

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 81/1997

195

T.A.No.

(5)

DATE OF DECISION 29-9-2000

Ashok Kumar Gupta

....Petitioner

Sh. B.S. Charya

....Advocate for the
Petitioner(s)

VERSUS

DG ESIC & Ors

....Respondent

Sh. G.R. Nayyar

....Advocate for the
Respondents.

COURT

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Sh. V.K. Majotra, 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

O.A. 81/97

New Delhi this the 29th day of September, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

Ashok Kumar Gupta,
S/o late Shri Lakhi Ram Gupta,
R/o 338/7, Anaj Mandi,
Shahdara, Delhi-32.

... Applicant.

(By Advocate Shri B.S. Charya)

VERSUS

1. The Director General,
Employees State Insurance Corp.,
Kotla Road, New Delhi-2.
2. The Director (Medical), Delhi,
Employees State Insurance Hospital,
Basaidarapur, New Delhi-15. Respondents.

(By Advocate Shri G.R. Nayyar)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has challenged the penalty orders passed by the respondents dated 19.11.1991 and 22.6.1992 imposing on him the punishment of withholding of four increments without cumulative effect. He has also challenged the order of reversion passed on 12.3.1991 and the rejection of his appeal against these orders by the appellate authority.

2. The applicant has stated that he was promoted as UDC on an ad hoc basis in November, 1988 when he was served with a memorandum of charges dated 7.8.1989. In the charge memo, it was alleged that during the period from 20.7.1987 to 20.11.1988 while the applicant was functioning as LDC in ESI Dispensary, Bhola Nath Nagar, Delhi and then posted as UDC in ESI Dispensary at NIA, Karampura, he has failed to maintain devotion to duty. The allegations were that he was

Y2

(1)

running a Clinic in H.No: D-35, Mansarovar Park, Shahdara, Delhi. The applicant denied the allegations. An inquiry was held and thereafter, the punishment order of withholding of four increments without cumulative effect was passed by order dated 13/15.2.1991. His contention is that thereafter, Respondent 2 passed another Office Order dated 12.3.1991 ordering his reversion and posting him as LDC with effect from the same date. The applicant had filed a representation against the order dated 12.3.1991 on 15.3.1991 which was disposed of by the respondents on 27.3.1991. He had also filed an appeal against the order of reversion which has been rejected, which has also been impugned in the present O.A. The applicant has stated that he is aggrieved by the punishment order dated 19.11.1991 and the appellate authority's order dated 22.6.1992 and 9.2.1996 ordering his reversion from the post of UDC to LDC which he has contended is double punishment.

3. A number of grounds have been taken by Shri B.S. Charya, learned counsel in assailing the aforesaid punishment orders. He has submitted that the charge-sheet has been issued with a view to victimise the applicant. He has submitted that the applicant's wife is running a clinic at D-35, Mansarovar Park, Shahdara, which had been taken on rent. He has also submitted that she is a qualified Doctor. According to the learned counsel, the premises, in question had been taken on rent by the applicant's wife in 1984 and they were having some differences with the land-lord, who had colluded with the department officials, who had issued the charge-sheet on 7.8.1999. He has submitted that the charges are false and fabricated, borne out of malice and

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(18)

vindictiveness. He has also stressed on the fact that later on Shri N.S. Bhatt had withdrawn the complaint and the premises had also been vacated by the applicant's wife. The applicant has also stated that he does not dispute the fact that his wife was carrying on private practice as a medical practitioner and her Board had been displayed at that place. He has alleged that Dr. (Mrs.) K.M. Nagpal, who had visited the premises and made a report has not given a true and correct view of the entire matter. He has also alleged that this Doctor had submitted a preliminary inquiry's report which was also not given to him. He has contended that Dr. (Mrs.) Nagpal had procured a false and fabricated statement of one Smt. Kamla, who has never been a patient of the applicant's wife, on the basis of which the Inquiry Officer had proceeded to record ~~his~~ findings. The applicant has also stated that he has been punished twice, which cannot also be done. Shri Charya, learned counsel has submitted that in the facts and circumstances of the case, ~~he has alleged that~~ as there is no substance in the findings of the Inquiry Officer or even in the charge-sheet which has been issued due to mala fide reason on the instigation of the land-lord, the punishment orders should be quashed and set aside.

4. We have seen the reply and heard Shri G.R. Nayyar, learned counsel for the respondents. A preliminary objection has been taken by the respondents that the applicant has sought multiple reliefs, namely (1) setting aside the punishment orders dated 19.11.1991, 22.6.1992 and 9.2.1996 and (2) at the same time claiming restoration of promotion as UDC consequent upon reversion by order dated 12.3.1991. They have stated that the second reversion order

(9)

dated 12.3.1991 is not consequent upon the other orders which are under challenge in the O.A. Shri Nayyar, learned counsel has also submitted that the reversion order dated 12.3.1991 is hopelessly barred by limitation and cannot be challenged in the present O.A., which has been filed on 8.1.1997. He has also stated that the applicant had been promoted on purely ad hoc basis and continued in that capacity till 11.3.1991 when he was reverted. He has also submitted that the applicant had filed appeal against the order dated 12.3.1991 which has been dismissed by the respondents vide their order dated 18/22.6.1992 (Annexure A-10) and, therefore, he has submitted that the challenge to the order of reversion at this stage is not maintainable as the same has become final as far back as June, 1992.

5. Learned counsel has submitted that the inquiry has been held in accordance with the rules and there is no infirmity in the same. He has submitted that the premises in which the applicant has stated that his wife was having a clinic as a Doctor, was taken on rent and the rent deed is in his name. In the statement made by the charged officer, he has also stated that the tenancy of the shop had been transferred to him ~~after~~ sometime in 1992. Learned counsel for the respondents has also drawn our attention to the fact that the applicant had admitted that he had gone to the clinic to bring his wife back. As his wife had gone to see a patient on a house visit, he was sitting in the clinic when Doctor (Mrs.) Nagpal and Mr. Saxena (PW-I and PW-6) had visited the clinic and they had picked up the prescriptions written by the charged officer. The submission made by the applicant that he was only copying the prescriptions while he was sitting idle, when Doctor

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60

(Mrs.) Nagpal had visited the clinic and had stated that the applicant had written the prescriptions, marked as Exhibits P-2-P-3, cannot, therefore, be accepted. He has also submitted that on that date, that is 2.10.1988, the applicant's wife was also not present. He has also taken us through the findings of the departmental inquiry report in which it has been stated that both PW-I and PW-6 have been cross-examined by the charged-officer and his defence assistants. Shri G.R. Nayyar, learned counsel - has, therefore, submitted that not only the departmental inquiry has been held against the applicant in accordance with the Rules, he has also been afforded full opportunity to put forward his case and there was no infirmity in the procedure or any other illegality which would justify setting aside the punishment orders. He has also submitted that in the appellate authority's order dated 9.2.1996 (second appeal), it has also been clearly stated that there is nothing on record to show that Dr. (Mrs.) Nagpal, a senior official has any reason to implicate the applicant in disciplinary proceedings. The reversion order passed against the applicant on the charges levelled against him and proved in the departmental inquiry has, therefore, been submitted as legal and valid as well, as the appellate authority's order.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. The contentions of the learned counsel for the applicant that the charge is vague and has been issued because of prejudice and mala fide have not been substantiated. A number of witnesses have been examined during the inquiry and the preliminary inquiry had been

(2)

conducted by a senior Doctor, namely Dr. (Mrs.) Nagpal, who had submitted a report. The evidence adduced in the inquiry proceedings by the witnesses clearly show that there was sufficient evidence for the disciplinary authority to come to the conclusion that the charges were proved on which the punishment order dated 19.11.1991 has been issued. The allegations of bias and prejudice levelled against the respondents for taking action in the circumstances of the case have not been proved. We are also unable to agree with the contentions of the learned counsel for the applicant that as the land-lord of the premises bearing H.No. D-35, Mansarovar Park, Shahdara, Delhi has withdrawn the complaint later, therefore, there is no basis for the departmental inquiry. The charges levelled against the applicant in the departmental proceedings were that during his period of service with the respondents, he was found running a personal clinic in House No. D-35, Mansarovar Park, Shahdara on 2.10.1988. The charges are not vague and have been fully proved by the witnesses in the departmental inquiry where the applicant has also been afforded a reasonable opportunity to cross-examine the witnesses and make his submissions in his defence. The findings of the Inquiry Officer are based on the evidence adduced before him and the plea that it is perverse is also rejected as unfounded. In the circumstances, we are unable to agree with the contentions of the learned counsel for the applicant that the charges ~~in~~ the disciplinary proceedings held by the respondents and the penalty orders passed against him are not in accordance with law and relevant rules. Similarly, the allegations of bias and prejudice levelled against the

12

disciplinary authority and other officials of the respondents are also baseless and not at all proved and are accordingly rejected. The appellate authority's order dated 9.2.1996 is a speaking order based on the records and there is no infirmity in this order also. (22)

8. The submission made by the learned counsel for the applicant that he has been punished twice is also without any force. His submission that even after the order of punishment dated 15.2.1991 was set aside by the Director General, the applicant's reversion was not withdrawn is again without any basis. As noted above, the applicant had filed an appeal against the reversion order passed against him by order dated 12.3.1991 which has also been rejected by the appellate authority by order dated 18/22.6.1992. Therefore, his contention that he should be restored to the earlier position as UDC with all consequential benefits, including seniority is rejected. We have also considered the other submissions and grounds taken in the O.A., but do not find any merit in the same to justify any interference in the penalty orders imposed on the applicant.

9. For the reasons given above, we find no merit in this application. The O.A. is accordingly dismissed. No order as to costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

"SRD"