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Central Administrative Tribunal
Principal Bench

O.A. No. 362 of 1997

New Delhi, dated this the 31st May, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

Dr. R.R. Kishore,
S/o late Sri B.R. Kishore,
R/o D-II/145, Kidwai Nagar (West),
New Delhi-110023.

.. Applicant

(Applicant in person)

Versus

Union of India through

1. The Secretary,
Ministry of Health & F.W.,
Nirman Bhawan, New Delhi.

2. Shri P.P. Chauhan,
Secretary,
Ministry of Health & F.W.,
Nirman Bhawan, New Delhi.

.. Respondents

(By Advocate: Shri P.H. Ramchandani)

ORDER

MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated 28.10.96 (Annexure 27) placing him under suspension and order dated 12.12.96 (Annexure 29) initiating departmental proceedings against him.

2. Applicant ^{who} is Chief Medical Officer, Directorate General of Health received letter dated 1.10.96 (Annexure 16) from the Project Manager, Conference Bureau for Priorities in Health Care, Stockholm, Sweden that he had been granted a Scholarship to participate in the 1st International Conference on Priorities in Health Care to be held in Stockholm, Sweden from 13th to 16th October, 1996 which would cover registration fee, accommodation,

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travel expenses etc. and invited him to participate in the same. He was asked to send his reply not later than 4.10.96.

3. On 3.10.96 applicant enclosed a copy of the aforesaid letter dated 1.10.96 with ^{^ a} covering note addressed to S.O (I.H. Section) (Annexure 17) stating that since the matter involved acceptance of foregin hospitality, necessary action may be initiated with Ministry of External Affairs and Ministry of Home Affairs to obtain No Objection Certificate. Copy of Form F.C. 2 was enclosed with the Note. The S.O. (I.H. Section) forwarded copy of the letter dated 1.10.96 to Ministry of External Affairs/Ministry of Home Affairs for clearance on 3.10.96 itself.

4. Ministry of External Affairs communicated its No Objection on 3.10.96 (Annexure A-19).

5. Ministry of Home Affairs also communicated its No objection on 4.10.96 (Annexure A-20).

6. On 4.10.96 applicant sent a Note (Annexure A-21) marked to Director General, Health Services through Dy. Director General (M) intimating that he had to visit Stockholm, Sweden from 13th to 16th October, 1996 in order to participate in the 1st Conference on Priorities in Health Care. He sought to avail 6 days C.L., on 11th October, 1996 and from 14th to 18th October, 1996 for this purpose and

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sought permission and necessary sanction. The D.G. recorded his approval on 4.10.96 itself and the Note was returned to applicant for being passed on to Administration for records.

7. Meanwhile applicant addressed ~~U.O.~~⁷ ~~Note~~ ~~letter~~ dated 3.10.96 (Annexure 17) directly to Ministry of External Affairs and Ministry of Home Affairs to expedite clearance.

8. On 7.10.96 the Project Manager of the Conference Bureau ~~and~~ sent another letter to applicant (Annexure 22) stating that he had been granted a scholarship to attend the PHC Conference at Stockholm on 13th to 16th October, 1996 and informing him of the Conference details.

9. On 8.10.96 the Under Secretary to Government of India in Ministry of Health & F.W. (Dept. of Health) issued a letter (Annexure 23) addressed to the applicant on the subject "Invitation for attending the 1st International Conference in Health care, Stockholm, Sweden from 13th" to 16th October, 1996 which ran thus:

"Sir,

I am directed to refer to your Note dated the 4th October, 1996 seeking permission to attend the above mentioned Conference and to regret our inability to attend the above mentioned Conference. You are, therefore, requested not (repeat not) to attend the above mentioned Conference.

Yours faithfully,
-sd-

(ASHOK MEHTA)
Under Secretary to Govt. of India

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Copies of the letter were sent to the Project Manager, Conference Bureau of PHC Stockholm by telefax/Dy. Secretary (EW), M.E.A./ Dy. Secretary, M.H.A.

10. Thereupon applicant sent a note to the Under Secretary (IH) dated 8.10.96 (Annexure 24). In this Note he stated that he ^{had} received the above letter at 5.00 P.M. on 8.10.96 denying him permission to attend the aforesaid Conference, in which he had been invited by the organisers to present a paper. He emphasised that the organisers would be funding the visit entirely and Ministry of External Affairs as well as Ministry of Home Affairs ^{had} given clearance. He also stated that the D.G. had granted him leave for attending the said Conference and he had already purchased the air tickets. He stated that the invitation had conferred a singular honour on the country and in view of the above, the denial of permission was arbitrary and unfair. He also stated that it was not clear ^{from} the aforesaid communication as to at what level the decision had been taken and it ^{seemed} ~~seemed~~ that the matter had not been placed before the Minister as had been done on an earlier occasion and as such the order was also without jurisdiction. He, therefore, urged that in the interest of justice and fair play, as also in the National interest, the aforesaid order be rescinded forthwith to enable him

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to proceed to Stockholm without any hurdle or difficulty. A copy of that note was also endorsed to the P.S. to State Minister with the request to place the matter before the Minister and also to arrange a personal interview with him.

11. Thereupon applicant filed O.A. No. 2181/96 challenging the aforesaid letter dated 8.10.96. That O.A. came up on 10.10.96. Applicant was represented by his counsel while Health Ministry was represented by Standing Counsel, who took notice on behalf of respondents. In view of the urgency of the matter the case was ordered to be posted for further direction at 3.00 p.m. that day. Later that day, both counsel appeared and the matter was heard. The O.A. was ordered to be admitted and Notice was ordered to be issued (Annexure 25).

12. Thereupon applicant sent a Note to Under Secretary (IH) presumably on 11.10.96 (Annexure 26) stating that in view of the Tribunal's order dated 10.10.96 admitting his O.A. No. 2181/96 after hearing respondents, he was proceeding to attend the 1st Conference on Priorities in Health Care at Stockholm, Sweden from 13th to 16th October, 1996.

13. It is not denied that applicant did participate in the aforesaid Conference. Upon his return he was served with impugned order dated 28.10.96 placing him under suspension on the ground that departmental proceedings were contemplated against him, and by impugned order dated 12.12.96

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initiating penalty under Rule 14 CCS (CCA) Rules, 1965 in which three Articles of Charges were listed out.

14. Meanwhile applicant submitted letter dated 2.11.96 (Annexure 28) addressed to Health Secretary alleging that the suspension order was founded on malice, owing inter alia, to his opposition to grant of customs duty exemption certificates to private importers of equipments and appliances running into crores of rupees. He also complained that he had been evicted from his office room, and the office facilities had been withdrawn and requested that the suspension order be rescinded immediately.

15. Applicant filed this O.A. in February, 1997. Thereafter in the background of M.A. No. 889/97 filed by applicant, his prayer for an interim direction revoking the suspension order dated 28.10.96 was heard by the Bench and by order dated 5.5.97 by way of an interim direction, the operation of the suspension order dated 28.10.96 was stayed for reasons which were to be recorded later. Those reasons were subsequently recorded in the order of the Bench dated 3.10.97 on the ground that the suspension order was by of an arbitrary exercise of power for extraneous reasons and was, therefore, punitive. The Bench in Para 25 of its order dated 3.10.97 made it clear that it was not expressing any opinion on the merits of charges against applicant,

nor would any of the views expressed in their aforesaid order have any bearing on the disciplinary proceedings which were to continue as per rules.

16. Meanwhile applicant filed CWP-2461 and 10325/97 in the Delhi High Court praying that in the facts and circumstances of the case, the inquiry proceedings should also have been stayed. The Delhi High Court by its interim order dated 30.5.97 permitted the disciplinary proceedings to continue but stayed any action in pursuance of any final order that might be passed in the disciplinary proceedings. Thereafter on 26.9.97 it fixed 8.1.98 for final disposal of the writ petition and meanwhile stayed the disciplinary proceedings. On 8.1.98 it noted that the main controversy about the passing of the suspension order and the validity of the charge sheet in the departmental proceedings was pending before the Tribunal. As the suspension orders had already been stayed by the Tribunal, and the departmental proceedings in pursuance of the chargesheet had been stayed by the Delhi High Court by way of an interim measure, it directed that as the main controversy was already pending before the Tribunal, the matter be expeditiously decided by the Tribunal, within three months, if possible, and till a final decision was taken by the Tribunal, the departmental proceedings would remain stayed as already directed by them on 26.9.97. It was made clear that any observations made during the pendency of the CWP regarding the merits of the matter need not prejudice the Tribunal

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while taking a final decision in this case. Parties were directed to appear before the Tribunal on 20.1.98.

17. Thereafter largely because of adjournments sought on one ground or the other by either side, the matter could not be heard till 15.5.2000.

18. We have heard the applicant who argued his case in person and Shri Ramchandani for respondents.

19. Applicant has emphasised that he is an acknowledged expert in the field of medico legal studies (undoubtedly he is one of the few medical doctors who has also an LLB degree) and is a member of several national and international committees in this field with a large number of papers published in renowned national and international journals, to his credit. He is frequently invited to participate in Symposia, Seminars etc. within India and abroad where ^{he is} ~~has~~ called upon to read papers and preside over sessions. He has urged that because of his opposition to the issue of customs exemption certificate by the Directorate General of Health Services and Health Ministry ^{the} to import of medical equipment and appliances (copies of his notes have been filed and are on record) involving hundreds of crores of rupees, he had annoyed various powerful persons in the Health Ministry who were out to prevent his participation in international

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conferences held abroad. He has cited other instances also when the officials in the Health Ministry had denied him permission to participate in Conferences held abroad, and had been able to participate in the same only through Court intervention.

20. As regards his participation in the Stockholm Conference, he has urged that it was ^{one} of several such invitations he received every year, and he had obtained the Director General's permission to participate in it. Ministry of External Affairs and Ministry of Home Affairs had also given their clearances and under the circumstances a fairly junior functionary such as the Under Secretary had no authority to prevent him from going. He denied having "managed" to secure the invitation to participate in the Conference as made out in Article 1 of the Charge, and contended that he had received it in view of his acknowledged expertise in the field. He explained his letter dated 3.10.96 by saying that it was only by way of reminder to Ministry of External Affairs/Ministry of Home Affairs to expedite the matter, as time was very short the original reference having already been made by S.O. (IH Section) on 3.10.96. He argued that no reason had been given in letter dated 8.10.96 as to why permission was being denied, and the letter itself was more in the nature of a request than an order. He contended that although in his note dated 8.10.96 he had sought an interview with the Minister to know the reasons why he had been denied permission, the

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same was not granted to him and meanwhile as he had already booked his ticket, the only alternative for him was to approach the Tribunal which he did in O.A. No. 2181/96 which was admitted by order dated 10.10.96. He stated that at the time the O.A. was admitted it fell from the Bench that at that stage nothing more could be done than to admit the O.A. containing the challenge to the letter dated 8.10.96, and if applicant proceeded to Stockholm he did so at his own risk and responsibility.

21. He stated that respondents were bent on harassing him so much so that they had initiated action against him for designating himself as Asst. Director General, when they themselves in their correspondence had addressed him by that designation.

22. He further stated that he had made specific allegations of malafide regarding initiation of the disciplinary proceedings against Respondent No.2 in the O.A., but no reply had been filed by him, and under the rule of pleadings in the absence of any reply the allegations of malafide regarding initiation of disciplinary proceedings against Respondent No.2 must, therefore, be taken as established, requiring the disciplinary proceedings to be quashed.

23. He also stated that in a ^{letter d. 19.3.97} ~~statement made~~ sent by the Health Ministry reproduced in a document at Annexure R-3 while explaining the delay in initiating departmental proceedings in those cases,

it had been stated that calling for the defaulters to submit their explanation was a mandatory requirement before the invitation of disciplinary proceedings, but that mandatory requirement had been given a go by in his case, which also pointed to the malafide intentions of respondents.

24. These assertions have been denied by Shri Ramchandani.

25. We have considered the matter carefully.

26. However, eminent applicant may be in the field of medico legal studies or in any other field of specialisation, he is a Government employee and is required to abide by Government rules and lawful orders issued by Government. First and foremost he is under the administrative control of the Health Ministry, and manifestly if he receives a communication from an Under Secretary to Government of India in the Health Ministry communicating the inability of that Ministry to permit him to attend the Conference, and requesting him not repeat not to attend the Conference, he is bound to obey the same, however, distressing it may have been to him personally, he having already made his ^{travel} ~~same~~ arrangements. Merely because it is couched in the form of a request, does not make it any less of an order, and it cannot be said to be either illegal or unlawful. Applicant cannot argue as he has sought to, that he was not obliged to abide by it as it was issued by a relatively junior official of the level of Under Secretary. An Under Secretary is competent to authenticate instruments of Government, and this letter contains ^{valid} a Government order, which the Under Secretary has been directed to communicate. We are

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informed by Shri Ramchandani that the decision to deny permission to applicant to participate in the Concurrence was taken at the level of the Minister, and we have no reason to doubt this assertion.

27. The letter dated 8.10.96 which was a Government order communicated by the Under Secretary would certainly prevail over the approval dated 4.10.96 granted by the Director General who is a Head of the Department and is himself subordinate to Government. It was also not mandatory for the Under Secretary to explain the reasons why permission was being denied. On this point, Shri Ramchandani stated that respondents had reason to believe that applicant had managed to procure the invitation which speaks of grant of a scholarship to applicant, because applicant had not secured the scholarship through Health Ministry Channels which was his cadre controlling authority. Prima facie this averment is not without merit. Under Government rules and instructions, Government servants are permitted to accept scholarships particularly from foreign institutions only if they are routed through Government channels, and permission of the cadre controlling authority (Health Ministry in this case) has to be obtained before any scholarship can be accepted. Applicant has not satisfactorily explained how the Conference Bureau came to grant him a scholarship, without such scholarship being routed through Health Ministry channels.

28. There is another aspect. Applicant was not proceeding to Stockholm to participate in the Conference as a private individual in his personal

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capacity but as a representative of the Government of India. This is clear from his own note addressed to the Director General dated 4.10.96 in which he sought for C.L. for 11.10.96 i.e. a day before the Conference and for C.L. from 14th to 18th i.e. after the Conference but not for the duration of the Conference i.e. 13th to 16th October, 1996. In other words he sought to attend this Conference as a part of his duty, in his official capacity as an officer of Government of India. Shri Ramchandani is entirely correct when he says that ~~Government~~^{Health Ministry} has the right to determine which of their officers will represent them in any international Conference and would normally select an officer who was dealing with the subject(s) which was to be discussed in the Conference. Notwithstanding the approval by the D.G. to applicant to attend the Conference, applicant did not have an enforceable legal right to compel the Health Ministry under whose administrative control he functions, to depute him to participate in the Conference, when they themselves requested him in no uncertain terms not to attend the said Conference and also faxed a copy of their letter to the Conference organisers.

29. Under the circumstances, if inspite of the contents of Government letter dated 8.10.96 applicant proceeded to Stockholm to participate in the Conference it is clear that he did so at his own risk and responsibility and must face the consequences thereof. In this context the fact that O.A. No. 2181/96 ~~stands~~^{is} admitted does not avail

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applicant, nor the allegation of malafide brought against respondent No.2 nor indeed the fact that ^{no} ~~was~~ explanation was called for from him before initiating the disciplinary proceedings. As pointed out by Shri Ramchandani an explanation would be necessary when the question whether a particular officer was responsible for some act of omission or commission was in doubt. In the present case, there is no such doubt, because despite Government letter dated 8.10.96 calling upon applicant not to proceed to Stockholm to attend the Conference, he sent note dated 11.10.96 stating that he was attending the Conference and proceeded to Stockholm to attend it.

30. The parameters of judicial intervention at the stage of framing of charges has been laid down by the Hon'ble Supreme Court in Union of India & Others Vs. Upendra Singh (1994) 27 ATC 200 thus

"In the case of charges framed in a disciplinary inquiry, the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges if any), no misconduct or other irregularity alleged can be said to have been made out, or the charges framed are contrary to any law. At this stage the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the jurisdiction of the disciplinary authority."

31. Applying the aforesaid parameters to the facts and circumstances of the present case, manifestly the charges framed are not contrary to any law, and ⁱⁿ ~~by~~ ^{not abiding by} ~~disobeying~~ Government's letter dated 8.10.96 addressed to applicant calling upon him not

to proceed to Stockholm to attend the PHC Conference from 13.10.96 to 16.10.96 it ex faile cannot be said that no misconduct on his part has been made out.

32. The Hon'ble Supreme Court in a catena of decisions has severely deprecated the practice of Courts/Tribunals interdicting disciplinary proceedings at interlocutory stages, Unless there are overwhelming reasons to warrant it, and in the present case we see no such reasons. In any case during the course of the D.E. applicant will get full opportunity to defend his conduct and also establish his contention that the proceedings have been initiated aigainst him for malafide and/or ulterior reasons. If he is dissatisfied with the disciplinary authority's order, he can ^{always file} ~~take~~ ~~recourse~~ ^{to} an appeal, and if he is still ^{any} ~~has~~ grievance, it is open to him to agitate his grievance before the Tribunal in accordance with law, if so advised.

33. After this case has been heard on 15.5.2000 and orders had been reserved applicant handed over across the Bar an M.A. (unnumbered) stating that a DPC for selecting candidates for promotion to S.A.G. of Central Health Services was held on 5.4.2000, in which applicant's name was considered alongwith others and he was also selected, but Respondents in an attempt to circumvent the recommendations of the DPC has adopted the sealed cover procedure instead of implementing the DPC's recommendations. In the M.A. applicant seeks a direction to Respondents to implement the DPC's

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recommendations relating to his selection for promotion to S.A.G. of C.H.S. and not to keep the same in the sealed cover.

35. An M.A. may be filed before final hearing of the O.A. towards securing relief in the O.A., but in the present case applicant has filed this M.A. after hearing was concluded in the O.A., and what he ^{^ seeks} ~~sought~~ in the M.A. goes beyond the relief claimed in the O.A. No notice has been issued on the M.A. and Respondents have not been given any opportunity to reply to the same. Under the circumstances no orders can be passed on the M.A. It is open to applicant to agitate this grievance through an O.A. if so advised.

35. We may summarise

- (i) In so far as Respondents' order dated 28.10.96 placing applicant under suspension is concerned the same was stayed by the Tribunal by its order dated 5.5.97 which interim order has also not been modified or set aside by the Delhi High Court. Applicant has also rejoined duties. The aforesaid interim orders are, therefore, made absolute.
- (ii) The impugned order dated 12.12.96 initiating Disciplinary Proceedings against applicant warrants no interference in view of the facts and circumstances discussed above, disciplinary proceedings should go ahead in accordance with law, ^{unless} ~~respondents themselves decide to drop the same~~
- (iii) In so far as applicant's prayer in the M.A. (unnumbered) filed after the O.A. was finally heard, is concerned, in which he has sought a direction to respondents not to follow the sealed cover procedure in regard to his promotion to SAG

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in C.H.S., this prayer goes beyond the relief claimed in the O.A. and it is, therefore, open to applicant to agitate the same separately in accordance with law, if so advised.

36. The O.A. stands disposed of in terms of the directions contained in Paragraph 35 above. No costs.

Kuldeep Singh
(Kuldeep Singh)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

/GK/