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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH ALLAHABAD

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T. A. No. 1786 of 1987.
(W. P. No. 7908 of 1981 of the High Court at
Judicature at Allahabad.)

Smt. Prema Devi Applicant.
v.

Dist. Medical Respondents.
Officer & Others.

Hon'ble Justice Mr K. Nath, V.C.
Hon'ble Mr. K. Obayya, Member(A)

(By Hon. Justice K. Nath, V.C.)

The Writ Petition described above, is before us under Section '29' of the Administrative Tribunals Act, 1985 for quashing of order dt. 18/19.08.80 (Annex.-28), by which the applicant/petitioner was removed from service. There is also a prayer to quash the orders dismissing the petitioner's appeal and review, communicated to the applicant respectively by letters dt. 06.11.80 (Annex.-31) and 13.03.81 (Annex.-32).

2. The petitioner was working as an 'AYA' in the D.L.W. Hospital, at Varanasi when on 19.07.79, she is alleged to have used filthy and unparliamentary language against Shri Agrawal, the Head Clerk in the District Medical Officers' office, and also about the District Medical Officer himself. The D.M.O. at that time was one Dr. Das. For this alleged conduct, the petitioner was served with a charge-sheet dt. 16/17.11.79. On her request, Hindi version of the memo was furnished to her on 15.01.80 and Hindi version of all relevant documents was furnished to her on 18.06.80. Before the petitioner had furnished a written statement in defence of the

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charge, the D.M.O., Dr. Das appointed himself to be the Enquiry Officer by an order dt. 15.07.80; he fixed 16.07.80 for enquiry proceedings.

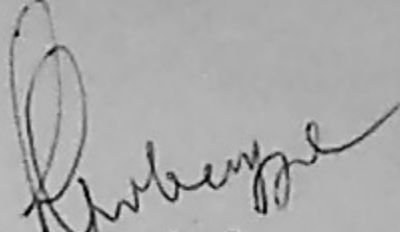
3. The petitioner made an application on 16.07.80 to Dr. Das himself, stating inter-alia that it was unfair and unjust for Dr. Das to appoint himself as the Enquiry Officer while she has not filed her written statement for defence because she herself has lodged a criminal complaint against Dr. Das on 02.11.79. It appears that on 02.11.79, the petitioner lodged a complaint against Dr. Das for offences under Sections 500, 504 & 506 of the IPC in the Court of the concerned Magistrate at Varanasi on the allegation that Dr. Das had hurled filthy abuses and had cast aspersion on her character on 20.07.79. However, Dr. Das proceeded with the enquiry on 16.07.80 itself, and concluded it ex-parte.


4. On 28.07.80, the petitioner made an application to the Chief Personnel Officer, D.L.W., Varanasi, stating inter-alia that Dr. Das may not act fairly as an Enquiry Officer and that some independent person may be appointed as an Enquiry Officer. On that very date, she also made a similar application to Dr. Das himself, and submitted her written statement of defence and requested Dr. Das, not to hold the enquiry.

5. The requests appear to have gone unheeded by the CPD as also by Dr. Das, the Enquiry Officer, and ultimately Dr. Das found the petitioner to have been guilty of the charges levelled against her. On that finding, Dr. Das himself passed an order of removal of the petitioner from service which is impugned Annexure-28.

6. A short point has been raised on behalf of the applicant that in view of the history of the case, as indicated above, the entire enquiry is vitiated by the vice of bias. The stand of the respondent was that because disciplinary proceedings were contemplated against the petitioner, she chose to lodge the criminal complaint against Dr. Das which was ultimately rejected by the Magistrate although a criminal revision appears to have been filed in the superior court. It is urged that the charge against the petitioner was that she had abused Dr. Das himself. Be that as it may; the fact remains that in respect of the incident which took place on 19.07.79, the charge-sheet had been issued on 16/17.11.79 while in the mean time the petitioner had lodged the criminal complaint against Dr. Das on 02.11.79. It is wholly immaterial whether or not the complaint of the petitioner against Dr. Das was truthful. It will also be appreciated that in proof of the charge against the petitioner, Dr. Das himself might have been witness. The learned counsel for the petitioner has referred to the cases of Arjun Choubey uv. U.O.I. 1984 SC 1356 and Andhra Pradesh State Road Transport Corporation vs. Satya Narayan 1965 SC 1303 on the law of bias. We are satisfied that the holding of enquiry by Dr. Das is vitiated by the doctrine of bias and punishment order cannot be sustained. The petition is allowed and the impugned orders of removal of the petitioner from service by Annex.-28 dt. 18/19.08.80 and further orders dismissing the petitioner's appeal and review, contained in Annexures 31 & 32 are quashed. The petitioner shall be

deemed to have been continued in the service and shall be
paid^{arrens} of wages and allowances and other consequential benefits
in accordance with the law. Parties shall bear their costs.


MEMBER (A)


VICE-CHAIRMAN

January 29, 1991.
Allahabad.

D.K. Karn/