

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.24/2017
in
O.A.No.3862/2013

New Delhi, this the 27th day of February, 2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Uday Kumar Varma, Member (A)

MS. Kiran
W/o Ashok Khanna
R/o 106/112, Rajouri Extn,
New Delhi – 110027. ... Applicant

Versus

1. Union of India
Through the Secretary
Ministry of Health & Family Welfare
Department of Ayush, Ayush Bhawan
INA, New Delhi.
2. President
Central Council of Indian Medicine
61-65, Institutional Area
Janakpuri, New Delhi – 110058.
3. CENTRAL COUNCIL OF INDIAN MEDICINE
Through Secretary
61-65, Institutional Area
Janakpuri, New Delhi – 110058. ... Respondents

O R D E R (By Circulation)

The O.A.No.3862/2013, for the reliefs claimed therein, was dismissed on merits by this Tribunal by its Order dated 23.12.2016, and the relevant paragraphs read as under:

"5. The learned counsel for the applicant, mainly contended that the impugned suspension order is liable to be quashed on the sole ground that though the same was issued on 22.10.2013, purported to be pending inquiry proceedings, but till date no chargesheet was issued by the respondents and that no challan was filed in any criminal case against the applicant.

6. The said submission of the learned counsel for the applicant falls to the ground by virtue of his own document, i.e., Annexure A13 dated 11.11.2013, which is a Chargesheet issued to the applicant alleging serious charges against her.

7. In the circumstances, the OA is dismissed as being devoid of any merit. However, this order shall not preclude the applicant from making any representation for revocation of her suspension and the O.A.No.3862/2013 4 respondents from considering the same, if the circumstances warrant, in accordance with law. No costs."

2. The RA has been filed for recalling of the aforesaid Order mainly on the following two grounds:

a) The applicant is similarly placed as that of the case of Mr. Prem Raj Sharma and the OA No.3904/2013, filed by him, was allowed by quashing the impugned order dated 22.10.2013, therefore, the applicant also be given the same treatment and should not be made to suffer with the discrimination, and as this Tribunal escaped the consideration of the same while passing the order dated 23.12.2016, there is an error apparent on the face of the record.

b) Although while passing the Order, the Tribunal had taken note of the fact that the applicant was chargesheeted vide Annexure A13, dated 11.11.2013, but failed to note the consequent events that the applicant made reply to the charge memorandum dated 11.11.2013 to the concerned on the ground of incompetence to issue the charge memorandum, vide her letter dated 21.11.2013, and thereafter, another Memorandum dated 27.12.2013 duly signed by the President I/C CCIM, was received by the applicant, which was duly replied vide her letter dated 10.01.2014, and thereafter, no orders were issued by the respondents regarding the continuation of DE, however, no action since been taken to revoke her suspension. Therefore,

according to the applicant, an error apparent on the face of the record.

3. We have perused the contents of the RA and also the Tribunal's Order dated 23.12.2016. It is an admitted fact that the applicant mainly contended that the impugned suspension order was liable to be quashed on the sole ground that though the same was issued on 22.10.2013, purported to be pending inquiry proceedings, but till date no chargesheet was issued by the respondents and that no challan was filed in any criminal case against the applicant. While passing the order, this Tribunal noting the issuance of Annexure A13 chargesheet dated 11.11.2013, against the applicant, dismissed the OA. Once this Tribunal found that chargesheet has been issued on 11.11.2013, matter ends there and non-mentioning of further consequent steps/orders in the Tribunal's Order, would not be a valid ground for review, as it is the applicant to take appropriate legal steps, if so advised, in accordance with law.

4. The other ground taken by the applicant that his case is covered by a Coordinate Bench decision, passed in OA No.3904/2013 (Mr. **Prem Raj Sharma v. UOI & Others**), decided on 02.07.2015, is also untenable as in that case there was no chargesheet issued, as is evident from the following observations of the Tribunal:

"12. In the present case, it appears that in the absence of there being any charge sheet issued to the applicant he cannot be treated to be covered by any disciplinary proceedings. It is also not alleged that the applicant has engaged himself in activities prejudicial to the interest of the security of the State or that he was facing any investigation / enquiry in any criminal offence. The respondents have merely averred that a disciplinary proceeding was contemplated against him. The first order of suspension was issued to the applicant on 17.04.2013 in which it was stated that the disciplinary proceedings were

contemplated against him. The suspension order was revoked on 26.08.2013, which was further extended for 180 days w.e.f. 11.07.2013 pending departmental enquiry and criminal complaint. On 26.08.2013 the applicant was directed to join office with immediate effect. In this way, right from the initial date of suspension i.e. 17.04.2013 till the revocation of his suspension, although it was stated in the order that departmental enquiry and criminal complaint was pending against him, it is on record that no disciplinary proceeding was initiated against the applicant by way of issuing a charge sheet. In the rejoinder the applicant has also brought this fact to notice that no criminal complaint had yet been registered against him. Merely saying that departmental proceedings were contemplated against the applicant cannot be *prima facie* accepted because even during the intervening months, no action was initiated by way of issuance of charge sheet, nor was any complaint registered by the competent authority against the applicant. Even till filing of the counter reply by respondent Nos. 2 and 3 on 28.11.2013, there is no averment to show that the charge sheet had been issued. There is therefore no document or record to support the contention of the respondents that since a departmental proceeding was continuing against the applicant, hence his suspension was justified. In these circumstances, this plea of the respondents cannot be accepted."

In view of the above, there is no error apparent on the face of the record. The applicant is trying to re-argue the OA, on merits, under the guise of the present Review Application, which is not permissible.

5. In the circumstances, we do not find any merit in the RA and accordingly, the same is dismissed. No costs.

(Uday Kumar Varma)
Member(A)

(V. Ajay Kumar)
Member (J)

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