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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 210 OF 1991

T.A. NO.

DATE OF DECISION 9-3-1995

Dr. P.C. Goklani — Petitioner

Party-in-Person — Advocate for the Petitioner (s)

Versus

Union of India & Another — Respondent

Mr. Akil Kureshi — Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Dr. P.C. Goklani,
Medical Officer,
C.G.H.S. Dispensary,
Navrangpura,
Residing at : Qr. No.1,
Postal Officer's Quarters,
Shahibaug,
Ahmedabad. ..... Applicant

(Party-in-Person)

Versus

Union of India Through:

1. Director General,
Department of Posts,
Dak Bhavan,
New Delhi.

2. Secretary,
Ministry of Health & F.W.,
Nirman Bhavan,
New Delhi. ..... Respondents

(Advocate : Mr. Akil Kureshi)

J U D G M E N T

O.A. NO. 210 OF 1991

Date : 9-3-1995

Per : Hon'ble Mr. K. Ramamoorthy, Member (A)

This application is against the order of compulsory retirement passed on the applicant vide order dated 13-2-92.

2. The facts of the case are as follows. The applicant is a member of the Central Health Services Scheme and was serving as a Medical Officer in one of the CHSS dispensaries of the State. When he was working as a Medical Officer in one of the P & T department dispensaries, he was served with a charge-sheet on 14-3-1988. The statement of Article of charge framed against the applicant in the said Memorandum is as under:

"The said Dr. P.C. Goklani while functioning as Medical Officer, P & T Dispensary, Lal Darwaja, Ahmedabad, during the period from 21-10-1982 to 21-7-1986 wilfully, dishonestly and intentionally preferred a false LTC claim for the block year 1978-81 in respect of himself and his family members for the journey from Ahmedabad to Kanyakumari and back with the malafide intention to defraud the Government.

By his above acts the said Dr. P.C. Goklani failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant thereby contravening the provisions of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964."

In the statement of imputations, it had been further stated that though he had not actually performed any journey, he wilfully, dishonestly and intentionally preferred a false LTC claim for the block year 1978-81 in respect of himself and his 4 other family members for a journey from Ahmedabad to Kanyakumari and back from 1600 hours on 17-11-82 to 2000 hours on 7-12-82 by bus No.GRT 222 of Shree Meenal Travel Services, Ahmedabad. Dr. Goklani and his family members had not actually undertaken the journey and the claim was bogus. It is further stated in the Statement of imputations that Dr. Goklani had deposited the entire amount of LTC bill along with interest amounting to Rs.5,646=20 in Ahmedabad GPO on 17-7-86. The Inquiry Officer found the charges as "fully and comprehensively established". Thereafter the Officer was given a copy of the Inquiry Officer's report and asked to submit his representation vide Govt. of India Office Memorandum dated 12-6-90 (A/53) and vide order of 13-2-92 (A/28). The following order was passed:-

"The President, after taking into consideration all facts and circumstances of the case, findings of Inquiry Officer, representation of Dr. Goklani dated 25-8-1990 and in consultation with the Union Public Service Commission (copy enclosed) has come to the conclusion that the allegation against Dr.

Goklani stands proved and ends of justice would be met if the penalty of "Compulsory Retirement' from service with immediate effect is imposed on him. The President orders accordingly."

The applicant's case for quashing of the impugned order is based mainly on the following grounds:-

(i) There has been long delay in starting of the enquiry. For an alleged offence of 1982, charge-sheet was served in 1988 and Inquiry Report was submitted in June, 1990 and orders were passed on 13-2-1992, i.e. after full 10 years of the incident.

(ii) The enquiry proceedings were marked by a distinct bias and conspiracy against the applicant as could be seen from the language of the charge-sheet as also by the remarks of the Inquiry Officer in the Inquiry Report itself giving an impression that there was already a pre-determined conclusion. The applicant was already punished even before the start of this formal enquiry by way of reversion from his post and thus a question of double jeopardy is attracted.

(iii) The enquiry proceedings were also marked by serious irregularities such as denial of a lawyer's assistance, non-furnishing of certain documents such as CVC's recommendation as also UPSC's advice and non-examination of certain witnesses as asked for by the applicant.

(iv) The applicant has also stated that the quantum of punishment is very much on the high side and the applicant had been denied a specific hearing on the quantum of punishment either. According to him, the punishment imposed is very severe and not proportionate to the gravity of the offence specially when the applicant had deposited the amount in good faith when the matter was under dispute and never wanted that his credential should be in doubt.

3. The respondents in their reply have stated that the enquiry was conducted strictly in accordance with the procedure laid down under the CCS (CCA) Rules, and denied that the enquiry was conducted in violation of the procedure and rules of natural justice. The respondents have also denied any irregularities in the enquiry and further stated that no bias or conspiracy could be deduced. The respondents have also denied that the language of the charge-sheet showed any pre-determined conclusion. All documents and necessary witnesses were examined. On the question of delay, it has been contended by the respondents that the time consumed in the present case could not be considered to be a delay much less a deliberate delay. The Officer appointed as Commissioner for departmental enquiries had to be changed once due to administrative exigencies and therefore, the present Inquiry Officer could be appointed only on 25-1-1989. The preliminary hearing was kept on 10-2-89 and by June, 1990, Inquiry Report had been submitted. A formal notice for taking necessary disciplinary action was served on the applicant on 31-5-91 and the orders of compulsory retirement were passed on 13-2-93. As regards the plea for permission to engage a lawyer, it is contended that since the Presenting Officer was not a legal practitioner or a lawyer, the applicant was rightly not allowed to engage a lawyer for defence assistance and no prejudice has been caused to the applicant on that ground. No defence witnesses were dropped in any manner ~~x~~arbitrarily and the enquiry was not vitiated in any manner whatsoever. The charge of the Inquiry Officer having had a close-door meeting with the Presenting Officer is specifically denied. The case cannot be considered as a case of no evidence as

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number of witnesses have been examined and the fact of the trip itself being a trip which did not take place has been brought out in the enquiry and the question of appreciating the evidence would not naturally arise at this stage of hearing before the Tribunal. The respondents have further stated that there was no provision for supplying copies of the CVC Report or the advice of the UPSC. However, as required, copy of the Inquiry Officer's Report was duly supplied to the applicant. The respondents have also stated that the penalty could not be construed as severe since the offence of submitting a false LTC bill amounted to an offence involving moral turpitude.

4. The counsel for both the applicant and the respondents have cited a battery of judgments in support of their arguments which will be referred in the subsequent paragraphs.

5. The petition and the accompanying documents were gone through as also the written statement furnished by the applicant. We have also heard at length the arguments as advanced by the counsel for both the applicant and the respondents.

6. On the question of delay, there is some merit in the contention of the applicant that there has been a delay factor. The alleged incident is one of 1982, and till 1989 the formal enquiry did not take place. It is understandable that in case such as the present one which involved preliminary investigation by an agency like the C.B.I., some delay is innevitable. The C.B.I. enquiry itself seems to have started only in 1986. It is presumed that information

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regarding the possibilities of there having been an irregularity in the claiming of LTC might have been received by the respondents only by then. In any case, the fact remains that in matters such as this, there is no gainsaying the fact that the lapse of time can tend to prejudice the case of the applicant in recalling the incident or in adducing necessary evidence. The applicant has relied on the case of State of M.P. V/s Bani Singh - 1990 (Supp) S.C.C. 738. The counsel for the applicant has also cited 8 other instances as under where the delay factor has been held to be serious enough to quash the proceedings:

1) C.N. Ramaswamy's case - 1981(2) SLR 469
2) D.L. Gawd's case - 1994 26 ATC 164
3) Tarlochan Singh's case - 1986(2) ATR 405
4) Manubhai Parmar Vs. Y.B. Zala - 1980(1) SLR 324
5) Puranchandra Mahapatra's case - 1991(1) SLJ CAT 134
6) P.L. Khandelwal's case - 1989 (9) ATC 509
7) M.N. Qureshi's case - 1989(9) ATC 500
8) Bejoy Gopal Mukherjee's case - 1989(9) ATC 369

In the judgments cited by the applicant in many cases, either the periods of delay were longer or the charges concerned were not serious enough or the department was not able to explain the delay factor. Apart from this fact that each one of these cases has distinct circumstances and is not on all fours with the present case, in this particular case, looking to the pleadings made by the applicant, it is also not established that serious prejudice has been caused to the applicant because of this factor of delay. In view of this, the contention that delay factor has seriously

jeopardised the case of the applicant is not accepted by this Tribunal.

7. The language of the charge-sheet cannot also be stated to be one as to support the case of the applicant regarding a pre-determined conclusion. The counsel for the applicant sought to take for his aid the judgment in the case of R.K. Basu Rai Vs. Administrator, Kuch Behar Municipality reported in 1984(2) SLJ page 416. According to the applicant as in the case of this judgment, the Inquiry Officer sought to become a fact finding agency. We have gone through the language of the Article of Charge and the Statement of Imputations. We do not find that in this particular case, the wording of the charge-sheet suffers from the vice of the exhibition of the closed-mind or a prejudiced-mind. The Inquiry Officer in this case happens to be the Commissioner for departmental enquiries, an Officer of an independent organisation under the Central Vigilance Commission and cannot be stated to be in the group of people as the ones cited in the particular case where the concerned inquirers were "gentlemen (who) could have failed to be aware of this ambiguous situation in which they were placing themselves to adjudicate on an issue wherein they were involved". We have gone through the statements made in this case and cannot find that the attitude of the authority amounted to victimisation. As regards bias arising from the copies of the statements not having been supplied even after demand, it is seen that the Inquiry Officer has passed specific remarks against each one of the requests as seen from the documents at A/14. As indicated in the written reply filed by the respondents in 1992, Inquiry Officer had allowed some

of the documents and rejected the request for others even though none of the documents were part of the listed evidence and they were not also taken into account in the present proceedings. The Inquiry Officer has specifically met with this charge in para 4.6 of his report. The action of the Inquiry Officer thu cannot be stated to be one as to cause any prejudice to the applicant as was found to be the case in the case cited by the applicant in the ruling reported in 1989 (9) ATC 21 in the case of Jagannath Behera V/s Union of India & Others. In this particular case, the applicant has been given full copies of the documents as cited along with the charge-sheet and even the additional documents as asked for as listed at Annex. A/14. We are rather inclined to agree with the counsel for the respondents that in this particular case the Supreme Court ruling as given in the case of State of U.P. V/s Om Prakash Gupta - AIR 1970 S.C. 679 would apply since the enquiry cannot be stated to have resulted in "deflecting the cause of justice". Since the Inquiry Officer has not relied on documents which are not supplied, it cannot also amount to violation of principles of natural ju tice as has been decided by the Supreme Court in the case of Chandramma Tewari V/s Union of India reported in AIR 1988 page 117.

8. On the question of the applicant not being given the service of a lawyer to defend his case, in this case also, the Inquiry Officer is right in stating that this was entirely within the province of the disciplinary authority. The disciplinary authority has also vide its order dated 19th September, 1989 clearly given the

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reasons as to why a lawyer's assistance was not necessary (Annex. A/49). The Inquiry Officer has also rightly observed from the nature of pleadings made by the applicant that this factor has also not caused any serious prejudice to his pleading before the Inquiry Officer. In this case also, though the Counsel for the applicant has cited as many as 5 cases in this regard, we are unable to agree that the circumstances in the present case are the same as made out in the case cited by the applicant. The five cited cases are as under:

1) C.L. Subramaniam's case - AIR 1972 S.C. 2178
2) Rajkot Panchayat's case - 1991(2) SLJ, GHC 213
3) Raghunathan Opeh Vs. Union of India - 1992(3) SLJ 372
4) T. Kanani Vs. Union of India - 1989(9) AIC 222
   R. Robert's case - 1991(2) SLJ CAT 138
5) P. Kasilingam's case - AIR 1981 SC 789
   A.R. Antulay Vs. R.S. Nayak - 1988 (2) SCC 602

The above five citations only reiterate the issue that the decision should be taken as per the circumstances of each case and it is for the disciplinary authority to decide the matter and the legal practitioner must be allowed only if the Presenting Officer is also a legally trained Officer which is not the case in the present application. The turning down of this request is also accompanied by a detailed order.

9. The Tribunal does not also find substance in the argument advanced by the applicant that effective cross-examination of the witnesses was not given to the applicant.

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From the proceedings, it is seen that the applicant has had opportunities to cross-examine the witnesses. As regards the assessment of the evidence by the Inquiry Officer, it is clearly beyond the jurisdiction of this Tribunal and the kind of evidence taken into consideration by the Inquiry Officer is also such as cannot be construed as a case of no evidence at all. The evidence taken such as the RTO's permit for inter-State travel, the veracity of such permits and statement of witnesses who have been listed as co-passengers are all instances of relevant evidence and thus, the findings cannot be classified as a case of no evidence whatsoever. For the very same reason, the theory of conspiracy as put forward by the applicant is also not acceptable since the applicant has not been able to show any particular motive behind the conspiracy or behind the tendering of a particular evidence by the witnesses.

10. A point has been made that the copy of the advice of CVC was denied to the applicant. The Tribunal had called for the papers and had seen the papers for themselves as stated by the applicant. The CVC reference is one of forwarding the Inquiry Report with the recommendation to the disciplinary authority for the acceptance of its findings. The Tribunal does not find that this reference from the CVC has caused any prejudice to the case of the applicant. A similar point has been made regarding the advice tendered by the UPSC and the fact that the advice tendered by the UPSC was not made available to the applicant. In this case also, we find that not making available the correspondence cannot be stated to have caused any prejudice to the case of the applicant.

11. As regards the issue of double jeopardy made out in the application, the applicant has referred to the fact that though he was asked to hold the post of Medical Officer In-charge of the dispensary, in 1986, his services were replaced and he was sent back to work as Junior Medical Officer. It is not the case of the applicant that the applicant was entitled to be appointed to the post of Medical Officer In-charge in the grade of Rs.1100-1600 by virtue of seniority. It is an admitted position that he was asked to hold charge of the In-charge Medical Officer's post by virtue of his local seniority within the dispensary alone and this charge was taken away when a regular Officer in the grade of Rs.1100-1600 was available to hold the post in the particular dispensary in which the applicant was working. We do not, thus, see any force in the argument that this particular action was a punitive action. He also referred to the fact that he was not allowed to draw LTC for the subsequent blocks because of the pending case of LTC of the applicant. We find that this is due to an administrative instruction in force regarding non-grant of LTC, when a LTC enquiry case is pending. This by itself cannot also, therefore, be said to be a punishment perse as to invite the charge of double jeopardy.

12. We are impressed with the accent made by the counsel for the respondents on the distinction between conduct of proceedings under a criminal trial and a departmental enquiry into a misconduct and his citation of judgments in this regard. As stated in the Supreme Court judgment reported in AIR 1963 S.C. 1723 in the case of State of Andhra Pradesh and Others Vs. S. Sree Rama Rao, "the rule

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to prove the offence in criminal trial beyond reasonable doubt, is not to be applied in proving misconduct in a departmental case". The Supreme Court has laid down the law in this regard very clearly also in the judgment of State of Andhra Pradesh & Others Vs. Chitra Venkata Rao reported in AIR 1975 S.C. 2151. In AIR 1980 S.C. 1170 in the case of Sunil Kumar Banerjee Vs. State of West Bengal and Others, Supreme Court has this ~~is~~ to say:

> "We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views on the very same material."

13. In the matter of domestic enquiries, the Supreme Court in its judgment in the case of Nand Kishore Prasad Vs. State of Bihar & Others reported in AIR 1978 SC 1277 has clearly ruled as under:

> "If the disciplinary enquiry has been conducted fairly without bias or predeliction, in accordance with the disciplinary rules and constitutional provisions, the order passed by such authority cannot be interfered with in proceedings under Article 226 of the Constitution, merely on the ground that it was based on evidence which would be insufficient for conviction of delinquent on the same charge at a criminal trial".

In view of these findings, we find that the Inquiry Officer's Report and the action taken thereon by the department cannot be faulted as a case of no evidence or one based on bias and conspiracy. It is true that some of the remarks of the Inquiry Officer do exhibit his exasperation at the applicant's conduct before the Inquiry Officer wherein the applicant has clearly asserted his right over every inch of the defence territory that he is allowed

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to traverse and some of the remarks of the Inquiry Officer tend to give voice to this sense of exasperation. Nevertheless, this by itself, however, cannot be stated to be a case of bias or prejudice ultimately.

14. On the question of quantum of punishment, however, when a specific request has been made by the applicant for hearing specifically on this issue, such a request should have been considered. The quantum of punishment is necessary to be seen in the light of the offence with which the applicant has been charged. The Inquiry Officer himself has referred to the fact that the false claiming of LTCs had almost turned into a racket. The acceptance of the private tourist operators' certificate in regard to such travels had led to the widespread misuse of this facility as to compel the Government to withdraw this facility later. While the misuse as such cannot be condoned, the fact also remains that this is basically a civil damage which is partly rectified by the return of the amount involved. The Inquiry Officer himself has referred to the fact that the Government has treated similar offences committed by other Govt. servants of this very department, some of whom have been cited as co-passengers in this tour, differently. In financial terms, the amount involved though not a material consideration is also not very high. Looking to the widespread nature of the misuse, various State Govts. have been reacting to the infringements in this field in different practical administrative measures such as recovery of the amount with a penal additional amount and debarment for further periods. Administrative loopholes for blatant misuse of such facilities has also been plugged now by not

allowing such certificate from private operators. In view of this matter, the picking of this particular Officer for this kind of punishment is, therefore, discriminatory and harsh, & hence that part of the order (ie punishment of removal) is quashed & set aside.

15. Even though on the question of double jeopardy, we have already stated in para 11 above that technically the case is not one of double jeopardy, it is nevertheless, apparent from the records that the Officer posted in the higher scale is an Officer brought on transfer from within the Station itself which could have been done much earlier. In that sense, though there is no reversion, a conscious decision taken to put the Officer in the higher scale only at the present point of time when the case of misconduct came to the notice of the department is in itself a clear signal of the applicant's loss of favour with the department. The loss of LWC facilities for subsequent blocks though a resultant event, has also caused some loss of privileges to the applicant. The fact that the matter pertains to an event which happened in 1982 also is one of the reasons as to why removal is considered to be too harsh to be imposed at this stage.

16. In view of the reasons above, we order that this case may be remitted to the disciplinary authority for them to consider the matter on the question of punishment alone. The disciplinary authority may give a hearing to the applicant on that question, since the case pertains to the year 1982. In remitting this case, we are guided by the Supreme Court's decision in Parma Nanda's case (1989) 2 SCC 177 (1989 SCC L&S 303). It is also ordered that this matter may be decided by the competent disciplinary

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authority within a period of three months from the date of receipt of this order.

17. No order as to costs.

(K. Ramamoorthy)
Member (A)

(M.B. Patel)
Vice Chairman

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