



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

(Through video conferencing)

O.A. No.800/2020

Wednesday, this the 29th July, 2020

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

Dr. Narendra Monga,
Specialist Grade –II (Paediatrics), Group A,
Aged about 41 years,
S/o Sh. Jagmohan Monga,
R/o Flat No. D-802, Corona Optus, Sector – 37C,
Gurgaon, Haryana.

...Applicant

(By Advocate : Mr. M. K. Bhardwaj)

Versus

1. Union of India, through Secretary,
Ministry of Labour and Employment,
Nirman Bhawan, New Delhi.
2. Employees State Insurance Corporation,
Panchdeep Bhawan, CIG Marg,
New Delhi,
Through its Director General.

...Respondents

(By Advocate: Ms. Leelawati for Respondent No. 01 and
Mr. Tejaswi Kumar Pradhan Respondent No. 02)



ORDER (ORAL)

Justice L. Narasimha Reddy:

The applicant was appointed as Insurance Medical Officer (IMO) Grade – II in the Employees State Insurance Corporation (ESIC), the 2nd respondent herein, on 12.09.2009. He was promoted to Grade-I on 12.09.2013.

2. On 13.02.2018, the 2nd respondent came forward with a proposal for the senior most GDMOs to get appointed as Specialist Grade-II. One such post was of Paediatrics. The applicant responded to the same and he was selected and appointed through order dated 06.06.2018. On 13.05.2020, the respondents issued an order reverting the applicant to the post of GDMO, on the ground that his Vigilance Clearance is not available. This O.A. is filed challenging the order dated 13.05.2020.

3. The applicant contends that on being selected as Specialist, he was put on probation and one of the conditions was that the probation can be terminated by issuing a notice of one month. It is stated that the applicant completed the probation and the impugned order was issued without any notice, whatever. Other grounds are also urged.




4. The 2nd respondent filed a detailed counter affidavit. It is stated that the applicant remained absent for 720 days while working as GDMO and during that period, he worked in private hospital in violation of service conditions. It is stated that on noticing this fact, he was issued a show cause notice (SCN) on 06.06.2020, and on considering his explanation, not only a charge memo was issued to him, but also an order of reversion was passed. Various grounds urged by the applicant are denied.

5. We heard Shri M.K. Bhardwaj, learned counsel for the applicant, Ms. Leelawati, learned counsel for respondent No.1. and Shri Tejaswi Kumar Pradhan, learned counsel for respondent No.2.

6. It is not in dispute that the applicant entered the service of the 2nd respondent as GDMO on 12.09.2009. There existed a cadre of Specialist. The 2nd respondent came forward with a Scheme of permitting the GDMOs to get appointed as Specialist, as one-time measure. Selection process was also involved. The applicant availed the benefit and was selected and appointed as Specialist on 06.06.2018.

7. Normally, the orders of appointment are issued after verifying the vigilance status. The order placing the applicant on probation clearly mentions that it is liable to be terminated on issuance of notice of one



month. The probation of the applicant in the post of Specialist was completed and thereby he became a full member of the cadre. Though the aspect of technical resignation to the post of GDMO is also referred to, it is not of much relevance. The impugned order reads as under:-

“ESIC (HQ)
Panchdeep Bhawan, CIG Marg,
New Delhi.

A-19/11/1/203/2009/CH-4

Dated: 13.05.2020

Office Order No. 124/2020

The competent authority has issued order of cancellation of appointment of Dr. Narendra Monga Specialist Grade-II, Bhiwadi on account of non availability of vigilance clearance.

Therefore, Dr. Narendra Monga has been reverted to the post of IMO Grade –I with immediate effect and Dr. Narendra Monga is posted in ESIC Hospital, Bhiwadi.”

8. There is no reference to any SCN, much less the explanation. Once the applicant was appointed as Specialist, the benefit thereof could have been taken away, only by issuing an SCN. The SCN dated 06.06.2020 is issued to the applicant is the one, proposing disciplinary action. Not a word is said about termination of the applicant from the post of Specialist.

The last paragraph of the SCN reads as under:-

“Now, therefore, Dr. Narendra Monga, the then IMO Gr.-I, ESIC Model Hospital, Gurugram (now posted as Specialist (Pediatrics) in ESIC Model Hospital, Bhiwadi, Rajasthan) is called upon to show Cause and clarify within 15 days from the receipt of this notice as to why disciplinary action as deemed fit should not be initiated against him for the aforesaid misconduct. If no reply is received from him within the stipulated time, it will be presumed that he has nothing to say in the matter and action as deemed fit will be initiated accordingly.

This issued with the approval of the Director General.”



9. Assuming that the applicant has failed to submit the explanation to the SCN or the one submitted by him, was not found satisfactory, the only consequence was that the disciplinary proceedings be initiated. In fact, a charge memorandum was issued to the applicant.

10. Mere issuance of the charge memo cannot result in automatic reversion to the earlier post. That amount to punishment without inquiry. If the 2nd Respondent wanted to revert the applicant to the post of GDMO, it was under obligation to issue show cause notice proposing that step. Since nothing of that sort is mentioned in the impugned order there is violation of principles of natural justice.

11. On this short ground, we allow the OA and set aside the impugned order and the applicant shall stand restored to the post of Specialist. It is, however, left open to the 2nd respondent to issue show cause notice proposing reversion of the applicant and to pass appropriate orders after consideration of his explanation. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/sunil/jyoti/ankit/