



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.1732/2017

Order Reserved on: 31.03.2021
Order Pronounced on: 07.04.2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

Dr. Soma Roy,
 D/o Sh. P.C. Roy,
 Aged 43 years, Group-A,
 Designation-Senior Medical Officer,
 R/o Flat-102, Type-4 Doctor's Quarters,
 Bhagwan Mahavir Hospital,
 Pitampura, Delhi-110034 - Applicant

(By Advocate: Mr. Sagar Saxena)

Versus

1. Government of NCT of Delhi
 Through Chief Secretary,
 Delhi Secretariat, IP Estate,
 New Delhi-110003
2. The Lt. Governor,
 Raj Niwas Marg, Delhi
3. The Special Secretary (Vigilance)
 Directorate of Vigilance,
 GNCT of Delhi,
 4th Level, C-Wing, Delhi Secretariat,
 IP Estate, New Delhi-110002
4. Secretary Health,
 Health and Family Welfare Deptt.,
 Government of NCT of Delhi,
 Delhi Secretariat,
 IP Estate, New Delhi-110002
5. Medical Superintendent,
 Dr. Baba Sahab Ambedkar Hospital,
 Sector-6, Rohini, Delhi-110085 - Respondents

(By Advocates: Ms. Avnish Ahlawat and Mr. Amit Anand)



ORDRE

Justice L. Narasimha Reddy:

The applicant joined the Central Health Service (CHS) as Medical Officer. On an option being given, she chose to serve in the hospitals governed by the Delhi Administration. Between January, 2002 and January, 2010, she functioned as Senior Medical Officer (SMO) at Dr. Baba Sahib Ambedkar Hospital, Rohini, Delhi. She was also assigned the duties in the Department of Microbiology and Integrated Counselling & Testing Centre.

2. It is stated that the applicant went to hometown by applying leave between 25th and 26th of September, 2009, and the charge was given to one Dr. A.K. Dewan.

3. It is stated that a theft took place in the stores of the hospital on 29.09.2009 and large number of items were stolen. The applicant was placed under suspension on 07.10.2009 but was reinstated shortly thereafter on 22.03.2010.

4. The applicant contends that on a compliant submitted to the Police, the culprits were nabbed and substantial quantity of stolen items was recovered. The Directorate of Vigilance, Government of National Capital Territory of Delhi (GNCTD) issued a charge memo dated 10.06.2016 to the applicant. It was



alleged that she failed to ensure proper maintenance of record of medical items, distribution thereof and to exercise proper supervision, and that in turn, resulted in theft of the medicines and other items.

The applicant filed this OA, challenging the Charge Memo dated 10.06.2016.

5. The applicant contends that the day on which the theft took place, she was on leave and even, in the course of investigation, the Police did not allege any complicity to her. She further submits that there was inordinate delay in issuing the charge memo, and that nothing would be available for verification at this stage. Various other grounds are also urged.

6. The respondents filed a counter affidavit. It is stated that though the applicant was on leave on 29.09.2009, she did not take adequate steps for maintenance of records or distribution of medicines. It is also stated that the loss due to theft was phenomenal, and had there been a proper care on the part of the applicant, the theft could have been avoided. As regards the delay, the respondents stated that much time was consumed in consulting the Central Government since the applicant was originally employee of that department.



7. We heard Mr. Sagar Saxena, learned counsel for the applicant and Ms. Avnish Ahlawat and Mr. Amit Anand, learned counsel for the respondents.

8. The applicant no doubt was the employee of CHS at the initial stage of her service. The hospitals established by the Delhi Government were being handled by the Medical Officers of CHS. Later on, the Government of Delhi established its own medical department. On an option being given, the applicant chose to become the employee of the Delhi Administration. Initially, it was on temporary basis, and thereafter, she became a full member thereof. By the year 2009, she was a full-fledged employee of the GNCTD, and her relationship with the Central Government stood severed.

9. The theft of considerable medical items took place on 29.09.2009. The applicant no doubt was occupying an important position by that time in the Dr. Baba Sahib Ambedkar Hospital. However, she was on leave between 26th and 29th of September, 2009. Having regard to the fact that the loss was phenomenal, the Appointing Authority (AA) placed the applicant under suspension on 07.10.2019. In the criminal case filed in relation to the theft, none of the officials of the Hospital were shown as accused, much less the applicant. She was reinstated into service on



22.03.2010. It was six years thereafter, that the charge memo was issued. The charges framed against the applicant read as under:-

“Article-I”

That the said Dr. Soma Roy, Senior Medical Officer, while functioning as Medical Officer In-charge (Store) in Dr. Baba Sahab Ambedkar Hospital, Govt. of NCT of Delhi, Rohini, Delhi during the year 2019, committed gross misconduct inasmuch as she failed to ensure security and safety of medical items, including expensive ones, in the store of the hospital, resulting to which incident of theft of medical items, amounts to Rs.70 Lacs (approx.), occurred during 26/09/2009 to 29/09/2009.

By the above acts of omission & commission, the aforesaid Dr. Soma Roy exhibited gross negligence and dereliction of duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS(Conduct) Rules, 1964.

Article-II

That the said Dr. Soma Roy, while functioning on the aforesaid post and during the aforesaid period, committed gross misconduct inasmuch as she failed to ensure the proper maintenance of record of medical items in the store of the hospital.

By the above acts of omission & commission, the aforesaid Dr. Soma Roy exhibited gross negligence and dereliction of duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS(Conduct) Rules, 1964.

Article-III

That the said Dr. Soma Roy, while functioning on the aforesaid post and during the aforesaid period, committed gross misconduct inasmuch as she failed to ensure proper distribution of medical items to the user/indenting departments in the hospital.



By the above acts of omission & commission, the aforesaid Dr. Soma Roy exhibited gross negligence and dereliction of duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS(Conduct) Rules, 1964.

Article-IV

That the said Dr. Soma Roy, while functioning on the aforesaid post and during the aforesaid period, committed gross misconduct inasmuch as she failed to exercise proper supervision over the functioning of her subordinate.

By the above acts of omission & commission, the aforesaid Dr. Soma Roy exhibited gross negligence and dereliction of duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS(Conduct) Rules, 1964.”

10. The applicant filed this OA, challenging the charge memo by raising several grounds. We are conscious of the limitation of the Tribunal to interfere with the charge memo. This is not a case in which a plea is raised as to the lack of competence on the part of authority who issued the charge memo nor it is pleaded that no misconduct can be perceived even if the charges are taken on their face value. The principal ground is about delay.

11. Whenever the act of indiscipline or misconduct takes place on the part of the employee, the administration is expected to initiate steps without any loss of time. The reason is that it would be possible for the department to gather the evidence



and equally possible for the employee to put forward his or her contention. As and how the time passes, the availability of evidence, linking with the various events that constituted the act of indiscipline, becomes difficult. Even if the department would be in a position to gather certain events, the employee would be at a serious disadvantage to defend, if the proceedings are initiated long thereafter the occurrence.

12. The allegation against the applicant was that she did not exhibit proper care. It is not as if that any deep investigation was needed to prove the charge, and that time was consumed in the process of collecting material. In the OA as well as in the counter affidavit, various steps taken by the Police, resulting in recovery of the stolen materials are mentioned. Nothing was said about the applicant in the narration.

13. On the issue of delay in issuing the charge memo, the Hon'ble Supreme Court in the case of **State of Andhra Pradesh vs. N. Radhakrishnan**, (1998)4 SCC 154, held as

“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 weight 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration.”

13. Though in the instant case, it is pleaded by the respondents that the delay occurred in the process of corresponding with the Central Government. We are of the view that it was totally unnecessary, once the applicant became their own employee. If, in fact, the applicant was not the employee of the GNCTD, the very



order of suspension was without competence. While the order of suspension can be issued only by the Appointing Authority, the charge memo can be issued by the Disciplinary Authority (DA) who can be inferior, in rank. Once the respondents did not feel any impediment in placing the applicant under suspension in the year 2009, it cannot be said that they entertained a doubt for a period of seven years in issuing the charge memo.

14. Therefore, we allow the OA and set aside the impugned charge memo dated 10.06.2016. There shall be no order as to costs.

(AK. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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