoing discussion, the order passed by the disciplinary authority dated 10.11.1984 is set aside and the respondent is directed to be reinstated with effect from 12.05.1994. However, the respondent shall not be entitled to any back wages and she/her legal heirs will only be entitled to pension/retiral benefits as per rules. The writ petition stands disposed of.