CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2939/2012

RESERVED ON: 18.08.2015
PRONOUNCED ON: 06.10.2015

HON'BLE JUSTICE SHRI BROJENDRA PRASAD KATAKEY, MEMBER (J).
HON'BLE DR. B. K. SINHA, MEMBER (A).

Sumer Singh Solanki
R/o H.No.A-2, Type-III,
West Kidwai Nagar, New Delhi. ...Petitioner

(By Advocate: Shri Yashpal Rangi)

VERSUS

Union of India through
1. The Secretary
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.

2. The Director General,
DGHS, Nirman Bhawan,
New Delhi.

3. The Medical Superintendent,
VMMC & Safdarjung Hospital,
New Delhi. ...Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

ORDER

By Dr. B.K. Sinha, Member (A):

Before coming to grips with the case onto the case in hand, it is expedient to relate certain important facts, which are necessary for proper adjudication of the case. Sequel to departmental inquiry, the applicant was dismissed from service by an order passed by the disciplinary authority in that regard on 25.05.2009. Against the order aforesaid, an appeal came to be filed on 09.06.2009, which was disposed of by the appellate authority, vide its order dated 26.10.2010. Aggrieved, the

applicant preferred OA No.144/2011 against the aforesaid two orders. Perusal of the appellate order dated 26.10.2010 revealed that the appellate authority having found certain procedural deficiencies in the conduct of the inquiry remitted the matter to the disciplinary authority to complete proceedings strictly as per procedure laid down under Rule 14 of the CCS (CCA) Rules 1965 and Rule 10(3) and (4) of the said rules. However, the order of dismissal dated 25.09.2009 was sustained. During the pendency of the aforesaid OA, yet another order dated 04.05.2011 was passed by the appellate authority. The Tribunal, after going through the said order, disposed of the OA vide order dated 13.12.2011 with the following directions:-

> "*4. This order has been handed over to us during the course of hearing. It appears that the respondents have realized their mistake of retaining the order dated 25.5.2009, and now the applicant is to remain under suspension from the date he was dismissed from service. No occasion arises in the circumstances to further proceed in the matter but to give liberty to the applicant to challenge the order dated 4.5.2011, if so advised. All issues that have been raised in the present OA are left open. However, in totality of the facts and circumstances of the case, we dispose of this Original Application directing the concerned authority to expedite the inquiry against the applicant and conclude the same within a period of six months at the most from today subject to applicant cooperating with the enquiry. If the applicant may not cooperate and for any other reasons it may not be possible to complete the enquiry by the aforesaid time, it shall be open for the respondents to seek extension of time."*

In the meantime, in compliance of the appellate order dated 26.10.2010, a Charge sheet dated 07.09.2011 came to be issued against the applicant.

2. Aggrieved by the Tribunal's order dated 13.12.2011 passed in OA No.144/2011, the applicant preferred a writ petition bearing WP(C) No.1002/2012 before the Hon'ble High Court of Delhi, which was dismissed as withdrawn vide order dated 21.02.2012 with liberty to file review application. Subsequently, the applicant preferred a Review Application before the Tribunal which was also dismissed. The applicant has also disputed even issuance of Charge Memo dated 07.09.2011.

3. Now coming to the instant OA, the applicant has assailed the impugned orders dated 25.09.2009 and 26.10.2010, which were challenged by him in the earlier OA No.144/2011 as also the Charge Sheet dated 78.09.2011.

4. The applicant has, *inter alia,* alleged that despite having realized their mistakes, the respondents have not completed the inquiry within the time prescribed by the Tribunal while disposing of OA No.144/2011 irrespective of the fact that the applicant has fully cooperated with the enquiry. He has further submitted that though the respondents admit that no rules have been followed, yet are predetermined to dismiss him. He has also averred that he has never committed any misconduct and the allegations of using un-parliamentary language with the HOD (Block Bank) or with any other officials made against him are false and misconceived and, therefore, he cannot be made to suffer on lapse of the respondents.

5. Per contra, the respondents have filed their reply denying the averments of the applicant and took a preliminary objection of res judicata as the instant OA has been filed on the same cause of action on which earlier OA No.144/2011 had been filed, and on this sole ground, the same deserves to be dismissed. The respondents further submitted the disciplinary authority issued a Memorandum dated 07.09.2011 and orders appointing Inquiry Officer and Presenting officer were also issued to enquire into the charges against the applicant. It is further submitted that one Suresh Kumar, defense assistant of the applicant was using delaying tactics and he did not allow to conduct the proceedings and the applicant has not even bothered to cooperate in the enquiry.

6. Apart from the rejoinder, the applicant has filed brief submission reciting therein that though the stipulated period of six months, as directed by the Tribunal in OA No.144/2011, expired on 12.06.2012 but nothing substantial could be done by the respondents, despite full co-operation by him. It is further contended that the respondents filed MA No.3112/12 seeking extension of time which was granted by the Tribunal till 30.04.2013 directing the respondents to complete the proceedings but of no avail. The respondents again filed MA No.3419/2013 for extension of time. This time also the Tribunal extended the time to complete the enquiry proceedings against the applicant but the fate of no different as the time extended on two occasions expired on 18.07.2014, submits the applicant.

The respondents have also filed MA No.1207/2015 seeking extension of time which was fixed on 09.04.2015 on which date the Tribunal, according to the applicant, though directed the respondents to comply with Tribunal's order passed in OA No.144/2011 and adjourned the matter on 07.05.2015, the respondents could not file the compliance report and the matter stood adjourned to 12.05.2015.

7. It is also pertinent to mention here that the applicant has also filed CP No.378/2015 alleging deliberately flouting the directions contained in order dated 19.03.2014 passed in MA No.3418/2013, and the orders dated 09.04.2015 and 07.05.2015 passed in MA No.1207/2015 arising out in OA No.144/2011 (disposed of on 13.12.2011). He further alleged that despite the order dated 19.03.2014 passed in MA No.3418/2013 allowing the respondents to complete the departmental proceeding initiated against him within four months and, thereafter, vide orders dated 09.04.2015 and 07.05.2015 passed in MA No.1207/2015 allowing the respondents to pass final order in the disciplinary proceeding initiated against the petitioner by 07.05.2015, since the respondents did not pass the final order on such proceeding and continued with the disciplinary proceeding, fixing the date of the said proceeding beyond 07.05.2015 and asking the petitioner to participate in the said proceeding, the respondents have committed civil contempt of this Tribunal.

8. The Tribunal having considered the rival contentions of the parties also noticing the order dated 10.01.2013 in MA No.3112/2012 wherein it has been observed that in addition to certain administrative difficulties, the applicant has also contributed to the delay by not cooperating in the inquiry, which order has not been challenged by the applicant before any forum, dismissed the contempt petition by holding that it cannot be said that there was, *inter alia,* willful and deliberate violation of any direction issued by this Tribunal by the respondents so as to initiate civil contempt within the meaning of Contempt of Courts Act, 1971. Resultantly, the Tribunal dismissed the CP No.378/2015 vide its order dated 28.08.2015 observing that the time granted vide its orders dated 13.12.2011 and 10.01.2013 was further extended vide order dated 19.03.2014 passed in MA No.3418/2015 in OA No.144/2011 and thereafter vide order dated 09.04.2015 till 07.05.2015. This Bench clearly held as under:-

> *"19…In none of the aforesaid orders passed, the consequence of non-completion of the disciplinary proceedings, initiated against the contempt petitioner, has been spelt out. No direction has also been issued not to proceed with the said proceeding in the event such proceeding could not be completed by the respondents within the stipulated time. No order was also passed to the effect that in the event of failure to complete the proceeding, the same shall stands quashed. On the other hand, as discussed above, order has been passed by this Tribunal to exclude the period of delay from the time granted, which has been caused at the instance of the contempt petitioner. As noticed above, it is evident from the order dated 10.01.2013 passed in MA No.3112/2012 that the applicant has also contributed to the delay by not cooperating in the inquiry, apart from the delay caused due to certain administrative difficulties. In view of the aforesaid*

> *discussion, it cannot be said that there is willful or deliberate violation of any direction issued by this Tribunal by the respondents, so as to initiate civil contempt proceeding within the meaning of 1971 Act."*

This Bench while dismissing the contempt petition in OA No.144/2011 has further held that the respondents have completed the disciplinary proceedings after 07.05.2015 and found in unequivocal terms that non-compliance to the said proceedings within the said date i.e. 07.05.2015 cannot be construed to be a contempt of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice, so as to make them liable under 1971 Act. The Tribunal also took into account the unconditional apology tendered by the respondents.

9. Here, we are also swayed by two factors that as it has been affirmed in the CP that the attitude of the applicant has been obstructionist by nature and was found adopting dilatory tactics and the findings in this regard have already been recorded in the aforesaid CP, they cannot be interfered or disagreed with in the instant OA and they hold good.

10. The second issue which we propose to deal with at some length is that what would be the impact of the directive to complete the proceedings within the stipulated time. It is an admitted position that the power of punishment vests in the disciplinary authority and is to be awarded as per the procedures prescribed either under Rule 14 in case of major

penalty or under Rule 16 in other cases of CCS (CCA) Rules, 1965.

11. The Hon'ble Apex Court has clearly held in various cases that a chain has been provided for award of punishment and the courts have been strictly prohibited to step into the shoes of the disciplinary authority. In *Maharashtra State Board of Secondary and Higher Secondary Education & Anr. V/s. Paritosh Bhupesh Kurmarsheth etc.* [1984 (4) SCC 27], the Hon'ble Court has held as under:-

> *"14…It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute. Though this legal position is well-established by a long series of decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly erroneous approach made by the High Court to the consideration of the question as to whether the impugned cl. (3) of Regn. 104 is ultra vires. In the light of the aforesaid principles, we shall now proceed to consider the challenge levelled against the validity of the Regn. 104 (3)."*

This has been further reiterated in *Bhushan Uttam Khare V/s. The Dean, B.J. Medical College & Ors.* [1992 (2) SCC 220 (para 8); *State of Rajasthan & Ors. V/s. Lata Arun* [2002 (6) SCC 252]; *Secrertary, Board of Basic Education, U.P. V/s. Rajendra Singh & Ors.* [2009 (17) SCC 452], and *Union of India & Ors. V/s. S.K. Goel & Ors.* [2007 (14) SCC 641]. This Tribunal has also dealt with these issues in the case of *Dr. Kamal Chauhan V/s. Union of India & Ors.* [OA No. 1918/2012 decided on 06.01.2014] and in the case of *Smt. Shashi Bala V/s. Union of India & Ors.*[OA No. 3513/2010 decided on 31.10.2013].

12. In the instant OA, we find that the procedure prescribed for departmental proceedings has been fully gone through. We further find that charges of obstruction and non-cooperation with the departmental proceedings sticking to the applicant. We also find that the disciplinary authority is the competent authority to take decision regarding the quantum of punishment and other disciplinary matters. On the issue of punishment, we find that once the disciplinary authority has taken a decision to award punishment on the delinquent employee, an appeal lies with the appellate authority under Rule 24 and a revision under Rule 29 of the CCS (CCA) Rules, 1965.

13. In terms of the spirit of the decisions of the Hon'ble Supreme Court, it would not be appropriate on part of the courts to muscle out the disciplinary authority in respect of

powers which have been vested upon it including that of deciding various factors relating to conduct of the disciplinary proceedings as also termination of proceedings.

14. However, where the courts are approached on grounds relating to procedural irregularities, the position has already been considered and clarified by this Tribunal as well as the Hon'ble superior courts. An identical matter had been referred to a Full Bench of this Tribunal in OA No. 1118/2008 decided on 30.07.2010 wherein a similar issue had been referred to the Full Bench, which reads as under:-

> *"To put law straight on the issue as to whether a direction by the Tribunal to complete the disciplinary proceedings within a timeframe and non-completion thereof within the stipulated period would have an effect of abatement of proceedings is the reference before this Full Bench."*

The Full Bench considered the matter and observed as under:-

> *"9. Our attention has further been drawn towards the decision of the Cuttack Bench in the case of Uttam Charan Jena Vs. Union of India reported in 2003 (3) ATJ 96. The Cuttack Bench of this tribunal was concerned with an almost similar controversy. In support of the reasoning, the Cuttack Bench referred to the decision of the Supreme Court in the case of State of Punjab and Ors. Vs. Chaman Lal Goyal (1995 (2) SCC 570) keeping in view the delay, the orders so passed by the Disciplinary Authority had been quashed.*
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> *10. Similarly, in the case of Madan Mohank Pradhan Vs. Union of India & Ors. reported at (2003 (3) ATJ 351), the Tribunal had directed the authorities to conclude the Disciplinary Proceedings within six months. But, the Disciplinary Proceedings were concluded after 9 to 10 months. There was no prayer made for extension of time for completion of the proceedings. This Tribunal had quashed the proceedings because of the delay that had occurred.*

11. So far as the decision rendered by this Tribunal in the case of Uttam Charan Jena (supra) is concerned, at the risk of repetition, we state that a Bench of this Tribunal had relied upon the decision of the Supreme Court. The Supreme Court had held that "if the delay is caused and is unexplained, the Court will interfere and quash the charges". It was further held that "if the Court is satisfied that the delay caused prejudice to the delinquent in defending of the case, the charges can be quashed". We do not dispute the said proposition. These findings related to facts where delay was relating to initiation of disciplinary proceedings. However, if there is no inordinate delay in that event, the ratio decidendi of the Supreme Court decision will have little import and application. We feel that the Cuttack Bench of this Tribunal, therefore, fell into a grave error in coming to a conclusion which we have referred to above.

12. Similarly, in the case of Madan Mohank Pradhan (supra) the Calcutta Bench of this Tribunal had held:

> *"In view of the above, we are of the confirmed view that since the respondents has failed to comply the order within the stipulated period given in the order dated 28.03.95 & the said order has not imposed any of the penalties enumerated in Rule (7) of the E.D. Conduct & Service rules, therefore, the order dated 18.07.96/16.08.96, in whatever form it has been passed by the respondents after the stipulated period is non-existent in the eyes of law. We accordingly quash the said order dated 18.7.96/16.08.96 enclosed as Annexure ' A' and direct the respondents to reinstate the applicant on the post of EDBPM, Naul w.e.f. 05.10.95 with all consequential benefits. All admissible service benefits w.e.f. 05.10.95 shall be granted to the applicant within a period of two months from the date of communication of this order".*

Same was the view expressed by the Lucknow Bench."

The Full Bench answered the reference in the following manner:-

"13. We are of the considered opinion that merely because there is a delay of couple of months in complying with the direction of this Tribunal, the concerned authorities, while passing the orders will not become functus officio. If within the stipulated time they do not comply with the directions, it may result in disobedience of the directions of this Tribunal or in certain circumstances in accordance with the

provisions of the Administrative Tribunals Act, 1985, on an appropriate application, the order can be enforced. But to state that the authorities would become functus officio or order so passed on that ground can be quashed will be improper. We hasten to add that those cases where there is inordinate delay or causes prejudiced to the said person are not being considered by this Tribunal in the present controversy. Once the delay is not inordinate and no prejudice is caused in terms of the person concerned to defend the proceedings, the order would remain valid which is passed in accordance with the relevant rules applicable to the concerned person."

15. In the face of such conclusive findings of the Full Bench, it is apparent that only where a direction has been given with the warning that if the proceeding is not completed within a certain time, the same shall be considered to have abated, the guillotine will apply. In the instant case, we do not find any specific warning that if the proceedings are not completed within the stipulated time, the same shall be deemed to have abated. To the contrary, the direction issued in OA No.144/2011 reads thus:-

"4…However, in totality of the facts and circumstances of the case, we dispose of this Original Application directing the concerned authority to expedite the inquiry against the applicant and conclude the same within a period of six months at the most from today subject to applicant cooperating with the enquiry. If the applicant may not cooperate and for any other reasons it may not be possible complete the enquiry by the aforesaid time, it shall be open for the respondents to seek extension of time."

From the above direction, we find that liberty was given to the respondents to approach the Tribunal in case of non-operation by the applicant or for any other reason. We have also taken note of the fact that in CP No.378/2015 in OA No.141/2011 this Tribunal has already held the applicant as an

obstructionist and non-operative in the departmental proceedings. Hence, we are in full agreement with the decision of the Full Bench (supra) that not having issued a specific direction of completion at the pains of abatement of the proceedings and having given a broad based directives for completion of proceedings with liberty to approach the Tribunal in case of non-cooperation or for any other reasons, we do not find the prayer of the respondents seeking extension of time unreasonable, particularly in light of grave charges against the applicant including that of misbehavior with the doctors and even wife of a doctor. We are, therefore, of the firm opinion that the respondents were correct in their action in completing the departmental proceedings. Hence, no cause of action survives with the applicant. It is, however, open to the applicant to challenge the order imposing penalty before the appropriate forum.

16. In totality of facts and circumstances of the case, we find the instant OA bereft of merits and the same is, therefore, dismissed. MA filed by the respondents also stands disposed of. There shall be no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(B.P. Katakey)
Member (J)

/AhujA/