

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1956/1996

New Delhi this the 08th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Dr. A.K. Dawar
S/o Late Shri S.L. Dawar
R/o 3/18 Subhash Nagar
New Delhi-110027
Ortho Specialist
E.S.I. Hospital
Sector 24
Noida (District Ghaziabad) Applicant

(None for the applicant.)

-Versus-

1. Union of India through
The Secretary/Chairman Standing Committee
(E.S.I.C)
Ministry of Labour & Employment
Sharam Shakti Bhavan
New Delhi.
2. The Director General
E.S.I. Corporation
Panchdeep Bhavan
Kotla Road
New Delhi.
3. The Director
E.S.I. Hospital
Noida (District Ghaziabad) ... Respondents

(Shri Moti Ram, Inspector, Departmental
Representative)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Applicant and his Advocate are absent. We have perused the record and we proceed to dispose of the OA in their absence on merits as per Rule 15 of the Central Administrative Tribunal (Procedure) Rules 1987.

2. By the present OA, applicant claims a direction to the respondents to convert the period of

absence from duty for the period 12.3.1989 to 22.11.1989 into half pay/Earned Leave and to make payment of subsistence allowance and other allowances as admissible under rules for the aforesaid period.

3. Applicant at the material time was a Specialist in Orthopaedics in the E.S.I. Hospital, Basaidarapur, New Delhi. Disciplinary proceedings were initiated against him by an order passed by the Director General, ESIC dated 31.8.1987. The charge levelled against the applicant was as under:-

"Doctor A.K.Dawar while functioning as Specialist, Department of Ortho, ESI Hospital, Basaidarapur, New Delhi for the period from 31.10.83 till date, committed misconduct in as much as in the process of examining and treating the patient Master Bharat Bhushan s/o Sh. Kishan Chand Mangla, Insurance Number 11598661 on 20.1.87 he showed utter negligence in not taking timely and proper effective steps to save the limb i.e. left forearm of the patient. He was approached by the patient's father Shri Kishan Chand Mangla as well as Dr.A.Kumar and Dr.M.B.Gulati, Medical Superintendent to see the patient but he did not come to see the case on 23.1.87, 25.1.87 and 26.1.87. He also showed reluctance and gross negligence in not performing fasciotomy operation himself keeping the seriousness of the case in view. He saw the patient only on 27.1.87. By that time the condition of the patient had worsened and signs of taxaemia developed which resulted in amputation of forearm of the said patient.

Thus, by his above acts, Dr.A.K.Dawar had failed to maintain absolute devotion to duty and exhibited conduct unbecoming of a Corporation employee thereby violated Rule 3 of the CCS (Conduct) Rules, 1964 read with Regulation 23 of the ESIC (Staff and Conditions of Service) Regulations, 1959."

4. The disciplinary authority by an order passed on 10.3.1989, imposed a penalty of dismissal from service against the applicant. Applicant carried

the matter in appeal. Appellate authority by an order passed on 15.11.1989 was pleased to set aside the order of dismissal from service and reduced the penalty to that of reduction of pay. The appellate authority in his order, has inter alia, observed and directed as under:-

"In view of this I find that Dr.Dawar has been guilty of the charge but there can be no denying that there has also been negligence on the part of Dr.Jain and others as well as the management. In fact this case should be an eye opener for the medical Administration or the ESI Hospital at Basaidarapur in particular and the ESI Medical Administration in Delhi in general. The system of attending to a patient requires to be streamlined and a sense of responsibility enduced in all the doctors. The Director General has awarded the punishment of dismissal from service to Dr.Dawar but I think this experience should open the eyes of Dr.Dawar who should be given one more opportunity to improve himself and his attitude. The punishment should be deterrent but not totally extreme. I would therefore modify the punishment to reduction in pay by three stages for a period of three years instead of dismissal. It is, therefore, ordered that the pay of Dr.A.K.Dawar be reduced by three stages from Rs.3625 to Rs.3300 in the time scale of pay of Rs.3000-100-3500-125-5000 for a period of three years with effect from the date he reports for duty. It is further directed that Dr.A.K.Dawar will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay. For the period Dr.Dawar has been out of service, he may be granted extra-ordinary leave without pay. Dr.Dawar may not be posted as Head of Orthopaedics Department during the period of punishment."

5. Applicant now claims regularisation of services in respect of his absence during 12.3.1989 to 22.11.1989 i.e. during the period when he was dismissed from service and till he was reinstated in terms of the order passed by the appellate

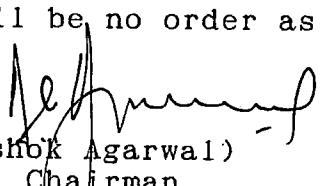
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authority on 15.11.1989. As far as the said period is concerned, the appellate authority has directed as under:-

"...For the period Dr.Dawar has been out of service, he may be granted extra-ordinary leave without pay..."

6. The prayer contained in the present OA, we are afraid cannot be entertained as the aforesaid order of the appellate authority was impugned by the applicant in this Tribunal by filing an OA being OA No.59/1990. By judgement and order passed on 3.3.1994, the OA was dismissed. Applicant thereafter filed a Review Application. The same was also dismissed. In the circumstances, the order of the appellate authority directing the period of absence to be treated as extra-ordinary leave without pay has been affirmed by the Tribunal. ^{The same has become final.} This being so, present OA will not be maintainable as it seeks a relief which is deemed to have been rejected in the aforesaid OA as also in subsequent Review Application. If a relief which could have been claimed is not claimed, the same will be deemed to have been rejected. No contrary order can, therefore, be prayed for in the present OA. Present OA in the circumstances is barred by the principles of res judicata.

7. Present OA in the circumstances is dismissed. There shall be no order as to costs.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member(A)