

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1926/2015

New Delhi this the 1st day of August, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. Hira Lal,
Medical Officer,
Aged 54 years, Group 'A',
S/o Shri Labh Chand,
R/o AI/71, Sector-3,
Rohini, Delhi-110085

- Applicant

(By Advocate: Mr. Ashish Nischal)

Versus

Union of India
Through the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110108

- Respondent

(By Advocate: Mr. N.D. Kaushik)

ORDER (Oral)

Justice Permod Kohli:

Validity of penalty order dated 23.01.2015 has been challenged in the present OA. One of the grounds urged is that charge memo was not approved by the competent authority. With a view to examine the contentions raised in the OA, the respondent was directed to produce the record vide order dated 13.05.2016. The record has been produced. We have carefully examined the record. Notings on the file dated 16.11.2017 relate to initiation of

disciplinary proceedings against the applicant. The relevant extract of the notings is reproduced hereunder:-

“This is regarding complaint against Dr. Hira Lal, Medical Officer, GNCT Delhi.

2. GNCT Delhi have informed that Dr. Hira Lal is in the habit of remaining absent without intimation, availing leaves without prior approval, disobedience of orders of seniors and insubordination. He has been warned several times during the last three years to improve his conduct but to no avail. The details of his misconduct and memos/warnings issued to him may be seen at p.1-35/cor. The memos/warnings have been issued by Maharishi Balmiki Hospital, GNCT Delhi.

3. The service particulars of Dr. Hira Lal have been obtained from GNCT Delhi vide p.34-40/cor. His date of joining in the Medical Officer Grade is 21.9.94. He has not been confirmed in the grade of Medical Officer so far. In this connection it is also submitted that a case of disciplinary proceedings is already being initiated against Dr. Hira Lal in Vigilance Section of the Ministry for his negligence towards Govt. duty (File No.C.14011/28/97-CHS.I refers in this regard).

4. It is proposed to initiate another disciplinary proceedings for imposing major penalty against Dr. Hira Lal for his unauthorized absence and insubordination. Vigilance Section have proposed the name of Shri Anil Uniyal, Under Secretary as Inquiry Officer (IO) and Shri V.K. Govil, Section Officer as Presenting Officer in the case. It is suggested that Shri Anil Uniyal, Under Secretary and Shri V.K. Govil, Section Officer, may be appointed as Inquiry Officer (IO) and Presenting Officer (PO) respectively in this case.

5. Kind approval of HFM is solicited for initiating disciplinary proceedings for imposing major penalty against Dr. Hira Lal, Medical Officer, GNCT Delhi for his unauthorized absence and insubordination.

Sd/
16.11.07”

The file was thereafter processed and notings dated 05.12.2007 indicate that the approval of Hon'ble Health & Family Welfare Minister was sought for initiation of major penalty proceedings. Draft chargesheet was also placed on record. The Hon'ble Minister, who is the delegatee of the President, has approved the same on 12.12.2007. Therefore, the plea that the charge memo was issued without the approval of the competent authority cannot be accepted.

2. However, the present OA is liable to be allowed on other valid ground. In para 4 of the notings referred to above, it is mentioned that while proposing to initiate another disciplinary proceedings for imposing major penalty against the applicant for his alleged unauthorized absence and insubordination, the competent authority also approved the appointment of the Inquiry Officer and the Presenting Officer. This is without even serving the chargesheet.

3. The aforesaid situation is in gross contravention of the Rule 14 of the CCS(CCA) Rules, 1965, which prescribes the procedure for imposing penalty. Besides that, it also demonstrates the pre-determined mind of the competent authority to impose the penalty upon the applicant even without serving the chargesheet. Sub-rule (2) of Rule 14 of

the CCS(CCA) Rules empowers the disciplinary authority to formulate his opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Government servant. Sub-rule (3) of Rule 14 of the CCS (CCA) Rules further provides where it is proposed to hold an inquiry against a Government servant, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge. Sub-rule (4) of Rule 14 of CCS (CCA) Rules further prescribes that the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses sought to be relied upon in the proposed inquiry. The aforesaid rule further prescribes that the said charge memo is to be served upon the applicant for his response/written statement within the prescribed time. Sub-rule(5)(a) of Rule 14 of the CCS(CCA) Rules imposes an obligation upon the disciplinary authority to examine the written statement of defence filed by the Government servant and if on such examination, the disciplinary finds that the charges are required to be inquired into may appoint the inquiring authority. The entire procedure is based upon fairness and in consonance with the principles

of natural justice. Where the disciplinary authority determines to appoint an inquiring authority even without serving the chargesheet, it renders the entire procedure meaningless. Apart from that, it also demonstrates the pre-determined mind of the disciplinary authority to hold an inquiry without even consideration of the written statement of the respondent. Thus, the principles of natural justice are grossly violative.

4. Without going into the other aspects of the matter, this OA is allowed on account of contravention of the mandatory statutory provision prescribed under Rule 14 of the CCS (CCA) Rules referred to hereinabove and violation of the principles of natural justice. The impugned order is hereby set aside.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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