

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(5)

OA.No.624 of 1996.

Dated New Delhi, this 11th day of July, 1996.

HON'BLE SHRI A. V. HARIDASAN, VICE CHAIRMAN (J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

Jai Singh Tushir
G. B. Pant Hospital
NEW DELHI.

... Applicant

By Advocate: Shri H. B. Mishra with
Shri A. K. Mishra

versus

1. Government of National Capital
Territory of Delhi, through
Secretary
Medical and P&H Department
No.5 Sham Nath Marg
DELHI.

2. The Director
G. B. Pant Hospital
NEW DELHI.

3. Dr D. K. Srivastava
Medical Superintendent
G. B. Pant Hospital
NEW DELHI. ... Respondents

By Advocate: Shri H. L. Jad

O R D E R (Oral)

Shri A. V. Haridasan, VC (J)

This application under Section 19 of the Administrative Tribunals Act, 1985 is directed against the order dated 31.3.1995 of the third respondent placing the applicant under suspension purportedly in exercise of powers conferred by sub rule 1 of Rule 10 of the CCS (Classification, Control 1& Appeal) Rules, 1965, on the ground that a disciplinary proceedings against him was under contemplation. The applicant has stated in the application

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that the Medical Superintendent who issued the order of suspension is incompetent to issue such an order as he is neither the appointing authority nor the head of the office or any other authority who has been authorised to issue an order of suspension. The applicant has also taken the ground that the order of suspension on the ground of contemplated disciplinary proceedings is unsustainable as no disciplinary proceeding against the applicant is under contemplation.

(2) The respondents seek to justify the order. In the reply, it is contended that the impugned order was issued with the approval of the competent authority, namely, the second respondent and that though no disciplinary proceeding is now under contemplation, the applicant was placed under suspension as a Criminal Case is under investigation against him.

(3) Having heard the learned counsel for the parties and on a perusal of the pleadings and records, we are of the considered view that the impugned order is unsustainable for more than one reason. According to the provisions of sub rule 1 of Rule 10 of the CCS(CCA)Rules only the appointing authority or any authority to which it is subordinate or the disciplinary or any authority empowered in his behalf by the President by general and special order only can place an official under suspension. Admittedly, the Medical Superintendent is neither the appointing, or disciplinary authority nor is an authority so empowered by any general or special order to place the applicant under suspension. The respondents in the reply have also stated that the order was issued with the approval of second respondent who is the competent authority; but in the order it was not stated

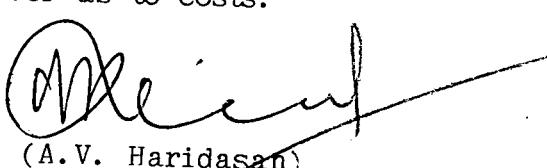
(7)

that it was issued with the approval of the competent authority therefore the impugned order issued by the Medical Superintendent is void ab initio as he had no competence to issue such an order. Though the impugned order was ~~per~~ported to have been issued as a disciplinary proceeding was contemplated, it is confirmed in the reply of the respondents that no disciplinary proceedings ~~is~~ is in contemplation against the applicant now and the reason why the applicant is being kept under suspension is that he is facing a criminal prosecution. If the respondents thought ~~not~~ necessary to place the applicant under suspension as a criminal investigation ^{was} in progress against him, they should have issued the order mentioning that reason. An order impugned cannot be sought to be justified on grounds which are not disclosed in the order.

(4) In the light of what has been discussed above, we find that the impugned order of suspension is unsustainable and, therefore, we set aside the order dated 31.3.95 and direct the respondents to allow the applicant to perform his duties as if the suspension had never taken effect. However, it is made clear that this order will not preclude the competent authority from placing the applicant under suspension ^{if} for any valid reason if they consider such an action is necessary.

(5) With the above observations and directions, the OA is disposed of finally. There is no order as to costs.


(K. Muthukumar)
Member(A)


(A.V. Haridasan)
Vice Chairman(J)