

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.581/09

Tuesday this the 27th day of July 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Dr.M.Syed Mohammed Koya,
S/o.late C.N.Muthukoya,
Ayurvedic Physician,
Community Health Centre, Androth.
Residing at Government Quarters, Androth.
(Mammel House, Kalpeni Island, Lakshadweep)

...Applicant

(By Advocate Mr.R.Sreeraj)

V e r s u s

1. Union of India represented by Secretary,
Ministry of Health and Family Welfare,
New Delhi.
2. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. The Secretary (Health),
Union Territory of Lakshadweep, Kavaratti. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC [R1]
& Mr.S.Radhakrishnan [R2&3])

This application having been heard on 27th July 2010 this Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-1 show cause notice dated 28.7.2009 issued by the 3rd respondent, namely, the Secretary (Health), Union Territory of Lakshadweep, Kavaratti together with a copy of

9
/

.2.

a self contained note in RC 4 (S)/2007/CBI/KER stating that he was charge sheeted by the CBI before the Court of Hon'ble Judicial First Class Magistrate, Andrott under Section 120 B read with 420, 468 & 471 of the IPC for forging the document No.1026/23/2000 (H) dated 16.11.2000 based on which the Department awarded undue promotions to some doctors and paid them higher scales of salaries for which they were not entitled and as his said action tantamount to cheating and corruption which caused huge pecuniary loss to the Government and taking into account the gravity of the gross misconduct committed by him, the Disciplinary Authority has proposed to award an appropriate penalty under Rule 11 of Central Civil Services (Classification, Control & Appeal) Rules, 1965. Further, it has been stated in the said show cause notice that on a careful consideration of the CBI Report, the Disciplinary Authority has provisionally come to the conclusion that the applicant was not a fit person to be retained in service and proposed the penalty of removal from service. He was, therefore, called upon to make representation, if any, on the aforesaid proposed penalty.

2. The allegation against the applicant in the FIR was that Dr.S.S.Mishra, Senior Ayurvedic Physician, Lakshadweep Administration, had given several representations to the Administrator and to the Government of India to include the post of Senior Ayurvedic Physician held by him under the Lakshadweep Administration in the cadre of Central Indigenous Medical and Health Services and to direct the Government of India and Administration of Lakshadweep to grant him time bound

Q.

.3.

promotion as envisaged in O.M.No.11019/2/97-ISM dated 25.1.1999 in the cadre of Chief Medical Officer on due date with all consequential benefits. Later, he filed OA 1348/00 for the same purpose before this Tribunal and during its pendency, a letter No.1026/23/2000 (H) dated 16.11.2000 purported to be issued by the Ministry of Health & Family Welfare was received providing time bound promotion under career progression scheme to Medical Officers (MBBS), Central Surgeons and Physicians of IMS&H serving in the Central Government Institutions who are not in the organised service. Based on the said letter, insitu promotion was given to three doctors working in Lakshadweep ie., Dr. K.G.Ali, Dental Surgeon, Dr.S.S.Mishra, Senior Ayurvedic Physician and the applicant who was working as an Ayurvedic Physician. However, it came to light that the said letter was a forged one and it was sent to various Departments of Government of India but the Ministry of Health & Family Welfare has intimated that no such letter was issued by them. The accused in the FIR were unknown persons. On the basis of the aforesaid letter the applicant was appointed as Ayurvedic Physician on ad hoc basis and joined duty on 30.7.1979 at Kavaratti. His appointment was later on regularised w.e.f. 25.2.1980. Subsequently, he was placed in Group-A scale with effect from 1.1.1986.

3. Subsequent investigations have revealed that a photocopy of the aforesaid letter of the Ministry of Health & Family Welfare (Department of Health) dated 16.11.2000 was received at the Secretariat of Union Territory of Lakshadweep on 28.3.2001 and it was signed by one



.4.

Shri.Ganesh Solanki, Director (ME). The letter envisaged only two promotions and it was silent about considering the Physicians in the Central Cadre. Based on the above letter, the then Director of Medical & Health Services, Union Territory of Lakshadweep, Dr.Kunhi Seethi Koya (Deceased), had recommended promotion to the above mentioned three doctors. The applicant was not eligible for promotion since his study leave was not regularised and he was not receiving his increments since 1993. Dr.Kunhi Seethi Koya made no mention about this aspect and recommended the applicant's case for promotion. The DPC in which Dr.Kunhi Seethi Koya was also a member recommended promotions to all the three doctors and the same was approved by the Administrator of Union Territory of Lakshadweep. All the three doctors including the applicant were given promotions to the next grade vide order F.No.62/2/2000-D&H(AC-3) dated 16.6.2001 with effect from 16.11.2000. The applicant received arrears even though he was not eligible for the same. In 2003, the applicant again sent a representation to promote him to the next grade as Chief Ayurvedic Physician based on the above order. In the meantime the bogus nature of the order came to light when the Ministry of Health & Family Welfare called for a photocopy of the aforesaid letter dated 16.11.2000. The Ministry intimated Union Territory of Lakshadweep that no such letter was issued from the Department of Health and further no person by name Ganesh Solanki has worked as Director in the Department. When the bogus nature of the letter was revealed the Administration of Union Territory of Lakshadweep withdrew the promotion order of the three doctors. Based on the above investigation a charge

2/..

.5.

sheet was filed against the applicant before the Court of Hon'ble Judicial First Class Magistrate, Andrott under section 120 B read with 420, 468 & 471 of IPC.

4. In another incident occurred in the year 1980, a departmental action was initiated against him for misbehaviour and attempt to outrage the modesty of a married woman and for attempting to assault the husband of a patient and he was awarded a penalty of withholding 3 annual increments in 1984. He was, therefore, not confirmed in the post for a long time and continued to be on probation. He was confirmed in the post only with effect from 25.8.1992 after the punishment was confirmed by the President of India.

5. Yet another incident stated in the aforesaid show cause notice was that the applicant had proceeded on study leave for 2 years in 1990 to pursue MD in Ayurveda College, Trivandrum. He extended his leave by one more year and after the study leave, he did not appear for the MD Examination. Consequently, the Lakshadweep Administration did not regularise the period of his leave and had passed orders for recovering his salary drawn during that period. He was, therefore, not considered eligible for any promotion. However, later on, he got his leave regularised vide order F.No.5/2/2005-DHMS/595 dated 28.7.2005.

6. The contention of the applicant is that the proposal made by the respondents to remove him from service was merely on the basis of an

Q/
..

.6.

allegation which is yet to be proved and, therefore, it is highly illegal, arbitrary, unreasonable and irrational and violative of Articles 14, 16 and 21 of the Constitution of India. It is also ultra vires of constitutional mandate envisaged by Article 311 as well as the provisions of CCS (CCA) Rules, 1965. He further submitted that the criminal case pending against him has not even been commenced. He has also moved the Annexure A-3 application dated 5.9.2008 for discharge on which also no decision has been taken so far. Learned counsel for the applicant Mr. R. Sreeraj has argued that an employee can be punished without holding an enquiry only in terms of Article 311(2) of the Constitution read with Section 19 of the CCS (CCA) Rules, 1965 and none of the conditions contained in those provisions are applicable in the case of the applicant.

7. The respondents in their reply statement has stated that the impugned Annexure A-1 show cause notice was issued to the applicant on the basis of letter No.C.29012/11/2006-AY dated 19.9.2008 received by them from the Director, Government of India, Department of Ayush, Ministry of Health & Family Welfare directing the Administrator of Union Territory of Lakshadweep to remove him from service for his gross misconduct after serving a copy of the CBI report and calling upon him to show cause as to why he should not be removed from service.

8. We have heard Shri.R.Sreeraj counsel for the applicant, Ms.Sheeja on behalf on Shri.Sunil Jacob Jose,SCGSC for respondent No.1 and Ms.Deepthi on behalf of Shri.S.Radhakrishnan for respondents No.2&3.



We are in agreement with the argument of Shri R. Sreeraj. It is guaranteed under Article 311 (2) of the Constitution of India that no person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The exceptions to the aforesaid law is contained in the proviso to the said Article which says that the said clause shall not apply only in the following cases :-

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry ; or
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

The aforesaid constitutional guarantee has also been incorporated in CCS (CCA) Rules, 1965 for the benefit of the employees covered under it. It has been specifically stated in Rule 14 (1) of the said Rule that no order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15 or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act. However, Rule 19 of the said Rule provides that the Disciplinary Authority can depart from the prescribed procedure for holding inquiry only in the following three circumstances :-



.8.

- (i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

9. In the present case, none of these situations as provided in Article 311(2)(b) of the Constitution or Rule 19 of the CCS (CCA) Rules arise. We, therefore, quash and set aside the Annexure A-1 show cause notice dated 28.7.2009 issued by the 3rd respondent proposing to impose the major penalty of removal from service upon the applicant. However, it is made clear that this order will not preclude the respondents from taking any appropriate disciplinary action against the applicant in accordance with the Rules.

10. There shall be no order as to costs.

(Dated this the 27th day of July 2010)


—
K. NOORJEHAN
ADMINISTRATIVE MEMBER


—
GEORGE PARACKEN
JUDICIAL MEMBER

asp