

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 01.10.2014

OA No. 638/2012

Mr. Salim Khan, proxy counsel for
Mr. Tanveer Ahmed, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondent nos. 1 to 4.
None present for respondent no. 5.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate
sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 638/2012

Date of Order: 1.10.2014

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Kanta Prasad Sharma S/o Shri R.P.Sharma aged about 57 years, resident of B-5, Sumer Nagar Extension, Goliawas, New Sanganer Road, Jaipur at present posted as Pharmacist, Ayurved C.G.H.S.Dispensary No.4, Bani Park, Jaipur.

.....Applicant

(By Mr.Salim Khan,Proxy Counsel
For Advocarte Mr.Tanveer Ahmed)

VERSUS

1. Union of India through Secretary (Health), Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. The Under Secretary, Ayush Ministry of Health & Family Welfare, Red Cross Building, New Delhi.
3. The Director Administration(AKS), CGHS II Section, Directorate General of Health Services, Nirman Bhawan, New Delhi.
4. Additional Director, Central Government Health Scheme, Kendriya Sadan Parisar, Block-B, Ground Floor, Sector-10, Vidyadhar Nagar, Jaipur.

5. Dr. Pawan Kumar, Incharge Ayurvedic Unit, CGHS WC No.4, Bani Park Jaipur.

.....Respondents

(By Advocate Mr. Mukesh Agrawal)

ORDER (ORAL)

The applicant has filed the present OA praying for the following reliefs:-

8. I. By an appropriate order or direction the order impugned dated 1.12.2011(Annexure-A/1), dated 19.3.2012 (Annexure -A/1-A) and the letter dated 22.8.2012(Annexure -A/1-B) may kindly be quashed and set aside in the interest of justice and the respondents may kindly be directed to provide all the benefits/dues to the applicant without any adverse effect in the interest of justice.

II. Any other order or direction which this Hon'ble Tribunal deems fit and proper may also be passed in favour of the applicant.

III. Cost of the Original Application may also be awarded in favour of the applicant.

2. The brief facts of the case as stated by the learned counsel for the applicant are that the present O.A. has been filed being aggrieved by the Penalty Order dated 1.12.2011 (Annexure A/1) issued by the Additional Director, CGHS, Jaipur vide which the pay of the applicant was reduced by one stage from Rs.18350/- to Rs.17650/- in the time scale

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of pay of PB-2(Rs.9300-34800) for a period of three years w.e.f. 1.12.2011 with further direction that the applicant earn increments of pay during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his future increments of pay. The appeal of the applicant and the revision filed by the applicant has also been rejected vide order dated 19.3.2012 (Annexure A/1-A) and the order dated 22.8.2012 (Annexure A/1-B). He prayed that the order dated 1.12.2011(Annexure A/1), 19.3.2012(Annexure A/1-A) and letter dated 22.8.2012(Annexure A/1-B) may be quashed and set aside.

3. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant argued that the penalty order dated 1.12.2011 (Annexure A/1) was passed without informing the applicant in writing of the proposal to take action against him and of imputation of mis-conduct or mis-behavior on which it is proposed to be taken and even giving him reasonable opportunity of making such representation as he may wish to make against the proposal as provided in Rule 16(1)(a) of C.C.S.(CCA)Rules, 1965, therefore, the penalty order is bad in law. He further argued that the order of penalty has been passed by the incompetent authority because the then Additional Director Shri R.K.Gupta was not posted here on regular basis. He

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was posted as Additional Director, Jaipur in officiating capacity which is evident from the Annexure A/2 of the rejoinder. He submitted that as per Govt. of India decision dated 24.1.1963 (Annexure-3) the officer performing current duties can exercise the administrative and financial powers of the post but cannot exercise the statutory powers. Since Shri R.K.Gupta, Additional Director was only officiating as Additional Director, therefore, he could not have exercised the statutory powers given to the disciplinary authority under the C.C.S.(CCA)Rules, 1965.

4. The learned counsel for the applicant further argued that there is no finding by the disciplinary authority as to whether the charge is proved or not. In fact the applicant was never served the charge memo clearly stating the charges against the applicant. Therefore, the penalty order dated 1.12.2011(Annexure A/1) is an illegal order without following the procedure and hence it should be quashed and set aside.

5. The learned counsel for the applicant further argued that since the penalty order dated 1.12.2011(Annexure A/1) itself is bad in law, therefore, the order passed by the appellant authority dated 19.3.2012 (Annexure A/1-A)and the letter issued by the reviewing authority dated 22.8.2012 (Annexure A/1-B) are also bad in law and be quashed and set aside.

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6. On the other hand the Senior Central Government Standing Counsel for the respondents argued that during the meeting, held under the chairmanship of Additional Secretary (Health) on 16.12.1993, it was instructed by the Chairman i.e. Additional Secretary (Health) that "the pharmacist of Ayurvedic Dispensary at Jaipur should be replaced urgently in view of the complaints against him", as it is detailed out under paragraph 13 of the Minutes issued in consequence of the meeting held on 16.12.1993.

7. That the applicant Shri Kanta Prasad Sharma, Pharmacist-cum-Clerk (Ayurvedic) failed to maintain devotion towards his duty and, therefore, disciplinary proceedings were initiated against him on account of official misconduct in failing to maintain devotion toward his duty by way of non-preparation of monthly indents in the prescribed format, non-demanding of medicines properly, non-submitting of monthly returns in time and also indulging in activities in inciting central Government Health Scheme beneficiaries against Doctors in Central Government Health Scheme and disrupting routine functioning of Ayush Wellness Centre, Jaipur. The applicant did not even bother to submit reply to the Memorandum dated 2.9.2011 calling his explanations to the charges leveled against him.

8. The learned counsel for the respondents submitted that the applicant was given sufficient opportunity to file reply to

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the complaints against him but he did not file any reply or representation and, therefore, the disciplinary authority after following the due procedure imposed the minor penalty as per order dated 1.12.2011(Annexure A/1). Thus the action of the disciplinary authority is as per rules. The applicant also preferred an appeal which was duly considered by the appellate authority. After due consideration the appellate authority upheld the order of the disciplinary authority dated 1.12.2011. Thereafter, the applicant filed revision petition and the competent authority held that there is no need to review the decision of the appellate authority. Thus the action of the respondents is according to rule.

9. The learned counsel for the respondents further submitted that the applicant were served memoranda on 24.8.2011, 28.8.2011 and 1.9.2011 but he did not respond to any of these memoranda (Annexure R/5, R/6 and R/7 respectively). The applicant was served another memoranda dated 7.10.2011 (Annexure R/8) to give his explanation but the applicant did not submit any reply. Therefore, Dr.(Mrs.) Janet Vickers, Staff Surgeon Dental (NFSG level officer) was nominated by Additional Director, Central Government Health Scheme (Respondent No.4) to inquire into the matter. Dr. (Mrs.) Janet Vickers submitted her report dated 21.11.2011 with the conclusion that the applicant namely Shri K.P.Sharma has nothing to say in his

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defence and that the complaints made/ charges leveled against the applicant by the Chief Medical Officer(Incharge), Dr. Pawan Kumar appears to be true (Annexure R/9).

10. Thus the learned counsel for the respondents submitted that the averments made by the learned counsel for the applicant that no reasonable opportunity was given to him is contrary to the material available on record. Therefore, the disciplinary authority after examining the matter thoroughly imposed a minor penalty vide order dated 1.12.2011.

11. With regard to the arguments of the learned counsel for the applicant that Shri R.K.Gupta, Additional Director was only officiating and, therefore, he was not competent to impose penalty on the applicant, the learned counsel for the respondents submitted that Additional Director was competent to impose the minor penalty as he was working on the post of Additional Director. Therefore, OA has no merit and it should be dismissed with costs.

12. Having heard the rival submissions of the parties and having perused the documents on record, I am of the opinion that in the present case the procedure for imposing minor penalty has not been followed by the respondents. I have carefully perused the Annexure R/3 which is the Memo dated 1.12.2011. This memo cannot be said that it is a proposal in writing to inform the applicant to take action against him and of the imputation of mis-conduct or mis-

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behaviour on which the action is proposed to be taken. The respondents have only enclosed certain complaints received from Dr. Pawan Kumar against the applicant. The memo dated 1.12.2011 does not clearly state imputation of misconduct or mis-behaviour on the part of the applicant as required under Rule 16 of the C.C.S.(CCA) Rules, 1965. No charge memo has been issued to the applicant. Mere asking for explanation on the basis of some complaints cannot be equated with charge memo as required under Rule 16 of the C.C.S. (CCA)Rules, 1965. I have also carefully perused the penalty order dated 1.12.2011. This order does not indicate that the applicant Shri Kanta Prasad Sharma was given any opportunity of making a representation against the proposal for taking any action against him and whether the applicant preferred a representation. If the applicant had submitted the representation then the disciplinary authority should have considered the representation and made the specific mention in the penalty order dated 1.12.2011. He should have also mentioned whether he agrees or disagrees with the points raised in the representation by the applicant. If the applicant did not submit the representation then also the fact should have been mentioned in the Penalty Order. Since the applicant has not been served with any charge memo or statement of imputation of mis-conduct or mis-behaviour on which the action was proposed to be taken

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against the applicant, therefore, I find that the order dated 1.12.2011 is against the procedure laid down for imposing minor penalty under Rule 16 of C.C.S.(CCA)Rules, 1965.

13. The inquiry conducted by Dr.(Mrs.) Janet Vickers is not a formal inquiry because the respondents have not put on record either any charge memo on which this enquiry was ordered by the disciplinary authority. It appears to be some internal enquiry. If it is the formal enquiry then copy of the enquiry report should have been supplied to the applicant. Neither the learned counsel for the respondents submitted during the arguments nor in their written reply that a copy of the Enquiry Report was given to the charged official. In a minor penalty disciplinary proceeding case it is not necessary to conduct a formal inquiry but if an enquiry is conducted then a copy of enquiry report is to be supplied to the charged officer/employee. If the enquiry conducted by Dr.(Mrs.) Janet Vickers is a formal enquiry, then a copy of the enquiry report must have been supplied to the applicant. But in the present case enquiry report has not been supplied to the applicant. Therefore, also the proper procedure has not been followed in the present case.

14. I am not impressed by the arguments of the learned counsel for the respondents that during the meeting held under the chairmanship of Additional Secretary (Health) on 16.12.1993 it was instructed by the Chairman i.e. the

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Additional Secretary (Health) that "the pharmacist of the Ayurvedic Dispensary at Jaipur should be replaced urgently in view of the complaints against him" as per Para 13 of the Minutes(Annexure R/1) because the punishment order has been passed on 1.12.2011 i.e. almost after 18 years of the meeting presided over by the Additional Secretary (Health). The learned counsel for the respondents could not explain as to what was the department doing for these 18 years. The respondent department in long 18 years could not shift/transfer the pharmacist of the Ayurvedic Dispensary as was recommended in the meeting held on 16.12.1993.

15. Therefore, on the basis of above discussion the order dated 1.12.2011 (Annexure A/1) imposing the minor penalty is quashed and set aside. Since the penalty order dated 1.12.2011 is set aside, therefore, the appellate authority order dated 19.3.2012 as well as the letter dated 22.8.2012 issued to communicate the decision of the competent authority on the revision filed by the applicant are also quashed and set aside.

16. In view of the facts that the proper procedure has not been followed while imposing the minor penalty the penalty order dated 1.12.2011, the appellate authority order dated 19.3.2012 and the letter dated 22.8.2012 issued on behalf of the reviewing authority have already been quashed on that count alone, therefore, I am not giving a finding as to

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whether the Additional Director, C.G.H.S (Shri R.K.Gupta) who was officiating as Additional Director was competent authority or not for imposing minor penalty on the applicant.

17. Thus the OA is allowed with no order as to costs.

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(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/