



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 3287/2019

M.A. No. 2399/2020

This the 04th day of March, 2021

(Through Video Conferencing)

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

Dr. Prabal Pal, Group A,
S/o Late Nrisingha 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

(through Mr. Abdhesh Chaudhary, Advocate)

Versus

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

... Respondents

(through Mr. Satish Kumar and Mr. Jacky Kazmi, Advocates)

ORDER (Oral)**Mohd. Jamshed, Member (A):**

The applicant is working as Professor (Dentistry) in Employees' State Insurance Corporation (ESIC) Medical College, Faridabad, Haryana. He was earlier posted in ESIC Medical College, Joka, Kolkata. He was promoted as HoD in that Institution in 2014. It is alleged by him that he was not allowed to work in his capacity as HoD in ESIC Medical College at Joka, Kolkata by his colleagues. On 10.08.2017, the applicant was transferred to ESIC Medical College, Faridabad. Aggrieved by this transfer and other grievances, he made several representations to the concerned authorities.

2. The ESIC issued an OM dated 19.11.2018 laying down guidelines to be observed by staff with regard to routing their grievances connected with service conditions. It was indicated that these should be addressed to the immediate superior or the Head of the Office or such authority at the appropriate level. The applicant contends that as he was being harassed by his immediate superior, he referred his grievances and complaints to the higher authorities.

3. The respondents issued him a show cause notice dated 20.03.2019 asking him to explain, as to why, he has made representations contrary to Rule-3 of CCS (Conduct) Rules, 1964. The applicant submitted a detailed reply in response to the show cause notice. The respondents, thereafter, issued the impugned charge memorandum dated 11.07.2019. Aggrieved by this act on the part of the respondents, the applicant has filed the present OA seeking relief in terms of setting aside and quashing the charge memorandum dated 11.07.2019. As an interim relief, the stay of operation of the impugned charge memorandum was also prayed. The Tribunal granted stay on further proceedings vide order dated 10.08.2020.



4. The applicant alleges in his OA that while he was working in ESIC Medical College, Joka, Kolkata, he was harassed by his colleagues and seniors. He had also approached the Kolkata Bench of the Tribunal by filing an OA and filed a Writ Petition in the Hon'ble High Court of Kolkata seeking certain relief(s). It is also stated that there have been issues with his attendance not getting registered at ESIC Medical College, Faridabad for want of transfer of a certain attendance module. For all these grievances, the applicant has been seeking redressal from higher authorities by making representations. It is contended that as an

employee it is his right to seek redressal of his grievances from higher authorities and, therefore, he is within his right to make all those representations. The charge memorandum dated 11.07.2019 as issued by the respondents, therefore, is illegal and requires to be set aside.



5. The respondents filed a counter affidavit opposing the OA. It is stated that the applicant was issued a show cause notice indicating that that the applicant has violated the rules and instructions for seeking redressal of his grievances, he has been making allegations and seeking redressal not only from the competent authority but also by writing to many other higher authorities in the Government. His representations to the higher authorities were also not submitted through proper channel. It is also stated that the applicant has violated the DoP&T instructions issued vide OM dated 01.11.1999. The applicant has been issued charge memorandum primarily on 2 grounds i.e.; (a) making representations to the higher authorities without exhausting the prescribed channel; (b) for refusing to receive the speaking order passed by Director General in compliance of order passed by the Kolkata Bench of the Tribunal. The Inquiry Officer (IO) has already been appointed to conduct the inquiry and the applicant shall be provided all reasonable opportunity in order to ensure that the principles

of Natural Justice are met. It is also stated that in view of the stay granted by the Tribunal, further proceedings are on hold. Various averments made by the applicant in the OA have been opposed and clarified in the counter affidavit by the respondents as most of these are unrelated to the charge memorandum and the relief sought in the OA.



6. We heard Mr. Abdhesh Chaudhary, learned counsel for the applicant and Mr. Satish Kumar and Mr. Jacky Kazmi, learned counsels for the respondents.

7. The applicant is working as Professor (Dentistry) in ESIC Medical College, Faridabad. He has narrated various incidents that have taken place during his posting at ESIC Medical College at Joka, Kolkata. While he was posted in ESIC Medical College, Joka, he sought redressal of his grievances by filing an OA in the Tribunal and also through a Writ Petition in the Hon'ble High Court. In 2017, he was transferred to ESIC Medical College, Faridabad as Professor (Dentistry). He continued to make representations seeking redressal of his grievances to various higher authorities in violation of the laid down instructions. A show cause notice was issued to him by the respondents. Subsequently, a charge memorandum dated 11.07.2019 has been issued to him. The charges read as under:-

“Statement of the Articles of Charge Framed Against Dr. Prabal Pal, Professor Dentistry, ESIC Medical College, Faridabad.

Article of Charge-I

Dr. Prabal Pal, Professor, Department of Dentistry while working in ESIC Medical college, Faridabad, Haryana has committed misconduct in, as much as, in violation of the DOPT instructions vide O.M. No. 11913/7/99-Estt. (A) dated 1/11/1999 he forwarded a representation dated 21.05.2018 as regard to his service matters directly to higher authorities, Secretary, CPGRMS, Ministry of Personnel, Public Grievances & Pensions, Secretary, Ministry of Communication & Information Technology, Secretary, Medical Council of India, and Deputy Director General, National Informatics Centre by passing the prescribed channels of communication.

By the aforesaid act, the said Dr. Prabal Pal has exhibited lack of devotion to duty and a conduct unbecoming of a Corporation employee and thereby, violated Rule 3 (I) (ii) & (iii) of the CCS (Conduct) Rules, 1964 with Regulation 23 of ESIC (Staff & Conditions of Services) Regulations, 1959, as amended.

Article of Charge-II

Dr. Prabal Pal, Professor in Dentistry while working in ESIC-PGIMSR & Medical College, Faridabad has committed misconduct in, as much as, that he refused and deliberately avoided to receive the speaking order dated 07/02/2018 passed by the Director General, ESIC, in compliance to Hon'ble CAT, Kolkata Bench order dated 2/11/2017.

By the aforesaid act, the said Dr. Prabal Pal has exhibited lack of devotion to duty and a conduct unbecoming of a Corporation employee and thereby, violated Rule 3 (I) (ii) & (iii) of the CCS (Conduct) Rules, 1964 with Regulation 23 of ESIC (Staff & Conditions of Services) Regulations, 1959, as amended.”

8. Charge No. 1 is primarily for violation of instructions contained in DoP&T OM dated 01.11.1999 and the charge No. 2 is refusal and deliberately avoiding to receive the speaking order passed by the Director General, ESIC in compliance to order passed by Kolkata Bench of this Tribunal dated 02.11.2017. The applicant has given various clarifications and opposed the charges levelled against him





in the OA. He has approached the Tribunal by filing the present OA praying for quashing of the impugned charge memorandum. As an interim relief, he also sought stay on further proceedings. The Tribunal has allowed the interim prayer and stayed further proceedings vide order dated 10.08.2020. It is evident that the respondents have found the actions of the applicant in directing his grievances to various authorities as violation of the instructions provided in DoP&T OM dated 01.11.1999. Respondents have considered these violations as serious and issued the impugned charge memorandum. It is submitted that Inquiry Officer has already been appointed and that by participating in the disciplinary proceedings, the applicant shall get reasonable opportunities to put forward his defence.

9. The applicant contends that he has not erred in any way by making the representations to authorities in violation of the laid down instructions. He contends that if he has grievances against the immediate superior authority, the same cannot be addressed by the same authority impartially and, therefore, there is nothing wrong in making these representations to other concerned higher authorities. The applicant can submit his clarifications during the course of the enquiry. Needless to mention that the respondents are well within their right to issue a charge memorandum and

initiate disciplinary proceedings in terms of the prescribed rules. The conduct of an enquiry in itself is not the final outcome. The enquiry proceedings provide full opportunity to the charged employee to present his case. It is only after the conduct of the enquiry that the disciplinary authority has to consider the enquiry report and decide appropriately. The conduct of an enquiry is only the first step and is not a punishment or a stigma in any way.



10. We do not find the challenge of the applicant to the enquiry proceedings tenable in any way. The applicant should henceforth participate in the disciplinary proceedings and provide his necessary explanations during the course of the enquiry. We are of the view that no interference at this point is required. The OA is, accordingly, dismissed. Pending MA stands disposed of. The interim stay also stands vacated. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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