

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

REGN.No.OA784/90

Date of decision: 28-09-1993

Shri J.R.Dhiman ... Petitioner

vs.

Union of India
through
General Manager,
Northern Railway,
New Delhi & ors. ... Respondents

For the Petitioner ..Sh.B.B.Raval,Counsel.

For the Respondents.. None

CORAM:

THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN
THE HON'BLE MR.B.N.DHOUDIYAL, MEMBER(A)

JUDGEMENT

(BY HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN)

The petitioner, a Pharmacist in the Northern Railway, was subjected to disciplinary proceedings. An inquiry officer was appointed. On the basis of the report of the inquiry officer, the Divisional Railway Manager passed an order of removal from service against him. The appellate authority maintained the order of the disciplinary authority. However, the revisional authority (General Manager) had reduced the penalty of removal from service to that of reduction in time scale of pay by two stages for a period of two years without cumulative effect with a direction that the petitioner may be allowed to be posted to Delhi Area but outside the Central Hospital as well as the Queens Road Hospital. The order of the revisional authority is being impugned in the present OA.

Sd/-

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2. The following reliefs are claimed in this application:

- (i) to declare these orders as not based on facts transpired/adduced during the course of enquiry and, therefore, null and void, arbitrary, illegal and, therefore, struck down and quashed as well as the ban for posting of the petitioner to the Central Hospital as well as Queens Road Hospital be lifted by reinstating the petitioner without any penalty whatsoever.
- (ii) to restore the petitioner consequently to his original position with appropriate fixation of pay and restoration of seniority with all the increments due and accrued to him.
- (iii) to award cost for this application with a request to further order any other relief/reliefs as this Hon'ble Tribunal deems fit in the light of the facts and circumstances of the case.

3. On 3.6.1983, the petitioner was furnished with a chargesheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 by the Divisional Medical Officer, Delhi. The charge in substance was that the petitioner while working as Pharmacist on 26.8.1983, committed serious misconduct and failed to maintain devotion to duty and acted in a manner unbecoming of a Railway servant, inasmuch he entered the casualty room between 22.00hrs. & 22.30hrs. without being called and misbehaved with Dr. A.K. Jolly, A.D.M.O./Rad, who was on duty at the material time, and snatched the Railway telephone and threw the same on the face of said Dr. A.K. Jolly, thereby causing physical injuries to him on the face. The statement of imputation of misconduct/misbehaviour in support of the article of charge is that the petitioner ^{on 26.3.1983} entered the casualty room between 22.00 hrs. to 22.30 hrs. without any

call and misbehaved with Dr.A.K.Jolly, who was on duty at the material time and was attending to a serious patient. While Dr.A.K.Jolly was busy in conversation concerning the serious patient, with the General Hospital, the petitioner snatched the railway telephone from the hands of Dr.A.K.Jolly and threw the same on the face of Dr.Jolly thereby causing injuries on Dr.Jolly. The telephone apparatus had also fallen on the ground in broken condition. The incident of physical assault on Dr.Jolly by the petitioner was witnessed by S/Shri Ram Pal, H.A. and Latoori Singh Dresser of the Hospital. As a result of injury caused to Dr.Jolly, he was given first aid by Dr.Aggarwal. There was no occasion for the petitioner to enter the casualty room between 22.00 to 22.30 hours without any call.

Annexure-III to the Memorandum of chargesheet dated 3.6.1993 contains the list of witnesses by whom the articles of charge framed against the petitioner were proposed to be sustained. Besides Dr.A.K.Jolly, the names of Dr.R.K.Aggarwal, Shri Latoori Singh and Shri Ram Pal and two others found place. Annexure-IV contains the list of documents by which the article of charge framed against the petitioner was proposed to be sustained. According to this list, the statements of the petitioner, Debabrata Ghosh, Latoori Singh, Dr.A.K.Jolly, Ram Pal and Prakash Chand were recorded. The complaint dated 26.3.1983 of Dr.A.K.Jolly addressed to the Medical Superintendent and an extract from O.P.D.casualty register and injury register in connection with the assault of Dr.A.K.Jolly and injury report dated 26.3.1983 were amongst the list of documents.

4. It appears that before the issue of the memorandum dated 3.6.1983 a fact finding inquiry was held and in that inquiry the statements of certain witnesses were recorded. Such statements were of the

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petitioner, Debabrata Ghosh, Latoori Singh, Dr. A.K. Jolly, Ram Pal and Prakash Chand.

5. In the report of the Inquiry Officer it is stated that Shri Prakash Chand did not attend the enquiry proceedings. It is also mentioned in the report that Shri Prakash Chand was an outsider witness. As regards Shri Debabrata Ghosh, it is stated that he had been transferred to Eastern Railway and could not be summoned for want of complete and correct address. It is clear that Shri Prakash Chand and Shri Debabrata had not appeared in the witness box in the departmental enquiry. However, it appears that the Inquiry Officer's report relied upon the testimony of Debabrata Ghosh recorded in the fact finding inquiry. It is also apparent from a reading of the Inquiry Officer's report that he relied heavily upon the testimony of the witnesses recorded in the fact finding inquiry. In fact, while appraising the testimony of Sh. Latoori Singh, one of the two eye witnesses, heavy reliance is placed upon the testimony of that witness as recorded in the fact finding inquiry.

6. The punishing authority in its order dated 18.12.1987 observes:

" In the Enquiry Report summed up on the basis of above, EO has proved ingredients of charge 1, 2 and 4. After going through the entire case I agree with the findings of the Enquiry Officer and accept the same. Therefore, I hold you responsible for above offences."

It is clear that the punishing authority by necessary implications relied upon the statements of Latoori Singh and Debabrata Ghosh recorded in the fact finding inquiry.

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7. In his memorandum of appeal in para 4.1, the petitioner made a grievance that the Inquiry Officer relied upon the statements of the fact finding inquiry to establish his findings which is beyond all canons of justice as the statements at the fact finding inquiry were taken at his back and not in his presence. It is contended that the said statements cannot be used as a base for drawing out the findings legally and morally, particularly when Ram Pal and Latoori Singh disowned the same by saying that the same were recorded in English and not translated in vernacular to make them understand as to what had been written out and attributed to them before getting their signatures appended on them at the fact finding inquiry and as such they could not vouchsafe the correctness of the said statements. It is emphasised by the petitioner in the memorandum of appeal that Shri Debabrata Ghosh never appeared as P.W. at the departmental enquiry and his statement at the fact finding inquiry cannot be used in any manner in the departmental proceedings. A true copy of the memorandum of appeal has been filed as Annexure A-5 to this OA.

8. The appellate authority did not advert at all to the aforesaid grievance made by the petitioner in his memorandum of appeal. Moreover, in the appellate order, there is no indication either express or implied that the appellant was given a personal hearing by the appellate authority. The appellate authority observes:

" Going through the relevant papers of Enquiry Committee and the decision of DRM/Delhi, it is seen that there is a preponderance of evidence to establish the fact that Shri Dhiman did commit serious misconduct and not maintained devotion to duty, unbecoming of a Railway servant."

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9. In the memorandum of revision presented by petitioner to the General Manager in paragraph 2.2 there is virtual reproduction of the grievance made by the petitioner before the appellate authority in his memorandum of appeal regarding the complaint made ^{that} ~~in~~ the Inquiry Officer's relied heavily upon the statements recorded in the fact finding inquiry.

10. The revisional authority in its order as quoted in the communication dated 26.4.1989 of the General Manager to the Divisional Railway Manager, Northern Railway, Moradabad & Delhi and the Chief Hospital Superintendent, Central Hospital, New Delhi, observes:

" I have gone through the relevant papers and petition of Shri J.R.Dhiman, Pharmacist. The charges against Sh.Dhiman which are proved during the inquiry are of serious nature. The penalty imposed on Sh.Dhiman is commensurate with his misconduct.

Keeping in view the young age of Sh.Dhiman I would like to give him a chance to reform his conduct. Accordingly, I reduce the penalty of removal from service to that of reduction in time scale of pay by two stages for a period of two years with cumulative effect. He may be allowed to be posted to Delhi Area but outside the Central Hospital as well as the Queens Road Hospital."

Evidently, the revisional authority too did not go into the grievance of the petitioner regarding the illegality committed by the Inquiry Officer in relying upon the testimony of the statements recorded in the fact finding inquiry.

11. It may be noted that to the OA, the petitioner

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has filed as one of the annexures the memorandum of his revision petition.

12. It is true that in this OA there is no averment that the Inquiry Officer's report is vitiated because he has relied upon the statements of the witnesses recorded in the fact finding inquiry and those statements had been recorded at the back of the petitioner without affording him any opportunity to cross examine. Furthermore, there is no averment that the Inquiry Officer heavily relied upon the testimony of Shri. Debabrata Ghosh who admittedly did not enter the witness box in the departmental inquiry. Even in the grounds taken in support of the OA, such a grievance has not been made.

13. The counter-affidavit filed on behalf of the respondents is rather unsatisfactory. The respondents have not set up their case. They have made an attempt to give a para-wise reply to the contents of the OA. It has to be presumed that the respondents were aware of the grievance of the petitioner made in the memorandum of appeal and the memorandum of revision. Therefore, there should have been an averment to the effect that the witnesses in the fact finding inquiry were examined in the presence of the petitioner and he was given every opportunity to cross examine them.

14. The learned counsel for the respondents has produced relevant record for our perusal. We have gone through the same and find that statements of a large number of witnesses were recorded in the fact finding inquiry behind the back of the petitioner and the petitioner was not afforded any opportunity of cross examining them. The Inquiry Officer could not rely upon the testimonies of the witnesses, who have not entered the witness box in the departmental

enquiry. Their testimonies could be used only for the limited purpose of testing the correctness of the statements given by them in the departmental enquiry.

15. Having given anxious consideration to the facts and circumstances of the case, we are of the opinion that neither the appellate authority nor ~~did~~ the revisional authority pass ~~orders~~ after due application of mind. The grievance of the petitioner that, the Inquiry Officer could not take into account the statements of the witnesses recorded in the fact finding inquiry, has remained unanswered. If the testimony of any material witness was, in the fact finding inquiry, recorded at the back of the petitioner without an opportunity of hearing and reliance has been placed upon the same by the Inquiry Officer, a serious infirmity in the procedure may exist. This will be so particularly in the case of Debabrata Ghosh.

16. The revisional authority had converted the order of removal of service into a lesser punishment. After the dismissal of the appeal and before the decision of the revisional authority, the petitioner was given re-employment and he had, in fact, joined in the Moradabad Division. As a consequence of the revisional order, the question ~~of~~ of his continuing in ~~the~~ re-employment did not arise. He was transferred in accordance with the direction given by the revisional authority. That was followed by an order dated 21.9.1989 passed by the Chief Hospital Supdt. refixing the pay of the petitioner in terms of the directions given by the revisional authority. In these circumstances, the order passed by the revisional authority qua the petitioner should be allowed to continue till a fresh decision is given by the revisional authority in view of the order we are about to pass.

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17. On 28.3.1983, the petitioner was suspended from service. On 29.3.1985, the order of suspension was revoked. Thus it is evident that the order of suspensioin was revoked during the pendency of the disciplinary proceedings. The grievance of the petitioner is that even till now no order has been passed by the relevant authority regarding pay and allowances.

18. In the counter-affidavit filed, it is stated that the matter regarding fixation of pay and allowances of the petitioner during the period of suspension is pending with the General Manager, Northern Railway. It is also stated that as soon as a decision is taken, the same shall be conveyed to the petitioner and the order of the General Manager shall be complied with. It is also stated that final fixation of pay of the petitioner shall be done after the decision of the General Manager. The General Manager should have passed an order long back. The suspension of the petitioner was revoked way back in 1985; more than 7years have passed. He shall now do so as expeditiously as possible but not beyond a period of one month from the date of production of a certified copy of this judgement by the petitioner before him. It will be open to the petitioner to transmit a certified copy of this judgement to the General Manager by Registered Post Acknowledgement Due.

19. The other grievance of the petitioner is that, while fixing the pay of the petitioner by the order dated 21.9.1989, the Chief Hospital Suptd. did not take into account the restructuring done and the increments given. The contention, therefore, is that fixation of the pay of the petitioner under the said order is illegal. In view of the order we are about to pass, the order dated 21.9.1989 will loose its efficacy. A fresh order will have to be

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passed for fixation of the pay of the petitioner in the light of the revisional order, if necessary.

20. In this OA the complaint also is that the seniority of the petitioner has been seriously affected as, while re-fixing his pay in terms of the orders of the revisional authority, neither the fact of restructuring was taken into account nor the increments which accrued to the petitioner had been taken into account.

21. During the pendency of this OA, the petitioner filed Misc. Petition No. 2981/92 stating therein that he was not being considered for the selection which was being held for the post of Pharmacist Grade II in the scale of Rs. 1400-2600. According to the respondents, the petitioner was not senior enough to be considered for selection to the post of Pharmacist Grade II. A reply had been filed to the Misc. Petition on behalf of the Respondents. This Tribunal on 1.10.1992 passed an interim order to the effect that the respondents will not act upon the results of the written test held by them for the aforesaid post. That order continues to operate even now.

22. The revisional authority shall decide the revision application of the petitioner afresh after taking into ^{consideration} the specific plea of the petitioner that the Inquiry Officer could not take into account the statements of the witnesses recorded in the fact finding inquiry. It shall also decide any other plea which the petitioner may raise before it.

23. This application succeeds in part. The order of the revisional authority as quoted in the communication dated 26.4.1989 issued by the General

already held and the result of the
supplementary test, if held, are
announced simultaneously.

There shall be no order as to costs.

B.N. Dhoundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K. Dhaon
(S.K.DHAON)
VICE CHAIRMAN(J)

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