

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:508/97

DATE OF DECISION: 8/8/03

Shri Vijendra Prakash

Applicant.

Shri S.V. Marne

Advocate for  
Applicant.

Verses

Union of India and others

Respondents.

Shri R.R. Shetty

Advocate for

CORAM

Hon'ble Shri A.S. Sanghvi

Member (J)

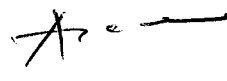
Hon'ble Shri Shankar Prasad -

Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

(3) Library. ✓

  
(A.S. Sanghvi)  
Member (J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 508/97

the 8<sup>th</sup> day of AUGUST 2003

CORAM: Hon'ble Shri A.S. Sanghvi - Member (J)

Hon'ble Shri Shankar Prasad - Member (A)

Vijendra Prakash  
Ex-Fireman, NDA  
Flat No.30,  
Shashijant Terrace House  
Near Manti Park,  
Kothrud, Pune.

...Applicant.

By Advocate Shri S.V. Marne

V/s

1. Union of India through  
The Secretary,  
Ministry of Defence,  
DHQ PO New Delhi.
2. The Director General  
Directorate General of  
Military Training,  
Army Headquarters,  
New Delhi.
3. The Commandant,  
National Defence Academy,  
Khadakwasla, Pune.

...Respondents.

By Advocate Shri R.R. Shetty

O R D E R

{Per A.S.Sanghvi, Member(J)}

The applicant serving as Firman Grade I in the office of National Defence Academy, Khadakwasla, Pune was served with a charge sheet on 22.5.1996 levelling imputation of misconduct and conducting himself in a manner unbecoming of the Government Servant in that, he produced a fictitious cash memo No. 15865 dated 21.11.1994 amounting to Rs. 7983.00 in support of medical

...2...

reimbursement claim in respect of his wife. The applicant denied the charges levelled against him and enquiry proceeded. The enquiry officer submitted his report on 27.7.1996 holding that the charges levelled against the applicant were not proved and recommended for exoneration of the charges levelled against him. The Disciplinary Authority, however, did not agree with the findings of the Enquiry Officer and after furnishing the applicant with the report of the Enquiry Officer and also the reasons for his own disagreement with the findings of the Enquiry Officer directed the applicant to submit his representation thereon. After receipt of the representation of the applicant, the Disciplinary Authority vide his order dated 22.8.1996, held that the charges levelled against the applicant stood proved and imposed the penalty of removal from service on him. After an unsuccessful appeal the applicant has approached this Tribunal challenging the order of removal from service passed by the Disciplinary Authority and confirmed by the Appellate Authority.

2. The applicant has inter alia claimed that the enquiry was conducted by non furnishing of the documents relied by the Disciplinary Authority as well as on account of there being no evidence against him in the enquiry proceedings. According to the applicant the Disciplinary Authority has based his findings merely on <sup>u</sup> surmises and conjectures, even though there is no evidence on record to prove the charges levelled against him. It is also contended that the Disciplinary Authority has placed

...2...

~ :3: <sup>PSI</sup> ~~EST~~

reliance on the report of the ~~EST~~ as well as the report of Joint Commissioner, Food and Drug Administration without examining any of the witnesses and without supplying those reports. The whole approach of the Disciplinary Authority was perverse, illegal and arbitrary and as such the order passed by Disciplinary Authority is required to be quashed and set aside.

3. The respondents in their reply have however contended that the enquiry had proceeded as per the rules and regulations and that the applicant was supplied with all the necessary documents. According to them the applicant was found to be repeatedly submitting large number of medical claims by producing the bills from the same shop which led to suspicion that there is something fishy. A detailed investigation was conducted and report was sought from Joint Commissioner, Pune Division, Food & Drug Administration, Maharashtra State as also from the Police SubInspector, NDA Chowki, Kothrud Police Station and it was found that except the sale of one medicine Supradin Tablets no other medicines were sold at all. It was therefore found that M/s Pooja Medicals from where the medicine was purchased had colluded with applicant, <sup>PSI</sup> ~~with~~ in order to mis-appropriate the Government Money. Hence regular departmental enquiry was held and the enquiry revealed that bogus bill was got prepared by the applicant. An investigation was also conducted and the report from Joint Commissioner Food and Drug Administration, Maharashtra State, Pune as well as from PSI, NDA Chowki, Kothrud Police Station were obtained in order to prove that the bill was infact

bogus and inflated one. Once it was found that the bill was bogus and inflated one the applicant was held guilty of the charges levelled against him and imposed punishment he deserved. It is also contended that the Enquiry Officer's report was furnished to the applicant and his representation was obtained before imposition of the penalty on him. The applicant in his representation had not raised the contention regarding non furnishing of the documents relied on. He therefore cannot be allowed to raise the dispute regarding non-supply of documents.

4. We have heard the learned counsel for the parties and carefully considered the rival contention of the parties.

5. Shri S.V. Marne counsel for the applicant has submitted that the charge sheet itself is a defective charge sheet. On this charge the applicant could not have been punished. He has further submitted that the Enquiry Officer has rightly held that the charges levelled against the applicant were not proved and hence there was no evidence against the applicant recorded during the course of enquiry. He has further submitted that the charge sheet given <sup>to</sup> the applicant, though mentioned about the report dated 15.6.1995 of the Joint Commissioner, Food and Drug Administration, Pune as one of the documents relied on by prosecution, Copy of the same was not given to the applicant and the Disciplinary Authority has solely relying on this document held that the charges levelled against the applicant were proved. He has further submitted that the Disciplinary Authority

...5...

has also relied on the report of the PSI though not figured in the list of documents annexed to the charge sheet. He has also drawn our attention to annexure 4 of the charge sheet, wherein the column of names of the witnesses by which article of charges framed are proposed to be sustained is shown to be Nil. According to Shri Marne no witnesses also were examined by the Enquiry Officer and therefore it is difficult to understand how the charges levelled against the applicant are considered to be proved. He has further submitted that the charge is only that the applicant produced a fictitious cash memo dated 25.11.1994 for the amount of Rs. 7983/- in support of medical reimbursement claim in respect of his wife. But there is no allegation anywhere in the charge sheet that he had submitted the Cash memo without paying the amount of cash memo. According to him the shop keeper is not in fact examined. There was no evidence on record to show that the shopkeeper had not received Rs. 7983/- from the applicant and therefore it could not have been concluded by the Disciplinary Authority that the applicant had produced bogus cash memo and he was asking for the medical reimbursement without first spending for the medicine stated in the cash memo. The cash memo itself is also not proved by examination of any witness and as such could not be relied upon. The report of the Joint Commissioner, Food and Drug Administration as well as <sup>PSI</sup> PDI are also not proved through any of the witnesses and hence these reports also cannot be relied upon. None of the witnesses were also produced for cross examination and as such their reports could not have been taken into consideration.

6. On the other hand Shri R.R. Shetty counsel for the respondents has submitted that so far the contentions regarding non-supply of documents are concerned, the applicant has nowhere raised this grievance prior to this OA in any of his representation nor in his appeal he had raised the grievance of non supply of the documents. He has also not made out how he was prejudiced by non supply of these documents. In support of his submission Shri Shetty has relied on the decision in the case of Syed Rahimuddin V/s Director General CSIR & Ors. reported in 2000(2) SC SLJ 132 wherein it is held that unless it is shown that delinquent was prejudiced by non supply of some so called documents, it cannot be said that the reasonable opportunity to defend the case was denied.

7. Shri Shetty also submitted that report of the Joint Commissioner Food and Drug Administration clearly reveals that some medicine was purchased by cash memo No. 15865. Duplicate copy of the cash memo showed that the name of one medicine was mentioned while in the original cash memo several medicines were listed. Thereby indicating that a false <sup>claim</sup> ~~calim~~ for medical reimbursement was prepared by the applicant.

8. After careful consideration of the rival contentions and the documents on record we have no hesitation in concluding that the order of Disciplinary Authority imposing punishment of removal from service on the applicant is not only perverse and arbitrary but illegal also. The Disciplinary Authority's order is not based on any evidence on record of enquiry but is based on

...7...

extraneous consideration as well as the documents which were not referred before the Enquiry Officer. It is also nothing but full of surmises and conjectures of the Disciplinary Authority and therefore cannot stand the judicial scrutiny. The order of the Disciplinary Authority Verbatim runs as under:-

Departmental enquiry - FS/62 Shri Vijendra Prakash, Fireman Grade I has been charged for producing fictitious Cash Memo No. 15865 dated 21.11.1994 in support of medical reimbursement claim in respect of his wife. This charge is proved by:

(a) Report of the Joint Commissioner, Pune Division, Food and Drug Administration, Maharashtra State vide letter No. D& C/MISC/URP/5295 of 1995 dated 15.1.1995;

(b) Report of the Police Station, Kothrud, Pune.

The plea of Shri Vijendra Prakash, Fireman Grade I is that he went to Pooja Medicals to buy the medicine after visiting three or four shops is considered untenable as he has regularly been buying all his medicines from this shop only for which he has claimed reimbursement in the past.

The individual had the presence of mind to ensure that the particulars of the medicines like the batch number, expiry date, cost etc. were duly entered on the original bill, but has displayed/feigned ignorance about the same being entered on the duplicate copy in collusion with the proprietor of the shop.

In view of the above, Shri Vijendra Prakash, Fireman Grade I has conducted himself in a manner unbecoming of a Government servant and the charge stands proved."

9. The Disciplinary Authority has held that the charges are proved by the report of the Joint Commissioner and PSI Kothrud. So far the report of Joint Commissioner is concerned, the same was not addressed to Disciplinary Authority or the Enquiry Officer but was addressed to the Sales Tax Department bringing to their notice the cash memo of M/s Pooja Medicals bearing No. 15865 was not issued on 21.11.1994. Bare reading of this report makes it difficult to conclude anything from this report. It states that the officer of this administration has entered the premises of Pooja Medicals and following observations were made:

1. Carbon copy of the Bill No.15865 does not bear date.
2. Bill No. 15865 was not issued on 21.11.1994.
3. One item i.e. "Supradyn Tablets" was sold to Mrs. Meena Prakash vide Bill No. 15865 and other three medicines were not sold, as verified from the carbon copy.
4. Cash memo of M/s Pooja Medicals Kothrud Pune having No. 15865 dated 21.11.1994 which is recieved with above reference letter is

...9...

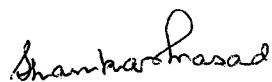
misleading since there is no bill dated 24.11.1994 (carbon copy) available with the firm of the said ST. No and date.

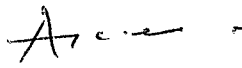
10. We are unable to undersand how the Disciplinary Authority on the basis of such a <sup>b</sup>absured report came to the conclusion that the charge levelled against the applicant was proved. The authority of the letter was not examined by the Enquiry Officer and was not even presented for cross examination by the delinquent. He himself is not clear what he has observed at the time of visiting M/s Pooja Medicals and on one hand he states that Bill 15865 wasnot issued on 21.11.1994 on the other hand he states that the carbon copy of Bill No. 15865 does not bear date. If the bill was not issued on 21.11.1994, how carbon copy was inspected by him. He therearter says that the cash memo bearing No. 15865 dated 21.11.1994 is misleading, since there is no carbon copy of the bill dated 21.11.1994 available with the firm. If no carbon copy of the bill bearing No.15865 dated 21.11.1994 was available with the firm how conclusion was drawn that only one medicine i.e. 'Supradyn Tablets' was sold and other three medicines were not sold. It is quite obvious that the report itself throws up many questions and without examining the author of the letter it could not have been accepted that it is fictitious bill. The <sup>Disciplinary Authority</sup> ~~Joint Commissioner~~ also relied on the report of the PSI Kothrud Pune Annexure R4(a) who has not even investigated the issues involved and still opined that Mrs Meena

Prakash had intentionally got the bogus medical bills prepared and submitted to NDA Medical Officer for re-imbusement and hence necessary action against her may please be taken. We are therefore convinced that without any evidence on record relying mainly on extraneous consideration, the Disciplinary Authority had disagreed with the finding of the Enquiry Officer and held the applicant guilty of the charges levelled against him. The order of the Disciplinary Authority is nothing but illegal arbitrary and perverse. There is no material on record to arrive at the conclusion that charges are proved. The shopkeeper was not examined. The Bill produced by the applicant contained 4 medicines while carbon copy of the bill contain only one medicine. Only shop keeper could have explained the discrepancy but he is not examined. When this evidence was not before the Disciplinary Authority, we are at a loss to understand how the Disciplinary Authority concluded that a fictitious bill was presented by the applicant for the claim of Medical reimbursement of Rs. 7983/-. It is needless to point out that the Disciplinary Authority's orders is based merely on surmises and conjectures and not based on any evidence recorded before the Enquiry Officer. It is not disputed that wife of the applicant was sick and that she was undergoing treatment in reputed hospital. It is also not disputed that prescription of medicine for which reimbursement claim was made is genuine. The charge levelled against the applicant was not therefore of not purchasing medicine but the charge is that he has submitted fictitious bill for reimbursement claim. If the applicant had

infact spent for the purchase of medicine it cannot be said that he has preferred false claim. The shopkeeper was not examined to prove that he had not recieved the amount of the medicine from the applicant. When this evidence was not before the Enquiry Officer, it is difficult to understand how the Disciplinary Authority came to the conclusion that the charges leveled against the applicant are proved. We are therefore of the considered opinion that the penalty imposed <sup>on</sup> ~~against~~ the applicant deserves to be quashed and set aside and applicant deserves to be reinstated with full backwages etc.

13. For the reasons discussed above we allow this OA and quash and set aside the order dated 4.10.1996 passed by the Disciplinary Authority imposing the penalty of removal from service and confirmed by the Appellate Authority and direct the respondents to reinstate the applicant <sup>in service</sup> ~~in service~~ forthwith with all consequential benefits of the service including backwages. The respondents are also directed to pay cost of Rs. 5000/- to the applicant.

  
(Shankar Prasad)  
Member (A)

  
(A.S. Sanghvi)  
Member (J)

(23)

SA. 508/1997

C.P. 47/04

DT. 11.10.2004

Shri S.V. Narne w. Counsel for  
the petitioner.

Shri R.R. Shetty for the respondents.

Shri Shetty mentioned that the w.p.  
filed by the respondents in the High Court  
is coming up for hearing on 18.10.2004.  
In view of this, list the case for  
order on 29.11.2004.

for 80  
14/10

Shri  
(Muzaffer Hussain)  
m/s

(A.K. Aggarwal)  
v/c

sy,

Dated: 24.11.2004 (11)

Applicant by Shri S.V. Narne.

Respondents by Shri R.R. Shetty.

The learned Counsel for the respondents  
has produced copy of letter dated 26.11.2004  
of National Defence Academy department.  
He states that necessary allegation have been  
made for the payment of back wages etc.  
The respondents have not complied with the  
order of the Tribunal.

In view of the above list the  
case on 18.1.2005. copy of the order see  
given to the Counsel for the respondents.

Shri  
(Muzaffer Hussain)  
m/s

(A.K. Aggarwal)  
v/c

1/12/04

are issued  
on 3/12/04  
R.M.


TRIBUNAL'S ORDER

Date: 18.1.2005

Applicant by Shri S.V.Marne.

Respondents by Shri R.K.Shetty.

2. The learned counsel for the applicant stated that all the dues payable to the applicant have been paid. He submitted a copy of the receipt dated 20.12.2004 indicating that a sum of Rs.4,79,340/- (Four lakhs, seventy nine thousand three hundred and forty only) has been received by the applicant. Since substantial compliance of the order has been done, we dismiss the Contempt Petition. Notices issued are also discharged.

  
(Muzaffar Husain)  
Member (J)

  
(A.K. Agarwal)  
Vice Chairman

mf