

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH****O.A. No.665/2015
with
O.A. No.666/2015
O.A. No.675/2015****New Delhi this the 16th day of May, 2016****HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)****(1) first case O.A 665/2015**

Isha Sharma,
W/o. Sh. Vipin Raj,
Aged 28 years
R/o. G-147, S-2, Dilshad Colony,
Seemapuri,
Delhi-110 095.

....Applicant

(Argued by : Shri. S. M. Zulfiqar Alam, Advocate)

(2) second case O.A 666/2015

Narain Singh Yadav,
S/o. Sh. Raghubir Singh,
Aged 34 years
r/o. Village & Post Khera Dabar,
Nazafgarh, New Delhi-110 073.

..Applicant

(Argued by : Shri. Ajesh Luthra, Advocate)

(2) third case O.A 675/2015

Dimple,
D/o. Sh. Ram Gopal,
Aged 30 years
R/o. F-CA 10, Mahavir Colony,
Ballabhgarh, Haryana.

....Applicant

(Argued by : Shri. S. M. Zulfiqar Alam, Advocate)

Versus

State of NCT of Delhi,
through

1. Secretary (Health & Family Welfare)
GNCTD,

Delhi Secretariat,
Delhi;

2. Medical Superintendent
Govind Ballabh Pant Institute of
Postgraduate Medical Education &
Research (GIPMER),
GNCTD,
1, J. L. Nehru Marg,
New Delhi – 110 002;
 3. Director (Vigilance)
Govind Ballabh Pant Institute of
Postgraduate Medical Education &
Research (GIPMER),
GNCTD,
1, J. L. Nehru Marg,
New Delhi – 110 002; and through
 4. Pay and Account Officer,
(PAO-15)
MRD Block, Lok Nayak Hospital
Jawahar Lal Nehru Marg,
New Delhi – 02.
 5. Dr. Sanjay Tyagi
Director,
Govind Ballabh Pant Institute of
Postgraduate Medical Education &
Research (GIPMER),
GNCTD,
1, J. L. Nehru Marg,
New Delhi – 110 002
 6. Sh. Ashok Kumar Pant
Pay and Account Officer,
(PAO-15)
MRD Block, Lok Nayak Hospital
Jawahar Lal Nehru Marg,
New Delhi – 02.
 7. Mr. Usha Ahuja
Nursing Sister / Superintendent,
Govind Ballabh Pant Institute of
Postgraduate Medical Education &
Research (GIPMER),
GNCTD,
1, J. L. Nehru Marg,
New Delhi – 110 002.
- ..Respondents

(By Advocate: Mr. Anmol Pandita for Mr. Vijay Pandita)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

As identical questions of law and facts are involved, we propose to dispose of ***Original Application*** (OA) **No.665/2015** titled as **Isha Sharma Vs. State NCT of Delhi and Others** (for brevity 1st case), **OA No.666/2015** titled as **Narain Singh Yadav Vs. State NCT of Delhi and Others** (for short second case) and **OA No.675/2015** titled as **Dimple Vs. State NCT of Delhi and Others** (for brevity third case), by virtue of this common decision, in order to avoid repetition of facts.

2. The matrix of facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant OAs and emanating from the record is that Isha Sharma, applicant (in first case) and Dimple, applicant (in third case) were working as Staff Nurses whereas Narain Singh Yadav, applicant (in second case) was working as OT Technician in G.B. Pant Hospital. Their services were terminated vide common impugned order dated 19.12.2014 (Annexure A-1) on account of alleged, financial misappropriation, by the Director (competent authority).

3. Aggrieved thereby, the applicants have preferred the instant OAs, challenging the impugned termination orders (Annexure A-1), invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

4. The case, set-up by the applicants, in brief, insofar as relevant, is that they have rendered excellent services to the Hospital and demonstrated high level of sincerity, honesty and integrity. The management of the Hospital was not paying salary to its employees regularly. It used to pay the salary to its employees after a period of 2 to 3 months. Applicants could not keep track of, how much money was credited into their accounts and thought that the Hospital was releasing arrears of salary and other benefits to the employees in pursuance of order dated 14.03.2013 in OAs No.1878, 3088 and 3089 of 2012 and other connected OAs. It was explained that subsequently due to inadvertence, a large sum of money was credited in the accounts of many employees of the Hospital through Information Technology Electronic Clearing (ITEC) System. The applicants also received the amounts mentioned therein in their respective accounts genuinely believing it to be their arrears of salary and other benefits.

5. Subsequently, the Director, G.B. Pant Hospital was informed by PAO-XV of significant mismatches between the pay bills and corresponding out going, from the Salary Head of the Hospital. Consequently, a Committee was constituted on 03.11.2014 by Secretary, Health and Family Welfare. During the course of preliminary enquiry, it revealed that the excess amount was deposited in the accounts of the applicants and other employees of G.B. Pant Hospital due to

fault in ITEC Transfer System and negligence of the official of Accounts Branch. According to the applicants, they are neither connected with ITEC Transfer System in any manner nor they are at fault, but their services were illegally terminated without, any show cause notice, providing opportunity of being heard and holding any regular enquiry in this regard. The impugned termination orders were termed to be illegal, arbitrary, whimsical, mala fide and against the principles of natural justice.

6. Levelling a variety of allegations and narrating the sequence of events, in all, the applicants claimed that the impugned orders are void and non-est in the eyes of law. On the strength of the aforesaid grounds, the applicants sought quashing of the impugned termination orders in the manner indicated hereinabove.

7. The contesting respondents refuted the claim of the applicants and filed the replies in all the OAs wherein it was pleaded that, after preliminary enquiry, it was detected that some suspicious payment/diversion of salary fund by some Hospital staff were credited in the accounts of many employees including the applicants. They have temporarily misappropriated the amount, which was subsequently recovered from them. Accordingly, their services were terminated in terms and conditions of offer of appointment letter dated 20.09.2007 by Respondents.

8. At the same time, an FIR No.116 dated 06.03.2015 (Annexure R-6) has already been lodged in I.P. Estate Police Station, New Delhi, about the above mentioned financial misappropriation. However, it was admitted that the investigation is still pending and is to be carried out by the competent authority in order to ascertain as to whether applicants were involved in the misappropriation or not. Therefore, termination orders cannot be revoked till final outcome of the investigation.

9. According to the respondents, the enquiry has further concluded that getting a new number of ECS is a serious lapse on the part of accounts functionaries of the Hospital and needs to be tackled with stern disciplinary action against all the concerned employees besides making recovery of entire amount, if not already recovered from the beneficiaries.

10. Virtually reiterating the validity of the impugned termination orders and acknowledging the factual matrix, the respondents have stoutly denied all other allegations contained in the OAs and prayed for their dismissal.

11. Controverting the pleadings contained in the reply of the respondents and reiterating the grounds contained in the OAs, the applicants have filed their rejoinder wherein it was additionally pleaded that they have not committed any misconduct and have been wrongly punished. The respondents have passed the impugned termination orders,

without even reaching to a final conclusion with regard to the involvement of the employees (including the applicants) in the Hospital of temporary embezzlement.

12. The applicants have also claimed that their services have been terminated by way of stigmatic order, without affording any opportunity to defend themselves, which violates the protection under Article 311 of Constitution of India and principles of natural justice. That is how we are seized of the matter.

13. After hearing the learned counsel for the parties, going through the record with their valuable help and considering the entire matter, we are of the firm view that the instant OAs deserves to be accepted for the reasons mentioned hereinbelow.

14. Ex-facie, the arguments of the learned counsel that the applicants are not in any way connected with the transfer of excess amount in their respective accounts through IT ECS transfer system, which has already been deposited back with the respondents and since their services have been terminated by means of a stigmatic order of misappropriation, without holding an enquiry, so the impugned orders are illegal and vitiated, have considerable force.

15. On the contrary, the learned counsel for respondents has fairly acknowledged that there is no positive evidence of mala fide connecting the applicants with the transfer of the

amount through ITEC Transfer System, in their respective accounts. They have already deposited the excess amount with the respondents. However, the contention of the learned counsel that since the applicants were the beneficiaries of the amount, so their services were rightly terminated by the competent authority, in terms of their appointment letters, is not only devoid of merit but misplaced as well, and deserve to be rejected for more than one reason.

16. As is evident from the record, that the applicants were duly appointed and discharged their respective duties in the G.B. Pant Hospital. The excess amount was transferred through ITEC Transfer System, in their account, on account of inefficiency, to operate the said System of the officials of the accounts branch.

17. At the same time, the learned counsel for the respondents, has miserably failed, to point out, that how, when and in what manner the excess amount was entrusted to the applicants for a particular purpose, which is a condition precedent to hold them guilty of misappropriation of the amount. Above all, the applicants cannot possibly be blamed for inefficiency of operating the ITEC Transfer System by the officials of the accounts branch. Thus, component of malice (*mensrea*) on the part of the applicants is totally lacking in this case. Moreover, as soon as the applicants came to know about the excess transfer

of amount in their accounts, they have immediately returned the excess amount to the respondents.

18. This is not the end of the matter. As indicated herein above, even the pleaded case of the respondents is that investigation was to be carried out by the competent authority in order to ascertain as to whether applicants are involved in misappropriation or not, and enquiry is yet to be completed. Meaning thereby, they have passed the impugned termination order on speculative grounds, even prior to the fixing of actual liability of the applicants, which is not legally permissible.

19. The matter did not rest there. A perusal of the record would reveal that incident of temporary misappropriation has occurred on account of inefficiency to operate the IT ECS transfer system by the officials of the accounts branch in the Hospital. It has been specifically pleaded by the respondents in their reply, that enquiry has further concluded that getting a new number of EC System would amount to serious lapse on the part of accounts functionaries and PAO of the Hospital, by way of forgery of records and hence needs to be tackled with stern disciplinary action against all the concerned, besides making recovery of the entire amount, if not already recovered from the beneficiaries.

20. The learned counsel for the respondents has miserably failed in establishing that any such departmental

enquiry or action has been initiated or any punishment order was passed against the officials of the accounts branch of the Hospital. Meaning thereby, the respondents have not yet punished the main erring officials of the accounts branch and straightaway jumped to terminate the services of the applicants on speculative grounds. Therefore, the applicants are also entitled to the same treatment on the basis of equality and parity.

21. Sequelly, the Hon'ble Apex Court in the case of ***Man Singh Vs. State of Haryana and Others AIR 2008 SC 2481*** has considered the scope of Article 14 of the Constitution and it was ruled that the concept of equality, as enshrined in Article 14 of the Constitution of India, embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

22. Again, the Hon'ble Supreme Court in the case of ***Rajendra Yadav Vs. State of M.P. and Others JT 2013 (2) SC 627*** has held that the Doctrine of Equality applies to all, who are equally placed even among persons who are found guilty. The persons, who have been found guilty, can also claim equality of treatment, if they can establish discrimination with them relatable to similarly situated persons.

23. Therefore, the protection of Articles 14 & 16 of the Constitution of India and principles of equality, parity and *stare decisis* are fully attracted to the case of the applicants as well. They are also entitled to equal treatment. The ratio of law laid down by Hon'ble Apex Court in the indicated judgments is *mutatis mutandis* fully applicable in the present controversy and is a complete answer to the problem in hand.

24. There is yet another aspect of the matter which can be viewed entirely from a different angle. The services of the applicants were terminated vide impugned stigmatic order (Annexure A-1), on account of misappropriation of the indicated excess amount, without issuing any show cause notice or holding any enquiry. The submission of the learned counsel that since the applicants were not confirmed employees, so there was no requirement to hold

a departmental enquiry against them, is again not legally tenable.

25. Even if the contents/substance of the order, attending circumstances and the basis of termination order are taken into consideration, and put together, then no one can escape to come to a definite conclusion, not only that the termination order is smeared with stigma, but also passed on the alleged misconduct of misappropriation of excess amount. Thus, impugned termination orders are held to be in the nature of stigmatic orders.

26. Therefore, once it is proved that the services of the applicants were terminated by virtue of impugned stigmatic order, on the basis of misconduct, then the protection under Article 311 of the Constitution of India is available to them and their services cannot be terminated on speculative grounds, without holding any enquiry. This matter is no more res integra and is now well settled.

27. An identical question came to be decided by the Hon'ble Apex Court in the **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others JT 2015 (9) 363**, wherein having considered the previous judgments of Hon'ble Supreme Court in cases ***Samsher Singh v. State of Punjab (1974) 2 SCC 831***, ***Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another (1999) 2 SCC 21***, ***State of U.P. vs. Kaushal Kishore Shukla (1991) 1***

SCC 691, *Triveni Shankar Saxena vs. State of U.P.*(1992) Supp (1) SCC 524, *State of U.P. vs. Prem Lata Misra* (1994) 4 SCC 189, *Samsher Singh (supra)*, *Parshotam Lal Dhingra vs. Union of India* AIR 1958 SC 36, *State of Bihar vs. Gopi Kishore Prasad* AIR 1960 SC 689, *State of Orissa vs. Ram Narayan Das* AIR 1961 SC 177, *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593, *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593, *Anoop Jaiswal vs. Govt. of India* (1984) 2 SCC 369, *Nepal Singh vs. State of U.P.* (1980) 3 SCC 288, *Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena* (1994) 5 SCC 177, *Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena* (1994) 5 SCC 177, *Chandra Prakash Shahi vs. State of U.P. and Others* (2000) 5 SCC 152, *Union of India and Others vs. Mahaveer C. Singhvi* (2010) 8 SCC 220, *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences* (1999) 3 SCC 60, *Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and Another* (2002) 1 SCC 520] and *State Bank of India and Others vs. Palak Modi and Another* (2013) 3 SCC 607,

it was ruled by the Apex Court that if the termination order is stigmatic and based or founded upon misconduct, would be a punitive order and court can lift the veil and declare

that in the garb of termination simpliciter, the employer has punished an employee, for an act of misconduct. It was also held that if a probationer is discharged on the ground of misconduct or inefficiency or for similar reason, without a proper enquiry and without his getting a reasonable opportunity of showing cause against the termination, it may amount to removal from service within the meaning of Article 311 (2). Hence, a show cause notice was required to be issued and opportunity of being heard has to be provided to such employees in departmental enquiry before passing any adverse order. In the absence of which, the termination order would be inoperative and non-est in the eyes of law.

28. Therefore, such impugned stigmatic order of termination, passed on account of temporary misappropriation of the amount, against the applicants by the competent authority would be inoperative and cannot legally be sustained. Thus, the contrary arguments of the learned counsel for the respondents *stricto sensu* deserve to be and are hereby repelled. On the other end the ratio of law laid down in the indicated judgments by Hon'ble Apex Court is *mutatis mutandis* applicable to the facts of the present cases and is a complete answer to the problem in hand.

29. Thus, seen from any angle, the impugned orders cannot legally be sustained in the obtaining circumstances of the case.

30. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

31. In the light of the aforesaid reasons, OAs are accepted. The impugned termination order dated 19.12.2014 (Annexure A-1), in all the connected cases, are hereby quashed. The respondents are directed to reinstate the applicants in service forthwith, with all consequential benefits. However, they would be entitled to 50% of amount of their back wages in view of the judgment of the Hon'ble Apex Court in ***Ratnesh Kumar Choudhary's case*** (supra).
No costs.

Let a copy of this order be placed in all the connected files.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh