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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.498 OF 2005

ALLAHABAD THIS THE 14th DAY OF March 2007

HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN
HON'BLE MR. P. K. CHATTERJI, MEMBER-A

Dr. Vishnu Swaroop,
Aged about 51 years, Son of Shri Chiranjil Lal,
Chief Medical Officer, Government of India,
Press Dispensary, Aligarh.

.Applicant

By Advocate : Shri T.S. Pandey

Versus

1. Union of India through Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
2. Deputy Director General Vigillance, Dak Bhawan,
Parliament Street, New Delhi.
3. Commissioner for Departmental Inquiry Shri Chendi
Andrews, Jamnagar House, New Delhi
(Inquiry Officer).

. Respondents

By Advocate : Shri S. P. Shrama

O R D E R

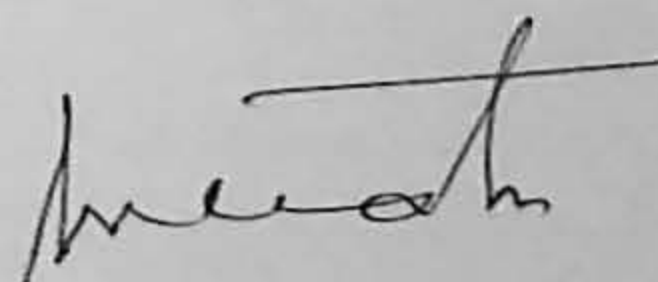
HON'BLE MR. P. K. CHATTERJI, MEMBER-A

The applicant in this OA was a Chief Medical Officer Incharge, Post and Telegraph Dispensary III, Lucknow during the year 1992 and 1993. He submitted Supplementary indents for medicine to General Manager, Stores, New Delhi and Karnal in addition to the annual indent for the year 1992 and 1993 on 27.01.1992 for supply of medicines allegedly in violation of instructions contained in the Director General's

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letter dated 13.09.1988. For this act the respondents initiated disciplinary action against him charging him for violation of Rule 3(1) (i) and (ii) of the CCS (Conduct) Rules, 1964. It has been alleged in the charge sheet that he placed the indent without properly assessing the requirement of medicine in violation of Rules 60 and 62 of the Post and Telegraph Financial Hand Book, Vol-I and the instructions contained in the Director General's letter dated 20.11.1990. The value of indent thus, placed was to the tune of Rs.65,37,442.60 paisa.

2. It has been further stated in the OA that on the same set of charges one Dr. Smt. Vinod Agrawal was also charge sheeted on 11.1.1995. However, on conclusion of the inquiry, the Disciplinary Authority vide order dated 24.09.1997 exonerated Dr. Smt. Agrawal from the charges. But so far even after expiry of many years neither the final order of punishment has been issued against the applicant nor has he been exonerated. It has been stated that the enquiry report by respondent no.3 was submitted in 17.01.2001. The applicant has approached this Tribunal to quash the impugned charge sheet dated 06.04.1994 and 11.01.1995 and also to restrain the respondent from passing any other order on the basis of the charge sheet.



3. The grounds on which the orders have been impugned are as follows:-

- (i) On identical charges Dr. Smt. Vinod Agrawal was exonerated and, therefore, any discrimination by the respondents to inflict any punishment of the applicant would amount to violation of Section 14 of the Constitution of India. The learned counsel for the applicant cited from the Apex Court decision on Civil Appeal no.3511 of 1998 State of U.P. Vs. Raj Pal Singh. The decision of the Apex Court as cited was the following:-

"Constitution of India, Article 14-Dismissal-The delinquents cannot be awarded different punishment when the charges are same and identical in relation to one and the same incident-In the present case respondent was dismissed from service whereas other delinquents were awarded the punishment of stoppage of increments-High Court quashed the dismissal order passed against the respondent and directed stoppage of increments as was done in case of other delinquents-Reinstatement with 50% of back wages also ordered-Held no infirmity in the High Court order-However court denied back wages as directed by the High Court."

- (ii) The applicant has been charged for violation of Article 3 of the CCA (Conduct) Rules. However, it is stated by the applicant that alleged lack of standard of performance of an official on duty cannot be stated to be mis conduct. Therefore, the charge of mis conduct in this case is mis placed and the disciplinary action should fall through on this account. On this issue the applicant has cited from the judgment of the Apex

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Court in the case of Union of India Vs. J. Ahmad
1979 SLJ 308 which is as follows:-

"It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding the high post would themselves constitute misconduct. If it is so, every officer treated average would be guilty of misconduct. Charges in this case as stated earlier, clearly indicate lack of efficient, lack of foresight and indecisiveness as well serious lapse on the part of the respondents. The deficiencies in the personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings."

(iii) The applicant has further pleaded that the charge sheet is also liable to be dismissed for the reasons that the respondents have not taken any action to finalize the case even after a lapse of 12 years. This delay is attributable to administrative laxity and the applicant should not be made to suffer for the lapse on the part of the respondents.

(iv) The applicant has further stated that undue delay in finalizing departmental proceedings has been held to be bad in the eye of law as laid down by the Apex Court in the case of P.V. Srinivas Shastri and Others Vs. Union of India, AIR 1993 SC 1321 as well as in the case of State of Andhra Pradesh Vs. N. Radhakrishnan, AIR 1998 SC 1833. In spite of series of representations made by the applicant the respondents have not taken any

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action to finalise the disciplinary proceedings against him.

- (v) The applicant also drew our attention to the report of the Enquiry Officer particularly the portion in which it has been stated that the interpolation in the supplementary indent could not be proved to have been made by the applicant himself. On the contrary there was a remark that the incorporation of three more medicines in the supplementary list was made and manipulated by some other officials in the concerned office and, therefore, the applicant should not be held accountable for that. On this ground itself, it is stated by the applicant, the charges against the applicant are liable to be dismissed.

4. The respondents have countered the allegations made by the applicant. They have stated that the case of the applicant is some what different from that of Dr. Smt. Vinod Agrawal. The allegations against Dr. Smt. Vinod Agrawal was that she had counter signed and endorsed the indent placed by the applicant without properly verifying its correctness and the actual requirement of medicine. In the case of the applicant it was a more direct responsibility. The charge is not merely that he had submitted a supplementary indent in addition to the usual official indent, caused the budgetary allocations to be exceeded. But

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he has also charged with the more serious allegations that in addition to the medicines recommended by the Circle purchasing Committee for the supplementary indent, he added three more medicines to the last by incorporating the same in his own hand. Therefore, the respondents do not agree with the decision in the case of Dr. Smt. Agrawal should apply in the case of the applicant as well.

5. As to the allegation of the delay the respondents have stated that the delay is not due to the lapse of the respondents. There are many procedural requirements for Senior Officers which require to be fulfilled such as the reference to the UPSC and CVC for consultation etc. The process has taken some time. However, the case was almost in its final stage and was about to be concluded shortly. The respondents have also stated that delay is also due to the applicant who has time and again asked for new documents and records.

6. We have heard the arguments and gone through the pleadings. Time and again it has been pronounced by the Apex Court in different judgments that courts /Tribunals are not required to function like appellate bodies and review/evaluate factual position in a disciplinary proceeding. This is the job of the disciplinary authority. The Tribunals in the course are to see whether:

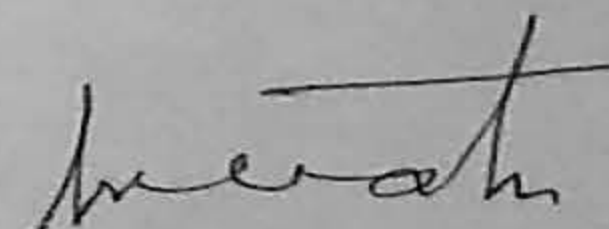
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- (a) The procedures laid down for disciplinary authority has been followed.
- (b) Whether the Disciplinary/Appellate authority exceeded their powers.
- (c) Whether such authorities abused their powers.
- (d) Whether decisions arrived at are perverse such as to shock the conscience of a sensible mind.

7. We have also noted that the disciplinary proceedings are yet to be concluded. It has been alleged by the applicant that the delay is inordinate and not attributable to the applicant. For this reason it is liable to be dismissed. We have taken note of the explanations given by the respondents as to the cause for delay, part of which has been assigned to the applicant himself. However the delay is mainly due to the consultations which are mandatory in such cases with the UPSC/CVC. We did not think it was necessary to probe into the matter further. The judgment of the apex court in the case B.C. Chaturvedi Vs. Union of India reported in JT 1995 (8) SC 65 is relevant in the case. The apex court had pronounced:


"delay in itself is not fatal in this type of cases. CBI had investigated and recommended that evidence was not strong enough for successful prosecution under the prevention of Corruption Act, 1988, but recommended to take disciplinary action. No doubt much time has elapsed in taking necessary decisions at different levels. So the delay in itself cannot be regarded as violative of Article 14 or 21 of the Constitution."

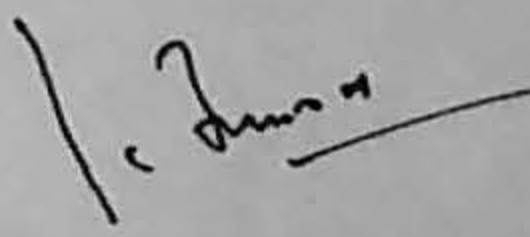


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8. This leaves us with the only other question whether disciplinary action against the applicant is violative of article 14 for the reason that on same charges Dr. Smt. Agrawal was exonerated. Having heard both the parties we are however of the view that it is somewhat premature for the applicant to ask this question. In the case of Smt. Agrawal the disciplinary proceedings was already concluded resulting in his exoneration. However, in the case of applicant it is yet to be concluded. We do not know what will be the outcome of it. The applicant will have to assess the factual position only after its conclusion to see whether he has been discriminated against. Thereafter only he can come to a conclusion whether the respondents can be held responsible for violation of Article 14. The respondents have given their views about this allegation and stated that the charges against the applicant and the Dr. Agrawal were not identical. However, in our view, it is not necessary for us to look into the allegation of infringement of article 14 for the reason that disciplinary action against the applicant has yet to be finalized.

9. For these reason we do not find any merit in this OA which is dismissed. No Costs.


Member-A


Vice-Chairman