

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 401
~~Ex No.~~

1987

DATE OF DECISION 29.1.88

Shri Amar Lal Petitioner

Shri D.C. Vohra Advocate for the Petitioner(s)

Versus

Delhi Administration & Others Respondent

Mrs Avnish Ahlawat and Advocate for the Respondent(s)
Shri Mukul Talwar

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. CH. RAMAKRISHNA RAO, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes,
2. To be referred to the Reporter or not ? Yes,
3. Whether their Lordships wish to see the fair copy of the Judgement ? No


(CH. RAMAKRISHNA RAO)
MEMBER (J)


(S. P. MUKERJI)
MEMBER (A)

6

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O.A. No.401/87

DATE OF DECISION : 29.1.88

Shri Amarlal Applicant

Vs

Delhi Administration and others . . Respondents

Shri D.C. Vohra, Advocate . . Counsel for applicant

Mrs Avnish Ahlawat and
Shri Mukul Talwar, Advocates . . Counsel for respondents

CORAM

The Hon'ble Mr.S. P. Mukerji, Administrative Member

The Hon'ble Mr.Ch. Ramakrishna Rao, Judicial Member

(Judgment delivered by Hon'ble Mr.S.P.Mukerji,
Administrative Member)

The applicant who was working as a Sweeper in the Nehru Homeopathic Medical College & Hospital (NHMCH) under the Directorate of Health Services of the Delhi Administration has moved this application dated 12.3.1987 under Section 19 of the Administrative Tribunals Act, 1985 against the order of removal from service dated 30.4.1986 passed by the Principal of NHMCH and has prayed that he should be reinstated in service with all consequential benefits and allowed to retain the Government accommodation. The brief facts of the case are as follows.

2. The petitioner is an illiterate scheduled caste sweeper working in the aforesaid College and Hospital since 2.8.1974. According to him his trouble, started from

1984 when Dr. V.K. Gupta was appointed as Principal. The principal required him to work at his residence from early morning which he could not comply with because he was living in a distant trans-Yamuna area. Consequently Shri Gupta became en~~e~~mical towards him and issued during 1984-85 as many as ^a dozen memoranda of warning etc, over his own signature and got other staff to report against him. These ^{me}moranda related to insubordination, refusal to pick garbage etc. Later, by refusing leave applied for when the applicant had to go to look after his ailing wife, ^{he} withheld 4 days' salary in April, 1985. He was haunted by the Principal and even minor lapses were noted and memoranda issued by the Principal to the applicant. On 25.7.1985, the Principal issued a charge sheet on the applicant as follows.

"Article-I That the applicant while functioning in the Female Ward of the Hospital used to dump the garbage in the toilet and refused to carry it out against the instructions of Nursing Sister Incharge.

Article-II That during the said period and while functioning in the aforesaid ward, the applicant was asked to work in the OPD from 23.3.85 but he intentionally became absent from 25.3.85 to 27.3.85; again he refused to work in the OPD on 2.4.85 and 6.4.85 and left the office at 10.45 AM, making departure time of 2 PM;

Article-III That during the aforesaid period and while functioning in the aforesaid office, the applicant was given attestation form for filling in his particulars by the Dealing Assistant in the Establishment Branch, but he threw on the table of the dealing Assistant shouting at him saying it was not his duty but the job of office!

The applicant denied the charges to the extent possible as the charges were vague. An enquiry officer was appointed

(Dr. A.C. Gupta) and (according to the applicant) he conducted the enquiry in English not understood by the applicant and sweeper-witnesses. The applicant represented to the Principal about conducting the proceedings in English and requested for a change of the enquiry officer but his representation was rejected. On the basis of the enquiry report the Principal passed the order of removal. His appeal to the Director of Health Services dated 10.5.1986 was rejected by a non-speaking order on 7.1.1987.

3. The applicant has challenged the punishment and the appellate order as being non-speaking, born out on prejudice and in violation of rules and natural justice. He has also argued that since he was appointed by the Director of Health Services, he could not have been removed by the Principal who is subordinate to the Director. The respondents have opposed the application by stating that the order of appointment was issued by the Deputy Director of Health Services as at the time of appointment of the applicant the post of Principal was not filled by a regular incumbent through the U.P.S.C. They averred that under the rules, the Principal is the appointing authority of the applicant. They have refuted the allegations of 'mala fides' against the Principal and have argued that the entire staff of the hospital could not have been prejudiced against the applicant. They have justified the withholding of the salary of 4 days as the question of his absence was in dispute. They have also refuted the allegations that the enquiry officer, Dr. A.C. Gupta, was related to the Principal. They have clarified that the enquiry proceedings, charge-sheet, etc. were all in Hindi. They have, however, conceded that his application for change of the enquiry officer was not accepted as there were no specific charges against the enquiry officer.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents. The first contention of the applicant is that since he was appointed by the Director of Health Services he could not have been removed by the Principal who is a subordinate authority. Respondent's argument that as the regular appointment of Principal was not made through the UPSC, the appointment letter was issued by the Deputy Director Health Services and not by the Principal, is not very convincing. The order of applicant's appointment at Annexure 'A' to the application indicates that he was appointed by the Directorate of Health Services and copy of the order was sent to the Principal directing him that the services of the daily-wager should be terminated immediately. Thus, the Principal will be considered to be an authority subordinate to the Director of Health Services. The Principal's post was in existence when the order of appointment of the applicant was issued. Therefore, if the Principal was the appointing authority he could have as well issued the order of appointment rather than leaving it to the Director of Medical Services to do so. The Deputy Director could have issued the order under the delegated powers of the Director of Health Services. In *Abid Mohamad Vs. State* AIR 1954 MB 259 it was held that the power to determine the services of civil servants was not intended to be conferred on the person who was the appointing authority on the date the order of the dismissal of the public servant was passed and that Article 311 "talks of factual appointment and states in express terms that no person shall be dismissed by an authority subordinate to that by which he was appointed". In view of the

above, we hold that the Principal was not competent to issue the impugned order of removal when the order of appointment of the applicant had obviously been passed by a superior authority. The learned counsel for the respondents fairly conceded this point.

5. Normally, this would have been sufficient to quash the impugned order. But in view of the conspectus of facts and circumstances as above, we would like to touch upon a few aspects of the case. There was no complaint for ten years against him between 1974 and 1984. It was only after Dr. V.K. Gupta took over as Principal that the applicant's troubles started and within a year of his taking over as Principal, the applicant was removed from service. Unless there was something more than meets the eye, there ^{is} ~~was~~ no reason why memorandum after memorandum against the applicant who was merely a sweeper should have been issued by no ~~lesser~~ a person than the Principal himself. This gives credence to the averment made by the applicant that the Principal was not well disposed towards him and he did not, therefore, get a fair deal at the hands of the Principal. Further, the charges appear to be vague and the punishment of removal from service also appears to be disproportionate to the charges framed against the applicant. The appellate order, besides being hopelessly non-speaking, does not comply with the elementary requirements of Rule 27(2) of the C.C.S.(CCA) Rules. In accordance with these rules the appellate authority has to consider whether the procedure laid down has been complied with, whether the findings of the disciplinary proceedings are warranted by the evidence on record and whether the penalty is adequate, inadequate or severe. On the other hand, the appellate authority after quoting verbatim the articles of

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charge has disposed of the appeal in following terms which lack both grammar as well as reasonings:

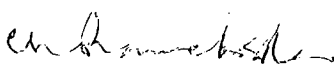
"And whereas the undersigned while going through the record of the case including the report of Inquiry Officer, the comments of Disciplinary Authority, the grounds points advanced/raised by the applicant for setting aside the order of imposition of penalty have been considered. The undersigned has also gone through the papers carefully and is of the view that there is no force in the grounds of appeal and as such the appeal filed is rejected."


It has been held by the Supreme Court in R.P. Bhat Vs. Union of India and Others AIR 1986(1) 149 that where there is no indication in the order of the appellate authority that the provisions of Rule 27(2) of the CCS (CCA) Rules have been complied with by due application of mind, the appellate order is liable to be set aside.

6. In the facts and circumstances, we allow the application and set aside the impugned order of punishment dated 30.4.1986 and the appellate order dated 7.1.1987 with the direction that the applicant should be reinstated in service with effect from the date of his removal with all consequential benefits of pay and allowances, as if the order of removal had not been passed. The respondents, however, will be at liberty to start de novo disciplinary proceedings, if so advised, strictly in accordance with law and in case de novo proceedings are held, the enquiry should be conducted by an authority outside the NHMCH in consonance with the principle that justice should not only be done but appear to be done and the final order passed by the Director of Health Services.

7. Arrears of pay and allowances should be made good to the applicant within a period of three months from the date of communication of this order.

8. The application is disposed of on the above lines. There will be no order as to costs.


(Ch. Ramakrishna Rao)
Judicial Member


(S.P. Mukerji)
Administrative Member