BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.73/93

Dated this the 27th day of June 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Mrs.Sheila Rajan,
R/o. Prakash Park-B-9,
Lulla Nagar,
Pune-411 040. ...Applicant

By Advocate Shri G.K.Masand

V/S.

1. Union of India through
The Secretary,
Ministry of Defence,
New Delhi.

2. Director General,
Armed Forces Medical Services,
Ministry of Defence,
'M' Block, DHQ PO.,
New Delhi.

3. Commandant,
Armed Forces Medical College,
Pune. ... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

The applicant while working as 'Speech Therapist' in the Armed Forces Medical College (AFMC) Pune was issued a chargesheet for major penalty dated 18.1.1999 with the article of charge

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"That the said Mrs.S.Rajan, while functioning as Speech Therapist is charged with misconduct,i.e. not attending to the patient when called for on 08 May 90 at about 1030 hrs and misbehaved with superior officer on 04 Jun 90 during working hours at ENT Dept AFMC, Pune." She submitted her defence against the same as per her letter dated 31.1.1991. Thereafter without issuing any order nominating the Inquiry Officer, the Inquiry Officer started conducting the inquiry, Based on the findings of the Inquiry Officer, the disciplinary authority imposed as per order dated 18.10.1991 punishment of reduction in pay by two stages from Rs.2480-2360 for a period of two years with immediate effect. The applicant filed an appeal against the same on 15.11.1991. The appeal was rejected as per order dated 20.4.1992. On being aggrieved by the penalty imposed, the applicant has filed the present OA.on 28.1.1993 seeking the relief of quashing the orders dated 18.10.1991 and 20.4.1992.

2. Assailing of the impugned penalty orders is based on the following grounds in the OA. :-

(a) No order under Rule 14 of CCS (CCA) Rules 1965 was issued for appointing inquiry officer. In the absence of any such an order, the inquiry conducted is vitiated.

(b) Both the inquiry officer and the disciplinary authority were biased against the applicant.

(c) Disciplinary authority as well as appellate authority hold the same rank as such the exercise of appellate power was a mere formality.

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(d) The order of the disciplinary authority is non speaking and without application of mind.

(e) Appellate authority has not taken into account the various submissions made by the applicant and has disposed of the appeal in a mechanical way through a non speaking order lacking application of the mind.

3. The respondents have filed written statement contesting the OA. The respondents contend that the disciplinary proceedings against the applicant have been conducted as per the extant rules. It is further submitted that both the disciplinary and the appellate authorities have passed their orders with due application of mind after considering the various points made by the applicant in defence of her case. It is further stated that order nominating Col. A.K.Misuriay as the inquiry officer has been issued under Rule 14 and there is no infirmity in the same. As regards the rank of the appellate authority being the same as that of the disciplinary authority, the respondents strongly contest the same stating that the appellate authority is Director General of Armed Forces Medical Services and is higher in rank than that of the CommandantAFMC. Based on these submissions in the written statement, the respondents plead that OA. is devoid of merits and deserves to be dismissed.

4. The applicant has **filed rejoinder reply reiterating her stand in the OA.**

5. We have heard the arguments of Shri G.K.Masand, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents. The respondents have made available the disciplinary proceedings file.

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6. With the rival contentions being briefly stated above, now we will take up the grounds of challenge detailed in para 2 above on merits to find out if any of them has effect of vitiating the impugned penalty orders.

7. The first ground is that no order as required under Rule 14 of CCS (CCA) Rules,1965 had been passed and served on the applicant as per the format laid down for nomination of the inquiry officer. Therefore in the opinion of the applicant, the conducting of the inquiry by such an inquiry officer was illegal and the findings of such inquiry are vitiated. The respondents have contested this and have stated in the written statement that the inquiry officer was nominated as per the provisions of Rule 14 and there is no illegality. During the arguments the counsel of applicant has stated that as per Rule 14, the format for nominating the inquiry officer has been laid down as per the Standard Form 8 but no such order was served on the applicant. On going through the disciplinary proceedings file, we find the order dated 27.2.1991 is on the record nominating the inquiry officer which has been issued by the disciplinary authority after considering the defence of the applicant to the chargesheet. Therefore, the applicant's plea that order had been issued for nominating the inquiry officer is not tenable. As regards the validity of the order dated 27.2.1991, we note that this order covers both the appointment of the inquiry officer as well as that of the presenting officer. It is also noted that the wording in this order is more or less the same in Form 8 (for

inquiry officer) and Form 10 for the presenting officer of CCS (CCA) Rules. The order dated 27.2.1991 has been passed exercising power under Rule 14. We also note the wording of the Forms 8 & 10 is almost reproduced in the order dated 27.2.1991. It is well settled legal position that it is not the form of the order but the substance of the same which is material. An order which is passed in exercising the power under Rules does not become illegal merely that it is not as per the laid down format. In fact, the Hon'ble Supreme Court in the case of Union of India vs. Khazan Singh (1993) 23 ATC 678 has gone to the extent in para 6 holding ".....it is settled proposition of law that when exercise of power can be justified under any provision of law then non mention of the said provision in the order cannot invalidate the same." In the present case, the order dated 27.2.1991 is in the format which is more or less the same as per Forms 8 & 10. Further the Rule under which the power has been exercised in nominating the inquiry officer has been clearly mentioned in the order. In view of these observations and keeping in view the law laid down by the Apex Court in the case of Union of India vs. Khazan Singh, we are unable to accept the contention of the applicant that the inquiry proceedings are vitiated. Further it is noted that after issue of the order dated 27.2.1991, the applicant has participated in the inquiry after receipt of the notice from the nominated inquiry officer. The applicant has not brought on record any document to show that she had protested that nomination of the inquiry officer was illegal. In fact in her first representation dated 27.4.1991 (Annexure-'N') the

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applicant had raised the issue of the inquiry officer and the presenting officer being biased but it is no-where stated that the nomination of the inquiry officer itself has not been done as per Rule 14. In the light of these observations, the applicant cannot now challenge the penalty on this ground.

8. The second ground taken is that the disciplinary authority and appellate authority are of the same rank and therefore consideration of the appeal was a mere formality. The respondents have contested this. Respondents state that appellate authority is higher in status than the disciplinary authority. The applicant has not controverted the same through the rejoinder reply. On going through the record, it is noted that the disciplinary authority is Commandant, Armed Forces medical College in the rank of Lieutinent General. The appellate authority is Director general, Armed Forces medical Services, DG AFMS in the Ministry of Defence and is also in the same rank of Lieutinent general. The respondents have stated that the Director General, Armed Forces Medical Services is the highest post in the Corps. In the absence of any controvertion on the part of applicant, we have no reason not to accept the contention of the respondents. Though the disciplinary authority and the appellate authority hold the same rank, but the appellate authority by virtue of holding the post of Director general is higher in status and therefore controlling authority for the Commandant AFMC. In fact, the applicant has addressed her appeal to the Director general, Armed Forces medical Services without

any ~~induction~~ indication of the appellate authority in the punishment order dated 18.10.1991. The applicant cannot now take up the plea that Director General, Armed Forces Medical Service was not the competent appellate authority. In the light of these facts, we are unable to find any substance in this contention of the applicant.

9. The third ground of attack is that both the inquiry officer and the disciplinary authority were biased. The applicant has alleged bias against the inquiry officer on the foundation that the inquiry officer ignored the various letters and the requests made by the applicant for examination of certain witnesses and proceeded with the inquiry with pre-determined mind. On perusal of the disciplinary proceedings file and the documents brought on the record, it is noted that the applicant as per her letter dated 27.4.1991 addressed to DG,AFMC alleged that the nominated inquiry and the presenting officers are biased. To this, the administration asked her to indicate the detailed reasons for alleging bias as per letter dated 29.4.1991. Thereafter, the applicant replied as per her letter dated 10.5.1991 stating that she has not made any allegations and only requests to follow CCS (CCA) rules. The representation of the applicant was considered by DG,AFMC and request for change of the inquiry officer and the presenting officer was rejected as per order dated 10.6.1991. Thereafter, it is noted that the applicant has participated in the inquiry. The applicant has

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again alleged bias against the inquiry officer as per her letter dated 6.8.1991 (Annexure-'BB'). The applicant has brought out that the inquiry officer wanted to proceed with article 2 of the charge while the applicant did not agree with the same stating that article I of the change had not concluded. The applicant has not ~~concluded~~ elaborated as to how the inquiry on article I charge had not yet concluded. The applicant has not elaborated in OA., the names of the witnesses whom she wanted to examine but the inquiry officer refused for the same. From the proceedings of the inquiry, it is noted that the applicant did not participate in the inquiry held on 5.8.1991 and inquiry officer recorded the statements of the witnesses and this was continued on 6.8.1991 also but the applicant did not attend on this date also. The applicant has brought a letter on the record at Annexure-'AA' dated 6.8.1991 which gives the details of the witnesses proposed to be called by the applicant. It is noted that applicant had not given the list of her witnesses at any time in the beginning of the inquiry when she was asked for the same by the inquiry officer. Therefore, refusal by the inquiry officer to call for the witness at the late stage when the inquiry had already proceeded cannot be a ground for alleging bias against him. We are of the considered opinion after careful consideration of the material on record that the allegations of bias against the inquiry officer are without any substance.

As regards the allegations of bias against the disciplinary authority, we find the allegation is vague and no foundation has been laid for the same. We are,therefore, unable to find merit in this plea.

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10. The fourth ground is that order of the disciplinary authority is non speaking and does not reflect the application of mind. We are unable to endorse this contention of the applicant. In the present case, the disciplinary authority has agreed with the findings of the inquiry officer as per which the charges were proved. As held by Hon'ble Supreme Court in the cases of Ram Kumar vs. State of Haryana, 1988 SCC (L&S) 246 and Indian Institute of Technology, Bombay vs. Union of India, 1991 SCC (L&S) 1137, when punishing authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings. In view of the law laid down by the Hon'ble Supreme Court in the cited judgements, the ground taken by the applicant is not sustainable.

11. Now we come to the last ground, i.e. the appellate authority has rejected the appeal of the applicant without taking into account the various submissions made by her in the appeal through a non speaking order. After carefully going through the appeal dated 15.11.1991 of the applicant at Annexure-'FF' and the order dated 20.4.1992 of the appellate authority, we ~~may be~~ are inclind to find merit in the contention of the applicant. The applicant in the appeal has raised several issues pointing out infirmities in the disciplinary proceedings. The appellate authority though in his order has stated that the appeal has been carefully considered but he has not specifically remarked on the

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points made by the applicant. If the order of the appellate authority is not found to be speaking and reflecting non application of the mind, normal ~~cause~~ course of judicial direction would be to remand the case to appellate authority and to direct him to pass fresh speaking order after reconsideration of the appeal. However, in the present case in view of deliberations earlier, we decline to follow this course of action. The various grounds taken by the applicant in assailing the punishment orders have been taken in the OA. and we have deliberated upon the same. We do not find merit in any of the grounds. Therefore the remanding of the case to the appellate authority at this distant date is not warranted.

12. The applicant through the amendment application after the written statement was filed by the respondents has taken one additional ground. The applicant has avered that the respondents in para 31 of the written statement have stated that the inquiry was concluded on 5.8.1991. This is not factual as per the applicant as the inquiry officer as per his letter dated 5.8.1991 had asked the applicant to appear for the inquiry on 6.8.1991. This shows that the inquiry was completed on 5.8.1991 itself without giving opportunity to the applicant. Respondents in reply to the amendment application have stated that the applicant did not participated in the inquiry on 5.8.1991. The inquiry was continued on 6.8.1991 and concluded but the applicant did not show up inspite of informing him of the same. The learned counsel for the applicant during the hearing strongly reacted to

the submission of the respondents made in the reply to the amendment stating that false affidavit had been earlier filed. On going through the para 31 of the written statement, contention of the applicant appears to have substance. However, going by the material on the record and purusal of the inquiry proceedings, there is no doubt that the inquiry was concluded on 6.8.1991 and not on 5.8.1991 and respondents have not taken proper care while filing the written statement. IN any way, this ground though may have some substance, does not vitiate the disciplinary proceedings as the inquiry was concluded on 6.8.1991.

13. During the arguments, the counsel for applicant took some additional grounds not taken in para V of the OA. at page 27-29. These are :- (a) List of witnesses shown in the chargesheet was 'nil' but actually a number of prosecution witnesses were examined. (b) Copy of the inquiry report not furnished. (c) Presenting officer not appointed in terms of Rule 14 (5) of CCS (CCA) Rules,1965. On going through the OA., we find that in respect of (a) & (c), there are some averments in the OA. through the grounds, the effect of the same have not been taken in para V. As regards (a), it is noted that though in the chargesheet no witnesses were cited but subsequently through the letter dated 11.7.1991, amendment to Annexure IV of the chargesheet was done indicating 8 witnesses before the commencement of the inquiry. Thereafter the applicant has participated in the inquiry without any protest and even cross examined the witnesses. The applicant

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therefore cannot take this plea now after the disciplinary proceedings are concluded. In respect of (c), we have covered this infirmity in para 7 above. The issue of non supply of the inquiry report has not been raised in the OA. and we decline to go into an issue on merits which is a fact of the record when raised during arguments. In any way, we note that disciplinary authority has already covered this aspect in his order dated 18.10.1991. The applicant in her appeal has not contested the observations of the disciplinary authority.

14. In the light of the above deliberations, we do not find any merit in the OA. and the same is dismissed accordingly. No order as to costs.

(S.L.JAIN)
MEMBER (J)

(D.S.BAWEJA)
MEMBER (A)

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