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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1298/2002

Tuesday, this the 14th day of January, 2003

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri V.K. Saxena,
S/o Late Shri Laxmi Narain Saxena,
Asstt. Director General (Stores)

R/o B-8/1073, Vasant Kunj,
New Delhi - 110070

Applicant
(By Advocate : Shri K.C. Saxena)

VS
Versus

1. Union of India
through its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi - 110 011
2. Director General of Health Service,
Government of India,
Nirman Bhawan,
New Delhi - 110011

Respondents
(By Advocate : Shri Madhav Panikkar)

O R D E R (Oral)

BY GOVINDAN S. TAMPI, MEMBER (A) :

Applicant challenges respondents O.M. dated 24.4.2002 as well as the enquiry report dated 29.08.1997 as illegal, arbitrary and seeks that they be quashed and he be given all the consequential benefits.

2. Heard S/Shri K.C. Saxena and Madhav Panikkar, learned counsel for the applicant and for the respondents *respectively*.

3. The applicant, Shri V.K. Saxena, who was charge sheeted on 23.5.1995 for alleged mis-conduct in placing supply orders for crores of rupees without any demand for medicines thereby blocking the Government money. On

his denying the charges, an enquiry was held wherein the Inquiry Officer found the charge to be partly proved. Accepting the findings of the Inquiring Authority, the President has imposed the penalty of "reduction of pay by two stages in the time scale for a period of one year with the stipulation that he will not earn increment during the period of reduction and without cumulative effects". Hence this OA.

4. The applicant, who was working as Deputy Assistant Director General in the respondents' Organisation, while serving in the Medical Stores Depot, Karnal, was on leave from 21.11.1998 to 30.12.1998 when his immediate junior was directed to look after the routine work. On his return, he found that the individual concerned had placed 162 supply orders which were cancelled by him on 05.01.1989. Subsequently he sought advice for reinstating the orders keeping in mind the demand, but as the same was getting delayed he reinstated some of the supply orders to the tune of Rs.30 lacs. After nearly six years on 23.12.1995, he was charge sheeted, holding that he had reversed his earlier decision for keeping the supply orders without any apparent reason and revalidated the same. In the enquiry conducted subsequently, the report was submitted by the Inquiry Officer, who gave the report that the charge was "partly proved". After receipt of the same, the applicant filed his representation on 27.1.1998, but four years later, on 24.4.2002 the impugned penalty has been imposed. In between, the applicant's promotion to the post of Deputy Director General had become due on

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01.04.1995 and the same had suffered on account of the charge sheet and the findings by the DPC about him having been placed in the sealed cover. A few of his juniors have already been promoted, to his cost and loss. All this had occurred on account of the delay on the part of the respondents and also on account of their action which was not based on any evidence and on wrong assumption.

5. The learned counsel for the applicant invites our attention to the statement of articles of charge framed against the applicant which reads as follows:-

"That Shri V.K. Saxena, while working as Deputy Asstt. Director General (MS), CMSD, Karnal during 1988-89 failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a govt. servant in as much as he, on resumption of duty, after having rightly cancelled all the Supply Orders (worth more than Rs.1. crore) placed by Shri K.M. Punmiya, the then Depot Manager who was declared Head of Office vide Order No. A.19011/2/78-SI dated 15.12.88 consequent on Shri Saxena having proceeded on leave from 21.11.88 to 30.12.88 and soon reversed his decision without any apparent reason and revalidated the same Supply Orders by giving new numbers in supersession of earlier one without waiting for the approval of Dte. G.I.S. and thus blocked the Govt. money contravening the provision of Rule 3.1 (i), (ii) and (iii) of CCS (Conduct) Rules 1966."

As against the same, the conclusion drawn by the Inquiry Officer reads as below:-

"The CO cancelled 162 supply orders which had been placed by Shri Punmiya during the leave period of Shri Saxena, CO. The reasons given by the CO in his letter dt. 23.2.89 were not the real reasons due to

which he cancelled the orders and these reasons were invented by him subsequently and the CO cancelled these supply orders with malafide reasons. The CO cancelled the orders without foreseeing the difficulties that would be faced in cancelling the orders and therefore his action was hasty.

The CO reinstated some of the 162 orders cancelled by him earlier and while reinstating the orders, new supply order numbers were given to such reinstated orders. It is also held that the orders were reinstated by him without waiting for any approval or direction from DGHS although he himself had sought the instructions of DGHS for reinstatement of the supply orders. It is further held that the CO did not furnish some of the information sought by DGHS in respect of reasons for cancellation and details of medicines for which supply orders had been issued by Shri Punmiya."

6. There is thus, a contradiction between the charge framed and the charge alleged to have been proved. Still the disciplinary authority has gone ahead and obtained the advice of the UPSC and imposed the penalty on the applicant. The findings of the Inquiry Officer and the details shown in the UPSC's advice are variance with each other as to how much of the supply orders had been reinstated by the applicant. All these have vitiated the proceedings ^{which} ~~and~~ deserves to be set aside, pleads Shri K.C. Saxena, reiterating the written pleadings made by him.

7. On behalf of the respondents, Shri Madhav Panikkar, who reiterates the contents of the counter affidavit, states that there was some delay as far as the respondents are concerned in the completion of the proceedings, but the same had occurred on account of ^{unavoidable} ~~unforeseen~~ reasons, relating to the need for obtaining the advices from the CVC, UPSC etc. It is also pointed out by him that the applicant had not acted properly in reinstating the supply orders earlier

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cancelled by him and has also mis-informed the DG GHS ~~on~~
threat of legal actions from a number of firms whose
orders have been cancelled though only one such agency
had threatened the authorities. In fact, it was the
applicant's malafide motive which was manifest in the
cancellation and reinstatement of the supply orders.
Procedures having been ^{already} gone through, and the applicant
having been given ample opportunity to explain and
defend his case, there was no ground for the
interference of the Tribunal in this matter, urges Shri
Panikkar.

8. We have carefully considered the matter. We
find that the proceedings had been initiated against the
applicant vide Charge Sheet No.C.14011/3/95-Vig. dated
23.03.1995 for his alleged mis-conduct of having failed
to maintain absolute integrity, devotion to duty and
performance in a manner unbecoming of a Govt. servant,
as he had, on the assumption of duty from leave, after
having rightly cancelled all the supply orders worth
more than rupees one crore, reversed the decision
without any apparent reason and revalidated the same.
At the same time, the Inquiry Officer has held that "he
had cancelled the orders without foreseeing the
difficulties that would be faced in cancelling the
orders and therefore his action was hasty". While in
the charge sheet, the applicant's action cancelling the
supply orders is described as being right, in the
enquiry report the same is shown as motivated. Thus,
the allegation and the findings arrived at contradicted
each other. However, the same has not been seen or

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appreciated by the disciplinary authority who has gone on and imposed the penalty on the applicant. It is also found that while the charge sheet talks about the proper cancellation of all the 162 supply orders out of which the Inquiry Officer holds some to have been reinstated, the UPSC's advice dated 14.03.2002 relied upon by the disciplinary authority states that 70% of the supply orders have been revaluated. These contradictions are too glaring to escape notice. Still on the basis of the same, the disciplinary authority has taken a decision to penalise the applicant. This cannot be sustained. By this action of the respondents, which also entailed long delay in two stages, namely, between the alleged event and issue of the charge sheet (1989 and 1995) and the filing of the representation against the enquiry report and passing of the impugned order (1998 and 2000), the applicant's promotion had remained undecided. We are not commenting on the respondents' action in initiating proceedings against the applicant for his alleged mis-conduct, but are expressing our dis-satisfaction on the inordinate delay which had taken place, which should have been avoided.

9. In the above view of the matter, the OA succeeds and is accordingly allowed. The impugned orders are quashed and set aside and the respondents are directed to grant the applicant all consequential benefits as permitted under the law. No costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

GOVINDAN S. TAMPI
MEMBER (A)

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