

9

Central Administrative Tribunal
Principal Bench

O.A. No. 1849 of 2001

New Delhi, dated this the 3rd May, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Dr. Pramod Ghandhi
S/O M.S.Gandhi,
Casualty Medical Officer,
ESI Hospital, Basai,
Dhara Pur, New Delhi. Applicant
(By advocate: Shri Sachin Chauhan)

VERSUS

1. Chairman,
Standing, Employees State Insurance
Corporation, Panchdeep Bhawan,
Kotla Road, New Delhi.
2. Director General
Employees State Insurance Corporation,
Panchdeep Bhawan, Kotla Road
New Delhi. Respondents
(By Advocate: Shri G.R. Nayyer)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the enquiry report dated 24.3.99 (Annexure A-3), the disciplinary authority's order dated 22.10.99 (Annexure A-1) and the appellate's order dated 24.4.2001 (Annexure A-2).

2. Applicant was proceeded against departmentally on the basis of a major penalty chargesheet dated 18.10.96 on the charge that:

"during the period October, 1991 to February, 1992 while functioning as Assistant Manager (Store) in ESIC Central Store, Basaidarapur, New Delhi, he failed to maintain absolute integrity and devotion to his duties in as much as he did not obtain certified copies of indents from Dr.(Smt.) S.P.Chadha, the then IMO, Incharge ESI Dispensary, Factory Road, Sarojini Nagar New Delhi

~

(2)

10

showing certificates that medicines had been duly received and entered in the Stock Register in as many as 45 indents. Further, applicant unauthorisedly permitted Shri Kamlesh Kumar to carry medicines and other stores on monthly indent by private vehicle."

3. The Commissioner for Departmental inquiries who was the Inquiry Officer in his impugned Inquiry Report dated 24.3.99 held the charge as fully proved.

4. A copy of the I.O's report was furnished to applicant on 26.7.97 (Annexure A-3) for representation, if any.

5. Applicant submitted his representation on 4.8.99.

6. After considering the representation as well as the other materials on record the disciplinary authority agreed with I.O.'s findings and by impugned order dated 22.10.99 imposed the penalty of reducing applicant from the post of Chief Medical Officer which he was holding, to that of IMO Grade-I on permanent basis with seniority as IMO Grade-I with effect from the date of reduction. Applicant's pay as IMO Grade-I was to be fixed at the stage at which he would have drawn had he continued as IMO Grade-I without promotion, with increments in the reduced post of IMO Grade-I and consideration for promotion as CMO with consequent pay fixation in the grade of CMO as per normal rules.

2

7. Applicant's appeal was rejected by detailed and speaking order dated 24.4.2001 (Annexure A-2) giving rise to the present OA.

8. We have heard both sides and perused the materials on record.

9. The grounds taken by applicant in the OA are largely a repetition of the grounds taken by him in his appeal, which have been discussed at great length by the appellate authority in his order dated 24.4.2001. For the reasons recorded by the appellate authority in his aforesaid order dated 24.4.2001 we hold that the disciplinary proceedings have been conducted in accordance with the prescribed procedure as laid down by rules and instructions; applicant was given full opportunity to defend himself; and the proceedings per se do not suffer from any infirmity serious enough to warrant judicial interference.

10. However, we do express concern in regard to the penalty awarded which to us is harsh and excessive, so much so that it shocks our judicial conscience. The appellate authority has himself held ~~in~~ his impugned order dated 24.4.2001 that there was no evidence of any lack of integrity on applicant's part and applicant's culpability therefore extends only to that of negligence. In this view of the matter, and having regard to the fact that there is no previous instance of negligence on applicant's

(4)

12

part which has been brought to respondents' notice, the permanent reduction of applicant to the lower post of IMO Grade-II is clearly harsh and excessive.

11. In B.C. Chaturvedi Vs. UOI JT 1995 (8) SC 65 the Hon'ble Supreme Court has held that the High Court/Tribunal while exercising its power of judicial review cannot normally substitute its own conclusion on the penalty and imposed some other penalty. If the punishment imposed by the disciplinary/appellate authority's ~~exceeds~~ ^{shocks} the conscience of the High Court/Tribunal it would appropriately mould the relief either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

12. Applying the ratio of the aforesaid ruling to the present case, we dispose of this OA by directing the appellate authority to reconsider the penalty imposed on applicant by means of a speaking order, after giving applicant a reasonable opportunity of being heard in person within 3 months from the date of receipt of a copy of this order.

13. The OA disposed of in aforesaid ^{the} terms.
No costs.

S. Raju
(Shanker Raju)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

/kd/