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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1887/2002

New Delhi, this the 20th day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member(A)

Dr.R.K. Karol,
S/o Shri S.R. Karol,
R/o 1044,Devika Apartments,
16,Vaishali,Ghaziabad
U.P.

.. Applicant

(Shri Shyam Babu, Advocate)

versus

1. The Union of India,
Through its Secretary
Ministry of Labour,
Shram Shakti Bhawan,Rafi Marg,
New Delhi.

2. Chairman,
Standing Committee,
Employees State Insurance Corpn.
Ministry of Labour,
Shram Shakti Bhawan,Rafi Marg,
New Delhi.

3. Director General,
Employees State Insurance Corpn.
Panchdeep Bhawan,
Kotla Road,
New Delhi.

.. Respondents

(Smt.Jyoti Singh, Advocate)

ORDER

Justice V.S. Aggarwal

Dr.R.K.Karol, applicant is working in the Employees State Insurance Hospital. By virtue of the present application, he assails the penalty awarded by the disciplinary authority and the subsequent order of the appellate authority. The penalty awarded is of reduction of pay of the applicant by two stages in the present scale with a direction that the reduction shall be for a

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period of two years and during the period of reduction, the pay of the applicant shall remain constant at the reduced stage. After the penalty period, the penalty shall have cumulative effect i.e. the pay of the applicant would be fixed at the stage at which it was when the penalty was awarded.

2. He had been issued the charge-sheet which reads:-

> "That Dr. Rajesh Kumar Karol, while functioning as Chief Medical Officer, I.G. E.S.I. Hospital, has indulged in private practice at Shop No.2, Swati Complex, A-9, Acharya Niketan, Main Patparganj Road, Mayur Vihar-I, Delhi.
>
> By his above mentioned act, the said Dr. Rajesh Kumar Karol, has violated rule 15(1) of the C.C.S. (Conduct) Rules, 1964, which are applicable to the employees of the Corporation by virtue of Regulation 23 of ESIC (Staff & Conditions of Service) Regulations, 1959."

The inquiry officer who had been so appointed, exonerated the applicant, but the disciplinary authority prima facie did not agree with the findings of the inquiry officer. A copy of the enquiry report along with the note of disagreement had been served to the applicant to which he had filed his representation. It is after consideration of the same that the abovesaid penalty order and the order of the appellate authority referred to above had been passed.

3. In the reply filed, the respondents have contested the application. It has been pleaded that the

applicant was working as Chief Medical Officer in the general cadre of the Employees State Insurance Corporation. He was not working as a specialist in the Corporation. He had not been granted the permission to give free consultation to the shopkeepers as a skin specialist. The respondents contended that a complaint was received on 6.4.1999 alleging that the applicant was indulging in private practice in Mayur Vihar, Phase-I. It was further alleged that he was habitually leaving the hospital at 12.45 PM everyday. An investigation was made by the departmental vigilance. The vigilance team for this purpose visited the clinic on 23.7.1999. At that time, the wife of the applicant was not in the clinic and the applicant was available with an attendant. Shri Ghanshyam Singh, the then Assistant Director and Shri S.P.Mehta, Insurance Inspector entered the clinic. Shri Ghanshyam Singh introduced himself as a patient. He was examined by the applicant and he took Rs.80/- as consultation fee. It is denied that the receipt in fact was signed by the wife of the applicant. It is in pursuance of these facts that the abovesaid inquiry had been conducted.

4. We have heard the parties' learned counsel.

5. The learned counsel for the applicant contended that in the present case, there was no evidence on the record to hold that the applicant was indulging in private practice because according to him, it is not

established that the applicant had charged any fee or given a receipt thereto. The applicant's plea was that his wife is a private practitioner at Swati Complex, A-9, Acharya Niketan, Main Patparganj, Mayur Vihar Phase-I, Delhi. In the evening, he normally accompanies his wife. Sometimes, he drops her and picks her up and sometimes sits in the clinic with her. All the acquaintances of his wife know that the applicant is a skin specialist and consult him for their ailment. The applicant being a doctor has no hesitation in prescribing them the proper medicine. On 23.7.1999, when Shri Ghanshyam Singh came to meet his wife who is a general practitioner, he had requested the applicant to prescribe him medicines. The applicant gave him a prescription slip. The receipt was only given by the wife of the applicant and that it cannot in the facts be stated that the applicant was indulging in private practice or that the charge stood proved.

6. It has to be remembered that this is a judicial review of departmental proceedings. We have already listed the facts above. The inquiry officer on examination of the evidence and the documents held that the department has failed to establish the charge of receipt of money by the applicant though it had been established that the applicant had issued the prescription slip on the pad of the private practitioner. The disciplinary authority had disagreed with the same. Thereupon the final order had been passed holding that

the charge stood proved that the applicant while functioning as Chief Medical Officer was indulging in private practice at Shop No.2, Swati Complex, Mayur Vihar.

7. Since this Tribunal is not hearing an appeal, it will be improper for it to re-appreciate the evidence. If on basis of some evidence, the disciplinary authority and the appellate authority had come to a conclusion and recorded findings of fact unless the findings are totally perverse or erroneous which could not be arrived at by a reasonable and prudent person, this Tribunal will not interfere.

8. In the present case in hand, the matter does not fall in the exceptions contemplated prompting this Tribunal to interfere. We do not intend to scrutinise the evidence but as per the vigilance report and the material, Shri Ghanshyam Singh and others had visited the clinic and a fee of Rs.80 is stated to have been paid. The signature on the receipt of course was not tallying with the normal signature of the applicant. Once an authority has given a conclusion that the signature was not of the applicant, it cannot be termed that the findings were totally erroneous when the material to come to that conclusion was available. Therefore, we have no hesitation in rejecting this particular contention.

9. The main argument advanced was that in the present case, there is non-application of mind on the part of the disciplinary authority because it is asserted that this was a quasi judicial proceeding. The note of disagreement had not been dictated by the disciplinary authority but by some other authority in the department. According to the learned counsel, it cannot, therefore, be termed that merely because the disciplinary authority had agreed with the said note on the office record, it could be termed that the disciplinary authority had ~~not~~ considered the matter himself.

10. On the contrary, the respondents' learned counsel had urged that the disciplinary authority was not required to record separate reasons. Once he had approved the office note, it is deemed that he has applied his mind and on that count, the findings so arrived need not be set aside.

11. It was not being disputed at either end that these are quasi judicial proceedings.

12. We know from the decision of the Supreme Court in the case of **Gullapalli Nageswara Rao and Others** v. **Andhra Pradesh State Road Transport Corporation and another**, A.I.R. 1959 SC 308 that the concept of a quasi judicial act implies that the same is not wholly judicial. Furthermore, the Supreme Court in the case of **S.N.Mukherjee** v. **Union of India**, AIR 1990 SC 1984 held

that when the requirement is to record reasons by an administrative authority exercising quasi judicial functions, they need not be as elaborate as a decision by the court of law. What is necessary is that reasons should be clear and explicit.

13. As regards the practice and procedure that is being adopted in the courts of law, one of the earlier decisions of the Supreme Court in the case of **Province of Bombay** v. **Khushaldas S. Advani**, A.I.R., (37) 1950 S.C. 222 clearly lays down that it is not necessary to follow the entire procedure of a court of law. The Supreme Court held:-

> "I am led to that conclusion because after the test of judicial duty of the body making the decision was expressly stated and emphasized by Atkin and Slesser L. JJ. in no subsequent decision it is even suggested that the dictum of May C.J. was different from the statement of law of the two Lord Justices or that the latter, in any way required to be modified. The word "quasi-judicial" itself necessarily implies the existence of the judicial elements in the process leading to the decision. Indeed, in the judgment of the lower Court, while it is stated at one place that if the act done by the inferior body is a judicial act, as distinguished from a ministerial act, certiorari will lie, a little later the idea has got mixed up where it is broadly stated that when the fact has to be determined by an objective test and when that decision affects rights of someone, the decision or act is quasi-judicial. This last statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the

exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari. Observations from different decisions of the English Courts were relied upon to find out whether a particular determination was quasi-judicial or ministerial. In some cases it was stated that you require a proposition and an opposition, or that a lis was necessary, or that it was necessary to have a right to examine, cross-examine and re-examine witnesses. As has often been stated, the observations in a case have to be read along with the facts thereof and the emphasis in the cases on these different aspects is not necessarily the complete or exhaustive statements of the requirements to make a decision quasi-judicial or otherwise. It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed. In my opinion, the conditions laid down by Slesser L. J. in his judgment correctly bring out the distinction between a judicial or quasi-judicial decision on the one hand and a ministerial decision on the other."

In other words what is necessary is that when the administrative authority exercises quasi judicial function, it has to be a fair procedure without causing prejudice to the delinquent. When the report of the inquiry officer is received and it has to be considered by the disciplinary authority, there should be no intermediary in this regard.

14. If the file is examined in the department and put up before the disciplinary authority, can it be stated that the abovesaid principle is violated?

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15. In our view, it goes with the facts and circumstances of each case. Strictly speaking, there is no legal bar if the file like any other departmental file is looked into, but the crucial test is if the disciplinary authority had applied his mind or not. Once the disciplinary authority had looked into the office notings and approved the same than it must be held that the order was passed by the disciplinary authority. In the present case, the respondents not only have made available the entire file to us but even placed on the record, a photo copy of the note that was recorded in the department. It clearly shows that the note of disagreement to be communicated had been approved by the disciplinary authority and in that view of the matter, it cannot be termed that there was non-application of mind on the part of the disciplinary authority or that the order cannot be sustained.

16. No other argument was raised.

17. For these reasons, the application being without merit must fail and is dismissed. No costs.

(S.A. Singh)
Member(A)

(V.S.Aggarwal)
Chairman

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