

30/100

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 377/2000
R.A/C.P No.
E.P/M.A No.

1. Orders Sheet. O.A-377/2000 Pg. 1 to 3
2. Judgment/Order dtd. 27/02/2002 Pg. 1 to 17 allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... 377/2000 Pg. 1 to 63
5. E.P/M.P..... Nil Pg.....to.....
6. R.A/C.P..... Nil Pg.....to.....
7. W.S..... Pg. 1 to 7
8. Rejoinder..... Pg.....to.....
9. Reply..... Pg.....to.....
10. Any other Papers..... Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 377/2000

... *Dr. Ashok Bagchi* ... APPLICANTS
 versus.

Union of India & ors Respondents.

FOR THE APPLICANT(S) *Mr. G. K. Bhattacharyya*
 ADVOCATE *Mr. G. N. Das Mr. M. Kalita*
Mr. B. Choudhury

FOR THE RESPONDENT(S)

Rd. Advocate

Notes of the Registry

DATE

COURT'S ORDER

7.11.00

Present: Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman.

Heard Mr. G.K. Bhattacharyya learned counsel for the applicant and learned Railway counsel for the respondents.

Application is admitted. Call for records! Issue notice to show cause to why the applicant shall not be to retain the official quarter to him, till disposal of the appl. Returnable by two weeks. List on 21.11.00 for orders.

In the meantime, the applicant is allowed to retain the said quarter till the returnable date.

[Signature]
 Vice-Chairman

1m

[Signature]
 2/11/00

21.11.00

List on 22.12.00 to enable the respondents to file written statement. In the meantime the interim order dated 7.11.00 shall continue.

[Signature]
 Vice-Chairman

1m

[Signature]
 2/11

for
 vide
 Dated

502815

6.11.2000

[Signature]
 Dy. Registrar

[Signature]
 6/11/00

Steps are received. Notice prepared and sent to DLB for giving the respondents No. 1 to 6 & By Hand Nos vide D.No. 2622 15 2627

add 14/11/00

by 14/11/00

① Service report are still admitted,

② No. show cause has been filed.

34
 20.11.2000

377/2000

Notes of the Registry

Date

Order of the Tribunal

2.1.02

29.11.2001

W/S submitted by the respondents

Written statement has been filed. The case may now be listed for hearing. The applicant may file rejoinder, if any, within 2 weeks from today.

List on 1.2.2002 for hearing.

K.C. Sharma Member

Vice-Chairman

mb

List the case again for hearing on 5.2.2002.

1.2.2002

W/S has been filed

K.C. Sharma Member

Vice-Chairman

bb

Hearred Mr. G.K. Bhattacharyya, learned Counsel for the applicant & Mr. B.K. Sharma, learned Counsel for the respondent.

Hearing concluded. Judgment reserved.

M/s A.K. Singh

31.1.02

No rejoinder has been filed.

9-2

20.3.2002

Copy of the order has been sent to the office for issuing the notice to the applicant as well as to the respondent. Counsel for the respondent.

27.2.02

Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

K.C. Sharma Member

Vice-Chairman

mb

(2)

O.A.377/2000

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

16.7.2001

No representation stand out. List the case on 17.7.2001 for order.

[Signature]
Member

[Signature]
Vice-Chairman

bb
17.7.2001

List on 7-8-2001 enabling the respondents to file written statement.

[Signature]
Member

[Signature]
Vice-Chairman

bb
7.8.01

List on 10/9/01 to enable the respondents to file written statement.

In the meanwhile interim order dated 7.11.2000 shall continue.

[Signature]
Member

[Signature]
Vice-

mb
10.9.01

List on 9/10/01 to enable the respondents to file written statement.

In the meantime, interim order dated 7.11.2000 shall continue until further order.

[Signature]
Member

[Signature]
Vice-Chairman

mb
9.10.01

List on 22/11/01 to enable the respondents to file written statement.

[Signature]
Member

[Signature]
Vice-Chairman

mb
22.11.2001

List on 2.1.2002 to enable the respondents to file written statement.

[Signature]
Member

[Signature]
Vice-Chairman

bb

No. written statement has been filed.

[Signature]
6.8.01

Order dtd 7/8/01 communicated to the parties concerned.

[Signature]
9/8/01

No. writs has been filed.

[Signature]
7.9.01

No. written statement has been filed.

[Signature]
8.10.01

No. written statement has been filed.

[Signature]
21.11.01

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 377 of 2000.

Date of Decision. 27.2.2002..

Dr. Ashok Bagchi

Petitioner(S)

Sri G.K.Bhattacharyya.

Advocate for the
Petitioner(s)

-Versus-

Union of India & Ors.

Respondent(s)

S/Sri B.K.Sharma, S.Sarma.

Advocate for the
Respondent(s)

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Admn.Member.

K. Usha

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 377 of 2000.

Date of Order : This the 27th Day of February, 2002.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Dr. Ashok Bagchi,
Son of Late S.Bagchi,
Resident of Railway Quarter No.M/2,
Station Colony, Hojai,
P.O. Hojai,
Dist. Nagaon. . . . Applicant.

By Advocate Sri G.K.Bhattacharyya.

- Versus -

1. Union of India
represented by the Secretary to the
Government of India, Ministry of Railways,
Railway Board, New Delhi.
2. Secretary (Estt)
Railway Board,
New Delhi.
3. The Secretary (S-I)
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
4. Central Vigilance Commissioner,
Central Vigilance Commission,
Satarkta Bhawan, I.N.A.Block-A,
G.P.O. Complex, New Delhi.
5. General Manager,
N.F.Railway, Maligaon,
Guwahati.
6. Divisional Railway Manager,
N.F.Railway, Lunding,
Dist. Nagaon. . . . Respondents.

By Advocate S/Sri B.K.Sharma, S.Sarma.

O R D E R

K.K.SHARMA, ADMN.MEMBER,

In this application under Section 19 of the
Administrative Tribunals Act 1985 the applicant has
challenged the order No. E(O)1-99/PU-2/NF/78 dated
21.6.2000 (Annexure-XI to the O.A) awarding him the

K.K.Sharma

penalty of compulsory retirement. The order has been challenged on numerous grounds. Amongst them that the Enquiry Officer failed to produce an witness Miss Sadhana Devi and that the respondents failed to furnish the applicant with a copy of the opinion of CYC. The order is also challenged on the ground that the UPSC while tendering advice to respondent No.1 should not have specified the particular penalty. The UPSC has no role in the matter of imposing penalty. It is also claimed that the penalty awarded is disproportionate to the alleged misconduct. The penalty is against principles of natural justice.

2. The facts and circumstances leading to the award of punishment are as follows :

The applicant joined Railway service as AMO on 28.4.84. Thereafter the applicant was selected in the Medical Service Examination 1983 conducted by Union Public Service Commission and joined N.F.Railway as Assistant Divisional Medical Officer on 1.2.85. He was allotted official accommodation on 1.4.85 and was promoted to the rank of Senior Divisional Medical Officer and posted at Hojai. The applicant is a class-I officer. The applicant was enjoying the non practicing allowance @ Rs.900/- per month and he was entitled to go for restricted private practice in terms of Railway Board Circular No. PC-IV/87/01/326/7 dated 6.10.87. The applicant was also informed by a circular dated 10.5.94 the procedure to be followed in treatment of non-Railway cases. ~~Railway Medical~~ Officer was permitted to do only restricted private practice and it is provided that "rank non Railway cases" are not permitted any consultation but if they are brought through

K. Uthappa

Railway employee then only they can be entertained in an emergency where medical facilities in near by areas are not available. As per the circular doctors are required to maintain a separate register for non-Railway cases who were examined in an emergency ^{as} /out patient. A monthly return of such cases attended by the doctor was to be sent ^{to} / the Chief Medical Director, N.F.Railway, Maligaon. It is stated that the applicant was not required to obtain prior permission from Railway authorities for treatment of non-Railway patients. The fee-s collected from non-Railway patients are required to be shared with the Railway administration and also required to be remitted to Railway as per prescribed distribution. The Indian Railway Medical Manual also provided that a room of official residence of the doctor may be utilised as consultancy room for examination and treatment of patients. The railway doctors were always required to give first preference to Railway patients and other members of their family and their near and dear ones. The fee chargeable from non-Railway patient has been prescribed at Rs.40/- vide letter No.H/188/LM/1 dated 6.6.94. The applicant was remitting the fees received from non Railway patients on the basis of monthly return. During the period from 1.6.94 to 10.1.95 the applicant treated 84 private patients. On 10.5.95 one Hareswar Das entered the residence of the applicant and suddenly fell down on the floor of the consultancy room due to suffering from acute abdomen pain and after a while he started vomiting blood. Seeing the condition of the patient the applicant examined him and issued a prescription on his letter head. The letter head specifically mentioned that the applicant belonging to I.R.M.S (Indian Railway Medical Service) and he was functioning as Divisional Medical Officer. The applicant also charged Rs. 40/- from the

K. U. S. B. S.

patient. The said patient re-appeared with a group of persons who identified themselves as C.B.I officials. They seized the four ten rupee notes charged as fee from the patient. They also seized Rs. 1888/- alongwith a sum of Rs. 25,000/- from a brief case. The amount of Rs.25,000/- was stated to be maturity value of L.I.C policy of the applicant's father. A case was registered by the C.B.I on 10.6.95. A F.I.R was registered on 10.6.95. In the F.I.R it was alleged that the applicant was treating private patients without maintaining proper registers. The entries in the register did not contain the name and address of the patients indicating whether they were Railway or non-Railway patients and whether the non Railway patients were relatives of Railway employee or not and also whether the non Railway patient accompanied by Railway employee. It was also alleged that the applicant had converted his official residence into a private nursing home and was staying at this own house. The decoy patient Sri H.Das subsequently died and could not be produced as a witness in the disciplinary enquiry ordered by the respondents. The CBI did not like to proceed with the Criminal Case No.RC 14(A)/95-SHG for want of sufficient evidence. A memorandum dated 18.4.97 was issued to the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968. The charge against the applicant is extracted below :

*Dr A.K.Bagchi posted and functioning as Sr.DMO/N.F.Rly./HJI Health Unit since May'1984, has been misusing his Govt. accommodation as a private Nursing Home treating private outdoor patients without permission of the competent authority and has been accepting consultation fees from them without maintaining a Register for this purpose and without depositing the amount to the Railway administration as provided for under the rules.

1/11/97

By the above act Dr. Bagchi has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened the provisions of Rule 3(1)(i), (ii) &(iii) of the Railway Service (Conduct) Rule, 1966."

On 23.4.97 the applicant submitted his representation to the General Manager, N.F.Railway praying for copies of the documents and statements of witnesses recorded earlier. The applicant submitted written statement of defence on 12.5.97 denying and disputing the charges even without getting the copies of the statements of witnesses. The enquiring authority conducted the enquiry on 7.5.98, 9.5.98, 21.7.98. The presenting officer could not produce the decoy patient and Miss Sadhana Devi who was working as private assistant to the applicant. It is stated that non examination of these witnesses deprived the applicant of his right to cross examine them. The enquiry officer also decided to drop these witnesses. The statements of these two witnesses were recorded without authentication by the witnesses and as such these could not be used as evidence against the applicant. The applicant also submitted his written brief to the enquiry officer on 30.7.98. The enquiry report dated 21.10.98 was received by the applicant through a letter of General Manager(P) dated 27.1.99. The finding of the enquiry officer are extracted below :

"In the light of discussion above I hold that the CO has been misusing the residential accommodation allotted to him as a private nursing home for treating private outdoor patients without permission of the competent authority and has been accepting consultation fees from them without maintaining a register for this purpose and without depositing the said amount to railway authority as required under rules.

K. Ushar

It is, therefore, established that by the above acts Dr A.K. Bagchi, the CO, has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant and has thereby contravened provisions of Rule 3(1)(i), (ii) & (iii) of the Railway Services (Conduct) Rules, 1966."

On receipt of the enquiry report the applicant submitted a prayer to the respondent No.5 seeking copy of advice rendered by CBI/CMC on the enquiry report. The applicant was informed by a letter dated 16.4.99 (Annexure-IX) as under :

"You have already been advised vide DY.CPO(G)'s letter dated 23.02.99 that it is not mandatory to supply copy of any document which is not part of the 'Relied upon Document' or which has not been allowed as an additional document by the Inquiry Officer. Hence your request for supply of CVCD's advice cannot be accepted to."

The applicant submitted a representation dated 13.5.99. Thereafter the respondent No.1 by a letter dated 25.10.99 requested the UPSC to convey the advice of the Commission. After taking into account the report of the enquiry officer, the UPSC vide letter dated 2.6.2000 (Annexure-X) informed the respondent No.1 as under :

"Commission consider that, the end of justice would be met in this case if the penalty of compulsory retirement is imposed on the applicant."

Thereafter by order dated 21.6.2000 (Annexure-XI) the applicant was informed that as the articles of charges have been proved against the applicant the President of India was pleased to impose the penalty of compulsory retirement. The impugned order has been passed by the President of India. As no appeal lies against the order passed by the President the applicant moved this application.

K. U. Sharma

12

3. Mr G.K.Bhattacharyya, learned senior counsel argued on behalf of the applicant. The learned senior counsel referred to the Indian Railway Medical Manual (IRMM) and specifically referred to rules 204, 208 and 210. Rule 204 provides for restriction on the treatment of non railway patients. However, no prior permission is necessary for such attendance. Rule 208 provides for the procedure for sharing the fees between the doctor and the Railways. Under this rule the total amount has to be deposited first to the Railway authority and a bill preferred by the doctor for his share later. Rule 210 provides that a Railway doctor in his private capacity is not allowed to utilize medicines and injections etc. of the Railway, even if non-Railway patients are prepared to pay for these at the prescribed rates. The railway doctors are also not allowed to open their own pharmacies or sit in a shop consulting room, in the open bazar. The Railway doctors are expected to give preference to a Railway employee and other entitled members of his family and dependent relatives over an outsider. The note to this rule provides that the Railway doctor should always bear in mind the noble traditions of his profession and in keeping with the spirit of the Code of Medical Ethics, should ever be ready to respond to the calls of the sick and the injured in an emergency. The learned counsel ~~referred to Rule 210~~ submitted that the disciplinary authority acted on the ~~advice of the~~ advice of the UPSC. However, the advice of the UPSC was not binding on the disciplinary authority. From the reading of the penalty order it appears that the disciplinary authority has simply followed the advice of the UPSC and has not independently applied its mind. The learned counsel referred to

K. Ushara

rule 601, 604, 625(4) and 633 of the ~~MEDICAL ATTENDANCE~~ ~~Appellate~~ Rules. The learned counsel took exception to the opinion ~~non~~ furnishing of the report of CBI ~~as~~ the advice and of the CVC ~~also non~~ ~~for~~ producing ~~the~~ witness ~~of~~ Sadhana Devi. The learned counsel for the applicant cited the following judgments to support his case.

- (1) S.C.Girotra vs. Uco Bank, 1995 Supp (3) SCC 212,
- (2) Union of India vs. Ratneshwar Karmakar, 2000 (2) GLT 610,
- (3) Mohd. Quaramuddin Vs. State of Andhra Pradesh, 1994(5) SCC 118,
- (4) State of Gujarat vs. Anand Municipality, AIR 1993 SC 1196,
- (5) State Bank of India vs. D.G.Agarwal, 1993(2) SLJ 88 and
- (6) Nagraj Shivarao Karaigi vs. Syndicate Bank, 1991(3) SCC 218.

Relying on these judgments the learned counsel argued that non production of CVC's/CBI's report vitiated the proceeding. Mr B.K.Sharma, learned counsel for the respondents relied on the following judgments, State Bank of India vs. S.S.Koshal, 1994 Supp (2) 2 SCC 468 for the submission that if the appellate authority agreed with the disciplinary authority, it need not give elaborate reasoning.

4. The respondents have filed written statement. Mr B.K.Sharma, learned senior counsel with Mr S.Sarma argued for the respondents. It is stated in the written statement that the disciplinary authority, the president in consultation with the UPSC, after considering the proceedings of enquiry, enquiry report, Dr. Bagchi's representation, records of the case, UPSC's findings agreeing with the UPSC findings has held the article of charges ~~as~~ proved. The president observing that the

10 (Usharma)

charge is grave and imposed the penalty of compulsory retirement. It is stated that the interpretation of the applicant that private practice is permitted is not correct. Regulation provides that medical treatment in emergency ~~xxxxxx~~ is permitted but private practice in a regular manner is not permitted. In the instant case the applicant has made a full fledged nursing home in his official residence which was provided to him for stay. The Railway quarter was not provided to him for treatment of non Railway patients. It is stated that there is no provision for having a consultancy room in a residential quarter. The applicant has covered the period from 1.6.94 to 10.1.95 in the record for payment of the fees to the Railways. The applicant has ^{been} ~~misusing~~ Government accommodation as a private nursing home since May 1984. The decoy patient could not be produced as he had already expired. Regarding production of witness of Miss Sadhana Devi, who was working as a private assistant to the applicant, if the CO wanted her to clarify any matter, he could have introduced her as defence witness or else he could have objected to the ^{authenticity} ~~the~~ of the statement of Ms Sadhana Devi during regular hearing. As none of the options were availed by the applicant his objection in this regard in the O.A are afterthought. Learned counsel for the respondents also produced the record.

5. The counsel for the parties have been heard at length. We have also carefully considered the submission made by the learned counsel for the parties. The charge against the applicant can be broken into four parts as under :

- i) the applicant has been misusing his Government accommodation,
- ii) without permission of the competent authority,

10/11/84

iii) has been accepting consultation fee without maintaining proper register and

iv) has not been depositing the amount with the Railways administration as provided under the rules.

The facts are not in dispute. The CBI laid a trap by sending a decoy patient. The applicant examined the decoy patient, who was in a serious condition. The applicant after examination prescribed medicines and accepted the prescribed fee. The amount of fee was recovered by the CBI. The applicant was charge sheeted and proceeded with as per disciplinary rules and after following the prescribed procedure the applicant has been awarded the penalty. The learned counsel for the applicant has challenged the penalty awarded on the ground of non submission of CBI report as well as the opinion of the CVC on the enquiry report. Rule 10 of the Railway Servants Discipline & Appeal Rules deals with the action following the enquiry report. Sub-rule (1) of Rule 10 provides that :

"Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided."

It is seen that the disciplinary authority in the applicant's case was the General Manager and as the General Manager considered that the misconduct of the applicant warranted a penalty of removal from service and as he was incompetent to award such a penalty in respect of a Group A officer he made the reference to the Railway Board as per rules. The punishment of removal from service/compulsory retirement can be imposed by the president. The reference was made by the General Manager to the president as per rules. Sub-rule (3) of Rule 10 is extracted below :

"The disciplinary authority shall, if it disagrees with the findings of the

10/11/2010

inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."

The operative part of the penalty imposed on the applicant is extracted below :

"Now, the president, in consultation with the UPSC, has carefully considered the proceedings of the inquiry, the Inquiry Report, C.O's representation thereagainst as also records of the case. Agreeing with UPSC's findings, the president has held the Article of Charge as proved against the C.O. for the reasons mentioned in UPSC's letter No.F.3/290/99-SI dated 2.06.2000. The president, observing that the proved charge is quite grave and accepting UPSC's advice has decided that ends of justice would met in this case if the penalty of compulsory retirement is imposed on Dr Ashok Bagchi, Sr.DMO/Hojai/N.F.Railway. Accordingly, the said penalty is hereby imposed on Dr. Ashok Bagchi."

Agreeing with the UPSC's findings the president has held that the article of charges ~~are~~ proved and accepting the UPSC's advice imposed the penalty of compulsory retirement. *
As discussed in preceeding paragraphs the UPSC had disagreed with the enquiry officer that the applicant was maintaining a private nursing home in his quarter, the operative part of the finding is extracted below :

"The commission further observe that as per photographs taken by CBI team and statement of Ms. Sadhna Devi, an employee of the CO and other independent witnesses, recorded by the CBI, the CO was using his entire residential accommodation for consultation purpose and during the raid by the CBI some patients were observed waiting for consultation including a lady lying on a bed being administered drip. They further notice that the photographs do not show any elaborate Medical equipment, as mentioned by the IO in his report (except perhaps a refrigerator) and in absence of infrastructure or other para Medical Staff, it cannot be held that the accommodation provided to the CO was being used as nursing

10/11/2000

home. It is, however, established that the CO was using his entire residence for treatment of patients and as such the Commission hold element (i) of the charge as 'proved' to that extent."

observed
The UPSC ~~v~~ views that the only equipment found in the entire residential accommodation was a refrigerator and no other medical equipment for running a nursing home was found. To the extent that the disciplinary authority has accepted the UPSC's findings, has disagreed with the findings of the enquiry officer that the applicant was running a private nursing home at his residence. As per Rule 10(3) of the Railway Servants Discipline and Appeal Rules the disciplinary authority after disagreeing with the findings of the enquiry authority has to record the reasons of such disagreement. The order does not show any record of such reasons. For argument sake it can be stated that the disciplinary authority has agreed with the findings of the UPSC on the point and UPSC's reasons can be taken to be the reasons of the disciplinary. We are unable to accept this contention of the respondents because in that case the disciplinary authority has not applied its mind in arriving an independent conclusion regarding the disagreement. In the absence of any recording of reasons for disagreeing with the enquiry officer in his report, we are unable to accept that the disciplinary authority independently disagreed with the findings of the enquiry officer. Regarding the penalty imposed on the applicant it also appears that the disciplinary authority has just followed the advice of the UPSC. The advice of the UPSC was taken as provided under the rules. The UPSC has given its views but the order of penalty is to be passed by the disciplinary authority. The disciplinary authority cannot abdicate that power to any other authority. as per the statutory scheme.

100/11/11/11

17

6. As per Rule 10(1) of the Rules it is the Disciplinary Authority who is to take action on the enquiry independently on assessing the evidence on record and impose such penalty within its competence. Where the penalty warranted is beyond the competence of the authority it is to forward the records of the enquiry to the appropriate Disciplinary Authority who is to act in the manner prescribed. The appropriate Disciplinary Authority thereafter is to act on the report of the Inquiry Officer on assessment of the evidence on record. As per the statutory arrangement the Disciplinary Authority in every case where it is necessary to consult the Commission is required to forward the record of the enquiry to the Commission for its advice and such advice is to be taken into consideration before making any order imposing any penalty on the Railway servant. The role of the UPSC is of advisory nature. The function of UPSC is of consultative character. It is not to assume the role of Disciplinary Authority and express conclusion on the merit of the case as to the guilty/ alleged to have been committed. The recommendations of the UPSC is suggestive in nature. The Disciplinary Authority is required to apply its mind to the guilt of the person charged or penalty to be imposed on due application of mind on the fact situation. As per the statutory design the Disciplinary Authority is required to share with the UPSC its views, but the final authority for imposing penalty rests with the Disciplinary Authority. It cannot decline to act and exercise its discretion and allow someone else to dictate to it. Such course of action is contrary to the statutory scheme. The rule making authority conferred only on the Disciplinary Authority the power of imposition of penalty on due application of mind by itself. Other measures,

10/1/1960

are, therefore, ultra vires of the rules and thus void. The decisive power imposing imposing penalty on the delinquent officer is only vested on the Disciplinary Authority on taking into account the report of the Inquiry Officer and the other materials on record. The statutory authority is to act on its own right and is required to exercise its own discretion. The Disciplinary Authority while passing the impugned order dated 21.6.2000 imposing the penalty of compulsory retirement only dittoed to the UPSC's findings and held the articles of charge as proved against the charged officer for the reasons mentioned in the UPSC's letter dated 2.6.2000.

7. On assessment of the materials on record it seems that the Disciplinary Authority in the instant case acted as a rubber stamp on the advice of the UPSC and therefore, the impugned order dated 21.6.2000 imposing penalty of compulsory retirement on the applicant is unsustainable in law.

8. We have also perused the report of the Inquiry Officer. The Inquiry Officer while considering the defence of the charged officer in giving treatment to non-Railway patients by giving money receipts, exhibits D-2, d-3 and D-5 he held that at best one could say that he was maintaining a semblance of a register and monthly statements and was only remitting a part of fees collection from non-Railway patients and the Inquiry Officer accordingly held that the charged officer was not maintaining truthfully and properly the registers prescribed for non-railway patients and was not truthfully depositing the amount realised from such patient patients to railway authorities as required under the rules. The Inquiry Officer in reaching the said conclusion went beyond the content of the charge alleged. The applicant was

K C Sharma

charged for misusing the Government accommodation as a private nursing home treating private outdoor patients without permission of the competent authority and accepting consultation fee from them without maintaining a register for this purpose and without depositing the said amount to the railway authorities as required under the rules. The applicant was not charged for not maintaining truthfully and properly the register prescribed for non-railway patients and for not truthfully depositing the amount realised from such patients. The Inquiry Officer thus gave his finding without providing any opportunity to the applicant to rebut this charge. The Inquiry Officer also relied upon the statement of Ms. Sadhana recorded by the investigating agency. Admittedly, Ms. Sadhana Devi was not examined and therefore, the applicant was denied with the opportunity to impeach her testimony. The Inquiry Officer, however, held that non-examination of the said witness was not fatal since Ms Sadhana Devi was the employee of the applicant and it was open for him to call her as a defence witness. It is not the case of disapproving the charges alleged. It was the Railway authority who brought the charges against the applicant and it was for it to prove by materials on record. The statement of Ms Sadhana Devi recorded by the Inspector of the CBI was all throughout challenged by the delinquent officer. It could have been ^{acted} upon by the authority only on giving adequate opportunity to the charged official to challenge or impeach the testimony, else it will be violat~~ive~~ve of the principles of natural justice. In this context it would be appropriate to recall the following observation of the Supreme Court in the case of M/s Bareilly Electricity Supply Co. Ltd. vs. The Workmen and others,

100 Wham

reported in AIR 1972 SC 330 :

" The application of principle of natural justice doesnot imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. If a letter or other documents is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. "


9. The statement recorded by the Inspector of CBI duly signed with the remark - "read over and admitted as correct", ipso facto, will not become an evidence and acted upon without providing opportunity to the charged official to challenge the veracity either by calling the witness or by confronting the documents to be charged official and get his version there. The UPSC also fell into similar error in reaching its own finding overlooking the materials on record. It also took note of materials which were not subject matter of the charge. The disciplinary authority only embraced the findings and conclusions of the UPSC. There is no material before us to show that the disciplinary authority independently was of the view that the penalty of compulsory retirement was justified. This was necessary all the more because in the reference made by the General Manager to the Railway Board he had recommended the penalty of removal from service. While the penalty imposed by the disciplinary authority is of compulsory retirement. We are unable to discern any reason why a lesser penalty was imposed then recommended by the General Manager.


10. For all the reasons stated above, the impugned order No. E(O) i-9/PU-2/NF/78 dated 21.6.2000 passed by the respondent No.1 imposing the penalty of compulsory

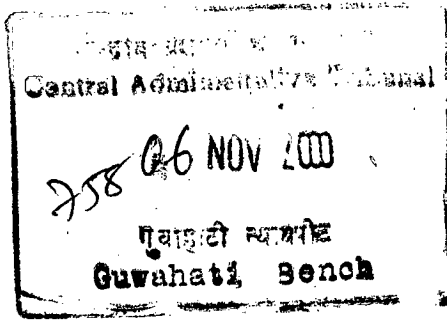
K. U. Shan

retirement upon the applicant is liable to be set aside and quashed and thus it is set aside and quashed.

11. The application is allowed. There shall, however, be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN



Ashok Bagchi

IN THE COURT OF CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI
BENCH GUWAHATI.

(An application U/s 19 of the Administrative Tribunals Act,
1985).

O. ANO. 377 /2000.

Dr. Ashok Bagchi .

... Applicant.

-Versus-

Union of India and others.

... Respondents.

I N D E X

<u>Sl.No.</u>	<u>Particulars.</u>	<u>Page No.</u>
1.	Application	1 to 24
2.	Verification	25
3.	Annexure-I	26- 27
4.	Annexure-II	28- 29
5.	Annexure-III	30
6.	Annexure-IV	31
7.	Annexure-V	32-36
8.	Annexure-VI	37-38
9.	Annexure-VII	39- 52
10.	Annexure-VIII	53- 54
11.	Annexure-IX	55
12.	Annexure-X	56- 61
13.	Annexure-XI	62- 63

Filed by :-

(Signature)
(Advocate)

*As per order
Filed by the
Applicant through
Mashed ch. Kalita
Advocate B.H.
6-11-2000*

IN THE COURT OF CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI.

(An application U/S 19 of the Administrative Tribunal Act ,
1985).

O. A. NO. _____ /2000.

Dr. Ashok Bagchi
Son of Late S. Bagchi
Resident of Railway Quarter No. W/2
Station Colony, Hojai
P.O. Hojai
District:-Nagaon
(Since compulsorily retired as
Senior Divisional Medical Officer
N. F. Railway, Hojai).

... Applicant .

-Versus-

- 1) Union of India
(Represented by the Secretary to the
Government of India, Ministry of
Railways, (Railway Board)
New Delhi .
- 2) Secretary (ESTT)
Railway Board
New Delhi .
- 3) The Secretary (S-I)
Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi .

contd....

2.

4) Central Vigilance Commissioner
Central Vigilance Commission,
Satarkta Bhawan, I. N. A. ,Block-A,
G.P.O. Complex, New Delhi .

5) General Manager
N.F. Railway, Maligaon ,
Guwahati .

6) Divisional Railway Manager
N.F. Railway, Lunding .,
District:-Nagaon .

... Respondents.

1: PARTICULARS OF THE ORDER AGAINST WHICH THE APPLI-
CATION IS MADE :-

Order No. E(O) i-99/PU-2/NF/78, dated
21.6.2000, passed by the Respondent No.1, whereby the
penalty of compulsory retirement was imposed on the
applicant .

(Annexure-XI at page 62-63).

2: JURISDICTION :-

The applicant declares that the subject matter
of the order against which he wants redressal is within
the jurisdiction of this Tribunal .

contd...

Asst. Secy. B. G. B. B.

3.

3: LIMITATION :-

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985 .

4: FACTS OF THE CASE :-

1) That the applicant passed the M. B. B. S. Examination from Gauhati Medical College and joined Railway Service as AMO (ad-hoc) on 28.4.84, at Central Railway Hospital, Maligaon. Prior to that he sat for the "Combined Medical Service Examination" in 1983, conducted by Union Public Service Commission. He was duly selected and appointed as Asstt. Divisional Medical Officer in N.F. Railway and posted at Hojai. He joined his new assignment at Hojai on 1.2.85, and he was allotted an Official Quarter No. M-2, Type-II with effect from 1.4.85. Subsequently the applicant was promoted to the rank of Senior Divisional Medical Officer and posted to the same Unit at Hojai .

2) That the applicant had inherited the Medical profession from his father who was also a Railway Doctor and retired from Hojai Health Unit as Asstt . Divisional Medical Officer . Since the date of joining service the applicant has been discharging his duties sincerely, honestly and to the best of his ability and there was no occasion when he incurred the displeasure of his superiors at my point of time .

contd...

4.

3) That the applicant was enjoying the benefit of N.P.A. @ Rs. 900/- P.M. but the applicant is entitled to go for restricted private Medical practice in terms of Railway Board Circulars No. PC-IV/87/02/326/7 dated 6.10.87. The Chief Medical Director, N.F.Railway, Maligaon, by his Circular No. H.M/186/1 dated 10.5.94 addressed to all Railway Doctors in N.F.Railway informing them of the procedure to be followed in treatment of non-Railway cases . The circular had stipulated that the Railway Medical Officers were permitted to do only restricted private practice and it also provided that the "rank non Railway cases " are not permitted any consultation but if they are brought through Railway employee then only they shall be entertained in an emergency where medical facilities in near by areas are not available. As per the circular, every Doctor was required to maintain a separate register for non-Railway cases who were being examined in an emergency as mentioned only out-patient ticket in a serial order given therein. The Divisional Hospitals were required to send a monthly return of non-Railway cases seen by the Doctors in the current month by the tenth of the following month and this monthly return should be sent to the Chief Medical Director, N.F. Railway Head Quarter, Maligaon. The circular further specified that the current practice of depositing the advance before the non-Railway cases ~~axwere~~ admitted in the Railway Hospital should continue .

contd...

5.

It would be pertinent to mention here that the note provided to Rule 201, Indian Railway Medical Manual which is quoted below would be relevant .

"Notwithstanding any of the provisions of this or any other Section of the Manual, a Railway Doctor should always bear in mind the noble traditions of his profession and in keeping with the spirit of the Code of Medical Ethics, should ever be ready to respond to the calls of the sick and the injured in an emergency ". The chapters -II of the Indian Railway Medical Manual , 1981, edition had dealt with, in details, the scope of private practice by Railway Doctor under certain given circumstances. The applicant was not required to obtain prior permission from the authority to provide examination and treatment to non-Railway patients as provided in the said chapter of the manual . It was also provided therein that the fees to be collected from non-Railway patients at prescribed rate were required to be remitted to the Railway Revenue and the said fees would be shared among the Railway administration and Doctor concerned and the Staff engaged by the Doctor as per prescribed distribution. The said manual had also provided to utilise a room of his official residence of the Doctor as consultancy room for examination and treatment of patients and the practice of sharing the fees , as stated above, realised from non-Railway patients was restored in terms of Railway Board's letter No. 88/H₁.2-1/14 dated 24.12.90.

contd...

6.

Copies of the said letters No. 88/H.2-1/14 dated 24.12.90 and No. HM/184/1 dated 10.5.94 are annexed herewith and marked as Annexure-I and II respectively .

4) That the applicant begs to state that in respect of private practice, a limited scope was allowed by the Indian Railway Medical Manual for providing treatment to non-Railway patients subject to Rules of the guidelines issued by the Railway Administration from time to time. The Railway Doctors were always required to give first preference to Railway patients and other members of their family and their near and dear ones. As stated above the Railway Doctors were not required to obtain prior permission from the Railway authorities in respect of non-Railway patients and accordingly the applicant used to obtain requisite fees at prescribed rate of Rs. 40/- for non-Railway patients in terms of the instructions issued by the Chief Medical Superintendent, Lunding vide his letter No. H/188/LM/1 dated 6.6.94. The letter further stipulated that the consultation fees of non-Railway patient was raised from Rs. 20/- to Rs. 40/- vide Railway Boards letter dated 25.3.92 .

A copy of the letter No. H/188/LM/1 dated 6.6.94 is annexed herewith and marked as Annexure-III.

contd...

cl

7.

5) That the applicant begs to state that in-terms of instructions received from the competent ~~agx~~ authority , the fees received by the applicant from non-Railway employees as private patients were duly remitted to the Railway Revenue on the basis of monthly returns in the Office of the Divisional Railway Hospital at Lunding . The applicant examined and treated 84 private patients at his consultancy room of his residential quarter between the period from 1.6.94 to 10.1.95 and the applicant duly deposited the fees received from all the 84 cases of private patients @ Rs. 40/- per patient.

(Money receipts will be produced at the time of hearing).

6) That the applicant begs to state that he was subsequently promoted to the rank of Divisional Medical Officer and was officiating as Senior Divisional Medical Officer at Hojai. In the context of the noble tradition of the profession to which the applicant belongs and the spirit of the Code of Medical Ethics, the applicant was ever ready to respond to the call of the sick and the injured in an emergency and the applicant had faced such emergent situations with responsibilities and devotion to duties .

Keeping in pace with his father, the applicant opted for a career in the Railways and as such he

contd...

8.

can not afford to indulge in any act in official discharge of his duties which may jeopardise his career .

7) That on 10.5.95, one Hareswar Das barged into the residence of the applicant when he came back home after completion of morning duties when he found that the said patient suddenly fell down on the floor of the consultancy room due to suffering of acute abdomen pain, and after a while, he started vomiting blood. The applicant, seeing the condition of the patient , examined the patient in his consultancy room and issued a prescription on his letter head . The letter head specifically contained the name of the applicant reflecting that he belonged to I.R.M.S. (Indian Railway Medical Service) and that he was functioning as Divisional Medical Officer. The applicant also received the amount of Rs. 40/- as fees from the said patient which was required to be remitted. The patient came out and all on a sudden he appeared again in the room of the applicant accompanied by a group of persons who identified themselves as C.B. I., Officials. The C. B. I. Officials immediately started interrogating the applicant and directed him to produce the currency notes that he obtained as fees from the decoy-patient, Sri Hareswar Das. The applicant accordingly handed over four ten-rupee currency notes which were seized by the C. B. I. Officials. The C. B. I. Officials ransacked all the rooms of the residential quarter and some papers kept in drawers of his desk

contd...

and some amount of Rs. 1888/- were also seized by them. The officials further opened a brief case belonging to the applicant wherein a sum of Rs. 25,000/- were there which was encashed from the L.L.C. maturity value of his father. The C.B.I. officials also did not spare the inner rooms where the applicant's wife and other members of his family were residing there. The applicant had to co-operate with the C.B.I. Officials under duress when he was enlarged on bail .

A copy of the prescription is annexed herewith and marked as Annexure-IV.

8) The applicant further begs to state that the C.B.I. had registered a case on 10.6.95, on the basis of a written complaint dated 8.6.95, lodged by the decoy-patient, Sri Hareswar Das and it was numbered as RC 14 (A)/95-SHG under Section-7 of the P.C. Act, 1988. Inspector Sri K.M. Das of C.B.I., ACB, Guwahati, was entrusted with the investigation of the case. On 10.6.95, a team of C.B.I. Officials led by Inspector K.M. Das alongwith the decoy-patient, Sri Hareswar Das and two so called independent witnesses, namely, Sri J.N. Bharali and B. Borah, both employees of H.P.C. Ltd., Jagiroad, who were lifted from Jagiroad went to the Official residence of the applicant on 10.6.95, at about 12 noon in Railway Colony at Hojai. The decoy, Sri Hareswar Das pretending to be a patient

contd...

got himself examined by the applicant, as stated above on payment of a fee of Rs. 40/- . Immediately, after the departure of the decoy-patient from the consultancy room of the applicant, the C.B.I. Officials entered into the residential premises of the applicant accompanied by the decoy and entered into the consultancy room and recovered Rs. 40/- in four ten-rupee currency notes . In course of investigation it was alleged that the applicant was drawing N.P.A. and at the same time he was treating out-door private patients at his consultancy room in his Official residence accepting fees @ Rs.40/- per patient without maintaining proper records/registers containing name and address of the patients indicating whether they were Railways or non-Railway patients and whether the non-Railway patients were relatives of Railway employee or not and also whether the non-Railway patient accompanied by Railway employee. It was further alleged that the applicant was misusing his Official residence by converting the same into a private nursing home. The Investigating Officer, on 10.6.95, during the search and trap operation, recorded the statements of the decoy-patient, Sri H. Das ,who was also the complainant, in the Criminal Case, as stated above and Mrs. Sadhana Devi daughter of Sri B.C.Acharjee who was the private Assistant to the applicant. It would be relevant to point out that the decoy-patient, Sri H. Das subsequently died. The statements of Sri J.N. Bharali and Sri B. Borah who were lifted from H.P.C. Ltd., Jagiroad were also

contd...

recorded behind the back of this applicant. The applicant, thereafter, came to know that the C.B.I., did not like to proceed with the Criminal Case No. RC 14(A)/95-SHG, as sufficient evidence was not forthcoming and as such the C.B.I. advised the Railway Administration to initiate disciplinary proceedings against the delinquent (present applicant) but the advice was not communicated to the applicant.

9) That, thereafter, the applicant received, on 18.4.97, the memorandum of charge sheet No. E/74/GAZ/347/Con, dated 2.4.97, under Rule-9 of the Railway Servants (Discipline and Appeal) Rules, 1968, issued by the General Manager, N.F. Railway, Maligaon (Respondent No.5) whereby the applicant was informed that an enquiry under Rule-9 of the said Rules was proposed to be held against the applicant. The articles of charges, the statements of imputation of misconduct, the list of documents by which and the list of witnesses by whom the charge against the applicant was going to be sustained were also annexed with the charge memorandum.

A copy of the said memorandum of charge sheet dated 2.4.97 is annexed herewith and marked as Annexure- V.

10) That the applicant, immediately on receipt of the charge memorandum, on 23.4.97, submitted a

contd...

12.

representation to the General Manager, N.F. Railway (Respondent No.5), praying for copies of the documents, listed in Annexure-III, of the charge memorandum. The applicant also prayed for copies of the statements of witnesses recorded earlier. In response to the said application the applicant was furnished with copies of some documents referred to in Annexure-III. Some of the essential documents were left out without assigning any reasons.

11) That the applicant submitted the written statement in defence on 12.5.97, to the disciplinary authority categorically denying the charges even without getting the copies of the statements of witnesses and other relevant documents till then. It was also pointed out that the copies of the documents which had since been supplied to the applicant were all un-authenticated although all such documents were required to be attested by the disciplinary authority.

Copy of the said written statement of defence dated 12.5.97 is annexed herewith and marked as Annexure-VI.

12) That, thereafter, the disciplinary authority had appointed Sri R.K. Bajaj, Commissioner of Departmental Inquiries, Central Vigilance Commission, New Delhi as Inquiry Officer and Sri P.K. Deb Kanungo, DSP, CBI, ACB, Guwahati appointed as Presenting Officer to conduct the

contd...

case on behalf of disciplinary authority by order dated 28.1.98 issued by the General Manager N.F. Railway Maligaon (Respondent No.5).

13) That the Inquiry Officer fixed regular hearing on 7.5.98 and 9.5.98, but it had to be adjourned till 21.7.98 . The regular hearing was finally held on 21.7.98 at Guwahati which was attended by the Presenting Officer and Charged Officer (Present applicant) and his defence assistant . During the enquiry , five prosecution witnesses were examined by the Presenting Officer and they were cross-examined by the Charged Officer (applicant). Out of these five witnesses, three were C. B. I. Official, namely, Sri K. M. Das, Inspectors, C. B. I., Guwahati, Sri T. L. Mang , Sub-Inspector, C. B. I., Guwahati (posted to Silchar at the relevant time) and Sri M. Sarania , Inspector, C. B. I., Guwahati , respectively. The so called two independent witnesses included Sri B. Borah and Sri J. N. Bharali who were employees of H. P. C. Ltd., Jagiroad. The Presenting Officer could not produce two vital witnesses, namely, Sri Hareswar Das, decoy-patient and Miss Sadhana Devi who was working as Private Assistant to the Charged Officer (applicant). The Presenting Officer stated that Sri Hareswar Das decoy-patient expired while Miss Sadhana Devi was not made available to attend the inquiry. The non-examination of these two witnesses deprived the applicant of his right to cross examination. The Inquiry Officer also decided to drop this two witnesses .

It would be relevant to point-out that the statements of Sri Hareswar Das, the decoy-patient recorded by Sri K.M. Das, Inspector, C. B. I., ACB, Guwahati on 10.6.95, in connection with the investigation of case No. R.C. 14 (A)/95 SHG was taken on record of the proceedings by the Inquiry Officer and marked as ext. 23 and similarly the statement of Miss Sadhana Devi was taken on record and marked as ext. S-24. These two statements were taken on record without corroboration/authentication by the witness concerned and as such they can not constitute any evidence against the Charged Officer (applicant).

At the closure of the prosecution case, the Charged Officer (applicant) denied the charges and was subjected to general examination by the Inquiry Officer. The Charged Officer also submitted his written defence as provided U/S 9 (19) to the Inquiry Officer.

14) That, as directed by the Inquiry Officer, the applicant had sent his written brief to the Inquiry Officer on 30.7.98 which was duly received by the Inquiry Officer, New Delhi, on 6.8.98. The Presenting Officer also submitted his written brief to the Inquiry Officer with a copy endorsed to this applicant which could not improve the case of the prosecution.

15) That, thereafter, the applicant received the Inquiry Report dated 21.10.98, submitted by Sri R.K. Bajaj, Commissioner of Departmental Enquiries (Inquiry

15.

Officer) from the General Manager(P) which he received on 1.2.99, under cover of Office memo No. E/74/GAZ/347/Con, dated 27.1.99 , from General Manager(P). The applicant was further informed that the disciplinary authority would take suitable decision after considering the said enquiry report . He was further directed to submit a representation to the disciplinary authority with regard to the enquiry report .

Copy of the said enquiry report of Inquiry Officer dated 21.10.98 is annexed herewith and marked as Annexure-VII.

16) That on receipt of the enquiry report, the applicant, on 26.3.99, submitted a prayer to the Respondent No.5 praying for a copy of the advice tendered by the CBI/CVC on the enquiry report submitted by Sri R.K. Bajaj, Inquiry Officer. The Respondent No.5, by his office memorandum No. E/74/GAZ/367/Con, dated 16.4.99 , intimated the applicant that his request for supply of CVC's advice could not be acceded to inasmuch as it was not mandatory to supply copy of any document which was not a part of the "relied upon document" or which had not been allowed as an additional document. The applicant was further advised to submit a representation against the finding of the Inquiry Officer within ten days from the date of receipt of that letter, failing which it would be presumed that the applicant did not have any further submission to make and the case would be decided accordingly. The applicant duly submitted his representation on 13.5.99, against the findings of the Inquiry Officer.

contd...

The applicant begs to state that no copy of the representation dated 13.5.99 was retained by him and as such it could not annexed .The respondents may kindly be directed to produce the same before this Hon'ble Tribunal at the time of hearing .

Copy of the prayer dated 26.3.99 submitted by the applicant and the memo dated 16.4.99 addressed by the Respondent No.5 to the applicant are annexed herewith and marked as Annexure-VIII and IX respectively .

17) That, thereafter, the Secretary to the Govt. of India, Ministry of Railway (Railway Board) New Delhi, (Respondent No.1) by his letter No. E(O) I-99/PU-2/NF/-78, dated 13/25.10.99, requested the Union Public Service Commission (the Respondent No.3) to convey the advice of the Commission in the matter of taking the DAR action against the applicant and the Union Public Service Commission (Respondent No.3) vide their letter No. F.3/290/99-SI dated 2.6.2000, conveyed its advice that the "Commission consider that, the end of justice would be met in this case if the penalty of compulsory retirement is imposed on the applicant ".

Copy of the letter dated 2.6.2000 containing the advice of the Union Public Service Commission is annexed herewith and marked as Annexure-X .

contd...

17.

18) That, thereafter, the applicant became shocked and surprised to have received the order No.E(O) I-99/ - PU-2/NE/78 , dated 21.06.2000 issued by the Joint Secretary (ESTT) Railway Board whereby the President of India, agreeing with the findings of the Union Public Service Commission, have held that the articles of charges as proved against the applicant for reasons recorded in Union Public Service Commission's letter dated 2.6.2000 and imposed the penalty of compulsory retirement on the applicant .

Copy of the said impugned order dated 21.6.2000 is annexed herewith and marked as Annexure- XI .

19) That, being highly aggrieved by the said impugned order, the applicant is now approaching this Hon'ble Tribunal for reliefs .

It will be pertinent to mention here that the impugned order was passed by the President of India and as such no appeal would lie in terms of Rule 17(I) of the Railway Servants (Discipline and Appeal) Rules, 1968 .

5: GROUND FOR RELIEF WITH LEGAL PROVISIONS:-

I) For that, the investigation were initially entrusted to the C.B. I. and when a prima-facie case

contd...

could not be established against the applicant, the C.B.I. advised the Railway authorities to initiate DAR action against the applicant which apparently showed that the Disciplinary Authority did not form its own opinion but was influenced by the advice of the CBI. The Disciplinary Authority issued the charge memorandum against the applicant with a closed mind and as such the entire proceedings culminating in imposition of the penalty of compulsory retirement on the applicant are illegal and void and liable to be set aside.

II) For that, the statements of Sri Hareswar Das (who subsequently expired), decoy-patient, and Miss. Sadhana Devi recorded on 10.6.95, during the search, were taken on record as Ext.S-23 and S-24 respectively, although their statements were not listed in the charge memorandum. The copies of the statements were denied to the Charged Officer. Moreover, these two statements were not proved/authenticated by the makers or by competent witnesses and as such these documents could not constitute any evidence against the applicant. No document which has not been disclosed to the applicant could be relied on by the department and as such this is clearly a case based on perverse findings recorded by the Inquiry Officer without supported by any evidence. Producing documents without presenting some one to prove them amounts to denial of cross-examination to the other side causing serious prejudice to the defence of

contd...

the applicant and as such the imposition of the penalty of compulsory retirement is bad in law and liable to be set aside .

III) For that, it is the duty of the department to prove the allegation levelled against the applicant by producing reliable evidences and the Inquiry Officer committed a serious illegality by holding that the applicant failed to disprove the charge by producing Miss Sadhana Devi as his witness and as such the action taken by the authority is bad in law and liable to be set aside.

IV) For that, the Inquiry Officer disregarded material witnesses and based his findings on extraneous considerations drawing surmises and deductions and as such the action taken against the applicant on the basis of such a perverse finding is bad in law and the impugned order is liable to be set aside .

V) For that, the inquiry report is legally required to be properly reasoned and speaking specially when the report is likely to result in loss of livelihood and the absence of reasons shows non-application of mind vitiating the entire proceedings and the resultant imposition of penalty on the applicant is bad in law and liable to be quashed .

VI) For that, the inquiry report also suffered from the vices of arbitrariness and bias inasmuch as

the Inquiry Officer did not record any reason as to why various contentions (defence pleas) raised by applicant did not appeal to him. In fact, the inquiry report is the narration of the case of the department completely ignoring the stand taken by the applicant and as such the action of the authority is bad in law and the same is liable to be set aside.

VII) For that, the charges levelled against the applicant can not be held proved on the basis of F.L.R. of the Criminal case in absence of positive evidence and as such the action of the authority is bad in law and liable to be quashed.

VIII) For that, the charges can not be held proved on the basis of photographs taken by the CBI, at the time of trap, specially, when the photographer was not examined with negatives before the Inquiry Officer and as such the action of the authority is bad in law and liable to be set aside.

IX) For that, the disciplinary authority is required to apply its mind to the facts and circumstances and records of the case and then records its own findings on each imputation of misconduct giving reasons for its findings to show that it has applied its mind to the case and that not having been done, the entire proceedings and the resultant imposition of penalty are bad in law and liable to be set aside.

contd...

X) For that, the Union Public Service Commission, while tendering advice to the Respondent No.1, should not have specified the particular penalty of compulsory retirement specially when they have no role to play in the matter of imposing penalty to the applicant and the disciplinary authority, by following what the Union Public Service Commission has suggested, imposed the penalty of compulsory retirement without recording any reasons for such imposition without proper application of mind and as such the action of the authority is bad in law and liable to be set aside.

XI) For that, the inquiry was conducted on the basis of misappreciation of facts and circumstances of the case whereby disciplinary authority, on the basis of such findings, imposed penalty of compulsory retirement is in flagrant violation of the Railway Servant. (Discipline and Appeal) Rules, 1968 and principle of "Natural Justice" and as such the action of the authority is bad in law and liable to be set aside.

XII) For that, the penalty imposed by the authority is grossly disproportionate to the gravity of misconduct alleged and as such this is a fit case where this Hon'ble Tribunal will exercise jurisdiction and grant relief.

XIII) For that non-examination of important witnesses, namely, Hareswar Das, decoy-patient and Miss Sadhana Devi by the Enquiry Officer had caused, in the

attending facts and circumstances of the case, serious prejudice to the delinquent (applicant) and as such the entire proceedings culminating in imposition of the impugned penalty is bad in law and liable to be set aside on this ground alone .

XIV) For that, the authority's refusal to supply the copies of second stage documents to the appellant could not prepared a final defence against the inquiry report submitted by the Inquiry Officer. The order of compulsory retirement by way of penalty imposed upon the applicant for his misconduct is contrary and not in accordance with the rules of natural justice which is prerequisite before imposing the penalty and as such the action of the authority is arbitrary, illegal and not sustainable in law and the impugned order is liable to be set aside and exonerate the applicant from the charges levelled against him .

XV) For that, in any view of the matter, the action of the authorities imposing major penalty of compulsory retirement upon the applicant at the age of 40 years is in contravention to the law and procedure and as such the impugned order of penalty is liable to be set aside and quashed .

contd...



6 : DETAILS OF REMEDY EXHAUSTED :-

The applicant has no remedy under the Rules inasmuch as the penalty was imposed by the President of India .

7 : DECLARATION :-

That applicant declares that he has not previously filed any application/writ petition or suit whatsoever regarding the matter in respect of which this application has been made before any Court of law or any other authority or any other Bench of this Hon'ble Tribunal and no such application/writ application or suit is pending and further declares that the applicant filed no appeal before the authority as there is no such provision to file departmental appeal in the instant case.

8 : PRAYER :-

It is, therefore, prayed that your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the impugned order of penalty dated 21.6.2000 (Annexure- XI) should not be set aside and quashed as not sustainable in law and after perusing the causes shown,

contd...

24.

if any, and hearing the parties, set aside and quash the impugned order dated 21.6.2000 (Annexure- XI) and direct that the applicant be reinstated in service forthwith and/or pass any other order/orders as your Lordships may deem fit and proper so as to grant proper relief to the applicant .

It is, further prayed that your Lordships would also be pleased to direct that the applicant be allowed to retain the official quarters allotted to him till this application is finally disposed of by this Hon'ble Tribunal .

And for this act of kindness, the applicant , as in duty bound, shall ever pray .

9 : Interim order .

10 : Does not arise.

11: Postal order No. 2G, 503815 dated 6.11.2000 of Guwahati Post Office is annexed.

contd...

25.

VERIFICATION

I, Dr. Ashok Batchi, Son of Late S. Bagchi, aged about 40 years, resident of Railway Quarter No. M/2, Station Colony, Hojai, P.O. Hojai, District:-Nagaon, Assam, do, hereby verify that the statements made in paragraphs Nos. 1, 2, 5, 6, 7, 8, 12, 13 and 14 are true to my personal knowledge and the statements made in paragraphs No. 3, 4, 9, 10, 11, 15, 16, 17, 18, 19 are believed to be true on legal advice and that I have not suppressed any material fact.

Place :- *Guwahati*

Date :- 6-11-2k

Ashok Batchi
SIGNATURE OF THE APPLICANT.

204
208
210
note to 210

-30-

Subject : Sharing of fees realised from non-railway patients for treatment in Railway Hospitals amongst doctors and Para-Medical staff.

No. 88/11/2-1/14, dated 24.12.1990

Consequent upon the recommendations of the 4th Pay Commission regarding grant of Non-Practising allowance to Doctors of Indian Railway Medical Services, the practice of sharing of money realised from outsiders for their treatment in Railway hospitals was discontinued. Since then there has been representations from Railways for reviving of sharing. After careful consideration of the matter the Ministry of Railways have decided to restore the practice of sharing of fees realised from non-railway patients. The incidence of treatment of outsiders in Railway Hospitals should be kept at the minimum and should be normally limited to near and dear ones of serving and retired railway employees.

The sharing of fees will be in respect of investigation treatment, delivery/operations, handling and service charges and doctor visit and nursing where specifically charged. There will be no sharing of any charges recovered for bed/cabin ambulance charges, theatre charges (distinct from operation charge). Labour room charge (different from delivery charge) or charges recovered under RELHS or PRECHS.

The sharing of fees will be as under :

- (i) The total amount realised from outsiders should be credited to Railway Revenues first.
- (ii) 80 per cent of the amount so realised should be retained by the railway.
- (iii) Balance 20 per cent will be available for sharing amongst the doctors/hospital staff as under :

(a) Doctors	40%
(b) Para-Medical Group 'B' or 'C' staff	35%
(c) Ministerial and other Group 'C' staff in separate functions like Laundry, diet, ambulance, etc.	5%
(d) Group 'D' staff	20%

The proportion allotted to the various categories should be divided equally among members of the category.

Attested by

Chavila
6-11-212
Advocate

336

RAILWAY BOARD'S ORDERS

The Hospital office should prepare a statement of shares of individual medical officers and members of the staff as per the above, and after approval by the officer incharge of the Hospitals should issue Pay Orders to the individual staff. Copies of share money should be sent to the concerned Pay and Accounts officers to enable them to make the necessary adjustment in income-tax deductions, etc.

This issues with the concurrence of Finance Directorate of Ministry of Railways.

This is in supersession of all earlier instructions issued from time to time on the above subject.

Attested by
Kalib
6-11-2K
25/00000

x

D-4 -28-

ANNEXURE-II

N.F. Railway.

No. HM/184/1

Office of the
CMD/Maligaon.

Dated 10. 5. 94.

To
Dr. A. Bagchi
Dno / Hospal

Re: Treatment to the non-Railway patient.

A case has come to my notice of a doctor having treated a non-Railway patient by collecting fees in cash instead of money receipt. The Doctor was put to considerable inconvenience which was avoidable.

I have observed that the record maintained by the Doctor working in H.U./Hosp. and attending non-Railway cases in an emergency is not in order. The money which is realised for consultation fee is either not deposited or there is delay in depositing it. Therefore, it is suggested to adhere to the following guidelines with the result the Doctor is not put in to trouble condition as well as there is no loss to railway revenue also.

1. The Railway Medical Officers are permitted to do only restricted private practice.

Blank non-railway cases are not permitted to any consultation but if they are brought through Railway employee then only they should be entertained in an emergency where medical facilities in nearby area are not available.

2. The OPD ticket which is made after examining the patient and medicines are prescribed, the details regarding the patient's name, C/o name and Railway employee's address, diagnosis etc. should be written and the Doctor should also write on the ticket that consultation fees - amount realised.

3. Every Doctor is requested to maintain a separate register for non-Railway cases who are being examined in an emergency with details as mentioned on the out patient ticket in a serial order as given below:-

SN	Name of patient	Age/sex	C/O name & address	Diagnosis	Amount realised	Remarks
----	-----------------	---------	--------------------	-----------	-----------------	---------

The amount should be deposited to the Railway revenue on the next working day and the receipt

Attested by
Chalika
6-11-2k
Advocate

number should be entered in the remarks column.

5. CMSs/MSS/IC of the Divisional hospital should send to CMD/HQ the monthly return of non-railway cases seen by the Doctors in the current month by 10th of following month.

The current practice of depositing the advance before the non-Railway cases is admitted in the Railway hospital should continue.

Please acknowledge receipt of the same.

(Dr. S.C. Jain)
CHIEF MEDICAL DIRECTOR
N.F.RLY./MELIGAON

Copy to:-

- 1. SDGM)
 - 2. AGM)
- for information.

(Dr. S.C. Jain)
CHIEF MEDICAL DIRECTOR

[2-1] - 30 -

ANNEXURE - III

NORTHEAST FRONTIER RAILWAY

Office of the
CFIS's Office
Lumding, dated 6.6.94.

No. H/100/LM/1

To,
Dr. A. Jagchi
DMO/HJI.

Sub : Treatment of Non- Rly Patient.

Ref : Your No. NonRly caso/1/94 dt. 1.6.94.

You have realised an amount of Rs. 20.00 as fortnight consultation fees from Srikr. Rabi Das as a non- Rly patient during the month of May/94. The fees fortnight consultation of non-Rly Patient was revised as Rs. 40.00 vide Rly. Board's letter No. 89/H/6-1/2 dated 25.3.92 which was sent to you vide this office letter No. H/100/LM/6 dated 4.6.92.

This is for your information and guidance henceforth.

[Signature]
Chief Medical Supdt/Lumding.

BM/ 6.6.

Attested by
[Signature]
ADVOCATE G-11-2K

Dr. A. Bagchi M.B.B.S.(Gau)
DMO IRMS GOLD MEDALIST
Regd. N. 9255 A.M.C
Ex. House Surgeon of the Deptt. of
Obstetrics and Gynecology

22200
22167
HOJAI-782435
(Assam)
Date 16/6 1995

MR. H. Das An 4570

(1)

- AC 3000A 10000
- 3m in B.D. 93.4
- (1) Que. Med. & Surgery 1-11 x(10)
- (2) Que. Gen. Med. 2-11 x(12)
- (3) M.O. 4 MRS 60 30.4.95
- (4) 3000A 10000 1-11 x3

10/6

Attested by
Blacia
6-11-2K
AGVOSTA

NORTHEAST FRONTIER RAILWAY.

OFFICE OF THE
GENERAL MANAGER.
GUMATI-781011.

Dated 2-4-97.

No. E/74/GAZ/347/Con.

M E M O R A N D U M.

The undersigned propose(s) to hold an inquiry against Dr. A.K. Bagchi, Sr.DMO/Hojai/N.F. Railway under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each articles of charges is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed. (Annexure-III & IV).

2. Dr. Bagchi is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact CVO/MLG, N.F. Railway, Maligaon immediately on receipt of this Memorandum.

3. Dr. Bagchi is further informed that he may, if he so desires, take the assistance of any other Railway Servant (who satisfies the requirements of Rule 9(13) of the Railway Servants (Discipline & Appeal) Rules, 1968 for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant(s), Dr. Bagchi should obtain an undertaking from the nominee(s) that he(they) is(are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other cases if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned, along with the nomination.

4. Dr. Bagchi is hereby directed to submit to the undersigned a written statement of his defence within ten days of receipt of this Memorandum, if he does not desire to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also -

- (a) to state whether he wishes to be heard in person; and
- (b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

Contd....2.

Attested by
Chakraborty
Advocate
5-11-21

-: 2 :-

5. Dr. Bagchi is informed that an inquiry will be held only in respect of those articles of charges as are not admitted. He should, therefore, specifically admit or deny each article of charge.
6. Dr. Bagchi is further informed that if he does not submit his written statement of defence within the period specified in para 4 or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, or the order/directions issued in pursuance of the said rule, the Inquiring Authority may hold the Inquiry ex-parte.
7. The attention of Dr. Bagchi is invited to Rule 20 of the Railway Services (Conduct) Rules, 1966, under which no Railway Servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Dr. Bagchi is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.
8. The receipt of this Memorandum may be acknowledged.

Encls:- Annexures-I, II,
III & IV.

S. P. Mehta 2/4/97
(S.P. MEHTA)
GENERAL MANAGER.

To
Sr. Dr. A.K. Bagchi,
Sr. DMO/Hojai.

(Through DRM/LMG.)

ANNEXURE-I.

Article of charge against Dr. A.K. Bagchi,
Sr.DMO/Hojai (N.F. Railway) Health Unit.
.....

Dr. A.K. Bagchi posted and functioning as Sr. DMO/N.F. Ry./HJI Health Unit since May'1984, has been mis-using his Govt. accommodation as a private Nursing Home treating private outdoor patients without permission of the competent authority and has been accepting consultation fees from them without maintaining a Register for this purpose and without depositing the amount to the Railway Administration as provided for under the rules.

By the above act Dr. Bagchi has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened the provisions of rule 3(i)(i), (ii) & (iii) of the Railway Service (Conduct) Rule, 1966.

S. P. Mehta 2/4/97
(S.P. MEHTA)
GENERAL MANAGER.

a) With no per-
b)
Misuse of Govt Accom as a private Home
c)
Acceptance of Consultation fees without maintaining Register
d)
With no deposit

2

AT

Statement of imputation of misconduct in support of article of charge against Dr. A.K. Bagchi, Sr. DMC/N.F. Railway/Hojai.

Dr. A.K. Bagchi was posted and functioning as Sr. DMC/HJI Health Unit/N.F. Railway since 28.5.84.

Dr. A.K. Bagchi, Sr. DMC/HJI indulged in private practice in his Railway accommodation at Railway Quarters No. M-2 located in Railway Colony/HJI which was allotted to him by the Railway Administration purely for his residential purpose. Dr. Bagchi did not obtain any permission from the competent authority to treat private patients at his Railway Quarter treating the accommodation as a private Nursing Home. In terms of para-5 of Railway Board's letter No. PC-IV/87/IMP/17 dated 6.10.87, with the revision of rates of Non-Practicing Allowance in favour of Railway Doctors, the extant orders for restricted private practice was modified to the extent that fees charged for medical attendance on the families of Railway employees, passengers who take ill while on travelling and outsiders who may be admitted as indoor patients or for surgical treatment in Railway Hospitals, should be remitted by the concerned Doctor to Railway Revenue. For the above purpose the Doctor is supposed to maintain a Register and remit the fees so collected at the first available opportunity. From the above instructions it transpires that for any Railway Doctor drawing Non-practicing Allowance, there is no provision for private practice beside the cases mentioned above.

To unearth the malpractice of Dr. Bagchi, a trap was laid on 10.6.95 consisting of CBI Officials and 2 independent witnesses of Hindustan Paper Corporation Ltd. (NPM), Jagiroad and one Shri H. Das, a private person. On the said day the trap laying team visited the Railway Quarters No. M-2 at HJI Railway Colony where Dr. A.K. Bagchi was found examining many male and female patients (both Railway and non-Railway) Shri H. Das pretending to be a patient got himself examined by Dr. A.K. Bagchi who demanded and accepted Rs. 40/- (Rupees forty) for medical examination and treatment of Shri H. Das. Thereafter the trap laying team recovered the currency notes of the said amount from the possession of Dr. Bagchi at his residence.

From the above it was substantiated that Dr. Bagchi has been using his Railway accommodation for treatment of both indoor and outdoor patients (both Rly. and non-Railway) since long and had been continuously doing private practice against the laid down rule of the Railway.

By the above acts Dr. A.K. Bagchi has failed to maintain absolute integrity, devotion to duty, and also acted in a manner unbecoming of a Railway servant thereby contravening the provisions of Rule 3(1)(i), (ii) & (iii) of Railway Service (Conduct) Rule, 1966.

S.P. Mehta 2/4/97
(S.P. MEHTA)
GENERAL MANAGER.

List of documents on the basis of which article of charges framed against Dr. A.K. Bagchi, Sr. DMO/N.F. Railway.

- 1. F.I.R. case No. PC.14(A)/95-SHG. /
- 2. Pre-trap memorandum. } dt. 10.06.95;
- 3. Post-trap memorandum. }
- 4. Medical prescription in respect of of Shri H. Das, dated 10.06.95.
- 5. Photographs of Qtr.No. M-2.
- 6. Rough sketch of Qtr. No. M-2 dt. 10.6.95.
- 7. G.C. note Rs. 10/- denomination bearing Nos.
 - 26 N 200584
 - 26 N 200585
 - 26 N 200586
 - 68 G 681973
 Rs. 40/- only.
- 8. Search list dt. 10.6.95.
- 9. Bond & Bail Bond in respect of Dr. A.K. Bagchi, dated 10.6.95.
- 10. Sealed solution bottle marked as M-3 and D-3.
- 11. Circular No. E/107/III/5/1(0) dt. 30.3.90
- 12. Circular No. PC IV/87/02/326/7 dt. 6.10.87.
- 13. Confidential letter No. Z/Vig/68/2/1/95(0) dated 18.7.95.
- 14. Letter No. E/227/III/175-P.III(0) dt. 27.4.84.
- 15. Letter No. 84/E(GR)/II/7/17 dt. 23.2.85.
- 16. Letter No. E/283/III/130-0 III(0) dt. 7.7.85.
- 17. O/Order No. 4/85 dt. 12.4.85 & 6/85 dt. 12.4.85.
- 18. Annexure-'B' in respect of Dr. A.K. Bagchi.
- 19. One diary book (written patient names).
- 20. C.S.F.L. report will be submitted as soon as the report is received.

ANNEXURE-IV.

List of witnesses.

- 1. ✓ Shri Hareswar Das, PO & PS. Kathatolisarali, Dist. Nagaon. ✓
- 2. ✓ Shri J.N. Bharali, Asstt. Vigilance Deptt. HPCL, Jagiroad. ✓
- 3. ✓ Shri B. Borah, Asstt. (P&A), HPCL, Jagiroad. ✓
- 4. ✓ Miss Sadhana Devi, D/o. Late Bijendra Chandra Acharjee, Golaghatia Basti, PO & PS. Hojai, Dist. Nagaon.
- 5. ✓ Shri M. Sarania, Inspector.
- 6. ✓ Shri T.L. Mang, Sub-Inspector. } ANNEXURE CBI Guwahati
- 7. ✓ Shri K.M. Das, Inspector. } Branch.

Attested by
[Signature]
Advocate

[Signature]
(S.P. MEHTA)
GENERAL MANAGER

ANNEXURE-VI

From: Dr. A. K. Bagchi,
Sr. DMO/Hojai.

To
The General Manager,
N.F. Railway, Maligaon,
Guwahati-11

Dated, 12.5.97

Sir,

Sub:- Statement of defence.

Ref:- Major penalty charge memorandum No.E/74/GAZ/
347/Con dated 2.4.97 received on 18.4.97.

1. In terms of the above charge memorandum, I have been informed that an inquiry is proposed to be held under Rule 9 of RS(D&AP Rules, 1968, against the undersigned into allegations brought out vide Annexures I and II, *ibid*. Since in terms of Rly. Board's extant orders copies of relied upon documents cited in Annexure-III of the charge memorandum are required to be supplied along with the charge memorandum itself and since no such copies were enclosed with the memorandum I had sought for supply of the same under my application dated 23.4.97. In response thereto I have been supplied with the following documents:

- i) Sl.Nos. 1 to 4 of Annexure III;
- ii) Sl.No.5, *ibid*. Xerox copies of photographs have been supplied which are indistinct, instead of photographic prints;
- iii) Sl.No.6, 8, 9, 11-15, *ibid*;
- iv) Sl.No.16, purporting to be a letter No.E/283/111/130-O III(O) dated 7.7.85, instead copy of an office order No.E/283/111/130-PVIII(O) dt.7.1.85 has been supplied;
- v) Sl.No.17, *ibid*, mentions O/order No.4/85 dt.12.4.85 and 6/85 dt.12.4.85 but only O/order No.4/85 dt.12.4.85 has been supplied.
- vi) Sl.No.18, *ibid*;
- vii) Sl.No.19, *ibid*, mentions a diary book, but only two sheets have been supplied; and
- viii) In regard to Sl.No.20, *ibid*, it is mentioned that CSFI report would be submitted as soon as the report is received.

In addition to the above, a calendar of evidence, documentary and oral is also supplied.

2. The undersigned had also sought copies of statements of witnesses in his application dated 23.4.97, but the same have not been supplied.

3. From the documents supplied it is seen that neither the charge memorandum nor its annexures bear the seal of the disciplinary authority beneath his signature, name and designation. The copies of documents supplied also are unauthenticated and unattested. In terms of extant orders all the copies of documents are required to be attested by the disciplinary authority.

4. From Sl.No.1 of Annexure III which is F.I.R. dated 10.6.95 it is seen that it was registered under section 154 Cr.P.C. on the basis of a written complaint lodged by one Shri Hareswar Das and a criminal case u/s 7 P.C.Act, 1988 No.RC.14(A)/95-SHS was registered against the undersigned. The undersigned was also made to furnish a security of Rs.5,000/- on bail bond (Sl.No.9 of Ann.III). It is not known whether this departmental proceeding would run parallel to the criminal case or the criminal charge has been dropped. If the criminal charge has been dropped I have not been intimated about the same and the discharge of my liability under the bail bond. This aspect may kindly be clarified so as to facilitate future course of action.

Attested by
(Signature)
Advocate
6-11-97

(Contd.....2)

(2)

5. However, in respect of the charges, I submit that since an inquiry is proposed to be held into the charges framed against me, at this stage I would suffice it to say that the allegations are based on imagined facts and the allegation of contravention of the provisions of Rule 3(1)(i)(ii)&(iii) of Railway Services(Conduct) Rule 1966 is absolutely misconceived.

The charges are denied.

6. However, I would request you to kindly arrange to supply the copies of documents not supplied and also kindly supply photographic prints of the photographs cited in Sl.No.5 of Annexure III of the charge memorandum, to enable me to prepare for the inquiry.

Thanking you,

Yours faithfully,

(Dr. A. K. Bagchi)
Sr.DMO/Hajai.

No. E/74/GAZ/347/Con.

Maligaon, dated 27-1-99.

To
Dr. A.K. Bagchi,
Sr. DMO/Hojai.

1/2/99

Through ~~DRM/IMG.~~

why 1/2/99

Sub: Inquiry Report.

The Inquiry Report of Inquiry Officer (Shri R.K. Bajaj, CDI/NDLS) is enclosed. The Disciplinary Authority will take suitable decision after considering the Report.

If you wish to make any representation or submission, you may do so in writing to the Disciplinary Authority within 15 days of receipt of this letter.

DA:-1 in 7 pages.

M. Brahma
(M. BRAHMO)
DY.C.P.O.(G).
for GENERAL MANAGER (P).

Attested by
Shri
AGVOCAL
1-11-2K

Ho. 38/REB/2(4)
Government of India
Central Vigilance Commission
10A, Jammagar House
Akbar Road, New Delhi

Subject: Departmental Inquiry against Dr. A.K. Bagchi, Sr.
D.M.O., N.F. Railway.

R E P O R T

1. Introduction

1.1 In terms of Rule 9 of Railway Servants (D&A) Rules, 1968 by order No.E/74/GAZ/347/Con. Dated 28.1.98 issued by General Manager, Northeast Frontier Railway, I was appointed as Inquiry Officer to inquire into charges framed against Dr. A.K. Bagchi, Sr. DMO/Hojai/NF Railway. By another order of even number and date from the same file, Shri P.K. Deb Kanungo, Dy.SP, CBI, Guwahati was appointed as the Presenting Officer.

1.2 The preliminary hearing held on 7.4.1998 was attended by PO but the CO asked for leave of absence because he was not well. During this hearing, schedule for various activities was laid down and RH was fixed for 7.5.98 and 8.5.1998. But the regular hearing had to be adjourned two times, once because witnesses did not come and again because CO did not attend because his father had expired. In view of the fact that some private witnesses had to be examined, as requested by PO, regular hearing was fixed to be held at Guwahati on 21.7.98.

1.3 The RH was finally held on 21.7.98 at Guwahati and was attended by PO, CO and his Defence Assistant. During the hearing 24 listed documents (ExS-1 to S-24) and five defence documents (ExD-1 to D-5) were taken on record and five prosecution witnesses were examined. The PO informed that Sh H Das, the decoy-patient had since expired, and Miss Sadhana Devi had not come to attend the RH. Accordingly he decided to drop these two witnesses. At the close of prosecution case, the CO denied the charges and was subjected to a general examination. The PO's written brief was received on 31.7.98 and CO's written brief was received on 6.8.98.

5 witness
24

RH held on 21.7.98

500

24 Listed Docs

5 Defence D & A

Attested by
[Signature]
6/11/98

2. Articles of Charges

2.1 In the articles of charges it has been alleged that "Dr. A.K. Bagchi posted and functioning as Sr. D.M.O./N.F. Rly/HJI Health Unit since May' 1984, has been misusing his Government accommodation as a private Nursing Home treating private outdoor patients without permission of the competent authority and has been accepting consultation fees from them without maintaining a Register for this purpose and without depositing the amount to the Railway Administration as provided for under the rules."

2.2 By the above act Dr. Bagchi has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened the provisions of Rule 3(1)(i), (ii) & (iii) of the Railway Services (Conduct) Rules, 1966.

3. Brief statement of case of Disciplinary Authority

3.1 The department has stated that, since May 1994, Dr. Ashok Bagchi was functioning as Sr. DMO at NF Railway Health Unit at Hojai. And he was drawing non-practicing allowance of Rs. 900/- per month. For use as his residence, he was allotted railway accommodation No. M-2 located in Railway Colony at Hojai.

3.2 In terms of Railway Board Circular No. PC-IV/87/02/326/7 dated 6.10.87 extant orders for restricted private medical practice were modified and it was decided that fees charged for medical attendance on the families of railway employees, passengers who take ill while on travel and outsiders who may be admitted as indoor patients or for surgical treatment in railway hospitals, should be remitted by concerned doctor to Railway revenues. In such cases where non railway patients are allowed to be examined by a railway doctor, the railway authorities have prescribed the procedure for collecting fees and remitting such fees to railway authorities. Further, by circular no E/107/III/5/I(O) dated 30.3.90 rates for NPA were revised. The CMD, Maligaon issued circular no-HM/184/1 dt. 10.5.94, to NF Railway railway doctors informing them of procedure to be followed in treatment of non-railway cases and this circular was applicable to the CO. In this circular it has been clearly laid down that "rank non-railway cases are not permitted to any consultation but if they are brought through Railway employee then only they should be

ertained in an emergency where medical facilities in early area are not available". It has also been prescribed that "the OPD ticket which is made after examining the patient and medicines are prescribed, the details regarding the patient's name, c/o name and railway employee's address, diagnosis etc should be written on the ticket that consultation fees amount realised." This shows that, in general, the railway doctors are not allowed to treat patients other than Railway servants. And in respect of non railway cases that they are allowed to see, the railway doctors are expected to maintain a separate register and so on and so forth.

3.3 It was reported that in violation of above guidelines, Dr Bagchi was indulging in private practice at the accommodation allotted to him by railways purely for residential purpose. A written complaint, dt 8.6.95, to this effect was received from one Shri Haleswar Das. The Supdt. of Police, CBI, Guwahati registered this complaint on 10.6.95 as No.14(A)/95-SHG and the investigation was handed over to Shri K.M. Das, Inspector.

3.4 On 10.6.95, a CBI team, along with Shri Haleswar Das, the decoy, and independent witnesses went to the official residence of Dr. A.K. Bagchi at railway quarter No M-2 in railway colony at Hojai. The decoy, Sh. H. Das, pretending to be a patient, got himself examined by Dr. A. Bagchi, who demanded and accepted an amount of Rs. 40/- from Sh H. Das. Thereafter, the CBI team which was standing outside the residence of Dr. A.K. Bagchi entered into his room, recovered currency notes of Rs. 40/- (four ten rupee notes), the fee taken by Dr. Bagchi from Sh Das. The post trap memorandum was prepared at the residence of Rr Bagchi incorporating details of trap and results of sodium carbonate-phenolphthalein test. The post trap memo was signed by the decoy, the witnesses and other members of the trap laying team. And Dr Bagchi was released on bail by executing a bond. The CBI team searched, u/s 165 Cr.P.C, the official residence which was being by Dr. Bagchi used as consultation chamber and nursing home.

3.5 The department says that in the instant case the decoy Sh. Das was a private person, he was neither admitted in the Health Unit Hojai as in-door patient nor he had deposited the fees in advance to the concerned railway authority and obtained money receipt for it. He had paid the fees to Dr. Bagchi on demand which was in violation of

[Handwritten signature]

the rules of the Railways. And Dr Bagchi did not ascertain if the decoy patient was in fact accompanied by any railway employee.

3.6 On 10.6.95, during the search, statements of Sh H. Das, the complainant, and Mrs. Sadhana Devi d/o Sh B.C. Acharjee of Hojai. These statements have been taken on record in these proceedings as Ex.S-23 and S-24. As a part of the investigation, pre and post trap memoranda and search list (Ex.S-2, S-3 and S-8) were prepared which contain details of the trap and the search. A sketch map of railway qr. No.M-2, which was being used by CO as a consultation chamber and a nursing home, was prepared and photographs of the above quarters were also taken.

Recd
Shri H. Das
not in
Pres
H

Ex 23/24
S-23
S-24

3.7 Thus according to the PO, the CO clearly violated the guidelines by treating an outsider who was not brought by a railway employee. Moreover, there was a Primary Health Centre within Hojai Town Area, near the Railway Station, which was run by State Government. The CO has not denied this fact.

3.8 The CO has also flouted the guideline that the OPD ticket which is made after examining the patient and on which medicines are prescribed should contain details regarding such as name of patient, name and address of the Railway employee who brought the private patient. The Doctor should also write on the ticket that consultation fees Rs.40/- was collected. As against this the CO had written the prescription on his personal pad which does not even disclose that he has a Railway Doctor which amounted to suppression of facts. The CO also failed to mention the fee amount of Rs.40/- received by him from Shri H.Das on the prescription ticket (Ex.S-4).

See p 21
Am 14

3.9 The CO failed to enter the name of decoy patient, Shri H. Das, in the register maintained by him (Ex D-3) which itself speaks of intentions of the CO that he did not intend to deposit the fees collected from this non-railway patient with the Railway Authorities.

3.10 The PO has pointed out that a Diary Book (Ex S-18) seized during search from the consultation room of CO, contains names of non-railway patients treated/diagnosed by the CO from 3.6.95. According to the CO, these names have also not been entered in D-3 which proves that D-3 is not properly maintained by the CO, and that the CO was

500

-44-

57

tionally omitting names of most private patients and thereby flouting the guidelines and causing loss to the Railways.

3.11 On being examined during inquiry, Dr. Bagchi accepted the fact that on 10.6.95 he had examined Sh H. Das, a non-railway patient and that he collected Rs. 40/- as consultation fees from the said Sh Das. The CO has also admitted this in writing. Hence, according to PO non-examination of Sh. Das, the decoy-patient, who has since expired, does not at all affect the case of disciplinary authority. The complaint and the statement of Sh. H. Das are marked as Ex.S-1 and S-24.

3.12 Finally, the PO states that oral as well as documentary evidence adduced on behalf of the disciplinary authority will clinchingly (sic) prove the charge against the CO. The PO has submitted that in the course of inquiry proceedings the prosecution witnesses were cross examined by the CO but he could not elicit any points adverse to the case of disciplinary authority.

4 Defence of Dr A.K. Bagchi, Sr DMO, NF Railway

4.1 The CO claims that it is wrong to say that railway doctor's can not use their official residence for treating patients. In support of this claim he has referred to para 304 of IRMM. He has also referred Rule 617, IREC. Vol. I which says that medical attendance and treatment at consulting room maintained by railway doctor at his residence shall be deemed to be medical attendance and treatment at railway hospital. At the same time the CO has contended that it is wrong to say that because the CO was using his residence for treatment of patients that makes his residence a nursing home. In short, his case is that, as allowed under rules, he was maintaining a consulting room at the residential accommodation allotted to him by railways it would be wrong to call it a nursing room.

4.2 Through his brief dated 30.7.98, the CO has claimed that Railway Doctor's are fully allowed to do private practice without prior permission from the competent authority. In support of his contention the CO has referred to clauses (a) to (k) of para 204 of IRMM. He has also claimed that Railway doctors can examine and treat non-railway patients and in support the CO has referred to para 204 to 206 and para 621, 625 and 626 of IRMM.

R^s 204 (a) to (k)
R 204-206

Ru 304

617

According to CO, under these paras a patient in emergency should be attended to first and in case a patient is found to be a non-railway patient he should be treated as an outsider and charged accordingly. CO claims that by virtue of para 210 and 625 of IRMM, the restrictions contained in Railway Board's letter No.88/A/1/14 dt. 24.12.90 does not apply to emergency cases. He has further stated that in case railway doctor examines a non-railway patient he has to collect fees as prescribed. In this background, the CO has claimed that he was right in entertaining Shri Das, the decoy patient, at his residence. And as prescribed under the rules, he collected necessary fees from Shri Das.

4.3 The CO claims that he was maintaining the register prescribed for non-railway patients and was regularly depositing fees received from such non-railway patients to railway authorities. In support, he has submitted 84 money receipts as proof of remittance of fees to railway authorities (Ex D-2). The register for non-railway patients opened on 1.6.94 (Ex D-3) and 15 monthly statements regarding treatment of non-railway patients submitted to railway authorities (Ex D-5). The CO has also explained that he did realise Rs.40/- as fees from the decoy-patient but could not deposit the same with railway authorities as it was seized by CBI. He has given a similar explanation as to why he did not reflect this receipt in the monthly return etc.

5. Analysis of Evidence

For the sake of convenience, allegations against the CO are discussed in three parts.

5.11 The first part of allegations is that he misused his government accommodation as a private nursing home. It may be recalled that on 10.6.95, the day of search, the CBI team found that some patients were sitting on a bench in the verandah (Ex S-3) of the said premises. A perusal of photographs (Ex S-5) of the premises taken during the said search shows that expensive and elaborate medical equipment was available in the premises and at least one lady patient was being administered some medicine through a drip. Significantly, no household goods were visible in the said premises and there were no other indications to show that the premises were being used as a residence. During the CBI search, Miss Sadhana Devi (Ex S-24) stated under oath that she was working for Dr. Bagchi, the CO, at Qtr. No.2 (the

D-2
D-3
D-5



Not Sy

000

premises in question) where the CO was examining both male and female patients. As a part of her duties she was maintaining a list of patient who wanted to consult the doctor and that she used to send patients, one by one, to doctor's room. She has stated that she had been working in this capacity, with the CO, since 1990 and was being paid Rs.700/- per month. She has deposed that in one of the rooms (the last room) of the said premises there were two beds which were being used for emergency patients. In the same statement, she has also stated that Dr. Bagchi was living with his family in his own house in Hojai. This shows that Dr. Bagchi was not using this accommodation for his residence and instead he was using this premises for examining and treating patients. He himself was residing with his family in his own accommodation at Hojai itself.

5.12 In his defence the CO has stated that under railway rules (para 304 of IRMM) he was authorised to maintain a consultation room at his residence. He has tried to differentiate between a consulting room and a nursing home and has argued that while he did have a consultation room at the said premises he did not have a nursing home. He has also observed that the CBI team did not make necessary inquiries with patients who were there in the premises at the time of search and according to CO these could have been Railway patients or may be members of his family. The CO has questioned the value, as evidence, of statement of Miss Sadhana Devi because he was not allowed an opportunity to cross examine her.

Reld
on
EV
no oppo
XX

5.13.1 At the outset it may be noted that para 304 of IRMM states that 'in case of such of the railway doctors only as are allotted quarters at a distance from health units or hospitals, the administration may provide properly equipped consulting room at their residence' and it is such consulting room that is mentioned in para 617 of IRMM. Thus, the consulting room mentioned in para 304 is a consulting room authorised by railway authorities under conditions mentioned in the said para. And there is no evidence, to suggest that what has been claimed as a consultation room by the CO was authorised by railway authorities as required by para 304.

5.13.2 It has been noted above that at the time of search, elaborate medical equipment was available in the premises, the CO was in fact examining patients and at least one lady patient was being administered some medicine through a

600

drip. And the bed on which she was lying was a typical hospital bed. There is no evidence to show that medical equipment that was there in the premises belonged to the railways. Also, as discussed above there were no indications to show that this place was being used as a residence by anyone. Thus, the premises was being used for examining and treating patients, notwithstanding the distinction between a nursing home and consulting room, as claimed by CO. Also, there is no indication to suggest that it was being used as a residence by anyone, leave alone the CO.

5.13.3 Miss Sadhana Devi was an employee of the CO and if he wanted her to clarify any matters the CO could have introduced her as a witness or he should have pointed out during the regular hearing. The statement of Miss Sadhana Devi was available with the CO and yet he did not exercise any of these options. Instead he has waited till the stage of his written brief to raise a technical objection and even now he has not contradicted or clarified any of the facts stated by Miss Sadhana Devi. Be that as it may, whatever has been deposed by Miss Sadhana Devi has also been observed and documented by the CBI team during the search. In view of this it is my considered opinion that the CO has deliberately not availed of the opportunity to get Miss Sadhana Devi to clarify matters and his objection is only a device to deflect from the facts stated by Miss Sadhana Devi. In any case, Miss Sadhana Devi has only confirmed what was observed and recorded by the CBI team, i.e., the residence allotted to the CO was being used to examine and treat patients, the distinction between a consulting room and nursing home as made out by CO notwithstanding. And Dr. Bagchi, the CO, was not using it for the purpose of his residence.

5.13.4 To sum up, in my considered view it is established that the CO was misusing accommodation allotted by railways to him for his residence as a consulting room and nursing home.

5.21 The second part of allegations is that the CO was treating private outdoor patients without permission of the competent authority. In this context it has been mentioned by the PO that through circular dt. 6.10.87 (Ex S-12) extant orders for restricted private medical practice were modified. In his defence, the CO has referred to circular dt. 10.5.94 (Ex D-4) through which also railway doctors in

550

railway were informed that they are not allowed to examine non-railway cases unless they are brought in an emergency by railway employees and when medical facilities were not available in nearby areas. To sum up the non-railway cases which Railway doctors were allowed to examine are restricted and conditions under which such patients could be entertained have been specified. As against this it has been seen that at his official residence, which he had converted into a nursing room, the CO was examining all and sundry. He had set up elaborate medical equipment in this accommodation and had employed Miss Sadhana Devi to assist him. During the search, the CBI team found that several patients were waiting to be examined by the CO. A document seized during the search and which has been taken on record in these proceedings as Ex S-19 contains records of patients examined by the CO from 3.6.95 till the date of search i.e. 10.6.95. According to this, on 3.6.95 he examined nine patients, on 4.6.95 he examined 21 patients and on 7.6.95 37 patients were examined in the morning and six patients were examined in the evening. Similarly on the date of search i.e. 10.6.95 there are 35 patients in the list. The CBI team did not interrogate the patients because they did not want to harass them.

5.22 The CO has quoted extensively from IRMM and other circulars and instructions to argue that being a doctor he was rendering a professional service and he did not require permission for private practice. He also feels that he was entitled to examine and treat non-railway patients in emergencies and when medical help was not available nearby.

5.23.1 It may be noted that the CO's reference to IRMM has come only in his written brief, which means the reaction of the Department is not available on whatever the CO has said. In any case, circulars dated 6.10.87 (Ex S-12) and 10.5.94 (Ex D-4) issued by railway authorities are the more recent decisions of railways on this subject and circular dated 10.5.94 was issued by NF Railways and is more specifically applicable to the CO. Through both these circulars the railway doctors, in general, and doctors of NF Railways, in particular, have been restrained from entertaining private and non-railway patients at large. In short, after issue of these circulars and as things stood on the day of CBI search the railway doctors were not permitted to indulge in free private practice. Only in certain circumstances these doctors are allowed to treat

~~500~~

12

private patients and one such situation is a private patient in an emergency when no other medical help is available. The CO has also admitted that a railway doctor is allowed to examine private patients only in an emergency and when no outside help is available.

5.23.2 As against this it has been seen that the CO had set up an elaborate facility in his official accommodation. He was examining private patients regularly and has produced no evidence to show that all these patients were in some emergency. As against this, a document (Ex D-4) seized during the search contains date-wise names of patients that were examined by the CO at the said premises since 3.6.95 and till the date of search. The actual numbers examined on a day is not the point, instead this document strongly proves that the CO was examining all and sundry, in complete disregard of railway guidelines on the subject. The CO has not produced any evidence to show that he had obtained or tried to obtain permission of railway authorities to entertain private patients.

5.23.3 It is also a fact that the CO did examine the decoy-patient but the CO has failed to show that the decoy-patient came to him in an emergency. On the other hand, it is a matter of record that the decoy-patient got himself examined, paid his fees and walked out of the premises to meet with the CBI team. Not only that, he was with the CBI team through out the search and was fit enough to give a statement to the team. The CO did not ask the decoy-patient about his railway connection. It is also a matter of record that there was a primary health unit in Hojai, which shows that alternative medical facilities were available to all such patients who were being examined by the CO. To sum up, there were no circumstances that compelled the CO to render professional medical services to a patient in an emergency. And he did not follow guidelines prescribed by railways for examining the decoy-patient, who was not in any medical emergency, was not brought to the CO by any railway employee and alternate medical facility was available in Hojai.

5.23.4 On the basis of discussions above I conclude that CO was examining private outdoor patients at the residence allotted to him in violation of railway guidelines on the subject and without any permission from railway authorities.

CO fair
promised
he
me
decoy
patient
got
Came to
him
in an emergency

500

5.3 The third and final part of the allegation is that he has been accepting consultation fee from private outdoor patients without maintaining a register for this purpose and without depositing the amount to the railway administration as provided for under the rules.

5.31 In course of these proceedings, the CO has submitted copy of circular dt. 10.5.94 (Ex D-4). This circular specifies the type of non-railway cases the railway doctors may examine and prescribes procedure to be followed in examining such private patients. The circular prescribes that railway doctors should maintain a separate register for non-railway cases. The OPD ticket, which is made by the doctor after examining the patient, should, inter alia, contain details such as name of railway employee who brought the non-railway patient and amount of consultation fee realised from such patients. The department's case against the CO is that he was not following these guidelines.

5.32 The CO's defence is that he was regularly entering name of non-railway patients in register maintained by him and was also remitting fees realised from such patients to the railway authorities. In his defence, he has submitted money receipts, as proof of remittance of fees to railway authorities (Ex D-2) and the register for non-railway patients opened on 1.6.94 (Ex D-3). The CO has also introduced copies of 15 monthly statements submitted by him to railway authorities (Ex D-5). He has also explained that he could not deposit Rs.40/- received by him from the decoy-patient because this amount was seized by the CBI.

5.33.1 After examining the decoy-patient, the CO prepared a prescription slip which has been taken on record in these inquiry proceedings as Ex S-4. A perusal of this document shows that CO has not recorded that the decoy-patient was not a railway patient, the CO has not shown as to who was the railway employee that brought this patient and he has also failed to record that fee of Rs.40/- was realised by him from this patient. It is also interesting to note that the slip on which the prescription was written has the name of the CO, his qualification and his experience as house surgeon in the Department of Obstetrics and Gynecology but there is no indication that he is a railway doctor. This shows that the CO was not following guidelines including those contained in circular dt. 10.5.94.

5.33.2 During the search, a slip pad (Ex S-19) was seen. The entries on this pad contain names of patients who were examined by the CO from 3.6.95 till date of search. From perusal of this pad it is not possible to know which patient is a railway patient or otherwise. According to guidelines on the subject, the CO was expected to maintain these particulars. It is also seen that the number of patients examined by the CO on these days is very large. But the register maintained by the CO (Ex D-3) does not reflect all these names. This shows that although the CO has claimed that he was maintaining a register for non-railway patients he was not truthfully and completely entering the names of all non-railway patients examined by him. As against this it was required of him to maintain such particulars and show that he was actually maintaining complete and correct records of non-railway patients examined by him and that he was remitting fees collected from such patients to railway authorities. In view of this I will not give the benefit of doubt to the CO; at best one could say that he was maintaining a semblance of a register and monthly statements and was only remitting a part of fees collected from non-railway patients. And I hold that the CO was not maintaining truthfully and properly the register prescribed for non-railway patients and was not truthfully depositing the amount realised from such patients to railway authorities as required under rules.

At best he was maintaining a register to CO has in hand further

5.41 In addition to what has been discussed above, the CO has raised some other issues also. For example, he has gone into the timings mentioned in various CBI documents such as time of complaint, time of lodging of FIR, time at which the search party started its action and so on and so forth. In my view discrepancies of this nature, if any, are not relevant to the proceedings before me as it is nobody's case that the search at the premises mentioned above did not take place on 10.6.95.

5.42 Similarly, the CO has pointed out a discrepancy in distinctive numbers of the four Rs.10 currency notes used in the trap. According to him, numbers mentioned in the pre-trap memorandum, the post-trap memorandum and the currency notes actually recovered from the CO by the CBI team do not tally. The discrepancy is only in one currency note: in the pre-trap memorandum this note has been shown as 68-3 681973 whereas the currency note actually recovered from the CO had the number 68-G 681973. This objection of the CO is irrelevant: for one this is only a typographical

COO

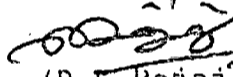
Dr. Second, there is no dispute that Rs.40/- (including disputed currency note) paid by the decoy-patient as fees was recovered from the person of CO by the CBI team.

5.43 Another objection the CO has raised is regarding evidentiary value of the statement of Miss Sadhana Devi, an employee of the CO, recorded by the CBI team during the search. This objection has also been answered above. In my view these sundry objections of the CO are redundant as these do not have any bearing on the defence of the CO.

6. Summary of findings

6.1 In light of discussion above I hold that the CO has been misusing the residential accommodation allotted to him as a private nursing home for treating private outdoor patients without permission of the competent authority and has been accepting consultation fees from them without maintaining a register for this purpose and without depositing the said amount to railway authorities as required under rules.

6.2 It is, therefore, established that by the above acts Dr. A. K. Bagchi, the CO, has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and has thereby contravened provisions of Rule 3(1)(i), (ii) & (iii) of the Railway Services (Conduct) Rules, 1966.


(R.K. Bajaj) 21.10.98

Commissioner of Departmental Inquiries
and
Inquiry Officer

New Delhi
21.10.98

Attested by

Advocate 11-2K

From: Dr. A. Bagchi,
Sr.DMO/Hojai

Dated, 26.3.99

To
The General Manager,
N. F. Railway,
Maligaon, Guwahati-11.

Sir,

Sub:- Supply of copy of second stage advice
of CVC/CBI in connection with the
disciplinary proceeding against me.

Ref:- Dy.CPO/G/MLG's letters No.B/74/GAT/
347/C on dated 27.1.99 and 23.2.99.

Respectfully, I submit that on submission of report by CDI/New Delhi on the DAR inquiry against the undersigned Dy.CPO/G/MLG vide her letter dated 27.1.99 issued a show cause notice to me enclosing a copy of the inquiry report and asking me to submit representation. In response thereto, I had sought a copy of the second stage advice of CVC/CBI on the inquiry report. However, Dy.CPO/G/MLG vide her letter dated 23.2.99, received on 10.3.99, advised that instead of addressing my request to her it should have been addressed to the disciplinary authority, that is, General Manager. On that score I stand correct. However, I would not have addressed her if she had not issued the show cause notice in the first place.

2. Dy. CPO/G/MLG however pointed out that CVC/CBI's advice was not part of the relied upon documents and that it was not mandatory to supply copy of any document which was not part of the relied upon document or which has not been allowed by the Inquiry Officer as a relevant document during the course of inquiry and hence my request for supply of this document could not be acceded to. This decision also appears to be that of Dy.CPO/G, instead of the disciplinary authority. Therefore, I make the following submission for supply of second stage advice of CVC/CBI.

3. Dy.CPO/G/MLG vide her letter dated 27.1.99 enclosed a copy of the inquiry report submitted by CDI/New Delhi. This document was neither part of the relied upon document nor it was a document which was allowed by the Inquiry Officer in course of the inquiry. If the logic advanced by the Dy.CPO/G is to prevail this document should also not have been supplied to me. Yet supply of a copy of the inquiry report is mandatory because it is a material which has been received by the disciplinary authority behind the back of the charged officer. The principles of natural justice enshrined in Article 311(2) of the Constitution postulate that no material which has been received by the disciplinary authority behind the back of the charged officer should be relied on or acted upon unless the charged officer has been given a reasonable opportunity to rebut the same. In every disciplinary inquiry where the Central Vigilance Commission or the Central Bureau of Investigation has been consulted they advise the disciplinary authority to take certain actions. As such, CVC/CBI also advises on the report of the inquiry officer which is called the second stage advice. This document, by virtue of several circulars of the Ministry of Railways, is important as the advice so tendered by CVC/CBI has been made binding on the DA. This is a material which has been received by the disciplinary authority behind the back of the charged officer. Therefore, its supply to the charged officer is a must if principles of natural justice are to be followed.

Attested by
[Signature]
Advocate

to be observed. The honourable Supreme Court of India has in a plethora of judgments declared the law that non-supply of CVC's advice to the charged officer is unfair and violative of principles of natural justice enshrined in Article 311(2) of the Constitution.

6. In view of the foregoing, it is requested that the advice tendered by CVC/CEI on the inquiry report submitted by Shri R.K. Bajaj, CDI/Now Delhi (Inquiry Officer) against me may kindly be supplied to me so that I can make submissions against that document too.

Thanking you,

Yours faithfully,

(Dr. A. Bagchi)
Sr. DMO/Hojai.

CONFIDENTIAL.

N. F. RAILWAY.

OFFICE OF THE
GENERAL MANAGER
GUWAHATI-11.

No. E/74/GAZ/347/Con.

Maligaon, dated 16-4-99.

To
Dr. Ashoke Bagchi,
Sr. DMO/N.F. Railway,
Hojai.

(Through : DRM/N.F.Rly./IMG).

Sub: Supply of copy of 2nd stage
advice of CVC.

Ref: Your letter dated 26.03.99.

.....

You have already been advised vide DY.CPO(G)'s letter dated 23.02.99 that it is not mandatory to supply copy of any document which is not part of the 'Relied upon Document' or which has not been allowed as an additional document by the Inquiry Officer. Hence your request for supply of CVC's advice cannot be acceded to.

It is further clarified that Dy.CPO(G) makes day-to-day correspondence with all concerned on behalf of the disciplinary authority i.e. General Manager. Thus the decision communicated to you vide letter ibid was that of the disciplinary authority's and not of Dy.CPO(G)'s.

As per the D&A Rules, it is mandatory to supply copy of the enquiry report to the Charged Official for making his final defence. Accordingly in this case a copy of the enquiry was sent to you on 27.01.99 for submission of your final defence. However, it is observed that even after lapse of more than 2 months you have not submitted your final defence.

You are once again advised to submit your final defence, if any, within 10 days of receipt of this letter, failing which it will be presumed that you do not have any further submissions to make and the case will be decided accordingly.

[Signature]
13/4/99
(RAJENDRA NATH)
GENERAL MANAGER.

Attested by
[Signature]
6-11-2K
Advocate

ANNEXURE - X

CONFIDENTIAL
F.3/290/99-

M. 2 C. 2.

The Secretary to the Govt. of India,
Ministry of Railways,
(Railway Board),
New Delhi.

Attn : *Shri A.K. Basu, Joint Secretary, (Estt.)*

Sub : *DAR action against Shri Ashok Bagchi, Senior
DMO/Hojai/N.F. Railway.*

Sir,

I am directed to refer to your letter No.E(O)I-99/PU
2/NF/78 dt. 13/25.10.1999 on the subject mentioned above and to
convey the advice of the Commission as under :-

2. Vide Memo No.E/14/GAZ/347/Con dt. 2.4.1997, issue
under Rule 9 of the Railway Servants (Discipline & Appeal) Rule
1968, Shri Ashok Kumar Bagchi, Sr. DMO/Health Unit/N
Rly./Hojai, was called upon to answer the following Article of
Charge :-

Dr. A.K. Bagchi posted and functioning as
Sr.DMO/N.F.Rly/Hojai Health Unit since May'1984, has
been misusing his Govt. accommodation as a private
Nursing Home treating private outdoor patients without
permission of the competent authority and has been
accepting consultation fees from them without
maintaining a Register for this purpose and without
depositing the amount to the Railway Administration as
provided for under the rules.

Attested by
Abalila
6-11-2002
Advocate

By the above act Dr. Bagchi has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened the provisions of Rule 3(1)(i)(ii) &(iii) of the Railway Service (Conduct) Rule, 1966.

3. A statement of imputation of misconduct/misbehaviour was also enclosed to the above charge memo. As the CO denied the charge, an inquiry was held and the IO vide his report dt. 21.10.1998 has held the charge as 'proved'. As required a copy of the IO's report was sent to the CO for making his representation. The CO submitted his representation dt. 13.5.1999 against the findings of the Inquiry Officer. After considering the CO's representation other relevant records the DA has tentatively decided to impose a major penalty on the CO. The records of the case have been forwarded to the Commission for advice.

4. The records of the case have been examined in detail by the Commission. As regards background of the case, the Commission observe that while Dr. Bagchi was functioning as Sr. DMO, Hojai Health Unit, Assam, one **Shri Hareswar Das**, made a complaint dated 8.6.1995 to SP, CBI, Guwahati alleging that the CO charged him **Rs.40** for medical examination without issue of any receipt/certificate of examination. The CBI, Shillong, registered a case on 10.6.1995 and arranged a trap to catch the accused red-handed. A team consisting of CBI officers and 2 independent witnesses along with Shri Das, the complainant, who acted as a decoy private patient, was deputed. After his examination by the CO, an amount of Rs.40, in denomination of four Rs.10 currency notes, coated with **phenolphthalein powder**, paid by him to the CO as consultation fee, were recovered from the pocket of the CO. Thereafter, the CO's hands were washed in Sodium Carbonate solution which turned **pink**. The CBI, however, did not prosecute the CO and on the basis their report dated 30.8.1995 the above disciplinary proceedings were started against the CO.

5. The CO in his defence has mainly stated that since patient was an emergency case, he treated him without ascertaining whether he was a Railway employee or an outsider. Regarding entering his name in the register and issue of receipt of the fee received, the CO stated that he could not do so as the amount was seized by the trap party.

6. The IO while conducting an inquiry has considered the charge against the CO in three parts as under :

- (i) Misuse of Govt. accommodation as Private Nursing Home.
- (ii) Treatment of private patients without the permission of the competent authority.
- (iii) Acceptance of consultation fee from private outdoor patients without maintaining a register and without depositing the amount to the Railway Administration as provided under the Rules.

7. The IO has held all above three elements of charge against CO as '**proved**' on the basis of photographs of the premises taken by the CBI at the time of trap and other oral and documentary evidence, brought out during the inquiry. After considering the representation submitted by the CO against the findings of the IO, the DA has also held the charge as proved.

8. The records of the case has been gone through carefully by the Commission and they observe that the CO was using his **entire Railway quarter** allotted to him to examine patients while staying elsewhere with his family. Though the rules permit having a consultation room at the residence of the CO for treatment of Railway employees etc., on revision of Non-Practicing Allowance, the Railway doctors were allowed to examine private patients only as **emergency cases** but the entire amount was to be deposited with the Railway. However, these orders, dated 6.10.1987 and 19.3.1990 were modified by order dated 24.12.1990 and the doctors were allowed **sharing** of the **consultation fee** realized from non-Railway **private patients**, who are either related to Railway employees or brought by them for treatment but no general private practice was allowed. For this purpose, the Doctor was supposed to maintain a register and indicate the fees realized and credit the same to the Railway revenues first. **80%** of the amount so realized was to be retained by the **Railways** and balance **20%** to be shared by **doctor (40%)** and other group B,C,D and Ministerial staff (60%).

9. The Commission further observe that as per photographs taken by CBI team and statement of Ms. Sadhna Devi, an employee of the CO and other independent witnesses, recorded by the CBI, the CO was using his **entire residential accommodation** for consultation purpose and during the raid by the CBI some patients were observed waiting for consultation including a lady lying on a bed being administered drip. They further notice that the photographs do not show any elaborate Medical equipment, as mentioned by the IO in his report (except perhaps a refrigerator) and in absence of infrastructure or other para Medical staff, it cannot be held that the accommodation provided to the CO was being used as nursing home. It is, however, established that the CO was using his entire residence for

treatment of patients and as such the Commission hold element (i) of the charge as 'proved' to that extent.

10. Regarding 2nd element of charge relating to treatment of private patient without permission of competent authority the Commission observe that as per Chief Medical Director Circular dt. 10.5.1994 and earlier Railway order dt. 6.10.1987, **no permission was required for examining emergency cases of private patients brought by Railway employees.** They, however, notice from Slip pad seized by CBI that the CO has been examining all patients without mentioning whether they were Railway employees or private patients/emergency cases. They, therefore, hold the second element of charge as **established** to the extent that the CO was examining patients without maintaining the proper records as required under rules.

11. As regard **third and most serious** part of the allegation against the CO that he has been accepting the consultation fee from the private outdoor patients without maintaining the register and without depositing the same with the Railway, the Commission observe that though the CO has **maintained register** regarding non-Railway patients indicating the amount realized and **deposited** with the Railway along with the Receipt numbers from 30.5.1994 till 22.9.1995 but there are only 33 such cases during this period. They further observe that the CO also submitted **monthly returns** of such amounts realized as required under Railway circular dt. 10.5.1994 and dt. 25.5.1994, for the month of June '94 to September '95. They, however, note that the CO after examining the decoy patient Shri Das, issued to him prescription on his own printed letter head, which **did not mention that he is a Railway doctor.** They further note that the prescription also did not indicate whether Shri Das was a Railway employee or outsider and most important, **the fee paid by the patient has not been mentioned** in the prescription as required vide circular dt. 10.5.1994, though the CO has contended that he had no time to issue a receipt, enter his name in the register since the amount was seized by the CBI. The Commission also see from a slip pad seized by the CBI at the time of trap that the CO has entered the name of patients examined by him at his residence from 3.6.1995 to 10.6.1995 and as per the above document, he has been examining on the average, about **20 patient every day** with number going as high as (37+6) on 7.6.1995 and **34** on 8.6.1995. The Commission find that on the date of trap on 10.6.1995, **35 patients** have been listed till the time of trap, viz. noon. The Commission notice that there is no mention on this document **whether these patients are Railway employees or their family members or non-Railway cases brought by Railway employees.** They also find that there is **no mention about the fees realized from each patient.** This clearly shows that the CO was **examining many more patients** than entered in the register and was **only remitting a part of the fee collected from**

on Railway patients. The Commission note that the CO has deposited an amount of Rs. 2890/- only with the Railways for six years (1990-95).

12. The Commission further observe from the circular dated 10.5.1994 issued by the Chief Medical Director, NF Railway, that the Railway Doctors were permitted private practice to minimum extent viz. non-Railway emergency cases brought through Railway employees, **where medical facilities in a nearby areas are not available.** In this case, the Commission notice that a Health Unit was existing at Hojai. The Commission further notice that this circular also stipulates that in the OPD ticket, which is made after examining the patients, the details regarding patients name, C/o name of the Railway Employee, his address who has brought the patient etc. should be written along with the **consultation fee realized.** The Commission observe that the CO, however, in the case of decoy patient brought by the CBI, **did not mention any such details and though he charged Rs.40, he did not indicate the same on the OPD ticket.** The Commission further observe that the CBI during the search carried out on the person of the CO and his room, recovered an amount of **Rs.1888 from drawer of his table** along with **Rs. 25,000 from his brief-case,** found in the consultation room. The other documents recovered, include slip pad used by the CO for recording the names of the patients, some LIC premium receipts and other money receipts etc. as per details given in the search list. (Exh S-8) The Commission are of the view that this circumstantial evidence of recovery of cash etc. proves that **the CO was doing a roaring private practice** and maintaining a semblance of Register indicating name of few private patients. In this connection, the Commission further observe that the statement of Ms. Sadhana Devi, an employee of the CO who was engaged by the CO since 1990 at a salary of Rs.700/- as recorded by Inspector, CBI on 10.6.1995, also corroborates that CO on the average was examining **20 to 30 patients** every day and charging **Rs.40 as consultation fee** from each patient.

13. Regarding the objection of the CO that Ms. Sadhana Devi has neither signed her statement nor she was called as a witness, the Commission observe that the statement of complainant, independent witnesses who accompanied the CBI team as well as Ms. Sadhana Devi have been recorded by Inspector, CBI, duly signed by him with the remark **"RO & AC"** at the end, which means **Read Over and admitted as Correct.** In this regard they note that the DA has also mentioned that if required the CO could have called Ms. Sadhana Devi, who was his employee as a defence witness but he did not do so. In view of the circumstances discussed above the Commission hold that the **charge** against the CO is **established.**

-Glt-

24

14. In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the ends of justice would be met in this case if the penalty of 'compulsory retirement' is imposed on Shri Ashok Kumar Bagchi, Sr.DMO/Hojai/N.F.Rly. They advise accordingly.

15. A copy of the order passed by the Ministry in this case may be endorsed to the Commission for perusal and records.

16. The case records, as per list attached, are returned herewith. Receipt of the same may kindly be acknowledged.

Yours faithfully,

8/

(J.K. MEHRA)
Under Secretary (S-I)
Union Public Service Commission
Tele : 3070820

Encl :-

1. Case records as per list attached.
2. Two spare copies of this letter.

Attested by
Atalika
ADVOCATE
6-11-2K

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

NO.E(O)I-99/PU-2/NF/78

New Delhi, dt. 21 -06-2000.

ORDER

Disciplinary proceedings for major penalty under Rule-9 of -RS(D&A) Rules, 1968, were initiated against Dr. Ashok Bagchi, Sr.DMO/Hojai/N.F. Railway by GM/N.F. Railway vide memorandum No.P(G)CON/1/533 dated 2.4.97 in respect of following article of charge:-

"Dr. A.K. Bagchi posted and functioning as Sr.DMO/N.F. Railway/HJI Health Unit since May'1984 has been misusing his Govt. accommodation as a private Nursing Home treating private outdoor patients without permission of the competent authority and has been accepting consultation fees from them without maintaining a Register for this purpose and without depositing the amount to the Railway Administration as provided for under the rules.

By the above act Dr. Bagchi has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened the provisions of rule 3(1)(I), (ii) & (iii) of the Railway Service(Conduct)Rule, 1966."

2. After considering his statement of defence, the case was remitted to inquiry and Shri R.K. Bajaj, CDI/CVC was appointed as Inquiry Officer. In the Inquiry report, I.O. held the charge as proved.

3. As required, a copy of I.O.'s report was furnished to the Charged Officer and his representation was obtained thereagainst.

4. Now, the President, in consultation with the UPSC, has carefully considered the proceedings of the inquiry, the Inquiry Report, C.O.'s representation thereagainst as also records of the case. Agreeing with UPSC's findings, the President has held the Article of Charge as proved against the C.O. for the reasons mentioned in UPSC's letter No.F.3/290/99-SI dated 2-06-2000. The President, observing that the proved charge is quite grave and accepting UPSC's advice has decided that ends of justice

R10

Complied of opinion with

Attested by
Chaitanya
Advocate
E-11-2K

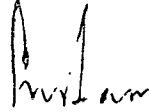
E/O

When is the final for the President on all at

sent on
6.7.2000

would be met in this case if the penalty of compulsory retirement is imposed on Dr. Ashok Bagchi, Sr.DMO/Hojai/N.F. Railway. Accordingly, the said penalty is hereby imposed on Dr. Ashok Bagchi.

5. A copy of UPSC's letter No. No.F.3/290/99-SI dated 2-06-2000 conveying their advice is enclosed.
6. Dr. Ashok Bagchi is required to acknowledge receipt of this order.



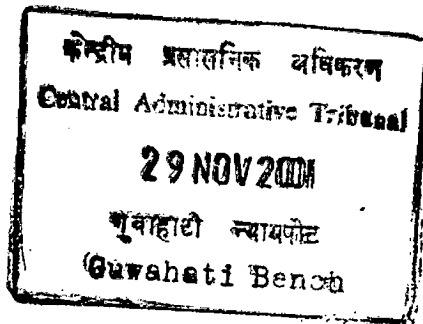
(A.K. BASU)

Joint Secretary(Estt.)/Railway Board.

DA: As above.

DR. ASHOK BAGCHI
Sr. DMO/HOJAI
N.F. RAILWAY

Attested by
Chaitanya
Advocate
8-11-22



Handwritten notes:
 1. 29/11/01
 2. 29/11/01
 3. 29/11/01
 4. 29/11/01
 5. 29/11/01
 6. 29/11/01
 7. 29/11/01
 8. 29/11/01
 9. 29/11/01
 10. 29/11/01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A No. 377/2000

Dr. A.K. Bagchi

versus

Union of India & Ors.

IN THE MATTER OF

Written statement on behalf of Respondents.

The answering Respondents beg to state as follows

BRIEF SUMMERY OF THE CASE

Dr. A.K. Bagchi, Sr. DMO/HJI, was served with Memorandum No. E/74/Gaz/347/CON dated 2.4.1997 in respect of the following article of charge.

"Dr. A.K. Bagchi posted and functioning as Sr.DMO/NF Railway/HJI Health Unit since May, 1984 has been misusing his Government accommodation as a private Nursing Home treating private outdoor patients without permission of the competent authority and has been accepting consultation fees from them without maintaining a Register for this purpose and without depositing the amount to the Railway Administration as provided for under the rules.

By the above act Dr. Bagchi has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened the provisions of rule 3(1)(I), (II) &

25
✓
13.5.1999
✓
Dr. A.K. Bagchi
13.5.1999
Dr. A.K. Bagchi
13.5.1999
Dr. A.K. Bagchi
13.5.1999

(III) of the Railway Service (Conduct) Rule, 1966."

After considering his statement of defence, the case was remitted to enquiry and Shri R.K. Bajaj, CDI/CVC, was appointed as Inquiry Officer. IN the enquiry report the ID held the charge as proved.

Copy of the enquiry report was given to Dr. A.K. Bagchi and Dr. Bagchi submitted his final defence dated 13.5.1999.

The Disciplinary Authority, the President, in consultation with the UPSC, after considering the proceedings of enquiry, enquiry report, Dr. Bagchi's representation, records of the case, UPSC's findings, agreeing with the UPSC findings has held the article of charge proved. The Hon'ble President observing that the proved charge is grave, has imposed the penalty of compulsory retirement on Dr. A.K. Bagchi, Sr. DMO/HJI/NF Railway vide Memorandum No. E(0)1-99/PU-2/NF/78 dated 21.6.2000.

The Memorandum of compulsory retirement from service was served on Dr. Bagchi vide GM(P) MLG's letter No. E/74/Gaz/347/Con dated 30.6.2000 which was received by Dr. Bagchi vide acknowledgement.

1. That the answering Respondents have gone through the copy of the DA as served on them and have understood the contents thereof. Save and accept the statements which are specifically admitted herein below, other statements made in the DA are categorically denied.

89
12/2/54
M. Chatterjee
M. Chatterjee
M. Chatterjee
M. Chatterjee

= 3 =

2. That with regard to the statements made in paragraphs 4 (1) and (2) of the OA, the answering Respondents do not admit anything contrary to the relevant records.

3. That with regard to the statements made in paragraph 4(3) of the OA, the Respondents state that the Railway Board's circular and CMD/NF Railway's circulation is factually correct. However, the interpretation of Dr. Bagchi that he is entitled to go in for restricted medical private practice is not correct. In fact the various regulations on the subject as provided by these letters only provide for the treatment of cases in emergency and does not allow for private medical practice, as a regular manner.

3. That with regard to the statements made in paragraph 4(4) of the OA, the answering Respondents state that the procedure stipulated by the Railways for treatment of non-Railway patients does not provide for private practice by the Doctor concerned. As per this procedure, whenever there is a private patient received in the Railway Hospitals in case of emergency, the treatment to the patient can be provided, after obtaining the requisite fee at the prescribed rate. Similarly, the procedure also allow treatment of patients on Railway stations (passengers falling sick) if they need a treatment on payment of similar fee. In the instant case, Dr. A.K. Bagchi had made a full-fledged Nursing Home in his Railway Quarters provided to him for stay and the same is not covered under the

90
✓
K. S. J. S. /
Chief Personnel Officer
10/10/11
11/11/11
12/11/11

rules and regulations provided for the treatment of non-railway patients. Thereby, he has made irregular and private use of the Govt accommodation.

5. That with regard to the statements made in paragraph 4 (5) of the OA, as already stated, there is no provision for having a consultancy room at the residential quarters. As such the interpretation by Dr. A.K. Bagchi that for all the patients treated in his consultancy room he has deposited the fees received from all the cases, is not correct. Moreover, as stated by Dr. Bagchi himself, the period covered by him for treatment of private patients at his consultancy room is only from 1.6.1994 to 10.1.1995 though as per the Memorandum of charges it has been clearly indicated that Dr. A.K. Bagchi has been misusing Government accommodation as a private Nursing Home since May, 1984. In view of this, even the records maintained by Dr. Bagchi are just a cover up after the investigations by the Vigilance Department already started against him.

6. That with regard to the statements made in paragraph 4(6) of the OA, the answering Respondents do not admit anything contrary to the relevant records.

7. That with regard to the statements made in paragraph 4 (7) of the OA, as stated by the Applicant after finding that Dr. A.K. Bagchi had been indulging in private practice, a CBI raid was conducted on 10.5.1995. The details of CBI case can be produced to

67 -
1-12-82
91
91
97. Chief Personnel Officer (C)
97. Chief Personnel Officer (C)
97. Chief Personnel Officer (C)
97. Chief Personnel Officer (C)

the Hon'ble Central administrative Tribunal for further examination, if necessary.

8. That with regard to the statements made in paragraph 4(8) the answering Respondents state that the findings of CBI on the instant case can be produced for examination, if necessary.

9. That with regard to the statements made in paragraph 4(9) the answering Respondents do not admit anything contrary to the relevant records.

10. That with regard to the statements made in paragraph 4(10) the Respondents state that all the copies of the relied upon documents were given to the Applicant for submission of his defence.

11. That with regard to the statements made in paragraph 4(11) the answering Respondents state that the copies of the relied upon documents are not to be attested by the Disciplinary authority himself. As per the provision of the rules, attested copies of the RUDs are to be supplied. In the instance case, copies of RUDs, duly attested, were supplied to the Applicant for submission of his defence.

12. That with regard to the statements made in paragraph 4(12) of the OA, the answering Respondents do not admit anything contrary to the relevant records.

13. That with regard to the statements made in paragraph 4(13) of the OA, at the time of inquiry, Sh. Hareswar Das, decoy patient, had already expired.

- 68 -
72
1344/24
Chief Personnel Officer
10 of 204, 11/13/10
U. S. G. - 11/13/10

Hence, the question of his presence does not arise. Ms. Sadhana Debi, was working as Private Assistant to the charged officer and if the CO wanted her to clarify any matter, he could have introduced her as defence witness, or else he could have objected authority of the statement of Ms. Sadhana Debi during regular hearing. since none of the two options were availed by the CO, his objection is an 'afterthought' and only aims at deviation from the fact in a deliberate manner.

14. That with regard to the statements made in paragraphs 4 (14) to (19) of the OA, while denying the allegations raised therein, the answering Respondents do not admit anything contrary to the relevant records and reiterate and reaffirm the statements made above.

15. That the answering Respondents submit that under the facts and circumstances stated above, the OA is not maintainable and liable to be dismissed with costs.

Verification

VERIFICATION

I Shri SUNIL KUMAR SINHA, aged about 33 years,
 son of Shri S.K. Sinha, resident of Maligaon,
 Guwahati-11, presently working as
Dy Sp/S, N.F. Railway do hereby verify
 and state that the statement made in paragraphs
1 to 4, 8, & 8 to K1 are true to my knowledge and
 those made in paragraph 5, 7 being
 matters of records are true to my information derived
 therefrom, which I believe to be true and the rest of
 my humble submissions before this Hon'ble Tribunal. I
 am also authorised to competent to sign this
 verification on behalf of all the Respondents.

And I sign this verification on this 27th day of
 November 2001.

✓ KR S B E I
 Deponent 21/11/01

জন কুমার কামিল অধিকারী (স্বাক্ষর)
 Dy. Chief Personnel Officer (C)
 পূঃ বীঃ রেল, গুৱাহাটী-781011
 B. P. Off., Guwahati-781011

69-
 93
 13042021
 জন কুমার কামিল অধিকারী (স্বাক্ষর)
 Dy. Chief Personnel Officer (C)
 পূঃ বীঃ রেল, গুৱাহাটী-781011
 B. P. Off., Guwahati-781011