

Central Administrative Tribunal
Principal Bench

OA 2799/2004

New Delhi, this the 19th day of December, 2005

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri A.K. Agarwal, Vice-Chairman (A)

Dr. V.K. Sinha,
ADG (HA) (Retd.)
R/o Flat No.9358
C-9. Vasat Kunj
New Delhi.

...Applicant

(Applicant in person)

VERSUS

1. The Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi.

2. The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi.

...Respondents

(By Advocate Shri Madhav Panikar)

ORDER

Shri A.K. Agarwal:

The applicant has impugned an order dated 20.10.2004 of respondents whereby a penalty of 10% cut in pension for two years was imposed upon him. This is a second round of litigation. The applicant was earlier awarded a penalty of 10% cut in pension vide order dated 24.6.2003. He had challenged that order by filing OA No.806/2004 which was disposed of by the Tribunal vide order dated 22.7.2004 with the direction that a copy of the advice of the UPSC should be served upon the applicant and he may represent against the disagreement of respondents with the UPSC within two weeks. The Tribunal in aforementioned order had observed that "a copy of the UPSC advice particularly in view of disagreement by the disciplinary authority was necessarily to be supplied to the applicant before imposition of penalty. This non supply had denied a reasonable opportunity to the applicant of making an effective representation".

2. The respondents had communicated following reasons for disagreement with the advice of UPSC.

"REASONS FOR DISAGREEMENT WITH THE ADVICE OF UPSC"

(a) The misconduct on part of Dr. V.K. Sinha is considered grave because CDEC was issued to M/s Lok Sewa CT Scan Centre even after the clarification by Ministry of Finance in November, 1993 that Diagnostic Centres were not entitled for CDEC.

(b) The CDEC to M/s Lok Sewa CT Scan Centre was withheld for more than two months after the Director General of Health Services (DG) who is the competent authority had approved it. It was issued only after a tour by Dr. Sinha to inspect the institution without informing the DG.

3. The applicant himself furnished the arguments and stated that he had submitted a detailed representation on 5.8.2004 denying the charges. He contended that in the grounds of disagreement with the advice of UPSC, no substantive reasoning justifying disagreement has been given by the respondents. He mentioned that Customs Duty Exemption Certificate (CDEC) was issued not to the Lok Sewa CT Scan Centre but to Lok Sewa CT Scan Centre of Lok Sewa Hospital. He argued that in the proposals received by the State Governments, nowhere was mentioned that Lok Sewa CT Scan Centre Pvt. Ltd. and Lok Sewa Hospital were two separate registered entities. He further stated that the grant of CDEC to those parties was approved by the DGHS on the basis of the project report. The applicant also stated that the allegation made against him about accepting the hospitality of promoters of the Unit is false since he had made all the payments for his stay and other expenditure. He further mentioned that he had gone to Jodhpur for the inspection of Unit only after taking approval of the competent authority. No doubt the arrangements at Umed Club were made by a Doctor of the Unit for his stay from 1.3.1994 to 2.3.1994, but he had made payments himself and had also submitted bills to the office. The applicant stated that UPSC had advised for a penalty of 'Censure' on the ground that Article 1 and Article 2 of the charge are only technically proved since it was a case of mix-up of two separate units for which the State Government had not made any justification. The applicant also drew our attention towards the para of the project report, which indicates that the equipment is to be installed at Lok

Sewa CT Scan Centre. The applicant also submitted that DGHS was competent to issue CDEC for the projects costing up to Rs. 2 crores. The applicant pleaded that since facts of the case do not prove any misconduct on his part, the penalty imposed of 10% cut in pension should be set aside.

4. Learned counsel for the respondents Shri Madhav Panikar stated that the Commission for Departmental Enquiries, in his report, has held that Article 1 and Article 2 stand proved against the applicant and Article 3 is also partly proved. He submitted that the applicant in his report given after return from tour had mentioned that the Unit, proposing to import the equipment, is providing 40% free treatment and 6 out of 45 beds are reserved for this purpose. However, there were no beds in Lok Sewa CT Scan Centre. The beds were available only in Lok Sewa Hospital which is totally a different Unit. The applicant had admitted this mistake before the Enquiry Officer as is apparent from para 7.5 of the enquiry report. While submitting a note for the approval of the DG, the name of the Unit was mentioned as Lok Sewa CT Scan Centre of Lok Sewa Hospital when in fact, these two are separate registered units. The learned counsel mentioned that there were a good number of cases relating to misuse of CDEC and in the light of the advice of UPSC, the respondents had reviewed the cases and had categorized the irregularities into two parts. One related to those due to personal faults and the second one is related to the systematic failures. It was decided that only those cases which were due to personal faults should be taken up for recommending penalty. The applicant had clearly tried to present a false picture with a view to provide undue advantage to Lok Sewa CT Scan Centre. In view of this, the punishment of penalty of Censure recommended by UPSC was considered inadequate and it was decided to impose a penalty of 10% cut in pension for a period of two years. Learned counsel contended that in view of submissions made by him, the OA deserves to be dismissed.

5. We have heard the applicant as well as the learned counsel for the respondents and have also perused the material placed on record. In this case, the disciplinary authority, vide an order dated 24.6.2003 had imposed a punishment of 10% cut in pension on the basis of Enquiry Officer's report which

held Article 1 and Article 2 of the charge as proved and Article 3 as partly proved. This penalty was more severe than the penalty of 'Censure' recommended by the UPSC. Since in the first round, the respondents had not communicated the reasons for disagreement with UPSC, the order dated 24.6.2003 was set aside and the respondents after giving the reasons for disagreement with the UPSC to the applicant and obtaining his say thereon have passed the impugned order dated 20.10.2004 maintaining the earlier penalty of 10% cut in pension.

6. The applicant in his note submitted that the party is doing a good job and serving the poor, therefore, CDEC may be issued. In the note communicating disagreement with the recommendations of the UPSC, it was mentioned that the diagnostic center is not entitled for CDEC. The contention of the applicant that Lok Sewa Hospital and Lok Sewa CT Scan Centre are the same has not borne out by the facts on record. It is apparent from case law Notification No.64/88 (Annexure IV) filed by the applicant along with his reply dated 5.8.2004 that a Diagnostic Centre is eligible for concessional rate of duty if situated within the premises of Hospital. The applicant in his reply, while quoting this notification has omitted the words 'within the premises'. Even the applicant, on a query from the Bench, had replied that the distance between the two Units is around 3 to 4 kms. The applicant had also admitted before the Enquiry Officer that he by mistake had mentioned that the concerned Unit is having 45 beds and is providing free treatment to 40% of the patients. In this case, there is enough material to support the conclusion arrived at by the disciplinary authority.

7. As per the law laid down by the Apex Court that Courts/Tribunals while exercising judicial review in disciplinary matters are not to act as an appellate authority. Hon'ble Apex Court in the case of **Govt. of Tamilnadu v. A. Rajapandian** 1995 (2) SLJ 216 (SC) has held as follows: -


"The Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority.

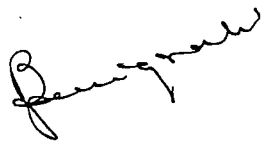
8. Hon'ble Apex Court in another case of **Union of India v. Upendra Singh** (JT 1994 (1) SC 658) has observed as under: -

".....the Tribunal has no jurisdiction to go into the correctness or truth of the charge. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed even after the conclusion of the disciplinary proceedings, if the matters comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of Judicial review. Judicial review cannot extend to the examination of the correctness of charges or reasonableness of a decision."

9. An intervention by Courts in the administrative decision while undertaking judicial review is called for only in the case of no evidence or when the punishment imposed is motivated by bias or malafide. The present case does not fall in either of these categories. The powers in judicial review are very limited and are circumscribed by Wednesbury Principles. According to these principles, an administrative decision is liable for judicial intervention only when either the order is passed by an authority not competent for the same or important relevant facts ignored or irrelevant facts influenced the decision, or there was a violation of principles of natural justice or the decision is such which no reasonable person would have taken. As far as the quantum of the punishment is concerned, an intervention by Courts becomes necessary only when the punishment is of such magnitude as to shock the conscious of the Court keeping in view the misconduct as held by the Apex Court in the case of **B.C. Chaturvedi v. Union of India** (JT 1995 (8) SC 65). According to us, the punishment of 10% cut in pension for a period of two years is not shockingly disproportionate to the proved misconduct.

10. For the reasons given in the foregoing paragraphs, we do not find any merit in the OA and the same is dismissed without any order as to costs.


(A.K. Agarwal)
Vice-Chairman (A)


(B. Panigrahi)
Chairman

/vikas/