

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 10th day of August, 2011

TRANSFERRED APPLICATION No.36/2009

[CWP No.5388/2001]

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Dr.S.P.Tiwari
S/o Shri Ganga Prasad Tiwari,
R/o 12, Moti Colony, Govind Nagar (East),
Amer Road, Jaipur.

... Applicant

(By Advocate : Shri R.D.Tripathi, proxy counsel for
Shri S.B.Mathur)

Versus

1. National Institute of Ayurveda,
Madhav Vilas Palace,
Amer Road, Jaipur, through
Its Director.
2. The President,
Governing body of National Institute of Ayurveda &
Minister of Health & Family Welfare,
Government of India,
New Delhi.

... Respondents

(By Advocate : Shri M.D.Agarwal)

ORDER (ORAL)

The petitioner/applicant filed a S.B.Civil Writ Petition
No.5388/2001 before the Hon'ble High Court, Jaipur Bench,
with the following prayer :

- "i) to quash the impugned order dated 19.10.2001
(Ann.15);

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- ii) to direct the respondents to reinstate the petitioner in service with all consequential benefits;
- iii) to direct the respondents to pay and allow all consequential service benefits forthwith;
- iv) to issue any other writ/order/direction or declaration which this Hon'ble Court deems just fit and proper may kindly be also passed in favour of the petitioner."

2. The said writ petition was transferred to this Tribunal for adjudication vide order dated 24.2.2009, which was registered in this Tribunal as TA 36/2009.

3. Brief facts of the case are that while the applicant was working as Lecturer, National Institute of Ayurveda, Jaipur, he was served with a charge-sheet dated 28.6.1999 (Ann.1). The applicant denied the charges and requested for providing copy of report of the preliminary inquiry and the other relied upon documents so as to enable him to submit a detailed reply. However, the respondents instead appointed Dr. Sri Krishna Sharma as Inquiry Officer, vide order dated 26.10.99 (Ann.3). The applicant, vide application dated 11.1.2000 (Ann.6), applied for permission to engage a legal practitioner as his defence assistant. However, the respondents refused to allow such facility vide order dated 9.2.2000 (Ann.7). The applicant submitted his reply to the Inquiry Officer on 23.2.2000 (Ann.8). It is stated that the Inquiry Officer was biased against the applicant. However, the Inquiry Officer submitted his report on 24.7.2000, copy of which was supplied to the applicant for submission of explanation vide letter dated 28.5.2001. The applicant submitted a detailed representation on 10.6.2001 against the findings of the Inquiry Officer (Ann.14). Respondent No.2, however, rejected the representation and imposed a penalty of compulsory retirement upon the applicant w.e.f. 20.10.2001, vide order dated 19.10.2001 (An.15).

4. The applicant has further stated that respondent No.1 passed a Notice dated 9.11.1994 with regard to issuance of

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certificates including medical certificates, which was partially modified vide order dated 19.11.1994. The respondents never prohibited treatment of patients outside IPD/OPD so long as it does not fall in the category of private practice. The Directors of the Institute always had cognizance of the fact that the applicant and other doctors used to prescribe treatment outside OPD/IPD and used to issue medical certificates. But, the applicant has been singled out for the disciplinary action. The disciplinary authority did not afford any opportunity of being heard to the applicant. He did not at all consider and apply its mind to various factors which ought to have weighed while selecting the penalty to be imposed. The applicant still had 12 years of service left and he is the seniormost Lecturer in the department. The disciplinary authority did not consider that the applicant was having 21 years outstanding service to his credit and the complaint related only to the grant of NPA.

5. The applicant has further stated that a total ban as to issuance of the medical certificates was imposed upon him in November, 1999 and he did not issue a single certificate thereafter and there had been absolutely no further complaint against him as to issuance of any certificate whatsoever since then, which is a factor that ought to have been considered by the respondents.

6. The applicant took a specific plea from the very beginning that he had been treating the patients without any consideration in consonance with his Charak oath and the Motoslogan of the Institute itself. The humanitarian considerations require that when he treated the patient, he must certify this fact. Whether the certificate would be treated as valid or not due to any procedure involved is for the patient to see and consider. Above all, there was no total ban on giving certificates and he was doing it as the same was usual practice in the Institute within cognizance of the Directors concerned. However, when a specific ban upon him was imposed, he obeyed it in letter and spirit. Therefore, he has

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prayed that this Writ Petition/TA be allowed and the penalty imposed upon him may be set aside.

7. The respondents have filed their reply. In their reply, they have stated that a vigilance case was initiated against the applicant for his involvement in doing private practice and unauthorisedly issuing medical certificates. The applicant was drawing Non-Practicing Allowance [NPA] and he had submitted an undertaking not to do any kind of private practice. Such private practice was prohibited by the Government for which NPA is allowed to the teachers of the respondent-Institute. But, in violation of the rules, the applicant had been indulging in doing private practice and had been issuing a large number of medical certificates to the patients who had been consulting him privately. The medical certificates could be issued only from the Hospital of the Institute in the prescribed format and with due countersign by the Deputy Medical Superintendent. However, the applicant issued a large number of medical certificates on his own and when these medical certificates were forwarded to the Institute for inquiry and to ascertain their authenticity, the respondent-Institute verified them and found to be not issued from the Hospital of the Institute. Since it was an act of violation of the rules by the applicant, the matter was submitted to the Government of India which, seeing the seriousness of the case, appointed an Inquiry Officer to inquire into the action of doing private practice/unauthorized issuance of a large number of medical certificates by the applicant. On receipt of the inquiry report by the Government of India, the same was forwarded to the Central Vigilance Commission for further necessary action in the matter and after considering the same, the impugned order has been passed against the applicant and he has been compulsorily retired from service vide order dated 19.10.2001, against which the present writ petition/TA has been filed by the applicant.

8. It is further stated in the reply that the applicant/petitioner has not availed of an alternative remedy of

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filing appeal before the governing body of the Institute against the impugned order and hence the writ petition/TA is liable to be dismissed summarily.

9. The respondents have further submitted that the payment of NPA was made to the applicant on submission of an undertaking by him that he would not do any private practice. But, on the contrary, the applicant was doing private practice and issuing medical certificates to the various patients including the employees of Government and Semi-Government authorities. The applicant was rightly refused to engage a legal practitioner (Advocate) as his defence assistant in the inquiry, as per the provisions of CCS Rules, which are applicable to the Institute. The respondents denied that the applicant had faced the inquiry in absence of any legal assistance. On the contrary, they have stated that the applicant has prolonged the inquiry by moving unnecessary applications from time to time to create grounds to challenge the inquiry. They have also denied that Dr. Sri Krishna Sharma, Inquiry Officer, had any bias against the applicant in any manner or that he was not qualified to be the inquiry officer. The applicant did not raise any such objection either before the authority or before the inquiry officer, which also proves that allegations against the inquiry officer are only afterthought and there is no truth in the same. They have also denied that the representation of the applicant was rejected cursorily. In fact, the order dated 19.10.2001 was issued after considering the inquiry report alongwith the record as also the representation filed by the applicant.

10. The respondents have further stated that in case any patient wants to get medical certificate then there is a procedure that the said certificate is to be issued with the approval of the Director of the Institute, as provided under Notice dated 9.11.1994 (Ann.16). However, the said notice dated 9.11.1994 has been partially modified vide notice dated 19.11.1994 (Ann.17), whereby it has been notified that only the Deputy Superintendent (Hospital) and the RMO (Seth

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Surajmal Bombaywala Hospital) will be authorised to issue the medical certificate for OPD/IPD patients. The said certificates will be prepared and issued by the concerned office of the said officers on the recommendation and signature of the Physician concerned. In the said notice, it is specifically mentioned that no Physician shall issue any medical certificate. In the present case, as the patients were treated by the applicant privately, there was no registration number of OPD/IPD on the medical certificates and the same were not issued on the prescribed form of the Institute, but issued on the forms purchased from the market.

11. The inquiry officer has found the charges against the applicant fully proved, which is apparent from perusal of the inquiry report. The disciplinary authority after considering the representation of the applicant has passed the impugned order. Therefore, the order passed by the disciplinary authority is perfectly legal and within rules and hence the present writ petition/TA is liable to be dismissed.

12. We have heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant mostly narrated the facts which have been stated in the writ petition/TA. He argued that the applicant did not indulge in the private practice from his residence or outside the office premises of the Institute and he did not charge any money for the treatment, the medicines or the medical certificates. The applicant prescribed treatment from his chamber in 'Sharir Rachna Department' of the Institute and the medical certificates were also issued from there yet it was held that the applicant was doing private practice. He further argued that the respondents have misinterpreted the Notice dated 19.11.1994, which was issued in partial modification of the Notice dated 9.11.1994. The Notice dated 19.11.1994 deals with the matter of issuance of medical certificates to in-patients and OPD patients. However, the Notice dated 9.11.1994 permits issuance of medical certificates with the approval of Director. He further argued that the treatment has

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been given and medical certificates have been issued from the official chamber of the applicant in the Institute itself. He further argued that the interpretation given by the inquiry officer is patently unfair, arbitrary and unreasonable. He also stated that the disciplinary authority has not at all considered the representation of the applicant against the inquiry report and has cursorily rejected the same. As such, the impugned order, being an unreasoned order, suffers from non-application of mind. The penalty imposed is unfair and shockingly disproportionate to the charges levelled against the applicant. Therefore, he prayed that the impugned order may be quashed.

13. On the contrary, learned counsel for the respondents argued that the applicant was indulged in doing private practice, which was banned since the applicant was recipient of the NPA. He argued that it is also admitted by the applicant himself that he issued medical certificates which, according to the applicant, was his duty to do so in the interest of patients. He further argued that the charge-sheet was served upon the applicant and a proper inquiry was conducted in accordance with the CCA Rules, which are applicable to the Institute, after giving due opportunity to the applicant. The applicant was not entitled to engage a legal practitioner as his defence assistant and as such his request was rightly not accepted. The disciplinary authority after due consideration of the inquiry report and the representation of the applicant passed the impugned order, which is perfectly legal and hence the present writ petition/TA has no merit and deserves to be dismissed.

14. Having heard the rival submission of the parties and perusing the documents on record, we are of the opinion that there is no need to interfere with the impugned order. The inquiry officer had held that the charges against the applicant are proved. The applicant has participated in the inquiry and during the inquiry he did not raise any issue of bias of the inquiry officer against him and, therefore, he cannot take this plea at this stage. The disciplinary authority has also passed

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by the impugned order dated 19.10.2001 considering the report of the inquiry officer as well as the representation submitted by the applicant. Besides, the order passed by the disciplinary authority is a speaking and reasoned order. There is no irregularity in the departmental proceedings as the same have been conducted as per CCS Rules. Therefore, there is no reason to interfere with the impugned order passed by the disciplinary authority. The punishment awarded to the applicant also cannot be said to be disproportionate to the gravity of the charges against him.

15. In view of the above, we do not find any reason to interfere with the order passed by the disciplinary authority dated 19.10.2001. Therefore, the present writ petition/TA, being devoid of merit, is dismissed with no order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

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K. S. Rathore

(Justice K.S.Rathore)
Member (J)