

**Central Administrative Tribunal
Principal Bench**

OA No.3285/2019

New Delhi, this the 10th day of August, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Prabal Pal, Group A
S/o Late Nirsingha Charan Pal
Aged about 47 years,
Professor (Dentistry)
ESIC Medical College & Hospital, Faridabad,
R/o 109, Vaishali Apartment,
3rd Floor, Sector-46,
Faridabad 121001. ... Applicant.

(By Advocate : Shri Abdhesh Chaudhary)

vs.

1. Director General
Employees State Insurance Corporation
Panchdeep Bhawan,
CIG Marg, New Delhi.
2. Union of India
Through Secretary
Ministry of Labour
Shram Shakti Bhawan,
Rafi Marg,
New Delhi.
3. Dean
ESIC Medical College & Hospital
NIT, Faridabad,
Haryana. ... Respondents.

(By Advocate : Shri Satish Kumar)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant is working as Professor (Dentistry) in the ESIC Medical College & Hospital, Faridabad. He was issued a Memorandum of Charge dated 11.07.2019. It was alleged that while working as Professor and Head of Department, Department of Dentistry in ESIC-PGIMSR & Medical College, Joka, Kolkata, he exhibited professional incompetence by trying to extract a healthy tooth of a nine year old boy. Another charge was that he exhibited professional incompetence and unethical behavior in attempting an internal fixation surgery of Maxillary fracture suffered by one Shri Prasenjit Bhandari.

2. The applicant contends that the alleged incident took place way back in 2015 and, in fact, a Fact Finding Enquiry that was conducted into the matter, and that the issue is reopened.

3. We heard Shri Abdhesh Chaudhary, learned counsel for the applicant and Shri Satish Kumar, learned counsel for the respondents, at the stage of admission.

4. The challenge in this O.A. is to the Charge Memorandum dated 11.07.2019. It is only when the Charge Memorandum is issued by an Authority, not vested with the power or when it is found to be in contravention to the provisions of law, that an

employee can approach the Tribunal challenging it. Such grounds are not pleaded in this O.A.

5. It is argued that the very issue pertaining to the allegations contained in the articles of charge was inquired by the Inquiry Officer (IO) and the report was submitted by a Committee holding that no lapse has taken place on the part of the applicant. It is also stated that when the issue was sought to be reopened, the applicant filed a writ petition before the Hon'ble Calcutta High Court, and it was held therein that the respondents can reopen the issue only after issuing a notice to the applicant.

6. We find that the allegation was inquired into earlier, by the Fact Finding Committee. It was not preceded by any charge memorandum. The disciplinary authority has issued a charge memorandum after such a fact finding enquiry. It is only in the Departmental Inquiry, that the truth or otherwise, of the allegations contained in the article of charge, needs to be examined. The applicant can put forward all his contentions. He can also rely upon the alleged report submitted earlier by the Fact Finding Committee.

7. The applicant submits that as regards the second article of charge, there exists a report of the Fact Finding Committee, and on noticing that it is against him, he filed OA No. 601/2017 before the Calcutta Bench of the Tribunal. We are of the view that

the scope of the Fact Finding Inquiry on the one hand and the Disciplinary Inquiry on the other hand are is totally different. When the charge can be framed straightaway, the mere fact that it was done after a report of the Fact Finding Committee, does not make a difference.

8. We do not find any merit in the O.A. and accordingly the same is dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/sd