

**Central Administrative Tribunal, Jabaipur Bench, Jabaipur**

**Original Application No. 613 of 2003**

**Bilaspur** this the 24<sup>th</sup> day of November, 2004

**Hon'ble Shri M.P.Singh, Vice Chairman  
Hon'ble Shri A.K. Bhatnagar, Judicial Member**

**Govind Prasad Rajak, son of late  
Chokhelal, aged about 57 years,  
Resident of House No. 765, Near Om  
Kala Mandir, Testing Road, Lalmati,  
Jabaipur.**

**Applicant**

**(By Advocate – Shri P.R. Bhave)**

**Versus**

1. **Union of India, through its Secretary  
Ministry of Defence, New Deihi. Ordnance  
Factory Board, through its  
Chairman, 10-A Auckland Road,  
Calcutta- 700 001**
2. **General Manager, Vehicle Factory  
Jabalpur.**

**Respondents**

**(By Advocate –Shri S.A. Dharmadhikari)**

**O R D E R**

**By M.P. Singh, Vice Chairman -**

**By filing this O.A. the applicant has sought the following main relief**

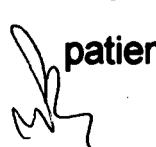
**"A writ in the nature of certiorari may please be issued for  
quashing the impugned order dated 5.10.2002 (Annexure-A-1)  
passed by General Manager, VFJ, Jabalpur (respondent no.3)."**

2. **The brief facts of the case are that the applicant – ex-Medical Assistant , Vehicle Factory Hospital, Jabalpur was proceeded against departmentally under Rule 14 of CCS(CCA) Rules, 1965 by the disciplinary authority for gross misconduct i.e. disobeying the orders of the superior staff and refusal to perform duties, vide memo dated**

4.10.1990. Charges having been denied by the applicant, a departmental court of enquiry was ordered wherein the charge leveled against the applicant was established and the disciplinary authority after considering the findings of the enquiry officer and representation of the applicant, imposed the penalty of compulsory retirement from service on the applicant vide order dated 23.8.1994. Against <sup>this order, &</sup> which the applicant preferred an appeal which was rejected by the appellate authority vide order dated 29.6.1995. Aggrieved by the aforesaid orders, the applicant filed O.A.No.507/1995 which was disposed of by this Tribunal vide order dated 23.10.1996 by remitting the case back to the appellate authority to consider whether the punishment imposed on the applicant could be moderated. The appellate authority in compliance with the aforesaid order of the Tribunal reconsidered the case and categorically stated vide order dated 23.1.1997 that refusal to administer the enema to a patient on the part of the applicant, at the material point of time particularly under the relevant situation when a patient was facing operation, was considered to be grave and penalty so imposed on the applicant was well warranted and justified. Aggrieved by the order dated 23.1.1997, the applicant had filed another O.A.No.212/1998 before this Tribunal. However, the Tribunal did not find any legal infirmity in the appellate order dated 23.1.1997 and accordingly the said OA was disposed of at the admission stage itself vide order dated 23.2.1998. Thereafter, the applicant filed a writ petition no.1667/98 challenging the Tribunal's order dated 23.2.1998 in OA 212/1998. The Hon'ble High Court vide its order dated 29.7.2002 have set aside the order dated 23.2.1998 passed by the Tribunal and remitted back the matter to the disciplinary authority to pass a reasoned order after taking into consideration the facts "whether the petitioner was trained as Medical Assistant to give enema or he had ever given enema to the patients. If he had the experience, definitely it would be open to the disciplinary authority to pass appropriate order. It is worth noting that formal training would not be the requirement in that case". In compliance with the order of the Hon'ble High Court, the disciplinary

authority has reconsidered the matter and passed the impugned order dated 5.10.2002 in which it has been mentioned that the applicant was employed as Medical Assistant for more than 15 years, and VFJ Hospital, being a specialists' zonal centre with surgical specialist and other specialists on its strength, has been carrying out major surgeries. Giving enema is a part of pre-operative preparation and the duties of Medical Assistant for giving such enema to the patients before operation is obligatory. The applicant - Ex-Medical Assistant was having about 15 years experience as Medical Assistant & sufficient knowledge as he handled similar job earlier in pre-operative preparation of patients. But the applicant had refused to perform his duties at the relevant situation when a patient required pre-operative preparation. Therefore, refusal to obey the Medical instructions of superior staff/Doctor at the relevant time in the Hospital posed danger to the life of patient who was going to be operated on. Thereby, disobedience on the part of the applicant was termed as grave misconduct warranting the penalty so imposed vide order dated 23.8.1994 which was just and proper and well within the realm of justice. Hence this O.A.

3. We have given careful consideration to the arguments advanced on behalf of both the sides. The Tribunal had earlier considered the penalty imposed on the applicant by the respondents. Thereafter the applicant had challenged the order of the Tribunal before the Hon'ble High Court of MP . The Hon'ble High Court of MP has set aside the order of the Tribunal remitting the matter to the disciplinary authority to pass a reasoned order after taking into consideration the direction given in the order of the Hon'ble High Court. In pursuance of the order of the Hon'ble High Court, the disciplinary authority has passed the impugned order stating that the applicant was having long experience of 15 years as Medical Assistant and sufficient knowledge as he had handled similar job earlier in pre-operative preparation of patients. The applicant had refused to perform his duties at the relevant situation when a patient required pre-operative preparation. Therefore, the refusal to



obey the medical instructions of the superior at the relevant point of time posed a danger to the life of the patient, who was going to be operated on. In view of these facts, we do not find any irregularity in the order passed by the disciplinary authority.

5. In the result, for the reasons stated above, the OA is bereft of merit and is accordingly dismissed, however, without any order as to costs.

  
(A.K.Bhatnagar)

Judicial Member

  
(M.P.Singh)

Vice Chairman

rkv

पृष्ठांकन द्वारा.....जबलपुर, दि.....

मालिनीपि दाते दिवा:-

- (1) सत्येन्द्र, राज्य वायिकार एवं एकोटिकार, जबलपुर
- (2) आवेदक श्री/महिला/कु..... के काउंसल
- (3) प्रत्यार्पी श्री/श्रीमती/कु..... के काउंसल
- (4) विधायक, रेप्रेसेंटेटिव, जबलपुर वा.सी.डी.

सूचना एवं आवश्यक वार्ताएँ कु.....

*P.R. Bhawne Apr-2003*  
*S.P. Dharmadhikari*  
*Apr-2003*

*मालिनीपि दाते दिवा*

*Issued  
on 3/12/04  
by 08*