

Deepa Sharma Vs. The Aoc-In-C

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Court : Karnataka

Decided On : Dec-15-2016

Judge : Jayant Patel and P.S.Dinesh Kumar

Appeal No. : WP 44337/2016

Appellant : Deepa Sharma

Respondent : The Aoc-In-C

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE15H DAY OF DECEMBER 2016 PRESENT THE HONBLE MR.JUSTICE JAYANT PATEL AND THE HONBLE MR.JUSTICE P S DINESH KUMAR WRIT PETITION NO.44337/2016 (S-CAT) BETWEEN: DEEPA SHARMA W/O. SUBRAMANYA M S, AGED ABOUT35YEARS, WARD SAHAYIKA, (NOW UNDER REMOVAL FROM SERVICE) COMMAND HOSPITAL, A.F. AGARAM POST, BANGALORE56000. R/AT NO.1602, VASHTHAVYA, 1ST A CROSS, CHANDRA LAYOUT, BANGALORE56001 ... PETITIONER (BY SRI RANGANATH S JOIS, ADVOCATE) AND:

1. THE AOC-IN-C APPELLATE AUTHORITY, HQ, TC, IAF, J.C. NAGAR POST, BANGALORE56000 2 2.THE COMMANDANT AND THE DISCIPLINARY AUTHORITY COMMANDANT HOSPITAL, AIR FORCE, BANGALORE56000 3.THE CIVIL ADMINISTRATOR COMMANDANT HOSPITAL, AIR FORCE,

BANGALORE56000 ... RESPONDENTS (BY SRI PRADEEP SINGH, ADVOCATE FOR R1-3) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE RECORDS RELATING TO THE IMPOSING OF THE

ORDER
OF REMOVAL FROM SERVICE BY

ORDER
DATED 09.02.2016 MADE IN O.A.1076/2014 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU BENCH, VIDE ANNEX-A PERUSE THE SAME AND SET ASIDE THE

ORDER
OF THE TRIBUNAL AS ERRONEOUS AND UNTENABLE IN LAW AND ETC. THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, JAYANT PATEL J., PASSED THE FOLLOWING:

3.

ORDER
Rule.

2. Mr. Pradeep Singh, learned Counsel appears for the respondents and waives notice of Rule.

3. With the consent of learned Counsel appearing for both the sides, the petition is finally heard.

4. The present petition is directed against the order dated 09.02.2016 passed by the Central Administrative Tribunal (hereinafter referred to as the Tribunal for the sake of convenience) in O.A.No.1076/2014, whereby the Tribunal for the reasons recorded in the order has dismissed the application.

5. The short facts of the case appear to be that the petitioner was working as Ward Sahayika with the respondents since 12.08.2004. As per the respondents, she remained absent for about 120 days without leave 4 and therefore on 04.08.2013

a charge memo was issued and thereafter show cause notice dated 12.08.2013 was issued by the second respondent to the petitioner. On 20.08.2013 the petitioner submitted her reply. Thereafter an inquiry was initiated and on 23.11.2013 the Inquiry Officer submitted the report. Thereafter, second show cause notice was issued which was replied by the petitioner and ultimately on 11.02.2014 second respondent passed the order and imposed punishment of removal from service without disqualification for any future employment under the Government. The petitioner preferred an appeal before the Appellate Authority on 21.03.2014. On 11.07.2014 the Appellate Authority passed the order dismissing the appeal and penalty imposed was confirmed. Against the said order of removal from service without disqualification, the petitioner approached to the Tribunal. The Tribunal 5 vide impugned order dated 09.02.2016 dismissed the application. Under the circumstances, the present petition before this Court.

6. We have heard Mr.Ranganath S. Jois, learned Counsel appearing for the petitioner and Mr.Pradeep Singh, learned Counsel appearing for the respondents.

7. It is an admitted position that the case was relating to absenteeism of 120 days without obtaining prior permission of the Department. It is also an admitted position that the petitioner was working as Ward Sahayika in the Hospital under the control of Indian Air Force. However, in the appeal before the Appellate Authority, when the matter was considered, it was found that there were certain discrepancies in the maintenance of the record by the Inquiry Officer, but the Appellate Authority has held that such error does not constitute nor has resulted into violation of any 6 provisions of Constitution of India or failure of justice. But when the matter is further considered by the appellate Authority on the aspects of confirmation of the punishment, at paragraph-10 of the order of the appellate Authority dated 11.07.2014, it has been recorded thus: 10. AND WHEREAS, as stated at Para 6 (g) above, it is viewed that the penalty of Removal from Service which shall not be disqualification for future employment under the Government vide order No.CHAFB/1807/563/PC dated 11 Feb 14 imposed on Smt.Deepa Sharma by her disciplinary authority i.e. Commandant, Command Hospital in accordance with Rule 11 (viii) of the CCS (CC&A) Rules, 1965 is in order and need to be sustained. The aforesaid shows that there was consideration of

paragraph-6 (g) which related to past misconduct, but of 7 course, it was not included in the present memorandum of charge. There was also observation in paragraph-6(g) by the Inquiry Officer that even if it was not included in the memorandum of charge, yet the same could not be ignored. If the matter is strictly considered for observance of the principles of natural justice in the course of disciplinary proceeding, the aspects which are not included in the memorandum of charge or any other misconduct not included in the memorandum of charge, cannot be considered. Therefore irrespective of earlier past misconduct, the Appellate Authority was required to examine as to whether the absenteeism for 120 days without obtaining prior sanction of leave which was the charge against the petitioner, deserved to be imposed with the punishment of removal from service which shall not be disqualification for future employment 8 under the Government and whether the said punishment could be said as proper or not.

8. We may also add that it was required for the Appellate Authority to address itself on the aspects of proportionality of the punishment, which if considered with paragraph-6 (g) of the said order, it shows that there is consideration on the aspects of proportionality of punishment by the Appellate Authority. But such consideration is extraneous to the charge. It was required for the Appellate Authority to independently consider the aspects of proportionality of the punishment limited to the charge and the factum whether the charge was proved in the inquiry and thereafter to decide as to whether the appropriate punishment has been imposed by the disciplinary authority or not. As there is no discussion with regard to consideration of the aspects of proportionality of 9 punishment on the basis of the charge only, we find that the impugned order passed by the Appellate Authority deserves to be set aside and the matter deserves to be remanded to the Appellate Authority to consider the appeal afresh in light of the observations made by this Court in the present order and to pass appropriate order after giving opportunity of hearing to the petitioner.

9. In view of the aforesaid, the order dated 11.07.2014 passed by the Appellate Authority as well as the order dated 09.02.2016 passed by the Tribunal are set aside with a further direction that the appeal shall stand restored to the appellate Authority. The Appellate Authority shall examine the matter afresh in light of the

observations made by this Court in the present order and shall pass appropriate order after giving 10 opportunity of hearing to the petitioner as early as possible.

10. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, no order as to costs. Sd/-
JUDGE Sd/- JUDGE JT/-

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