

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 021/00208/2016

Date of C.A.V. : 25.01.2018

Date of Order :12.03.2018

Between :

K.Nagamalleswara Rao, S/o K.Chandraiah,
Aged about 46 years, Occ : Constable,
R/o Sardar Vallabhai Patel National Police Academy,
Site-A, Type-II, D.1/8, Sivarampally, Rajendra Nagar (M),
Ranga Reddy District – 500085

... Applicant

And

1. The Government of India,
Ministry of Home Affairs,
Sardar Vallabhai Patel National Police Academy,
Hyderabad – 500052, Rep. by its Director
and Appellate Authority.

2. The Deputy Director (Admin) and Disciplinary Authority,
Sardar Vallabhai Patel National Police Academy,
Hyderabad – 500052.

... Respondents

Counsel for the Applicant	...	Mr. C.V.R.Rudra Prasad, Advocate
Counsel for the Respondents	...	Mr. V.Vinod Kumar, Sr.CGSC

CORAM:

<i>Hon'ble Mr.Justice R.Kantha Rao</i>	<i>...</i>	<i>Member (Judl.)</i>
<i>Hon'ble Mrs.Minnie Mathew</i>	<i>...</i>	<i>Member (Admn.)</i>

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant originally was a Constable in Border Security Force (BSF). He was sent on deputation to Sardar Vallabhai Patel National Police Academy (Academy) on 20.01.2008. Subsequently by order dated 16.08.2013 the applicant was absorbed permanently as a Constable in the Academy. An order dated 28.10.2013 was issued to the applicant alleging that he resorted to serious misuse of medical referral facility given to his wife and therefore he was sought to be repatriated to his parent organization i.e. BSF. The applicant challenged the order in the Hon'ble High Court of Andhra Pradesh in W.P.No.31712/2013 and was granted interim suspension by order dated 06.11.2013 in W.P.M.P.No.39411/2013. The main Writ Petition is pending adjudication. While so, the second respondent kept the applicant under suspension in exercise of powers under CCS (CCA) Rules, 1964. The memorandum of article of charge was issued alleging that while the applicant was working as a Constable in the Academy he was involved in a serious mis-utilization of medical referral / treatment facility under a credit referral letter dated 25.09.2013 issued for his wife to consult Gynecologist and Endocrinologist at Care Hospital, Banjara Hills, Hyderabad, instead his mother-in-law was presented on the examination table on 12.10.2013, which was noticed by the Gynecologist and the same was reported to the Academy. It is said that by indulging in the said mis-utilization of medical referral facility the applicant damaged the reputation of the Academy which amounts to misconduct under the provisions of Rule (1) (i) & (iii) of the CCS (CCA) Rules, 1964 and also that the applicant failed to maintain absolute integrity.

2. An enquiry officer was appointed and an enquiry was held in respect of the aforementioned charge, after completing the enquiry the enquiry officer submitted a report on 26.09.2014 recording a finding to the effect that the charge levelled against the applicant was not proved due to lack of evidence. The enquiry officer mentioned in the report that the applicant was not present at the hospital when his mother-in-law was presented in place of his wife. It is also stated that no material is available to prove that the whole act was pre-meditated by him.

3. The second respondent who is the Disciplinary Authority not being satisfied with report of the Enquiry Officer, remitted the matter back to the enquiry officer to resubmit the enquiry report after rectifying the anomalies pointed out therein. The enquiry officer kept it pending for a long time and submitted a report to the Disciplinary Authority expressing her inability to proceed with the enquiry as she was busy with conducting training classes. Thereupon the second respondent appointed another enquiry officer by order dated 16.02.2015 directing him to complete the enquiry within two months. The second enquiry officer also returned the enquiry proceedings dated 04.06.2015 stating that no further issues are required to be enquired upon and that the enquiry revealed that on the relevant date Smt.Bhuvaneshwari wife of the applicant was present at Care Hospital, but the applicant was not present at the time of the incident.

4. After receiving the said report, the Disciplinary Authority seems to have disagreed with the findings in both the enquiry reports, issued a memorandum dated 20.07.2015 to the applicant stating therein that the charge

levelled against him was proved and he has to submit his representation. The applicant submitted his representation stating that he never involved in the referral facility and therefore he has to be exonerated against the charge levelled against him. The second respondent did not accept the representation of the applicant and passed the impugned order dated 03.12.2015 holding that the applicant abetted his wife to commit the act of mis-utilisation of medical referral / treatment facility and that the applicant is liable as an abettor on par with his wife who is the principal offender. Consequently the second respondent imposed major penalty of compulsory retirement from service against the applicant.

5. It is under these circumstances, the applicant filed the present OA to set aside the compulsory retirement order and to reinstate him into service with all consequential benefits.

6. The respondents filed reply statement contending inter alia that admittedly the medical referral / treatment facility was in the name of his wife as per the letters submitted by the authorities of the Care Hospital. The mother-in-law of the applicant was presented on the examination table and also that in the letter submitted by the defence assistant of the applicant it is mentioned that the applicant's wife was present at the time when his mother-in-law was presented for examination in the hospital, but the applicant was not present. As such according to the respondents it can be inferred that with the consent of the applicant his wife resorted to mis-utilise the referral / treatment given in her name.

7. We have heard Sri C.V.R.Rudra Prasad, learned counsel for the applicant and Sri V.Vinod Kumar, learned Senior Central Government Standing Counsel for the respondents.

8. In a departmental enquiry it is enough if the charge is proved by the standard of preponderance of probability, whereas in the criminal case the standard required is that of proof beyond reasonable doubt. However, even in a departmental enquiry a charge cannot be proved by mere surmises and conjectures. Further the enquiry officer who is a quasi judicial authority has to conduct the enquiry by observing the principles of natural justice. If no documents are marked at the enquiry and no witnesses are examined, it would be a case of no evidence and no finding of guilt cannot be recorded in such a situation. It is not open for the enquiry officer or the Disciplinary Authority to say that from the documents available with the department the enquiry can be said to be proved. If there are any such documents they have to be marked in the enquiry and the charged employee has to be given opportunity to cross examine the witness with reference to those documents. He shall be afforded an opportunity to impeach the credit of the witnesses as well as the documents. In the instant case the enquiry officer only put some questions to the applicant who is a charged employee obtained some answers. In the said answers no incriminating material was elicited. By putting some questions to the charged employee and completing the enquiry is nothing but utter violation of principles of natural justice. Even both the enquiry officers have stated emphatically that there is no incriminating material against the applicant. The Disciplinary

Authority without recording any specific finding as to the evidence forthcoming against the applicant disagreed with the enquiry officer and held that the charge levelled against the applicant was proved. As already said that no witness was examined at the enquiry and no document was marked. There are some documents filed by the respondents in the OA which show that the authorities of the Care Banjara Hospital intimated the Academy that instead of the wife of the applicant, his mother-in-law was produced before the Doctor for examination and an attempt was made to mis-utilize the referral / treatment facility. Those documents were not marked in the course of the enquiry. No witness either connected with Care Banjara Hospital nor the Academy was examined. Therefore, in our considered view the said documents cannot be relied upon to prove the charge against the applicant.

9. As regards the principal issue that in the letter dated 07.05.2014 submitted by the defence assistant to the Disciplinary Authority the applicant admitted that his wife was present at the time his mother-in-law was produced for examination before the Doctor of Care Banjara Hospital, perusal of the letter does not indicate any such admission. It was only stated by the defence assistant on behalf of the applicant that the applicant was on duty on 12.10.2013, though it was a Saturday and that he was neither present nor aware of the alleged incident at Care Hospital. Thus in the said letter total denial was made. Therefore, basing on the said letter submitted by the defence assistant of the applicant no inference can be drawn that the applicant indirectly admitted the charge levelled against him.

10. In view of what all stated herein before the finding of the guilt recorded by the Disciplinary Authority expressing his disagreement with the enquiry officers is based on no material which was unfolded at the time of the enquiry. No oral or documentary evidence was adduced against the applicant at the time of the enquiry. Though in the charge memorandum the respondents referred certain documents and certain witnesses which they proposed to exhibit and examine for the purpose of proving the charge, no such attempt was made. Both the enquiry officers held categorically that there is no material against the applicant to substantiate the charge levelled against him. The Disciplinary Authority without recording any sufficient reasons disagreed with the enquiry reports and the Appellate Authority mechanically concurred with the Disciplinary Authority. The finding of guilt recorded by the Disciplinary Authority therefore is based on no evidence and is liable to be set aside in the present OA.

11. Consequently the impugned order dated 02.02.2016 issued by the first respondent and the order of the second respondent dated 03.12.2015 where under the punishment of compulsory retirement was imposed on the applicant under Rule 15 (4) of CCS (CCA) Rules, 1965 is set aside. The respondents are directed to reinstate the applicant into service with all consequential benefits within a period of two months from the date of receipt of a copy of this order.

12. The OA succeeds and the same is allowed. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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