

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXX~~ No. 2159 of 1997

Decided on: 15/7/98

(9)

Shri V.P. Pandey

.....Applicant(s)

(By Shri E.X. Joseph

Advocate)

Versus

U.O.I. & Others

.....Respondent(s)

(By Shri R.P. Aggarwal

Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI T.N. BHAT, MEMBER (J)

1. Whether to be referred to the Reporter or
not? *yes*

2. Whether to be circulated to the other Benches
of the Tribunal? *✓*

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2159 of 1997

New Delhi this the 15th day of April, 1998.

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. T.N. BHAT, MEMBER (J)

Shri V.P. Pandey
S/o Late Shri Bhagwati Prasad Pandey
R/o C-155/13 Khajoori Khas,
P.O. Bhogalpuri, Shahdara,
Delhi.

...Applicant

By Advocate Shri E.X. Joseph.

Versus

1. Union of India through the
Secretary to the Government of India,
Ministry of Health and Family
Welfare,
Nirman Bhavan,
New Delhi-110 011.
2. The Director General,
Health Services,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi-110 011.
3. The Principal and Medical Superintendent,
Lady Hardinge Medical College and
Sucheta Kripalani Hospital,
New Delhi-110 001. Respondents

By Advocate Shri R.P. Aggarwal.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

A departmental enquiry instituted against the
applicant resulted in the disciplinary authority
imposing a major penalty of reduction to a lower stage
in the time scale of pay by 5 increments in addition to
recovery of loss of amount of Rs.3,07,636.86 with a
stipulation that reduction in increment would have the
effect of postponing the future increments with
cumulative effect. On an appeal filed by the applicant,
the appellate authority passed the following order dated
14.7.1997:-

"NOW, THEREFORE, the undersigned in exercise of the powers conferred by Rule 27(2)(ii) of CCS (CCA) Rules, 1965 hereby remits the case to the Disciplinary Authority viz. Principal and Medical Superintendent, Lady Harding Medical College and Associated Hospitals New Delhi with the direction that a copy of the report of the Inquiring Authority may be supplied to Shri V.P. Pandey, LDC, LHMC and final view in the matter may be taken after considering the representation of Shri V.P. Pandey on the findings of the Inquiring Authority, to be made by Shri V.P. Pandey if he wishes to do so."

2. During the pendency of the appeal, the respondents reduced the pay of the applicant from November, 1996 and also started effecting the monthly recovery of Rs.2,100.25 from November, 1996 and the increment due was also not granted. The applicant prays for a direction to the respondents to refund the amounts recovered from him including the amount of difference between the original pay and the reduced pay and also to release the increment due to him in April, 1997. He has also prayed for interest on the amount recovered from him.

3. The respondents submit that on the basis of the order passed by the appellate authority, the enquiry report was furnished to him and the applicant had also submitted his reply on 28.10.1997, which is under consideration and in view of this, further monthly recoveries have since been stopped. As regards the refund of the amounts recovered, the respondents submit that the appellate order does not quash the penalty order dated 29.10.1996 and as such, the question of refunding the amount at this stage does not arise.

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4. The learned counsel for the applicant argued that in terms of the order passed by the appellate authority, the orders of the disciplinary authority cannot be acted upon inasmuch as it was specifically stated that after receiving the representation on the enquiry report, the disciplinary authority will have to take a final view in the matter. This would itself go to show that the orders of the disciplinary authority passed earlier has become ineffective and is deemed to have been quashed. The counsel for the respondents on the other hand argued that there is no specific order quashing the order of the disciplinary authority. The effect of the appellate authority's order was to bridge the procedural lacuna in the enquiry proceedings inasmuch as the Enquiry Report had not been supplied to him earlier and this was directed to be supplied by the appellate authority. The counsel argued that this would not amount to setting aside the orders of the disciplinary authority.

5. We have heard the learned counsel for the parties and have perused the record carefully.

6. Rule 27 of the CCS (CCA) Rules, 1965, deals with the procedure for consideration of the appeal. In terms of sub-clause(2) it is stated that the appellate authority shall consider the appeal and pass orders (i) confirming, enhancing, reducing or setting aside the penalty; or (emphasis added) (ii) remitting the case to the authority which imposed or enhanced the penalty

(B)

or to any authority with such directions as it may deem fit in the circumstances of the case. It is clarified by the Government of India's instructions under sub-clause (2) of the aforesaid rule as follows:-

"It is clear that Rule 27(2)(c)(i) and (ii) ibid., do not empower the appellate authority to pass an order in which both these alternatives are ordered. The appellate orders should be quite clear and in conformity with the provisions contained in Rule 27(2)(c) and Rule 29 of CCS (CCA) Rules, 1965." (emphasis added)

7. In this particular case the appellate authority has decided to remit this case with a direction to the disciplinary authority to take a final view in the matter after considering the representation. The disciplinary authority in the absence of any other direction or stay order had proceeded to implement the order of the disciplinary authority passed in October, 1996. On receipt of the appellate authority's order, recoveries have been stopped. Although the disciplinary authority will not be in a position to implement his earlier order of October, 1996 any further, the action that has already been taken by him has not been specifically directed to be reversed to status-quo ante. It is stated by the respondents that further recoveries have been stopped and the applicant had given representation on receipt of the copy of the enquiry report on 28.10.1997 itself and this application was filed only in September, 1997. It is stated that the representation is under consideration.

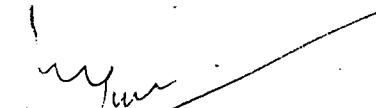
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8. In the circumstances and in the interest of justice, we consider it appropriate to dispose of this application with the following directions:-

(i) The disciplinary authority is directed to consider the representation and pass appropriate orders ~~Rakesh~~ in this behalf within a period of one month from the date of receipt of a copy of this order and on receipt of such order, it is open to the applicant to avail himself of remedies available to him under the law.

(ii) In the circumstances, there shall be no order as to costs.



(T.N. BHAT)
MEMBER (J)

(K. MUTHUKUMAR)
MEMBER (A)

Rakesh