

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1357/94

DATE OF DECISION: 7th Jan, 2000

Shri B.R.Fredricks Applicant.

Shri D.V.Gangal Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri R.K.Shetty Advocate for
Respondent(s)

CORAM

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

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

(1) To be referred to the Reporter or not? NO.

(2) Whether it needs to be circulated to NO.
other Benches of the Tribunal?

(3) Library. NO.

S.L.Jain
(S.L.Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAY BENCH, MUMBAI

ORIGINAL APPLICATION NO: 1357/94

the 7th day of January 2000

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

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

B.R. Fredricks
Residing at Govt.
Colony Dehu,
3/12, Old J Type,
Range Hill Estate
Kharki, Pune.

...Applicant.

By Advocate Shri D.V.Gangal.

v/s

1. Union of India through
The Secretary
Ministry of Defence,
South Block,
Sena Bhavan, New Delhi.

2. Director General
Ordinance Factory Board,
Autkland Road, Calcutta.

3. General Manager,
Ordinance Factory,
Dehu Road, Pune.

4. Dr. Mrs. M.Alphanso,
In charge Senior Medical Officer
Ordinance Factory, Dehu Road,
Hospital, Dehu Road, Pune.

...Respondents.

By Advocate Shri R.K.Shetty.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the
Administrative Tribunals Act 1985 for a declaration that the
Enquiry Officer's report, Disciplinary authority's order and the
Appellate Authority's order are illegal, bad in law, quash and

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set aside the order of suspension, charge sheet, enquiry Officer's report, order of punishment and order of the Appellate Authority with all consequential benefits. In alternative it is prayed that the matter be remitted to the disciplinary authority for de-novo enquiry with a direction to give fair and reasonable opportunity to the applicant alongwith costs.

2. The applicant who is an Ex-Army personnel, discharged from the Army from 31.1.1978 was re-appointed as Medical Assistant with effect from 16.8.1979 in Ordnance Factory Dispensary, Dehu Road, after construction of a new Hospital at Dehu Road, the existing staff of the Dispensary was brought under the control of the Senior Medical Officer of the said hospital. The applicant received an order of suspension dated 25.8.1990. On 26.8.1990, he submitted the representation against the same. On 10.4.1992 ,annexure A-7, he was served with the charge sheet dated 14.9.1990, replied to the same on 5.10.1990, an Enquiry Officer and the Presenting Officer were appointed, enquiry proceeded with first date of hearing on 22.11.1990 of which notice was received on 21.11.1990, was adjourned to 12.12.1990, after conclusion of the enquiry, enquiry report dated 20.4.1992 was submitted, a penalty order dated 23.12.1992 " reduction of pay to the minimum of the payscale for a period of two years with further directives that Government Servant will not earn increments of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing the future increments of pay" was passed, appeal against the same was preferred which was rejected on 18.3.1993.

Pljm -

3. The applicant's case in brief is that respondent No.4 came on transfer as Senior Medical Officer from Ammunition Factory Hospital Khadki has sympathy with the other staff members who came on transfer from various other places to the said Hospital and prejudice against the existing staff member who came to be accommodated after functioning of the said hospital and who were working in the said dispensary and subsequently brought under her control, he has submitted several reports against respondent No.4 to the official Union which has moved the said reports regarding illegalities and irregularities to the higher authorities. Regarding unauthorised travel of the Doctors in Hospital's Ambulance, Respondent No.4 came to know of the same, threatened the applicant that she will take action against him at any cost. The respondent No.4 has made false allegations against Shri B.D.More, Shri. D.G. Raut, P.S. Sabale, spared Shri B.K. Natkar who reported on duty under the influence of Liquor and was also found gambling in the hospital premises. The respondent No.4 is of revengefull nature, habituated in arbitrary and malafide exercise of her powers.

4. The applicant further pleaded that on receipt of information that one of the patient is to be discharged from Military Factory Hospital Khadki, is to be readmitted in Dehu Road Hospital. The case was surgical one. On being asked the applicant accompanied the Ambulance for collecting the patient reached at Khadki at 10 o'clock, waited there for 2 hours but

no body turned up. Hence returned back and reported about the same to the respondent No.4. On 18.8.1992 the duty Doctor Mrs. Kali Chaturvedi asked the applicant to give treatment to one of the newly admitted patient without any prescription of the treatment, which the applicant refused to comply being against rules and the Doctor refused to endorse a prescription of the treatment, he was called by the respondent No.4 for refusal of duty and stated that he is prepared to face disciplinary action. On 19.8.1990, on being asked to give treatment to the same patient on a prescription, he complied the same. On 20.8.1990 the respondent No.4 threatened the applicant for the disciplinary action for refusal, he informed that he would report the matter through the union to General Manager, Military Hospital. He was posted by respondent No.4 at Dispensary on 21.8.1990 with a malafide intention. Though he was working at Dispensary he has to sign the muster roll at factory dispensary and while returning he has to sign at the hospital and then go home, he was signing the muster roll while going home.

5. It is further pleaded that the respondent No.4 made allegation that the applicant had taken bribe from the same patient to whom the applicant refused to give treatment on 18.8.1990. He informed about the illegalities on the part of Doctors only.

J.YK/-

6. The applicant after leaving application for leave for 22.8.1990, proceeded to help his father in law who has received the notice for demolition from Containment Executive Officer - A6 and the demolition was carried on 22 and 23rd August 1990, made a search for shelter and hence remained on leave on 22, 23 and 24 August 1990.

7. The admission of the patient was after receiving money by the Doctor and respondent No.4, respondent No.4 engineered and a story of false allegations taking advantage of the situation of his absence for the cause noted above in para 6 of this order, managed to obtain some statements from her subordinate by using her force and official capacity and they made the same on account of fear.

8. The Enquiry Officer did not conduct the enquiry in a fair manner, was unfair while recording the statements and questions, refused to record the questions, representation regarding bias nature of the Enquiry Officer was submitted, another enquiry officer was appointed on 29.9.1991 who proceeded from such a stage where it has been left by his predecessor while de-novo enquiry ought to have been conducted, refused permission to cross-examine the witnesses after being fresh documents submitted by them. The case is of no evidence. Erred on the evidence of the defaulter- The said patient. The case proceeded with prejudice and predetermination, no trap was arranged, records have been altered. Hence this OA for the above said reliefs.

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9. The respondents have resisted the claim of the applicant and alleged that irrelevant, baseless allegations are levelled. They prayed for dismissal of the OA alongwith costs.

10 The learned counsel for the applicant relied on 1971 LLJ 293 Satish Chandra Chakravarty V/s State of West Bengal which lays down the proposition that charges vague and indefinite, the details without which the delinquent cannot properly defend himself are only a matter of evidence, non-compliance of Fundamental Rule 56. The enquiry is not as per provisions of ^{law} ~~law~~. The delinquent is entitled to succeed.

11. The learned counsel for the respondents relied on 1994 I LLJ 808 Union of India V/s Upendra Singh which lays down the proposition that jurisdiction of the Tribunal is similar to jurisdiction of High Court under Article 226 of the Constitution. Tribunal cannot interfere in the charges framed in disciplinary enquiry only if no mis-conduct or other irregularity alleged can be said to have been made out or charges framed are contrary to law.

12. On perusal of the charge sheet, we are of the considered opinion that it cannot be said that the charges were vague or indefinite.

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13. On perusal of the allegations in para 3, 4, 5, and 7 of the order, it is suffice to say that the said allegations are denied in written statement. Dr. Mrs. Kali Chaturvedi not a party to the proceedings, the name of the doctor who received money for admission of the patient is not on record, he is not a party to the ^usaid proceedings, hence no finding can be recorded behind the back of any person who is not before the tribunal particularly when the said facts are also not borne out from the record of the disciplinary proceedings.

14. We have gone through the evidence on record on the file of the disciplinary proceedings alongwith the Enquiry Officer's report, the order of the Appellate Authority and are of the considered opinion that the applicant's case is neither covered by a case of 'no evidence' or 'a perverse finding'. It is worth mentioning the findings of the Aapex Court of the land reported in 1999 I LLJ 170 Kuldeep Singh V/s Commissioner of Police and others.

" A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at no evidence or evidence which is throughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record^u which is acceptable and which could be relied upon, howsoever compendious, it may be, the conclusion would not be treated as perverse and the findings would not be interferred with"

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15. The learned counsel for the respondents relied on 1989 II LLJ 57 Union of India V/s Parma Nanda which lays down the proposition that the Tribunal has no discretionary power to interfere with penalty awarded in disciplinary proceedings except in cases where penalty is imposed under clause (a) of second proviso to Article 311(2) of the Constitution of India. We agree to the said proposition of law and as the case is not covered under clause (a) of Second Proviso of Article 311(2), the Tribunal has no power to interfere in the penalty awarded by the authorities.

16. In the result, we do not find any merit in the OA, it is liable to be dismissed and is dismissed accordingly with no order as to costs.

J.S.M/
(S.L.Jain)
Member(J)

NS

D.S.Bawej/
(D.S.Bawej)
Member(A)