

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA/100/3986/2014

Reserved on: 24.08.2018
Pronounced on: 28.08.2018

Hon'ble Mr. Ashish Kalia, Member (J)

Durgander S Mathur,
S/o Shri M.S. Mathur
R/o 103-104, Ishwar Colony,
Bawana, Delhi-110039

....Applicant

(Through Shri Parvinder Chauhan, Advocate)

VERSUS

All India Institute of Medical Sciences
Through its Director,
Ansari Nagar, New Delhi-110029

.... Respondents

(Through Shri V.S.R. Krishna, Advocate)

ORDER

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:

- "A. Direct the Respondent Institution to withdraw the penalty of `Censure' imposed upon the Applicant vide Order dated 09.03.2013;
- B. Grant any other or further relief that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case in favour of the applicants."

2. Brief facts of the case are that the applicant was appointed as Laboratory Technician in the respondents-

Institute on 21.11.2007 and since then he has been discharging his duties sincerely. On 7.03.2011, the applicant was issued a Memorandum by which he has been accused of taking away CPAP machine out the respondent-Institute unauthorizedly, which amounted to a gross misconduct. The applicant filed his reply to the said memorandum on 14.03.2011, stating therein that the machine was neither at his disposal nor was it put under his control. Thus, taking the same out of the Institute was not possible. However, action under rule 16 of the CCS (CCA) Rules was taken against the applicant and penalty of 'censure' was awarded on him.

3. It was submitted by the learned counsel for the applicant, during the course of arguments, that it was well thought conspiracy of some officers/ workers of the Institute against the applicant. It was also submitted that it was Shri Ramesh Singh Yadav, who was involved in the alleged act of taking the CPAP machine out of the premises of the Institute and to save said Shri Yadav, a conspiracy was hatched against the applicant. Further, the disciplinary authority has erred in taking into account the contradictory and dubious statements of Shri Yadav, Field Worker. Feeling aggrieved by the penalty imposed, the applicant has approached this Tribunal for the aforementioned reliefs.

4. Respondents have filed their reply. They have stated that the OA is not maintainable in the light of ratio laid down

by the Hon'ble Supreme Court in **Union of India Vs. Sardar Bahadur**, 1972 (4) SCC 618, wherein it was held as under:

"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

Respondents have further cited the judgment of the Hon'ble Supreme Court in **Union of India Vs. Parma Nand**, 1989 (2) SCC 177, where it has been held as follows:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to [Article 309](#) of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

5. The basic thrust of the argument of the applicant is that he has not taken away the machine. Second, no action has been taken against the person who has actually taken away the machine. Third, award of penalty will unnecessarily blot the service records of the applicant. On the other hand, the learned counsel for the respondents Shri Krishna emphasized

that this Tribunal is having very limited jurisdiction and he has read over the statement of imputation of misconduct against the applicant, which reads as follows :

"It has been reported that Shri D.S. Mathur, while working as Laboratory Technician in Sleep Laboratory, Deptt. of Medicine, AIIMS had forcefully asked to Sh. Ramesh Singh Yadav, Field Worker to help him in transporting an auto CPAP machine from the sleep laboratory of DII ward of the Department of Medicine, AIIMS to Kripal Ashram near Mukherjee Nagar metro station in the evening of 15th January, 2011 and told him that he had taken prior permission from the HOD of Medicine for this but no such permission was given to him. It was taken for the query demonstration and was brought back after two days. Therefore, he had taken out an auto CPAP Machine (an expensive machine for patient care) out of AIIMS unauthorizedly without permission of the competent authority."

6. Another Show Cause Notice was issued to the applicant for use of official computer for some personal work on 23.07.2014 and leaving the printer dis-functioning. In reply to the same, similar stand has been taken by the applicant that the computer was not at his disposal or under his control.

7. Keeping in view the facts and circumstances of the case, I am of the view that the applicant has failed to demonstrate that the disciplinary authority/ competent authority has acted arbitrarily while imposing the punishment on him. Action taken does not warrant interference by this Tribunal. Hence, the OA is dismissed. No costs.

(Ashish Kalia)
Member (J)

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