

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.951/2001

New Delhi, this 4th day of January, 2002

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Dr. (Mrs.) Neelam Kaul
140-C, Phase I, Pocket I
Mayur Vihar, New Delhi

.. Applicant

(By Shri Ajit Pudussery, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

2. Secretary(Medical)
Govt. of NCT of Delhi
Deptt. of Medical & Public Health
5, Shamnath Marg, Delhi-54

.. Respondents

(By Shri Madhav Panicker, Advocate for R-1 &
Smt. Smedha Sharma, Advocate for R-2)

ORDER

Shri M.P. Singh, Member(A):

The applicant before this Tribunal is seeking directions to quash and set aside the order dated 6.11.2000 whereby a penalty of dismissal has been imposed upon her and to reinstate her back in service with all consequential benefits.

2. Briefly stated, the applicant joined service as a Specialist Grade II (Ophthalmology) in the Central Health Service on 19.12.89 in Sanjay Gandhi Memorial Hospital, Govt. of NCT of Delhi. Prior to that she was running a clinic from 5B, Pocket III, Mayur Vihar, Phase I, New Delhi under the name and style of "East End Eye Clinic" which she closed down on joining Govt. service. She also sent letters on 26.12.89 to all PSUs which had empanelled her intimating them of the fact and requesting

them that her name may be removed from their panel. One Mr. L.D. Joshi made certain allegations against the applicant alleging that she had performed cataract surgery on his father Shri K.N.Joshi by charging Rs.20,000 and due to negligence of the applicant the said K.N.Joshi lost his eyesight. In the criminal proceedings initiated against her by L.D. Joshi, the applicant was honourably acquitted by a competent criminal court vide order dated 31.1.2000.

3. In the meantime, Respondent No.1 issued a charge memo dated 13.1.95 under Rule 14 of CCS(CCA) Rules, 1965 alleging that she had indulged herself in private practice by performing eye operation and also that she got herself empanelled in the panel of PSUs, as per details given in the Articles of Charges attached to that charge-memo (Annexure P-6 to the OA). Inquiry Officer (IO) appointed by R-1 conducted a preliminary hearing on 23.8.95. However the IO was changed vide letter dated 24.7.96. The new IO fixed 26.8.96 as the date of hearing. The applicant who was sick wrote to IO pointing out her inability to attend the hearing on 26.8.96. However, the IO held the sitting and made certain directions. The applicant completed the requirements. Since the applicant found the new IO biased, she made a request to the disciplinary authority (DA) for change of the IO on the ground of bias. She also enclosed a copy of OPD record issued by Safdarjung Hospital confirming her illness and seeking adjournment. However, the IO proceeded with the enquiry ex-parte and submitted his

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findings on 28.7.97, a copy of which was made available to the applicant on 23/28.10.97. Applicant made her representation against the IO's report on 10/23.11.97. Thereafter, she received the impugned order dated 6.11.2000, which is impugned in the present OA.

4. Respondents in their reply have stated that the applicant, a Specialist in Ophthalmology belonging to Central Health Service and appointed in 1989, had been charge-sheeted by R-1 for doing private practice which she was not supposed to do, particularly when she was being paid Non-practicing allowance. Apart from this, she had continued to figure in the panel of doctors attached to PSUs. The fact of her private practice came to light through the complaint made by the relatives of some of the patients on whom she reportedly performed cataract operation in 1992, the operation having led to complications and adversely affecting the patients. Disciplinary action was initiated against her in the background of these grave charges. After completion of DE under Rule 14 of CCS(CCA) Rules, 1965 in consultation with Central Vigilance Commission, a penalty of dismissal from service was imposed on her by the impugned order dated 16.11.2000. As per the procedure, UPSC's advice was sought which advised that a penalty of reduction of pay by two stages for a period of 3 years with cumulative effect may be imposed on the applicant with the stipulation that she would not earn increments during the period of reduction. However, the respondent had to disagree with UPSC and considering the severity of the charges and in consultation with CVC and DoPT, imposed the aforeosaid penalty.

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5. Heard the contentions of the rival contesting parties and perused the records.

6. During the course of the arguments, the learned counsel for the applicant has submitted that the applicant had been denied reasonable opportunity to defend herself in that the IO proceeded ex-parte in the matter inspite of the complaint of bias made against him which was not considered and disposed by the DA till date. There is no evidence that the applicant had charged any amount for the private operations. Rule 15(2)(a) of CCS(Conduct) Rules permits a government servant to undertake honorary work of a social and charitable nature without the previous sanction of the government. The IO refused to grant the applicant even one adjournment on the request made to him on 2.7.97 inspite of producing a medical certificate from a doctor and insisting on production of a medical certificate from a govt. hospital when it was in IO's knowledge that OPDs in government hospitals only work in the mornings and it was not possible to obtain the medical certificate prior to 3.7.97 on which date applicant was called for to participate in the inquiry. Though the UPSC had only recommended reduction of pay, the DA in a mechanical manner imposed the severest punishment on the applicant particularly when it was never established that the applicant had charged any fees for the surgery performed by her.

7. In support of applicant's claim that the IO should be changed because of his biased attitude, the learned counsel has relied upon the judgement of the Supreme Court in the case of Registrar of Coop. Societies, Madras Vs. F.X.Fernando (1994) 2 SCC 746.

8. On the other hand, learned counsel for respondents has submitted that the applicant was given all the material/documents, which were relied upon in the inquiry report, by the disciplinary authority. Departmental proceedings were started independent of the preliminary inquiry report and without waiting for the outcome of the report. Respondents had no means to verify the applicant's statement that she had not charged anything from the patient. They have received complaints from the relative of atleast one of the patients who had alleged that the applicant had charged Rs.20,000 for the operation of both eyes of his father Shri K.N. Joshi (Annexure R-I). They have denied that applicant was undertaking any honorary work of social and charitable nature coming under Rule 15(2)(A) of CCS(Conduct) Rules. Once the DE had commenced, it was for the IO to decide on how to proceed. In this case, the DE had commenced in April, 1995 and had already been delayed for two years for reasons, partly attributable to the applicant. In this background, in July, 1997 the IO who was Commissioner for Departmental Inquiries in the CVC and who was familiar with all the procedures of departmental inquiries, had passed certain orders which were not to the advantage of the applicant. He had, therefore, raised this non-existent grounds of bias. The IO had passed reasoned orders during the inquiry and it was

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expected of the applicant to cooperate with IO and followed his instructions till the conclusion of the inquiry instead of staying away from the same from July, 1997 onwards. To repeat, the case had commenced in 1995 and the respondents do not consider that the orders passed by the IO during 1997 were with a view to conclude the enquiry hastily and hold the applicant guilty. The respondents did not view that the IO had any bias in proceeding with the inquiry against the applicant as all the orders were reasoned and were in consonance with the laid down procedures. The respondents had consulted the UPSC and it was only on the point of quantum of penalty where the DA had differed with the Commission and so stated in the order of penalty. The misconduct on the part of applicant was considered too grave for her to be retained in service and that it demanded the penalty of dismissal disagreeing with the UPSC. As per the procedure for disagreement with the UPSC, applicant's case had also been referred to DoPT and the final order was issued only after concurrence from the DoPT.

9. Since the respondents do not consider that the IO has violated any of the laws with regard to the documents for sustaining the charges against the applicant and the applicant has not been able to establish that the IO was biased against her, the judgement cited by the applicant in the case of F.X.Fernando has no application in the instant case.

10. From a perusal of the complaint made by Shri L.D. Joshi (R-I to the reply) that he took his father (K.N.Joshi) on 8.1.92 to "East End Eye Clinic" owned by

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the applicant when the applicant advised him surgical removal of cataract and that she operated on Shri K.N.Joshi on 9.1.92 in Ram Nursing Home. Shri L.D.Joshi paid an amount of Rs.20,000 to the applicant but no receipt was given to him for the same. He also took his father to the said clinic on 11.1.92 and 12.9.92 as advised by the applicant. This only goes to prove that the applicant was doing private practice even after joining Government Service in 1989 and that she has not closed the said clinic as stated by her in this OA as also in her representation. The applicant was acquitted by the MM, Karkardooma Court by order dated 31.1.2000 because the prosecution was not able to prove that the patient (K.N.Joshi) lost sight due to operation for cataract conducted by her or that she was rash or negligent in operating upon the said K.N.Joshi. The fact remains that the applicant did conduct the operation on K.N.Joshi in her private clinic on 9.1.92 when she was very much in Government service, which is against the Rules as rightly pointed out by the respondents.

11. ✓ We also find from the inquiry report conducted by Commissioner for Departmental Enquiries that the applicant did not present herself before the IO on 3.7.97. On 2.7.97 she sent a letter alongwith a medical certificate issued on 1.7.97 by a private medical practitioner through a messenger to the office of IO. The applicant had not put her signature in the said medical certificate, when she, as a Government servant as also a senior doctor, was fully aware of the rules. Therefore her contention that she was able to get medical certificate from Safdarjung Hospital only on 3.7.97,

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which she has attached with her request dated 19.7.97 for a change in IO, is only an after-thought. Incidentally, the prescription dated 3/7 of the Safdarjung Hospital is only OPD record and cannot be termed as medical certificate, nor it contains the signature of the applicant. That apart, she remained absent before the IO even on 28.7.97 despite due intimation to her and the IO had to proceed ex-parte due to non-cooperation of the applicant.

12. We also find that the enquiry has been conducted in accordance with the rules and the DA has passed a reasoned, detailed and speaking order and therefore we do not find any fault with the action taken by the respondents. Therefore we are unable to grant the relief prayed for by the applicant. In the result the OA is dismissed. No costs.

S. Raju

(Shanker Raju)
Member(J)

M.P. Singh

(M.P. Singh)
Member(A)

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