IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLICATION NO. 185/2005
Date Of Decision : This the 23rd day of May, 2006.

CORAM:
HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

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Suresh Kumar Yadav S/o Shri Balbir Singh Yadav aged about 45 years, presently working as Pharmacist, N.W. Railway Health Unit, Degana North Western Railway Degana Distt. Nagaur (Raj) Resident of Belwa, Khalidpur The. Pataudi Distt. Gurgaon (Haryana).

.....Applicant.

Mr. N.R. Choudhary, Advocate, for applicant.

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur.

2. The Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.

3. The Chief Medical Superintendent, North Western Railway, Hospital., Jodhpur.

4. The Senior Divisional Medical Officer, Railway Health Unit, North Western Railway, Degana Distt. Naguar (Raj).

.....Respondents.

Mr. C.S. Kotwani, Advocate for the respondents.

ORDER

Shri Suresh Kumar Yadav, has questioned the charge memorandum dated 31.12.2003 (Annex.A/3), validity of penalty order dated 19.2.2004 (Annex.A/2) and the appellate order dated 26.6.2004 at Annex. A/1 and has sought for quashing and setting aside the same with all consequential benefits.

2. I have heard the elaborate arguments advanced by the learned counsel representing the contesting parties and have carefully considered the pleadings and records of this case.

3. The brief facts of the case as pleaded on behalf of the applicant indicate that the applicant was employed on the post of Pharmacist in North Western Railway Health Unit, Degana. He was issued with the Charge Memorandum SF – 11 for minor penalty under Rule 11 of

Railway Servants (Discipline and Appeal) Rules, 1968 with a set of charges alleging exhibition of lack of devotion to duty and acted in a manner unbecoming of a Railway servant. The applicant submitted a representation/reply to the same. Thereafter, the disciplinary authority imposed penalty of with-holding of increment for a period of two years without postponing future increments. An exhaustive appeal was filed which has been turned-down by the appellate authority vide impugned order dated 26.6.2004 (Annex. A/4). The impugned orders have been assailed on multiple grounds. It has been averred that the applicant is holding the post of Pharmacist and he has no authority and power of Medical Officer/Nursing Staff to give any type of treatment to the patients. He was never called to attend any passenger and even the called-up memorandum was addressed to the D.M.O. It is not incumbent on the Railway to provide medical aid to the passengers who falls ill. Still the applicant managed the availability of a Civil Doctor to attend the ill passenger and it was found that there was no need of any treatment but these aspects have not been considered by the disciplinary authority. It has also been averred that the applicant himself happened to be unwell even then he tried to call upon a Civil Doctor hence it is made clear that without conducting any inquiry, a penalty has been imposed. His appeal has also been rejected without application of mind. The appellate authority has travelled beyond the allegations/charges.

4. The respondents have not chosen to file the reply and despite the fact that lot of opportunities were given for the same, the learned counsel for the respondents has been striving hard for taking time for filing the reply. Despite last chance that no reply has been filed.

5. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the pleadings of the applicant as noticed

above and specifically mentioned that he has not committed any misconduct inasmuch as even the called-up memorandum was not addressed to him and the same was addressed to the D.M.O., Degana. The applicant had still made efforts for the treatment of the ill passenger. He has next contended that applicant was not otherwise competent to administer any treatment to the passenger - patients. He seems to have been made a scapegoat just to save D.M.O., Degana, who seems to be not available at the relevant time. He has made me to traverse through the detailed representation submitted in this respect. It has been next contended that it is not incumbent or obligatory on the Railways' part to provide medical facilities to its passengers. He has also submitted that the enema instrument was not available in the Health Unit and this fact was also brought to the notice of the disciplinary authority in addition to the factum of sickness of the applicant. As regards the prescription issued in favour of the applicant, the same was never called for by the disciplinary authority and the statement of the Doctor has been taken at the back of applicant, however, the same was submitted along with the appeal. But, the defence of the applicant thrown over the board on the ground that no documentary proof regarding applicant's illness was produced and none of the other points has been taken into consideration. Therefore, the order passed by the disciplinary authority is a non speaking order. As regards the appellate order, it has been submitted that the appellate authority has taken extraneous matters into consideration which was not even the subject matter of the chargesheet. The appellate order is equally a non-speaking order and not in conformity with the relevant rules. Therefore, the impugned orders should be declared as non-est, and inoperative in the eye of law. The learned counsel for the respondents expressed his inability to

make any further submission in absence of the reply from the side of the respondent department.

6. I have considered the rival contentions put forth on behalf of both the parties. As far as factual aspect of the case is concerned, the facts pleaded on behalf the applicant as noticed above shall have to be taken as admitted and true since there is no denial to the same from the opponent side. The call up memo was addressed to DMO and not to the applicant. The medical prescription memo indicating sickness of the applicant is on the records. He was also not called to submit a copy prescription by the disciplinary authority. It is also admitted that the patient was given treatment by arranging private doctor. It is also a fact that the railway is under no obligation to provide medical treatment to its passenger. A pharmacist (i.e. applicant herein) had no authority to give medical treatment to anyone.

7. The scope of judicial review by this Tribunal is well settled by the Apex court through catena of judgements. I may refer decision of the Apex Court in case of **Kuldeep Singh v. Commissioner of police AIR 1999 SC 677,** wherein their Lordships have lucidly illustrated the scope of judicial review. The following paras are relevant and excerpted:

> "It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.
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> Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" were based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny."

8. Applying the aforesaid proposition of law I am in agreement with the submissions of the learned counsel for the applicant that the

present one is a case of no evidence and the applicant did not commit any misconduct. There is no record to indicate that applicant was at all called up to attend the sick passenger. If at all anyone was called up, it was DMO Degana who seems to have not been available at the Hqrs. The disciplinary proceeding against the applicant is farce and meant to make some score. The penalty order cannot be sustained in such situation. I also find support of this view from a celebrated decision by Apex Court by a constitution bench in case of **Union Of India v. H. C. GOEL** [AIR 1964 SC 364], wherein in has been held that there can be little doubt that a writ of certiorari can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the proceedings which is the basis of his dismissal is based on no evidence. The impugned orders deserve to be quashed on this ground alone.

9. The disciplinary and well as appellate authorities have not taken judicial notice of the relevant rules. The defence of the applicant has been abruptly thrown overboard. The appellate authority has rejected the appeal by a cryptic order without application of mind in as much as no specific findings have been given on the three mandatory points including that of adequacy or inadequacy of the penalty (disproportionate penalty) as per Rule 22(2) of the R. S. (D. & A.) Rules. The same has been rejected by taking extraneous material into consideration. He has travelled beyond the charges indicated in the charge memo. There is no indication that the appeal has been rejected by application of mind. The same cannot be sustained (**AIR 1990 SC 1984; S.N. Mukherjee vs. Union of India and AIR 1986 SC 1173; Ram Chander vs. Union of India**- refer). An administrative authority, while exercising quasi-judicial functions, must record reasons for its decision. Para 35 of S. N.

Mukherjee case supra is instructive on this and its contents are extracted as under:

> "35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. 'The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such art order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

10. Thus the impugned orders are illegal, arbitrary and cannot meet the scrutiny of law. The same shall have to be held as manifestly incorrect, palpably absurd and inoperative which I do without any demur.

11. In the light of the aforesaid principles laid down in the decision of the Supreme Court and also in the context of facts and circumstances of the present cases, the OA merits acceptance and the stands allowed accordingly. The impugned charge memorandum dated 31.12.2003 (A/3), validity of penalty order dated 19.2.2004 (A/2) and the appellate order dated 26.6.2004 at (A/1) are hereby quashed and the applicant shall be entitled to all consequential benefits as if none of these orders were ever in existence. No costs.

(J.K. KAUSHIK)
JUDICIAL MEMBER

jrm

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Part II and III destroyed
in my presence on 04/4/14
under the supervision of
section officer ( ) as per
order dated 31/1/14

Section officer (Record)
4/4/