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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A.No.678/89

New Delhi this the 17th day of March, 1994

Shri Justice V.S. Malimath, Chairman.

Shri S.R. Adige, Member (A).

Dr. V.P. Malik, s/o late
Shri C.B. Malik,
R/o Flat No.10,
Lady Hardinge,
Medical College Campus,
New Delhi.

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Petitioner.

By Advocate Shri Ajit Pudussery.

Vs.

1. Union of India, through
Secretary, Ministry of
Health & Family Welfare,
Nirman Bhavan,
New Delhi.

2. Principal, Lady Hardinge,
Medical College &
Associated Hospitals,
New Delhi.

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Respondents.

By Advocate Mrs. Raj Kumari Chopra.

ORDER (ORAL)

Shri Justice V.S. Malimath.

The petitioner, Dr. V.P. Malik, has, in this application, prayed for quashing of the memorandum dated 23.4.1988 and for a direction to grant him pay and allowances for the period he participated in strike and remained absent from 20.7.1987 to 28.7.1987 either by sanctioning leave of the kind due or by taking extra work from the doctors to compensate for the strike period. Though in the reliefs claimed, an attempt is made to appear that the petitioner is fighting the case for all the doctors who had gone on strike during that period, there is an

earlier order made in these proceedings on 10.9.1990 by the Bench that this O.A. has to be treated as being made only by the petitioner, Dr. V.P. Malik, for himself as an individual capacity.

2. There was a strike by the Doctors in which the petitioner admittedly participated and absented himself from his duties for the period from 20.7.1987 to 28.7.1987. The petitioner has not been given any emoluments for that period and hence this grievance.

3. It was urged by Shri Ajit Pudusser, learned counsel for the petitioner, that in view of the assurance given to him that no penal action would be taken if he resumes duty, the respondents are not entitled to deny him the emoluments for the strike period and to treat the same as 'dies-non'. Reliance was placed on the letter of Shri S.S. Dhanoa dated the 29th July, 1987, placed as Annexure 'A' which says that no penal action would be taken against the doctors who had gone on strike provided they have resumed duty. The petitioner's case is that it is on the strength of the representation which was made that he resumed duty and that, therefore, the principle of estoppel is attracted. It was urged that the denial of the wages for the strike period treating the same as 'dies-non' amounts to penal action taken contrary to the assurance given. It was urged that we should take the dictionary meaning of the 'penal action' to understand the expression ~~of the meaning~~ 'penal action' used in the

letter. In our opinion, having regard to the context the expression 'penal action' has been used, to convey penal action contemplated by the CCS(CCA) Rules (for short 'the Rules'). When any Govt. servant remains unauthorisedly absent he can be proceeded against for misconduct and any of the penalties as specified in Rule 11 of the Rules can be inflicted. The assurance held out by Annexure 'A' is that no such disciplinary action ~~should~~ be taken to impose any of the penalties as prescribed by Rule 11 of the Rules. The action taken for denying the wages for the strike period and treating the same as 'dies-non' cannot be understood as 'penal action' as the action taken is not a penalty falling under Rule 11. The petitioner cannot therefore invoke the principle of estoppel.

4. It was next urged that by order dated 3.11.1988 (Annexure 'G') the Govt. had directed that Medical Officers who participated in the strike may apply for leave and that the leave due would be granted if such application is made. He submitted that the action taken by the respondents in denying him the wages and treating the period as 'dies-non' is in clear violation of the said order. The Counsel for the respondents, however, submitted that this order has since been withdrawn by the Government by [✓]

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a subsequent order made on 18.12.1989 produced as Annexure R-IV. The contention of the learned counsel for the petitioner is that the petitioner having acquired certain rights in pursuance of Annexure 'G' he cannot be deprived of the same without complying with the principles of natural justice. He also urged that depriving him of the emoluments and treating the period as 'dies-non' also amounts to depriving him of the rights which he had earned. Firstly, we would like to point out that it is not the case of the petitioner that he made any application for grant of leave, as contemplated by Annexure 'G'. The said order, it is clear from Annexure R-IV, has been withdrawn. The background of the withdrawal is of significance. This has been done in the light of the settlement or understanding that was arrived at between the striking doctors on the one hand and the Government on the other. The copy of the said settlement has been produced as Annexure R-III by the respondents. Paragraph 4.4 of the same says that in the light of the established Government policy of 'no work no pay' the decision of 'dies non' covering July, 1987 strike period will remain. It is in the light of this settlement which has been arrived at between the striking doctors on the one hand and the Government on the other that the order dated 18.12.1989 (Annexure R-IV) was passed. In the light of the settlement which arrived

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at and the order passed consistent with the settlement as per Annexure R-IV, the petitioner cannot claim any rights under Annexure 'G' dated 3.11.1988 which stands revoked by the Government. We fail to see how in this background the petitioner can invoke the principles of natural justice. It has to be presumed that the petitioner also stood represented by the association which arrived at the settlement and on the strength of which the order Annexure R-IV was passed. The fact that the petitioner's is a solitary case making such a claim and that none of the doctors has made such a claim as the one made by the petitioner in this case further supports our inference that the settlement was accepted by all doctors. Looked at from any angle, this case does not call for interference.

5. For the reasons stated above, this application fails and is accordingly dismissed.

Adige
(S.R. ADIGE)
MEMBER(A)

Melimath
(V.S. MALIMATH)
CHAIRMAN

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