

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1120/2014

Order Reserved on : 04.09.2018

Pronounced on : 26.09.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Ms. Aradhana Johri, Member (A)

Ms. Sneh Lata D/o late U. S. Pipar,
R/o 1264, Sector-4, R.K. Puram,
New Delhi.

... Applicant

(By Ms. Sonia A. Menon and Mr. Himanshu Saini, Advocates)

Versus

1. The Director,
All India Institute of Medical Sciences,
Ansari Nagar, New Delh.

2. Shri D. K. Sharma,
Medical Superintendent,
All India Institute of Medical Sciences,
Ansari Nagar, New Delhi.

3. Ms. Priti Ahluwalia,
Welfare Officer,
All India Institute of Medical Sciences,
Ansari Nagar, New Delhi.

... Respondents

(By Ms. Preeti Singh and Dr. Swati Jindal, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant was working as Assistant Nursing Superintendent (ANS) in the All India Institute of Medical

Sciences (AIIMS). She was issued a charge-sheet dated 18.04.2009, wherein it was alleged that she had been unauthorisedly absent for certain period, and that she did not handover the keys of the cupboards of the casualty OP before she left her duty on a particular date, and that in turn caused hindrance in the activities of the hospital.

2. In her explanation, the applicant denied the charges, and accordingly an inquiry officer was appointed. He submitted his report holding that the charges framed against the applicant are proved. Taking the same into consideration, the disciplinary authority imposed the punishment of compulsory retirement from service, through order dated 09.08.2011 (Annexure A-1).

3. Aggrieved by the order of punishment, the applicant filed an appeal before the Governing Body of the Institute. The appellate authority rejected the appeal on 14.10.2013 (Annexure A-2). This OA is filed challenging the charge memorandum dated 18.04.2009, the order of punishment dated 09.08.2011, and the one passed by the appellate authority on 14.10.2013.

4. The applicant contends that the reason for initiation of the disciplinary proceedings against her through the impugned charge memorandum was the submission of a complaint by her in the context of her forcible eviction from a room in the hostel, and though the charges were trivial and without any basis, a severe punishment of compulsory retirement from service was imposed. She submits that the charge was not clear as to how many days she was absent, and the fact that she submitted application for leave was not taken into account.

5. As regards the second charge, she contends that the keys were handed over to the duty nurse in the next shift, and without even verifying the record, the charge was framed, and the inquiry officer held the same as proved. It is also pleaded that though in the General Body of the Institute, several members felt that the charges are trivial and the punishment was severe, a totally different view was taken, and the appeal was rejected.

6. On behalf of the respondents, counter affidavit is filed opposing the OA. It is stated that the applicant remained absent almost for fifteen days without proper leave application

or authority, and thereby the activities in the hospital were adversely affected. It is also pleaded that on account of the failure on the part of the applicant to hand over the keys of the cupboards of the casualty ward after completion of duty, serious inconvenience was felt, and the almirah had to be opened by breaking the locks.

7. We heard Ms. Sonia A. Menon with Mr. Himanshu Saini, learned counsel for the applicant, and Ms. Preeti Singh and Dr. Swati Jindal, learned counsel for the respondents.

8. The charges framed against the applicant read as under:

“Article of charge No.1

That the said Ms. Sneha Lata while working as A.N.S. in this Institute, had been willfully and unauthorisedly absenting herself from duty w.e.f. 13.12.2018 without prior permission or sanction of leave by the competent authority.

Ms. Sneha Lata, ANS was directed to rejoin duty immediately failing which action as deemed fit under the CCS (CCA) Rules, 1965 should be taken against her on account of her unauthorized willful absence from duty vide this office memorandum of even number dated 19.12.2008, but she had failed to comply with the orders of the Competent Authority. This amounts to disobedience of orders on her part and unbecoming of an Institute employee.

Article of charge No.2

That the said Ms. Sneh Lata, ANS while working as A.N.S. in this Institute, had also not handed over the keys of the cupboards of casualty OT before leaving her duty. The locked cupboards contained important equipments and commodities required for day to day use every day in the casualty OT including suture material. But she had not bothered even to reply the show cause notice issued to her. This act not only disrupted the smooth functioning of the patient care service but due to her acts she put the life of patients to endanger and she was thus responsible for gross negligence, dereliction of duty and had failed to maintain absolute devotion to duty.

Ms. Sneh Lata, ANS is thus responsible for gross misconduct, misbehaviour, disobedience of order and had failed to maintain absolute devotion to duty and is not amenable to discipline and has acted in a manner unbecoming of an Institute employee thereby contravened Rule 3(1) (ii) & Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1965 as applicable to the employees of this Institute.”

9. Normally, disciplinary proceedings are not initiated into the alleged misconduct of this nature. The matter is put an end to by issuing a warning or memo. It appears that the background that emerged on account of the various acts and omissions on the part of the applicant in the context of the eviction from the accommodation in the hostel, and the subsequent steps taken by the applicant, virtually branding everyone included in the process as her enemies, has given rise to the unpleasant situation. The first charge is about her

unauthorized absence. Though the exact period is not mentioned in the charge-sheet, the record discloses that she remained absent for 15 days. While the applicant claimed that she had submitted application for sanction of earned leave, the record in this behalf is not clear. In the attendance register itself, some entries are made, which are a bit contradictory.

10. In relation of the second charge, the applicant has stated that she handed over the keys to the duty nurse next in the shift. In case the applicant failed to hand over the keys, one expects her superiors to issue a memo in this regard. However, the record is silent on this aspect.

11. Even if both the charges are taken as proved, normally, one expects punishment in the form of a warning or withholding of increment(s) for certain period. Imposition of penalty of compulsory retirement on the charges of this nature is totally disproportionate and pricks the conscience of any reasonable person. Added to that, in the order of compulsory retirement, the disciplinary authority hardly assigned any reasons. In the first page of the order, the charges are extracted and the factum of the inquiry officer submitting his report is mentioned. Thereafter, the order reads as under:

“AND WHEREAS after having gone through the report of the Inquiry Officer, submission made by Ms. Sneh Lata, Assistant Nursing Superintendent (A.N.S.) and considering the evidence on record and the facts and circumstances of the case and taking all the relevant facts into consideration, the President, AIIMS for good and sufficient reasons has come to the conclusion of imposition of penalty of compulsory retirement from service Ms. Sneh Lata, Assistant Nursing Superintendent to meet the ends of justice.

NOW, THEREFORE, the President, AIIMS in exercise of the powers vested as the Disciplinary Authority vide Rule 15 of the CCS (CCA) Rules, 1965 read with Regulation 33(2) of the AIIMS Regulations, 1999 (as amended) hereby imposes the penalty of compulsory retirement from service on Ms. Sneh Lata, Assistant Nursing Superintendent with immediate effect.

A copy of this order may be added to the Confidential Rolls of Ms. Sneh Lata, Assistant Nursing Superintendent.”

Barring this, there is no other discussion. This hardly satisfies the requirement of a speaking order. Before imposing the punishment of compulsory retirement, which has the effect of putting an end to the service of the applicant with the respondent Institute, the matter was required to be examined objectively.

12. The appellate authority is the Governing Body of the Institute. The proceedings of the meeting of the Governing

Body on the appeal presented by the applicant make an interesting reading. For the sake of convenience, the entire extract, which is also in brief, is reproduced as under:

“To consider the appeal of Ms. Sneh Lata, Ex-ANS against the penalty of “Compulsory Retirement” under Rule 14 of CCS (CCA) Rules, 1965.

While considering the appeal of Ms. Sneh Lata, the Governing Body in its last meeting desired some additional information relating to remaining period of her service, exact period of her unauthorized absence and details of notices and warning issued to her. Accordingly additional information was placed before the GB under this agenda item.

DGHS expressed some reservations about the quantum of penalty imposed on Ms. Sneh Lata for the unauthorized absence of 14 days. Sh. S.K. Srivastava, AS & FA, observed that Medical Superintendent was a very important person in running the show in a hospital and his views should be taken into consideration.

The Medical Superintendent, Dr. D.K. Sharma, who was present in the meeting, informed that Ms. Sneh Lata was posted in the Emergency/Casualty Department and disciplinary proceedings were initiated against her for unauthorized absence for 14 days. He further, added that her behavior in the casualty area was not in conformity with professional ethics adversely affecting patient care services. Dr. Sharma also informed that she did not vacate the hostel while all the nurses vacated premises and kept two rooms under her possession unauthorizedly. Further, during her unauthorized absence, she had kept the keys of

the cupboard in her possession and it created problems in Emergency/Casualty area.

Participating in the discussion, Dr. Badwe expressed the view that it was not a matter of mere 14 days unauthorized absence, but it was also a matter of her absence from Casualty which was more disturbing. He added that casualty was a sensitive area of patient care and every hour was important for saving lives. Therefore, the period of her unauthorized absence for 14 days should not be compared with the absence of an ordinary civil servant as she was a professional nurse and the gravity of her misconduct was far more intense than that caused by the unauthorized absence of an ordinary civil servant.

After detailed discussion, GB (decided to reject the appeal of Ms. Sneha Lata, Ex. ANS.)

Further action to implement the decision of the GB may kindly be initiated immediately under intimation to Dy. Director (Admn.) and the undersigned."

From a reading of the above extract, it becomes clear that – (a) the appellate authority has taken into account certain aspects which did not form part of the record; (b) the Medical Superintendent has informed the members of the General Body that the applicant did not vacate the hostel, and kept two rooms in her possession unauthorisedly; and (c) the DGHS expressed the view that the penalty imposed upon the applicant was improper and disproportionate.

13. While the order passed by the disciplinary authority suffers from the infirmity as regards furnishing of reasons, the one passed by the appellate authority is vitiated on account of extraneous considerations. The punishment is also disproportionate, even if both the charges are taken as proved. The factors mentioned above are fairly well recognized in the field of administrative law, and they constitute adequate grounds for setting aside the order of punishment.

14. Though the very issuance of the charge memorandum is challenged in this OA, we are not impressed by that, and we reject the relief in this behalf.

15. The OA is accordingly allowed, setting aside the order of punishment dated 09.08.2011 and the order passed by the appellate authority dated 14.10.2013. It is, however, left open to the disciplinary authority to pass a speaking order imposing any punishment other than the one which would have the effect of putting an end to the service of the applicant in the organization, within two months from the date of receipt of this order. The applicant shall be reinstated into service, and the question as to how the period between the date of imposition of punishment and the reinstatement, shall be

treated, would depend upon the order which the disciplinary authority may pass. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/