

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 4058/2012

Reserved on 13.09.2018
Pronounced on 20.09.2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

Revati Prasad Sharma, Age-59 yrs,
Pharmacist,
F-45, Dwarkapuri, Uldham Nagar,
Shahdara, Delhi-32

... Applicant

(By Advocate: Mr. Sachin Chauhan)

VERSUS

1. Union of India, through
The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi-110001.
2. The Director,
Central Govt. Health Scheme (CGHS),
Nirman Bhawan, Delhi-110011
3. The Addl. Director (North Zone),
C.G.H.S. New Rajinder Nagar,
New Delhi.
4. The C.M.O (SAG) (A),
CGHS (North Zone),
New Rajinder Nagar, New Delhi.
5. The Addl. Director,
C.G.H.S. (HQ),
9, Bikaner House, New Delhi-1
6. The Pay & Accounts Officer,
C.G.H.S., New Rajinder Nagar,
New Delhi.
7. The Head,
Cash & Accounts Section,
CGHS (North Zone),
New Rajinder Nagar, New Delhi.

... Respondents

(By Advocate: Mr. Rajat Gaur)

ORDER**Hon'ble Mr. S.N. Terdal, Member (J):**

We have heard, Shri Sachin Chauhan, counsel for applicant and Shri Rajat Gaur, counsel for respondents, perused the pleadings, and all the documents produced by both the parties.

2. In OA, the applicant has prayed for the following reliefs:

- “(a) To quash and set aside order dated 8.2.2012 (2nos.) of the Disciplinary Authority at A-1 & A-2, order dated 7.11.12 of Appellate Authority at A-3, order dated 20.11.12 issued by Addl. Director (NZ), CGHS whereby the pay of applicant has been fixed in lower time scale of pay, grade, post or service w.e.f. 8.2.12 at A-4 and order dated 20.11.12 issued by CMO (SAG) (A), CGHS (NZ) whereby the recovery of amount of 13,51,222.32 (Rs. Thirteen lakhs fifty one thousand two hundred twenty two and thirty two paise only) has been ordered from the salary of applicant to further direct the respondents that the forfeited grade/post/service be restored as it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances.
- (b) To quash and set aside the memorandum dated 12.4.2010 including Article of Charge and imputation of misconduct whereby a departmental enquiry under Rule 14 of CCS (CCA) is initiated against the applicant at Annexure A-5A.
- (c) Any other relief which this Hon'ble Court deems fit and proper may also be awarded to the applicant.”

3. The relevant facts of the case are that disciplinary proceedings were initiated against the applicant under Rule 14 of the CCS (Classification, Control and Appeal) Rules, 1965 vide order dated 08.02.2012 for the alleged irregularities found during the 100% physical verification of allopathic medicines store and counter, while the applicant was functioning as Store Keeper (Allopathic) at CGHS, Wellness Centre, Vivek Vihar, Delhi. The article of charge was as under:-

"Article-1

While functioning as a Store Keeper (Allopathic) at CGHS, Wellness Centre, Vivek Vihar, Delhi; a 100% Physical Verification on 17/12/2009 was carried out by the Enquiry Committee and major irregularities (Shortage and Surplus) of medicines were found and such lapses/misconduct on the part of Sh. Revati Prasad Sharma the then store-keeper, CGHS, Wellness Centre, Vivek Vihar, Delhi is against the relevant CCS Conduct Rules."

4. Along with the proposal to hold a departmental enquiry, the article of charge, statement of imputation of misconduct, list of documents and list of witnesses were served on the applicant. After following the relevant procedural rules and principles of natural justice, the departmental enquiry was held and the Inquiry Officer submitted his enquiry report on 22.07.2011 holding that the article of charge is proved. The Inquiry report is reproduced below:-

"The undersigned was appointed as Inquiry Officer vide order no. F.No.1-17/2009-CGHS/VC/233-36 dated 10.6.2010 to enquire into the charges framed against the said Shri Revati Prasad Sharma, Store-Keeper (Pharmacist).

Initially Shri Puran Singh Kadyan, UDC, CGHS South Zone was appointed as Presenting Officer by the disciplinary authority vide F.No.1-17/2009-CGHS/C/220-32 dated 10.6.2010, but later on Shri A.K.Mathur, UDC, CGHS South Zone was appointed as Presenting Officer by the disciplinary authority vide order no.F.No.1-17/2009-CGHS/VC/317-21 dated 26.7.2010.

Shri Revati Prasad Sharma, CO availed the services of a Defence Assistant- Shri Ram Singh.

The following article of charge is framed against Shri Revati Prasad Sharma, Store-keeper (Pharmacist).

Article 1 That the said Shri Revati Prasad Sharma, Store-keeper (Pharmacist), presently under suspension, while working in the CGS Wellness Centre, Vivek Vihar, Delhi and holding the charge of Store, it was found that certain irregularities shortage and surplus of medicines were found.

A total number of 11 hearing were held to this inquiry. It is worth mentioning that eight days were given to the CO to file his brief but he failed to submit it and asked for 10 more days and this extra period was also granted in the interest of justice.

Prosecution case

PO submits that 100% Physical Verification was conducted independently by a team of 3 eminent & experience doctors, who were in no way connected with the case so there can be no doubt about their integrity and fair conduct. Since the CO was in custody, his presence was neither possible nor it was required under the rules. The C.O's submission that the physical verification was done after 10 days does not hold ground as in any investigation some time is necessary for completing the job. Since the store was kept sealed wef 05/12/2009 to 17/12/2009 there can not be any doubt about the authenticity of the physical verification. All the three doctors who conducted physical verification were cited as prosecution witnesses and have authenticated their report.

The following objections were raised by the CO:

- i. That the prosecution witnesses have only authenticated their signatures on the physical verification report and have not verified the contents of the same.
- ii. The shore room was opened frequently during the absence of CO.
- iii. What was the need for second verification report when first verification report was there?
- iv. Chits were not considered while formulating the first report.
- v. All the four defence witnesses were not allowed.
- vi. That the past good record of the CO has not been taken into consideration during the proceedings.

General questions were asked to CO on the basis of the evidence adduced during the inquiry.

Assessment of Evidence

The one article of charge states that various shortages and surpluses were found by the committee of three doctors appointed for the purpose. All the three doctors were also listed as witnesses in the charge sheet. They have also appeared before me as prosecution witnesses and have duly authenticated the physical verification report. I see no reason to doubt or dispute its correctness. The points raised by the CO in his defence are frivolous and perfunctory and do not in any way dilute the prosecution case. The CO had asked for production of

four witnesses for his defence but I allowed only one as the others were not considered as relevant. It was an operational necessity to open the store for drawl of medicines which was admittedly done in presence of two gazetted officers for disbursement to the beneficiaries.

It has come on record that one committee of two doctors conducted the 100% physical verification and submitted its report on 9.12.2009. Since this committee had not taken into consideration the chits in respect of medicines already issued, it became necessary to appoint another committee to get to the bottom of the surpluses and shortages. This committee headed by Dr.Sharda Verma consisted of three doctors and gave its physical verification report on 23.12.2009. This Committee found that there were 149 shortages and 69 surpluses (total 218 items). It is this report which is the subject matter of the Article of Charge.

Findings

I hold that the article of charge as proved."

5. The applicant submitted representation against the inquiry report. After considering the enquiry report and the representation of the applicant, the disciplinary authority passed two penalty orders on 08.02.20912, one is regarding reduction in the time scale of pay and another is regarding recovery of the cost of medicines which were found short. The said orders of punishment are extracted below:

"8.02.2012

..... AND WHEREAS, after due consideration of the enquiry report and representation of Sh.Revati Prasad Sharma, Pharmacist, the undersigned has come to conclusion that the major penalty under Rule 11 (vi) of CCS (CCA) Rules i.e. "reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service" is imposed on Sh. Revati Prasad Sharma, Pharmacist, formerly working as a Store Keeper, at CGHS, Wellness Centre, Vivek Vihar, Delhi with immediate effect.

08.02.2012

WHEREAS, reference is made to the major discrepancies found during the 100% Physical Verification carried out by the Enquiry Committee on 17.12.2009 at CGHS, Wellness Centre, Vivek Vihar, Delhi. Therefore, it has been decided that the recovery of the cost of medicines fallen short for 149 (Hundred Forty Nine) items during 100% Physical Verification at CGHS, Wellness Centre, Vivek Vihar, Delhi.

The amount of Rupees 13,51,222.32 (Thirteen Lakhs, Fifty One thousand Two Hundred Twenty Two and thirty Two paisa ONLY) should be recovered from the salary of Sh. Revati Prasad Sharma the then Store-Keeper, CGHS, Wellness Centre, Vivek Vihar, Delhi as per Rules.

Therefore, you are directed to recover the above said amount from his salary under intimation to the undersigned."

The appeal filed by the applicant was dismissed by the appellate authority vide order dated 07.11.2012.

6. The applicant has challenged the above said orders and the consequential order of pay fixation and recovery order and the inquiry report. The learned counsel for the applicant vehemently contended that the inquiry report is passed in violation of Rule 14(23)(i) of CCS (CCA) Rules which reads as follows:-

"14 (23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor."

In support of his submission, learned counsel for the applicant relied upon the judgment of this Tribunal in OA No.616/2010, titled **HC Chander Veer Vs Commissioner of Police and Ors.** In the said case, the facts were different. In that case, the inquiry officer did not discuss the defence/objection raised by the delinquent employees. From the close scrutiny of the inquiry report in this case, it is crystal clear that the inquiry report contains the article of charge, the number of hearing held, the opportunity given to the applicant as charged officer, the prosecution case, the defence raised by the applicant and the inquiry officer has also given reasons with respect to all the material objections/defences raised by the applicant and he has recorded his findings. In the circumstances, in our considered opinion there is no violation of the procedural rule 14(23(i) of the CCS (CCA) Rules.

7. Referring to the two penalties, namely, the reduction in pay scale and ordering recovery, the counsel for the applicant vehemently and strenuously submitted that in a departmental enquiry, the disciplinary authority cannot impose two penalties. He further submitted that imposing two penalties enumerated in rule 11 of the CCS (CCA) Rules amounts to double jeopardy. In support of his submission, learned counsel relied upon the order of this bench in the case of **M.L.Sahanar Vs Union of India & Others** (1991(18 ATC 586) and the provisions of rule 11 (ii), 15 (3) and 15 (4) of the CCS (CCA) Rules, 1965. The relevant rules are extracted below:

"11. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, **be imposed** on a Government servant, namely:-

Minor Penalties –

- (i) censure;
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iii(a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.
- (iv) withholding of increments of pay;

Major Penalties –

- (v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay
- (vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -
 - (a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and
 - (b) the Government servant shall regain his original seniority in the higher time scale of pay , grade, post or service;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government;

- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Rule 15 (3) & (4)

5. If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that **any of the penalties** specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty:

6. If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that **any of the penalties** specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed."

(emphasis supplied)

Rule 15(5) and 6 quoted above, were identical to Rule 15(3) and (4) existed before 31.10.2014.

8. From the perusal of the above said rules, we do not find any restriction of only one penalty to be imposed. The phrase used in Rule 15(5) and (6) is "any of the penalties", and it is not to be read and we cannot read it as "only one of the penalties" or "one of the penalties only" or "not more than one of the penalties". Also when we read Rule 15(5) and (6) along with the opening phrase of Rule 11, it further makes clear that more than one penalty can be imposed. The opening sentence highlighted is reproduced at the cost of repetition:

"The following penalties may be imposed."

9. The provisions regarding double jeopardy are enumerated in Article 20(2) of the Constitution which are as follows:

“(2) No person shall be prosecuted and punished for the same offence more than once.”

Article 20 (2) of the Constitution states that the accused person shall not be prosecuted and punished more than once. That is, if a person is prosecuted and consequently punished. Then later on he cannot be prosecuted once again for the same offence. What is prevented by Article 20(2) is two prosecutions and punishments imposed one after another. In this case, the appellant was not subjected to two such enquiries and consequent punishments. He was subjected to departmental enquiry only once and given two punishments. In view of the facts of the case, and in view of the clear provisions of the Constitution, referred to above, there is no double jeopardy in this case.

10. As this aspect is not properly considered in the above referred case of **M.L.Sahanar** (supra), as such it is of no assistance to the applicant. In support of the impugned orders the counsel for the respondents has rightly relied upon the following judgments:

- “(1) **State of U.P & Ors Vs. Harihar Bhole Nath** (2006(11) Scale 322).
- (2) **Life Insurance Corporation of India Vs S.Vasanthi** (2014) 9 SCC 315).
- (3). **Mahendera Singh Vs Delhi Power Supply Co. Ltd.**(2018 AD(DELHI) 697.”

11. Counsel for the applicant further vehemently submitted that the impugned orders are non-speaking orders. We have closely perused the impugned orders. They are speaking and reasoned orders. The objections/defence raised by the applicant, as referred to above, were considered by the Inquiry Officer. He has repeated the same in his

representation against the enquiry report and in his appeal before the appellate authority. Both the authorities have referred to his representation and have stated that they have duly considered his representation as well as his appeal and passed the impugned orders.

12. In view of the facts and discussion made above, we do not find any substance in the OA. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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