CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO.2598/2004

New Delhi, this the 3rd day of October, 2005

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

Dr. Pramod Gandhi,
Chief Medical Officer,
ESI Hospital,
Basaidarapur,
NEW DELHI ... APPLICANT

(By Advocate Shri V.S. R. Krishna)

VERSUS

Union of India through

1. The Secretary,
Ministry of Labour,
Government of India,
Shram Shakti Bhawan,
New Delhi

2. Dr. D.P. Shenoy,
Chairman, Standing Committee,
Employees State Insurance Corporation,
Panchdeep Bhawan,
Kotla Road,
New Delhi

3. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan,
Kotla Road,
New Delhi ... RESPONDENTS

(By Advocate Shri Yakesh Anand)

ORDER

In this OA the challenge is made to orders dated 13.11.2003 and 24.07.2004 passed by Respondents No.3 and 2 respectively whereby the penalty of withholding his next two increments without cumulative effect was imposed upon the applicant and upheld by the appellate authority. The facts, which are required to be noticed, are as follows.

2. The applicant while working as Deputy Manager, ESIC, Basaidarapur was proceeded for major penalty proceedings vide Memo dated 25.04.1994, which contained six charges. As he denied the charges, an oral enquiry was conducted and the enquiry officer submitted his report dated 22.06.2001 holding that the charges 1 to 5 stand not proved and charge 6 was held to be proved. The said

report was made available to the applicant, who submitted representation dated 09.07.2002. The matter was referred to Central Vigilance Commission, who recommended imposition of aforesaid penalty. The proposed penalty was communicated to the applicant vide communication dated 30.06.2003. Thereafter, the Director General, being the disciplinary authority, after considering the findings recorded by the Inquiry Officer, representation submitted by the applicant and also taking into consideration the recommendations made by the C.V.C., imposed upon him the penalty of withholding his next two increments without cumulative effect. A detailed appeal was filed, which too was rejected by the Chairman, Standing Committee, Employees State Insurance Corporation, New Delhi, vide order dated 24.07.2004.

3. Shri V.S.R. Krishna, learned counsel appearing for the applicant basically raised two contentions, firstly that there had been abnormal and unexplained delay in concluding the departmental proceedings, which caused serious prejudice inasmuch as he suffered his career progression. The charge sheet was issued in the year 1994 for an incident which occurred in the year 1992, the enquiry was completed in the year 2001 and the penalty imposed as late as on 13.11.2003. Reliance was placed for this purpose on JT 1998 (3) SCC 123 *State of Andhra Pradesh v/s M. Radhakishan*, particularly paras 19, to contend that the disciplinary authority was not serious in pursuing the charges against the applicant. Delay defeats justice.

4. The second contention raised was that the allegation under charge No.6 is no misconduct in the eyes of law and that the applicant with reference to rule 3 of CCS (Conduct) Rules, 1964 had discharged his official duties in his best judgment and accepted the medicines in question under oral instructions of the higher officers, who subsequently approved the same by granting ex-post-fact approval.

5. The Respondents contested the claim laid by filing a detailed reply stating that the disciplinary proceedings were held in accordance with the rules on the subject, reasonable opportunity of hearing had been afforded to the applicant,

the matter was examined even by the Central Vigilance Commission and principles of natural justice were duly observed before imposing the impugned penalty. The applicant's allegations about the perverse findings of the inquiry officer, non-application of mind on the part of disciplinary authority etc. were denied. It was contended that the applicant, without any knowledge of his senior, accepted the belated supply of medicines, which caused financial loss to the Corporation, and it was only later on that ex-post-facto approval was obtained. Stores Manager, Dr. Harmohinder, who was also responsible for the said incident, was proceeded with and was issued a charge-sheet, but it was, later on, dropped by the disciplinary authority in consultation with the C.V.C.

6. The applicant by filing rejoinder contested the pleas raised by the respondents and reiterated the submissions made in the OA.

7. I have heard the learned counsel for the parties and perused the pleadings and record placed before me carefully.

8. Coming to the first contention that the disciplinary enquiry was continued for an unreasonably long period without any justification and the delay in completing the said proceedings caused serious prejudice to the applicant is concerned, I may note that the charge sheet which contained the allegations of misconduct committed by the applicant in the year 1992, had been issued to him in the year 1994. The allegation under charge No.6 was that the applicant accepted unauthorisedly the belated supply of medicines on 26.6.1992 and 15.09.2002 in two instalments, whereas the last date for such supply was 03.05.1992, which is apparent from a perusal of the Statement of Imputation to the said Article of Charge. The charge-sheet was issued on 25.04.1994 against the applicant and other two persons, as stated by the applicant in para 4 (ii) of the OA. Common proceedings were ordered by the disciplinary authority on 12.01.1998, inquiry officer completed the proceedings and submitted his report on 18.06.2001. Thereafter, C.V.C.'s advice had been obtained and the enquiry report was furnished to the applicant vide Memorandum dated 25.06.2002. The applicant submitted his representation on 09.07.2002. The matter was again

referred to C.V.C. and another show-cause notice dated 30.06.2003 was issued to him, which narrated the second stage advice received from the said Commission. Applicant submitted further representation on 15.07.2003 and the penalty was imposed upon him on 13.11.2003. A cumulative reading of all these facts goes to show that there had been no abnormal and unexplained delay in conducting the disciplinary proceedings. In *N. Radhakishan* (supra) the Hon'ble Supreme Court observed as follows:

> *'19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly; when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."* (emphasis supplied)

9. Shri V.S.R. Krishna, learned counsel for the applicant, in my view, has also not been able to explain the prejudice caused, if any, to him in the completion of the said proceedings belatedly, as alleged. It is nobody's case that the respondents had, at any stage, tried to obstruct or delayed the enquiry proceedings unnecessarily. It is also not the case of the applicant that though he had requested the said authorities for completion of the said proceedings

expeditiously, yet it was dragged on without justification. It is also not the case of the applicant that whatever delay had been there in concluding the proceedings, it was all because of the disciplinary authority.

10. On bestowing my careful consideration to all these aspects, I am of the considered view that there was no abnormal and unexplained delay in concluding the aforesaid proceedings. I am also of the considered view that no prejudice was caused to the delinquent. Merely because the applicant, during the pendency of the aforesaid proceedings, was denied certain promotion, though no such particulars were disclosed, the same alone could not be a ground to record a finding that the alleged delay caused him any prejudice. No such delay is writ large on the face of it.

11. As there were six charges against the applicant, and five of them were not proved, we are left with only the sixth Article of Charge. Since the contention raised by the learned counsel had been that there was no misconduct, the findings of the inquiry officer were perverse and that there had been no application of mind on the part of the authorities. In other words, the learned counsel for the applicant wanted this Tribunal to reappraise the evidence on the said aspect, therefore, it has become necessary to notice certain facts before making any observation on this aspect. The sixth Article of Charge reads as under:

> *"**ARTICLE OF CHARGE NO.6***
>
> *That the said Dr. Pramod Gandhi, while working in his aforesaid capacity:-*
>
> *(a) failed to intimate to the Manager Central Stores about the non-execution of the supply order No.1802 dated 30.3.92 for purchase of 29000 capsules of Cloxacilline 250mg. At the rate of Rs.1582.36 per 1000 within the stipulated time (i.e. 03.5.92); and*
> (b) *accepted unauthorisedly the belated supply of the aforesaid medicine supplied by M/s. Panchdeep Pharmaceuticals in compliance with the said Supply Order No.1802 dated 30.3.92. As at that time, new Rate Contract was available and the said medicine could be purchased at a lower rate of Rs.1300 per 1000, the acceptance of the belated supplies resulted in a loss of Rs.10482/- to the Corporation.*
>
> *By his aforesaid acts, the said Dr. Pramod Gandhi failed to maintain absolute integrity and devotion to duty and committed*

act unbecoming of an employee of the Corporation thereby violating rule 3 (1) of the CCS (Conduct) Rules, 1964 which are applicable to the employees of the Corporation by virtue of Regulation 23 of the ESIC (Staff and Conditions of Services) Regulations, 1959.

STATEMENT OF IMPUTATION

A supply order No.1802/92 dated 30.3.92 was issued for purchase of 29000 capsules of cloxacilline (250 mg.) at the rate of Rs.1582.36 per 1000 capsules. In the said supply order, the Central Stores had stipulated the supplies should be made by 3.5.92. But the concerned supplier (namely M/s. Panchdeep Pharma) supplied these medicines in two installments on 26.6.1992 and 15.9.92.

As per the Rate Contract No.91, which came into force w.e.f. 1.4.92, this medicine should be purchased at a lower rate of Rs.1300 per 1000 capsules. As this rate was economical and the earlier order dated 30.3.92 was not executed in time, any man of normal/ordinary prudence intending to protect the interests of his organization, would have taken steps to get the earlier order cancelled immediately after 3.5.92 and proposed for purchasing of the medicine at the new lower rate. Instead of taking such action, the said Dr. Pramod Gandhi accepted the supplies delivered by M/s. Panchdeep Pharma on the aforesaid belated dates and thereby caused loss to the Corporation to the extent of about Rs.10,482/-.

By his aforesaid acts, the said Dr. Pramod Gandhi failed to maintain absolute integrity and devotion to duty and committed act unbecoming of an employee of the Corporation thereby violating rule 3 (1) of the CCS (Conduct) Rules, 1964 which are applicable to the employees of the Corporation by virtue of Regulation 23 of the ESIC (Staff and Conditions of Services) Regulations, 1959." (emphasis supplied)

12. The findings recorded by the Inquiry Officer, on the aforesaid Article of Charges had been as follows:

"ASSESSMENT OF THE EVIDENCE AND FINDINGS.

I. The issuance of SO No. 1802 dt. 30.3.92 for purchase of 29000 capsules of Cloxacillin, failure to supply the order within the stipulated time, and acceptance of belated supply beyond the stipulated delivery time is not disputed by the charged official.

II. It could not be proved that it was the duty of the charged official to follow-up the performance of supply order No.1802 dated 30.3.92.

III. The charges official has admitted that he had accepted the belated supply and has cited the document (Ex.D-44) to establish that ex-post-fact approval for extension of time for execution of the supply order in question had been obtained from the SM/D(M)D. This fact of ex-post-facto approval to extension has not been disputed

by the prosecution; however, they have negated the argument of defence and have stated that approval of Directorate for delay supplies does not hold good since, the supplies had been accepted by ASM beyond the due date of his own and subsequently got the irregularity regularized by obtaining ex-post-facto approval.

IV. PW-3 has specifically confirmed that such was the practice to get such irregularity regularized by D(M)D later in the form of extension of due date.

There is something black at the bottom. Although the prosecution has not been able to prove that ASM, Dr. Gandhi was responsible to follow-up with Purchase Section for non performance of SO for which he has sent demand note yet it is difficult to believe that the officers in Central Stores directly concerned with rate contract are not at all aware of the changes in the rates at the fag end of the existing rate contract and subsequent rate contract. The plea taken by Dr. Gandhi about ignorance of revised rate is a lame excuse and unbecoming of an officer. A prudent officer in the Central Stores is supposed to guard the interests of the Corporation and he ought not have accepted belated supplies of drugs at a higher rate; and would have advised the Competent Authority to cancel the SO. Subsequent action to seek expost approval for belated supply without any cogent reason speaks a lot of malafide intentions, particularly when the deal was against the interest of the Corporation. The cover of Past Practice is of no avail when any prudent man can visualize the glaring irregularity. The competent authority which has granted the ex-post facto approval is also not absolved of its responsibility. It is established that the loss has been caused to the Corporation and directly or indirectly by mis-conduct on the part of charged official.

The charge stands 'proved'. (emphasis supplied)'

13. The contentions raised by the applicant are, namely, that –

i) the applicant had performed his duty to the best of his judgment and also acted under the oral direction of his superior and the ex-post-facto approval had been obtained for accepting such medicines subsequently,

ii) once the applicant's action was ratified by granting ex-post-facto approval by the supervisory and higher authority, it cannot be contended that there was any mis-conduct on his part. In other words, the misconduct, if any, stood condoned with the grant of such ex-post-facto approval.

iii) in any case, second stage advice of the C.V.C. had not been supplied to the applicant and the only communication made to this

effect had been the letter dated 30th June, 2003, by which he was informed –

> *"The Central Vigilance Commission after perusing the records of the above mentioned case has proposed, in its O.M. No.X-LBR-6 dated 23.6.2003, to impose penalty of withholding of two increments without cumulative effect, on you.*
>
> *You are requested to submit your representation, if any, on the said advice of the Commission within 7 (seven) days of receipt of this letter. If no representation is received within the stipulated time, it will be presumed that you have nothing to offer and final order shall be passed in the case accordingly".*

14. Reliance was also placed on Appendix-I to the Swamy's Compilation of General Financial Rules, 1963 (2000 Edition), under rule 21 of the aforesaid Rules dealing with "instructions for regulating the enforcement of responsibility for losses, etc", which requires that the competent authority may, in special cases, condone an Officer's honest error of judgment involving financial loss, if the officer can show that he had acted in good faith and did his best up to the limits of his ability and experience, personal liability shall be strictly enforced against all officers who are dishonest, careless or negligent in the duties entrusted to them. It was urged that since the supply of medicine in question was essential for day-to-day management of the hospital, and patient care the applicant had acted in good faith and, therefore, this being a honest error of judgment, the said error and misconduct, if any, ought to have been condoned by the respondents.

15. Reliance was also placed on 1993 (1) SCC 13, *State Bank of India & Ors v/s D.C. Aggarwal & Anr.,* to contend that the order of the disciplinary authority is vitiated because of reliance placed on a material which was neither supplied nor shown to the applicant. Procedural fairness is as much essence of right and liberty as the substantive law itself. Non-supply of C.V.C. recommendation, which was prepared behind the back of the applicant and without his participation, he did not know on what material such recommendation had been based and, therefore, it violates procedural safeguards.

16. Shri Yakesh Anand, learned counsel for the respondents, on the other hand, seriously contested and disputed the said contentions and urged that the supply order of the medicines in question had been issued on 30th March, 1992 and the new rate came into effect on 1st April, 1992. Though the last date of supply of medicines was 3.5.1992, the supply was received in two instalments only on 26.06.1992 and 15.09.1992. The rate at which the order placed was Rs.1,582.36 per 1000 tablets, though the new rate had been Rs.1300/- per 1000 tablets. Therefore, it was contended that the financial loss so suffered by the respondents was not because of a honest error of judgment, but because of misconduct committed by the applicant.

17. As far as the question of supply of second stage advice of C.V.C. is concerned, the learned counsel for the respondents stated that the relevant portion of the C.V.C. recommendation had indeed been communicated to the applicant on 30th June, 2003. It was further clarified that the C.V.C. Memo rendering the advice in the case of applicant had also contained the advice in respect of other officials and for the sake of confidentiality, the complete text of the Memo was not supplied.

18. On bestowing my careful consideration to the entire aspect, I find no justification in the applicant's contention that due to non-communication of the full text of CVC's second stage advice, it had caused serious prejudice to him. I may notice that this specific plea advanced by the respondents had not been countenanced by the applicant in his rejoinder. What has been emphasized by the applicant is that there is nothing confidentiality in the advice of the CVC. A perusal of communication dated 30.06.2003, which has been reproduced in complete hereinabove, would go to show that the CVC advice was related to only quantum of punishment and not to any other aspect, which fact had been duly communicated to the applicant. Therefore, I do not find any justification and substance in the applicant's contention on this aspect. What prejudice was caused by not supplying the complete text of CVC memo had not been explained by the applicant.

19. The ratio of D.C. Aggarwal (supra) on which reliance was placed by the applicant do not apply in the facts and circumstances of the present case.

20. As far as the question of re-appreciating the evidence is concerned, I may observe that the law is well settled on this aspect too.

21. It is well settled law that Courts/Tribunal while exercising judicial review: "will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings." R.S. Saini v/s State of Punjab {(1999) 8 SCC 90} (emphasis supplied)

22. It is also well settled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. When an enquiry is conducted on charges of mis-conduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of the fact or conclusion. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. "The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the

evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the authority is based on no evidence." (*B.C. Chaturvedi v/s Union of India & Others , (1995) 6 SCC 749).*

23. The aforesaid law, in my respectful view, is applicable in the facts and circumstances of the present case. Having regard to the aforesaid law, I do not find any justification in the contention raised by the applicant that he acted to best of his judgement and the ex-post-facto approval obtained from his superior officer ratifying his mis-deed/mistake, if any, the mis-conduct should be condoned. The reasons furnished by the Inquiry Officer for holding the applicant guilty, which, in turn, were accepted by the disciplinary authority as well as the appellate authority, in my considered view, is reasonable, justified and cannot be said to be based on no evidence or perverse finding. There seems to be justification in the reasons furnished that it is unbelievable that officers in the Central Store were not at all aware of the changes in the rates of the medicine in question. It is also established that the Corporation suffered loss for the acts of the applicant. I also find justification in the reasoning advanced that merely because there were past instances granting ex-post-facto approval for delayed supply, could not be a ground to perpetuate the illegal procedure adopted by some officials.

24. It was further urged that the Stores Manager, Dr. Harmohinder was also responsible in the mis-conduct and had been issued a charge-sheet, which was later on dropped by the disciplinary authority in consultation with the CVC, as the said officer in the meantime had retired on attaining the age of superannuation. Merely because no penalty could be imposed upon the Stores Manager for her lapse, it would not entitle the applicant full exoneration. In any case, it was contended that mere exoneration of the said official would not enure any benefit to the applicant. Applicant, without any

knowledge of his superior, accepted the belated supply of medicines and it was only later on that ex-post-facto approval had been obtained which would make it amply clear that there had been proven mis-conduct on his part. The penalty imposed under these circumstances cannot be said to be either unwarranted or dis-proportionate to the established charge. Procedure prescribed under the Rules as well as the principles of natural justice were duly observed by the authorities before taking the impugned action.

25. Though various other contentions in the nature of consideration of his appeal etc. by the concerned authority etc. were pleaded in the OA, but had not been pressed during the course of oral submissions. Therefore, I do not wish to make any comment on the said aspect.

26. In view of the discussions made hereinabove, I do not find any illegality, arbitrariness or unreasonableness in the impugned action. Finding no merits in the application, the OA is dismissed. No costs.

(Mukesh Kumar Gupta)
Member (J)

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