

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 3101/92

Date of Decision: 12.02.1993.

Sh. J.R. Dhimon

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Applicant

Versus

Union of India & Ors.

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Respondents

Coram:-

The Hon`ble Mr. P.C. Jain, Member(A)

The Hon`ble Mr. J.P. Sharma, Member(J)

For the applicant

: Sh. B.B. Raval, counsel

For the respondents

: Sh. H.K. Gangwani, counsel

JUDGEMENT

(delivered by Hon`ble Sh. J.P. Sharma, Member(J)

The applicant is employed as Pharmacist with the respondents Railways and at the relevant time was posted at the Northern Railway Dispensary in the Sardar Patel Marg, Northern Railway Officers Colony, New Delhi w.e.f. May, 1989. The applicant remained on sick leave till 25.11.1992 and reported for duty with his fitness certificate on 26.11.1992. He was given a memo on that day that pending completion of enquiry he is not to work at the Dispensary. The applicant allegedly questioned the same by filing a representation on which Respondent No.3, Divisional Medical Officer, Northern Railway Dispensary, Sardar Patel Marg, New Delhi made an endorsement that the

applicant is spared to attend a fact finding enquiry to be conducted by Asstt. DMO Lajpat Nagar at Sardar Patel Marg Dispensary. He was further told that the copy of the order of Sr.D.M.O. will be supplied to him as and when received.

2. On 27.11.1992, the applicant was served with a hand written order of suspension w.e.f. 7 P.M. under the signature of Dr. Raj Kumar, Chief Cardiologist, Northern Railway. This order also directed the applicant to report to Sr. D.M.O.(AG) Central Hospital, New Delhi on 28.11.1992 at 10 A.M.

3. The applicant in this application under Section 19 of the Administrative Tribunal Act, 1985 challenged the order of his suspension dt. 27.11.1992 (Annexure-A)). He has prayed for the following relief:-

"i) to quash the impugned order of suspension being without authority, arbitrary, malafide and bad in law;

"ii) award exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit in the light of the facts and circumstances of the case."

4. He also prayed for the following interim relief:-

"The Hon'ble Tribunal may be graciously pleased to direct the respondents to hold the operation of suspension order at Annexure 'A' in abeyance."

5. We have heard the counsel for the parties on 25.1.93 on admission and interim relief but the consideration of the interim relief itself involves the adjudication of the suspension order itself (Annexure A-I). Accordingly, the original application is being disposed of finally on the various contentions advanced by the parties on merit also.

6. In the application, the applicant has made certain averments which are personal allegations against Respondent No.3 Dr.(Mrs. Jaya Sree Rana). He has also alleged risk to his life at the hands of the husband of Respondent No.3. For the disposal of this application, it is not relevant to consider all the personal allegations but these shall be seen with regard to their relevancy whether order of suspension is in any way mala fide. The case of the applicant is that on 10.11.1992, the applicant was required to come on duty by Respondent No.3 to prepare the reply to the audit objections and other office work. When he reported on duty on 11.11.1992, he found that in

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the attendance register his attendance which he marked on 10.11.1992 was cut without putting the applicant to any notice. He protested against this to Respondent No.3. Respondent No.3 on 13.11.1992 gave him memo that he did not attend the duty on 10.11.1992 and yet marked his attendance and explanation in that regard was sought. The applicant entered into certain discussion with Respondent No.3 regarding the business done by her husband which also made her furious. The applicant, therefore, fell sick and requested for issue of memo in prescribed proforma G-92. Respondent No.3, however, referred the applicant to Dr. Raj Kumar, Respondent No.2 of the Central Hospital, New Delhi. Dr. Raj Kumar after giving prescription referred the applicant back to Respondent No.3 for issue of G-92. Respondent No.3 further directed him to the Inspector of Works (IOW) at S.P. Marg who issued G-92 addressed to Sr. D.M.O. Applicant proceeded on leave on the medical advice and joined on 26.11.1992 with the fitness certificate as stated above. On that day Respondent No.3 asked him to attend to the enquiry of which the applicant was not at all aware. Therefore, he asked for the supply of a copy of the Sr. D.M.Os. order but the same was not supplied to him. As a consequence of this the applicant was spared by Respondent No.3. On 27.11.1992, as stated above, he was given the suspension order which is assailed by the applicant.

7. The respondents contested the application and filed the reply stating that the applicant has not come

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with clean hands. The allegations made against Respondent No.3 concerning the frequent visits of her husband to the Dispensary and also dealing with some private business in the Dispensary has been denied. It is further stated that on 11.11.1992 the applicant marked his attendance in the register for 10.11.1992 on 11.11.1992. The register was thereafter kept in the room of Respondent No.3. On 11.11.92 the applicant's signature for 10.11.92 in the attendance register were struck down with due remarks by Respondent No.3. Henceforth, the register of attendance was kept in Respondent No.3 room. It is further stated that the applicant wanted short leave on 12.11.1992 which was refused and he was asked to file a leave application which was submitted by him and thereafter he left the premises. On 13.11.1992 the applicant asked for the attendance register at 9.50 A.M. The applicant was asked to explain his actions and the applicant was rude, and behaved in an indisciplined manner. Respondent No.3 consulted Respondent No.2 and on the direction of Respondent No.2 the applicant was referred to Central Hospital for further action as the work in the Dispensary was disrupted. Respondent No.2 thereafter asked the applicant to hand over the keys to Respondent No.3 which the applicant flatly refused saying that he was permanent incharge at the Dispensary. As a result of which the functioning of the dispensary was disrupted.

8. Respondent No.3 after having consulted the concerned authorities at NRCH issued a letter to the

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applicant as per instructions of Sr. D.M.O. (AMG) on phone asking the applicant not to work in Dispensary until the enquiry was completed. This is also denied that any threats were given to the applicant by Respondent No.3 or any of her family members. At the request of the applicant the venue of the enquiry was changed from Lajpat Nagar to S.P. Marg, Health Unit. The respondents have also made certain allegations against the applicant of misbehaving with Respondent No.3 when she was asked to attend to the applicant and complained of chocking effect. It is also averred in the reply that the applicant has abused Respondent No.3 using language which cannot be written. Respondent No.3, therefore, called Dr. Raj Kumar, Chief Cardiologist to come immediately who was also the over all incharge nominated by CHS and therefore he issued letter of suspension to the applicant and obtained his signature. The suspension was done on the spot vide Annexure-A.

9. The applicant filed the rejoinder to the counter filed by the respondents and reiterated the averments made in the application. Most of the averments made in the counter against the applicant have also been denied.

10. We have heard the Learned counsel for both the parties at length and have gone through the record of the case.

11. The first contention of the learned counsel for the applicant is that the alleged suspension order(Annexure-A) was passed by an authority who was not the competent authority. It is also argued that the suspension order has been passed suspending the applicant from duty at 7 P.M. on 27.11.1992 from work which was handed over by the applicant at 8 P.M. on the same date. The respondents have filed the extracts from Schedule-II of the Railway Servants (Discipline &Appeal) Rules, 1968 and under heading 9 it is shown that the order can be passed by an appointing authority or an authority equivalent in rank or any higher authority. Dr. Raj Kumar, Chief Cardiologist is also over-all incharge of S.P. Marg, Health Unit nominated by CHS. Against entry No.5 of non-gazetted railway staff referred to in Col.4, an officers in junior scale or in group B is competent to pass an order of suspension. Dr. Raj Kumar, therefore, was competent to suspend the applicant because he is senior Administrative Grade Officer on the basis of schedule of power enclosed.. The learned counsel for the applicant, however, has filed the appointment letter dt. 24.6.1971 wherein it is mentioned that final appointment will be made by the General Manager, Northern Railway, Baroda House, New Delhi who will in due course send the offer of appointment. But a perusal of the Schedule 1 & II clearly goes to show that a Sr. Administrative Grade Officer is equivalent to the grade of ADRM as the appointing authority of the applicant as given by the learned counsel for the respondents is Sr. D.M.O. The applicant has been working

as Pharmacist in the grade of Rs.1350-2000. Dr. Raj Kumar is an Sr. Administrative Officer who is senior in rank to Sr.D.M.O. The contention of the learned counsel for the applicant has no force that the suspension order has been passed by an authority which was not competent to pass the same.

12. A suspension order can be passed when there is contemplated enquiry against the delinquent officer. Suspension has the effect of keeping a person removed from the office for the period from his duties irrespective of the nature of the duties. The suspension order can also be passed even when the enquiry is contemplated against the delinquent officer. The matter was considered in the case of Prakash Vs. High Court of Rajasthan at Jaipur reported in 1982(2) SLR P.261. It has been held that the starting of the departmental proceedings is sine quanon for suspension. In the present case the enquiry proceedings already been instituted and the enquiry officer has also been appointed. Thus, it cannot be said that the suspension order in any way is defective or is against the rules.

13. The aforesaid averments made by the Learned counsel for the applicant against Respondent No.3 cannot be considered at this stage but from the face of it appears that the applicant was called on 10.11.92 and that on the next date i.e. 11.11.92 it is alleged that he has also

signed in the attendance register to show his presence on 10.11.92. Respondent No.3, who, was incharge of the attendance register in the said Dispensary struck out the signature of the applicant which he made in the register on 10.11.92 making certain endorsement that the applicant did not actually come on that date. It shall not be in the interest of justice to discuss that issue in more detail as it may prejudice case of the applicant. It can also not be stated at this stage whether on the basis of allegations and counter allegations made by the applicant against Respondent No.3 and by Respondent No.3 against the applicant that it is necessary to give a finding about the mala fide of the suspension order. The suspension order has been passed by Dr. Raj Kumar, Chief Cardiologist Sr. Administrative Grade Officer who was over-all incharge of the Dispensary. Dr. Raj Kumar is working in the Northern Railway Central Hospital and cannot be said to be in any way prejudiced against the applicant in passing the present order of suspension. The suspension order is not a punishment and only on the complaint by Respondent No.3 which appeared to him of serious nature to the extent of maligning Respondent No.3 as alleged. It can not, therefore, be said that the suspension order in such circumstances is arbitrary or not justified.

14. In view of the above facts and circumstances, we do not find any ground to grant the interim relief, and also give a finding that the suspension order does not call

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for any interference at this stage. The OA is, therefore, dismissed, leaving the parties to bear their own costs.

Sharma

(J.P. SHARMA) 12.2.93

MEMBER(J)

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(P.C. JAIN)

MEMBER(A)