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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1946/97

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T.A.No.

DATE OF DECISION 16-8-2000

Sh. Raj Kumar Sagar

....Petitioner

Sh. K. P. Dohare

....Advocate for the
Petitioner(s)

VERSUS

Govt. of NCT of Delhi through
the Chief Secy. & Ors.

....Respondent

Sh. Vijay Pandita

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)
The Hon'ble Shri S. A. T. Rizvi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1946/97

New Delhi, this the 16th day of August, 2000

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Raj Kumar Sagar, DARK Room Asstt, Office
of the Medical Supdt. Guru Teg Bahadur
Hospital, Deptt. of Photography,
Delhi-Shahdara, Delhi-95.

....Applicant.

(By Advocate: Sh. K.P.Dohare)

Versus

1. Chief Secretary, Govt. of N.C.T.
of Delhi, 5, Sham Nath Marg, Delhi -
110 054.
2. Secretary (Medical), Govt. of
N.C.T. Delhi, 5 Sham Nath Marg,
Delhi - 54.
3. The Medical Supdtt. Guru Teg
Bahadur Hospital, Delhi
Administration, Shahdara, Delhi-95.

....Respondents

(By Advocate: Sh. Vijay Pandita)

ORDER (Oral)

Hon'ble Mrs. Lakshmi Swaminathan; Member (J)

This is the second round of litigation by the applicant in which he has impugned the Appellate Authority's order dated 19.8.96 imposing on him a penalty of withholding of two increments with cumulative effect.

2. The applicant had filed an earlier application (OA-1786/95) which was disposed of by Tribunal's order dated 9.2.96 (Annexure A-3). In that case, the respondents were directed to consider the pending appeal of the applicant by passing a speaking order within the time stipulated in that order. The disciplinary authority's order dated 21.3.94 and the impugned order dated 19.8.96 passed by the Appellate Authority, have

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been passed against the applicant after holding an enquiry against him on certain charges under Rule 14 of the C.C.S. (CCA) Rules, 1965 (hereafter referred to as "the Rules"). The disciplinary authority had reduced the pay of the applicant from Rs.1030/- to Rs.950/- in the pay scale of Rs.950-1500/- for a period of three years with immediate effect with a further direction that he will not earn any increments of pay during this period. The applicant had been placed under suspension vide order dated 7.1.92 which was revoked by the disciplinary authority's order dated 21.3.94 and the period of suspension was ordered to be treated as not spent on duty for all purposes. In the appellate authority's order dated 19.8.96, he has stated that because of the mental agony for the misconduct which he had committed 54 months back, he was inclined to take a lenient view. Accordingly, he modified the punishment order by reducing it to a penalty of withholding of two increments with cumulative effect but he had upheld the order of the disciplinary authority regarding the period of suspension.

3. We have heard the learned counsel for both the parties and have carefully perused the documents on record and pleadings.

4. Sh. K.P.Dohare, learned counsel has contended that in the present case, there is no evidence against the applicant and the aforesaid penalty orders have been passed by the authorities without application of mind. There was also a faint submission on the part of the
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Learned counsel for the applicant that the respondents were also biased and prejudiced against the applicant and hence, the penalty orders were passed. One of his main contentions is that the complainant had mistaken the identity of the applicant, who is Sh. Raj Kumar Sagar, whereas there was another person in ^{the} ¹⁸ X-Ray room of the same Hospital by the name of Sh. Raj Kumar Chauhan. He has also contended that as the ~~complainant~~ ¹⁸ has not appeared in the departmental enquiry held against him, no penalty order can be passed against the applicant. In order to support his contentions, he has relied on certain judgements of the Tribunal in Rajinder Prasad Vs. Union of India & Ors. (OA-591/90), decided on 30.8.93, Radha Krishnan Nair Vs. Lt. Governor, Delhi & Ors. (OA-1493/94), decided on 3.1.98 (copies placed on record) & Lekhi Ram, Ex. Constable Vs. Union of India & Ors. (1989 (3) (CAT) AISLJ 321). He has submitted that as this is a case of no evidence and the lady, Ms. Rekha Devi had mistaken the identity of the applicant, mistaking him for the other person Sh. Raj Kumar Chauhan, he has prayed that the penalty orders may be quashed and set aside. He has also contended that in the disciplinary proceedings against the other person, namely, Sh. Raj Kumar Chauhan, the complainant had appeared in the departmental proceedings and he had also been awarded penalties by the respondents.

5. Sh. Vihay Pandita, learned counsel has, on the other hand, submitted that this is not a case of no evidence or there is any allegation of bias or malice which has been either alleged or proved against the

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complainant or any other official of the respondents. He has ~~also~~ taken us through the relevant portion of the Enquiry Officer's report and has submitted that the applicant has been identified correctly as the person who had committed the alleged misconduct against the lady patient in the X-Ray room. He has also pointed out that the relevant witnesses and documents relied upon by the Enquiry Officer have been supplied to the applicant. He has, therefore, submitted that this is not a case of no evidence and the punishment has been correctly awarded to the applicant. He has also relied on the judgements of the Hon'ble Supreme Court in B.C.Chaturvedi Vs. Union of India & Ors., (1995) 6 SCC 749 & Union of India Vs. Parma Nanda, AIR 1989 SC 1185. He has submitted that although the complainant did not appear before the Enquiry Officer as she could not be traced, there was other sufficient evidence on record which has been analysed by the Enquiry Officer, on the basis of which he has come to the conclusion that the charge against the applicant was proved. Learned counsel for the respondents has, therefore, submitted that the grounds taken by the applicant are not tenable and has prayed that the OA may be dismissed.

6. On consideration of the documents placed on record, including the Enquiry Officer's report dated 9.7.93, we are unable to agree with the contentions of the learned counsel for the applicant that this is a case of no evidence. It may be correct that the complainant, Ms. Rekha Devi, was not produced as a witness in the departmental proceedings held against the applicant but

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that by itself will not vitiate the departmental proceedings held against the applicant. We have no doubt in our mind, that in the present case there is sufficient evidence, by way of witnesses and documents which have been produced at the time of enquiry, on the basis of which the Enquiry officer has after fully analysing the situation, come to the conclusion that in the totality of the case that has emerged, the charged official is guilty of the charge. It is settled law that the Courts, and the Tribunal in exercise of the powers of judicial review are not to re-appraise the evidence so as to come to its own conclusion or substitute the decision for that ~~right~~ of the competent authorities who have held a proper departmental enquiry in accordance with the rules. We are further satisfied that in the facts and the circumstances of the case, the applicant has been afforded a full opportunity of hearing and the principles of natural justice have also been complied with. It is also correctly pointed out by Sh. Vijay Pandita, learned counsel that this is not a case where there has been any prejudice or malice or bias made against the complainant, Ms. Rekha Devi, or any official of the respondents, let alone any proof of these allegations to warrant any interference. The judgements relied upon by the applicant will not also assist him in the facts and circumstances of the present case as, in our view, this is not a case of no evidence or non-application of mind by the competent authorities as alleged. This is also not a case of excessive or harsh punishment being meted out to the applicant.

Yours

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7. On the contrary, a perusal of the appellate authority's order dated 19.8.96, which has been impugned in the present application, shows clearly that the Appellate Authority had indeed considered the relevant facts and circumstances, including the fact that the applicant had suffered considerable mental agony on the basis of which he has taken a lenient view. Therefore, it cannot also be held that there is any arbitrariness or unreasonableness or excessive punishment which has been imposed on the applicant in the facts and circumstances of the case.

8. In the result for the reasons given above, we find no merit in this application and the same is accordingly dismissed. No order as to costs.

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(S.A.T.Rizvi)
Member (A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

/suhil/