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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2459/89

NEW DELHI, THIS 29<sup>th</sup>, DAY OF JULY, 1994

SHRI C.J. ROY, MEMBER (J)  
SHRI P.T. THIRUVENGADAM, MEMBER (A)

Shri Hari Kishan  
s/o late Shri Jwala Prasad  
A.429, Minto Road Qrtrs.  
New Delhi-110 001  
By advocate Shri J.P. Verghese .. Applicant

VERSUS

Union of India,

1. Secretary  
Ministry of Health & Family Welfare  
Nirman Bhawan, New Delhi
2. Director General, Health Services  
Nirman Bhawan, New Delhi
3. Medical Superintendent  
Dr. Ram Manohar Lohia Hospital  
New Delhi
4. The Chief Administrative Officer  
Dr. Ram Manohar Lohia Hospital  
New Delhi .. Respondents

By Advocate Shri M.K. Gupta

ORDER  
(C.J.ROY, HON'BLE MEMBER (J))

In this OA, the applicant has assailed the order dated 1.12.88 by which he was removed from service. The applicant while serving as a Peon with the Respondent No.3, was charge-sheeted on 5.6.87, after which an enquiry was held as a result of which the impugned order of removal from service was passed. He says that he preferred an appeal on 9.1.89 which is yet to be disposed of. He sent several reminders after that, the last one being on 12.9.89, but he alleges that his appeal has not been disposed of so far.

2. The grounds on which this OA is filed are that the impugned order is passed in violation of Article 311 of the Constitution of India as R-4 has no power to pass the order and the same is totally without any evidence and on flimsy grounds without giving reasonable opportunity to the applicant to cross-examine some of the key witnesses. The applicant states that the respondents have disagreed to believe the status of his wife and also that the evidence on record can not prove the charge as stated by the Enquiry Officer and it has been stated to have been proved emphatically without application of mind and without any evidence. He has, therefore, filed this OA with a prayer to direct the respondents to reinstate him in service and give all consequential benefits from the date of removal.

3. The respondents have filed their reply denying the averments made in the application. They admit that the appeal of the applicant is under consideration under Rules and therefore the applicant has not exhausted the departmental remedies. They deny that the R-4 has no powers to pass the removal order and his removal was duly approved by R-3 (Medical Superintendent) on the basis of the findings of the inquiry report and after applying his mind into the facts and circumstances of the case. They further assert that the departmental enquiry into the articles of charge was conducted by a duly appointed Inquiry Officer and decision was taken on the report submitted by him. Therefore, they contend that the applicant is not entitled for the relief claimed by him and the OA may be dismissed with costs.

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4. The applicant has also filed a rejoinder reasserting the points raised in the OA.

5. We have heard the counsel for the parties and perused the records, including the departmental file, made available to us.

6. The charge-sheet framed against the applicant are briefly as follows:

Article I

"That Shri Hari Kishan has been found in the habit of remaining absent from duty without prior permission or intimation. He does not comply with the directions issued to him. His above acts exhibit utter lack of devotion to duty.

Article II:

That Shri Hari Kishan refused to perform his duty assigned to him by his senior colleagues on 20.6.86, thus exhibiting lack of devotion to duty.

Article III:

That on 2.5.86 Shri Hari Kishan applied for leave for one day after he had come to office and on being refused permission he abandoned his duty and absented himself till 10.5.86. He took his the keys of Almirah where papers had been kept. This intentionally deprived the doctors of the most urgent and useful facility of communication against the vital interest of patients.

Article IV:

That Shri Hari Kishan was found by Dr. Narinder Singh inside the room of the Doctor locked from inside, alongwith a lady (said to be his wife) with pocket radio at 12.45 PM on 13.4.87. His act exhibits moral turpitude unbecoming of a Government servant violating Rule 3 of the CCS(Conduct) Rules, 1964"

7. From the report of the Inquiry Officer, it is seen that the applicant did not appear on several hearings, he refused to receive the last letter addressed to him for appearing in the hearing, which was held on 4.8.88.

He did not cross-examine the prosecution witnesses, even though he was allowed to do so, and avoided the same by some excuse. However, he defended his case in respect of charge (iv) above. While the charge (i) and (ii) stand proved, charge (iii) stands partly proved since R-4 was not brought for examination. In so far as charge (iv) is concerned, one Mr. Mann, defence assistant of the applicant, said to Dr. Narinder Singh, in whose room the applicant is alleged to have been found alongwith a lady with a pocket radio playing on, that the said lady is the wife of the applicant. Mr. Mann is further reported to have told Dr. Narinder Singh that the applicant was discussing with that lady regarding some papers on gyneocological problem. However, the applicant failed to establish that the lady was actually his wife. Thus the Inquiry Officer concluded that the act of the applicant exhibits moral turpitude unbecoming of a Government servant in violation of Rule 3 of CCS(Conduct) Rules, 1964, and thus causing damage to the reputation of the hospital. Therefore, this charge also stands proved. On this point, the learned counsel for the respondents further avers that if that lady is actually the wife of the applicant and any such complaint is made, the applicant would have jumped to prove them wrong and establishing that she is his wife and that he would have called her during the course of enquiry.

8. On the point of applicant's challenging the validity of power of the punishing authority, the learned counsel for the respondents says that as per Schedule IV of the CCS(CCA) Rules, Head of the Office is the competent authority to function as a Disciplinary

Authority. However, no order as to who is the Head of the office for the purpose of disciplinary proceedings could be produced by either the respondents or the applicant, despite a number of opportunities being given. We called for the personal file and disciplinary proceedings file relating to the applicant. We note that the appointing authority of the applicant is the Administrative Officer vide appointment order No. 7-902/76-WH/E.II/6093-95 dated 17.3.76. In the absence of a clear-cut order as to who is the Head of Office, we proceed on the premise that the entire disciplinary proceedings have been conducted by the appointing authority or higher authority.

9. At this stage, the learned counsel for the respondents drew our attention to a decision of the Hon'ble Supreme Court in 1993(1)SCC 419, which reads as under:

"Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceedings must be initiated only by appointing authority. However, it is open to Union of India or a State Government to make a rule prescribing that even the proceedings against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. But in the absence of any such rule, this right or guarantee does not flow from Article 311. It need not be pointed out that initiation of a departmental proceedings does not visit the officer concerned with any civil consequences. In the absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceedings"

10. In the face of such an observation by Hon'ble Supreme Court which allows initiation of departmental proceedings by an authority lower than the appointing

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authority, in certain circumstances, we do not feel that the requirements of Article 311 have in any way been violated in this OA. The entire proceedings have been concluded by the Chief Administrative Officer and if at some stages he obtained the approval of Medical Superintendent, the penalty can not be said to get vitiated.

12. Summing up, it is clear that the applicant neither cooperated with the inquiry officer, nor he filed the list of witnesses - which he was allowed to do - nor he produced the lady alleged to be his wife in respect of charge (iv). He also failed to show evidence that the lady was his wife, who was the best witness. In the circumstances, we have no hesitation to hold that the charges framed against the applicant stand fully proved. The applicant has failed to make out a case for our interference. The OA is therefore liable to be dismissed which we do so. No costs.

13. The respondents are also directed to pay legal fee to Shri M.K. Gupta as per rules as applicable to a Government counsel.

P.T.Thiru  
29/7/94.

(P.T.Thiruvengadam)  
Member (A)

29/7/94  
(C.J. Roy)  
Member (J)

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