

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

Orders pronounced on: 10.01.2019
(Orders reserved on: 03.12.2018)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

...
(I) O.A.NO.060/01041/2018

Arvinder Kaur, aged 45 years, Nursing Sister Employee Code-1623 W/o
Urminder Pal Singh, Department of Nursing Sister, Government Medical
College, Hospital, Sector 32-B, Chandigarh, Pin-160032 (Group C).

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Applicant

(Argued by : **Mr. Pawan Kumar, Sr. Advocate with
Mr. Rozar Kumar Aggarwal, Advocate**).

Versus

1. The Chandigarh Administration, Union Territory, Chandigarh through its Home Secretary-cum-Secretary Medical Education and Research, Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh, Pin-160009.
2. The Director, Principal, Government Medical College and Hospital, Hospital Building, Sector 32, Chandigarh, Pin-160032.

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Respondents

(Argued by : **Mr. Arvind Moudgil, Advocate**)

(II) O.A.NO.060/01042/2018

Mahender Chaneja, aged about 44 years, Staff Nurse Employee Code-6563 (Srl. No. 937) S/o Subhash Chand, Department of Nursing, Government Medical College, Hospital, Sector 32-B, Chandigarh, Pin-160032 (Group B).

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Applicant

(Argued by : **Mr. Pawan Kumar, Sr. Advocate with
Mr. Rozar Kumar Aggarwal, Advocate**).

Versus

1. The Chandigarh Administration, Union Territory, Chandigarh through its Home Secretary-cum-Secretary Medical Education and Research, Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh, Pin-160009.
2. The Director, Principal, Government Medical College and Hospital, Hospital Building, Sector 32, Chandigarh, Pin-160032.

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Respondents

(Argued by : **Mr. Aseem Rai, Advocate**)**(III) O.A.NO.060/01043/2018**

Vijay Kumar, aged about 40 years, Staff Nurse Employee Code-0706003 (Srl. No. 506) S/o Mahavir Prasad Sharma, Department of Nursing, Government Medical College, Hospital, Sector 32-B, Chandigarh, Pin-160032 (Group C).

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Applicant

(Argued by : **Mr. Pawan Kumar, Sr. Advocate with Mr. Rozar Kumar Aggarwal, Advocate**).

Versus

1. The Chandigarh Administration, Union Territory, Chandigarh through its Home Secretary-cum-Secretary Medical Education and Research, Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh, Pin-160009.
2. The Director, Principal, Government Medical College and Hospital, Hospital Building, Sector 32, Chandigarh, Pin-160032.

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Respondents

(Argued by : **Mr. Rakesh Verma, Advocate**)**(IV) O.A.NO.060/01044/2018**

Rajesh Chaudhary, aged about 35 years, Staff Nurse (Srl. No. 412) s/o Ranjeet Singh, Department of Nursing, Government Medical College, Hospital, Sector 32-B, Chandigarh, Pin-160032 (Group C).

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Applicant

(Argued by : **Mr. Pawan Kumar, Sr. Advocate with
Mr. Rozar Kumar Aggarwal, Advocate**).

Versus

1. The Chandigarh Administration, Union Territory, Chandigarh through its Home Secretary-cum-Secretary Medical Education and Research, Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh, Pin-160009.
2. The Director, Principal, Government Medical College and Hospital, Hospital Building, Sector 32, Chandigarh, Pin-160032.

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Respondents

(Argued by : **Mr. K.K. Thakur, Advocate for
Mr. Mukesh Kaushik, Advocate**)

(V) O.A.NO.060/01045/2018

Anju Bala, aged about 44 years, Staff Nurse Employee, Code-2123 (Srl. No. 80), W/o Harish Kumar Kakkar, Department of Nursing, Government Medical College, Hospital, Sector 32-B, Chandigarh, Pin-160032 (Group C).

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Applicant

(Argued by : **Mr. Pawan Kumar, Sr. Advocate with
Mr. Rozar Kumar Aggarwal, Advocate**).

Versus

1. The Chandigarh Administration, Union Territory, Chandigarh through its Home Secretary-cum-Secretary Medical Education and Research, Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh, Pin-160009.
2. The Director, Principal, Government Medical College and Hospital, Hospital Building, Sector 32, Chandigarh, Pin-160032.

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Respondents

(Argued by : **Mr. K.K. Thakur, Advocate**)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. All the above mentioned 5 Original Applications (OAs) involve common facts arising out of same incident and questions of law and as such these have been taken up for disposal by a common order, with the consent of learned counsel for the parties. For the facility of reference, the facts are being taken from O.A. No.060/01041/2018 titled **Arvinder Kaur Vs. Chandigarh Administration & Another.**

2. The applicant has filed this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 1.8.2018 (Annexure A-11) vide which punishment to the extent of stoppage of one increment with cumulative effect with warning has been imposed upon her; order dated 8.11.2017 (Annexure A-8), vide which disciplinary authority impose the stoppage of three increments with cumulative effect upon her and to declare the entire proceedings as null, void and tainted with malafide intentions.

3. The facts in brief, which led to filing of the instant O.As. are that the work and conduct of applicants is stated to be up-to mark. A memorandum dated 17.3.2017 (Annexure A-1), under rule 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short "Rules of 1970"), as applicable to employees of Chandigarh Administration, was issued levelling allegations that the applicant had barged into Nursing Office, without any prior information along with 40-50 Nurses Staff and all of them were aggressive in their verbal expression and disturbed the working of Nursing Office and the behaved in irresponsible and indiscipline manner, thereby violating rule 3 of the Government Employees (Conduct) Rule, 1966. It is submitted that Annexure III does not contain any documents on the basis of which charge was to be

proved whereas Annexure IV, contains list of six witnesses to prove the charge against the applicant. The charge was basically on the basis of document 'H' referred to in charge, which was not supplied to the applicants. Thus, they asked for copy of the same. She submitted reply dated 13.5.2017 denying the charges being not supported with any relevant / reliable document or witnesses and no rule was violated by her. The charge is basically based on presumption and as such it may be withdrawn. It was also explained that date of even is mentioned is 11.11.2016, whereas complaint was alleged to have been made on 17.11.2016. There was no explanation as to why there was delay of six days in lodging the complaint. There is no allegation of misbehaving with any employee or pushing of two A.N.S. to the wall or using aggressive language. The complaint was made by one Smt. Prem Lata, Officiating Nursing Superintendent for incident of 11.11.2016, on the premise that President of Nurses Welfare Association entered into Nurses Office with 40-50 Nurses without prior intimation etc. The complaint is witnessed by Sarwan Kumar, Junior Assistant, Ms. Lalita Joshi, DEO, Ms. Usha, Record Restorer and A.N.S. Ms. Amanveer Kaur. The President of Union refuted the charge and stated that his association with 5/7 nurses went to Nursing Office and stayed there for 5 to 10 minutes.

4. A preliminary enquiry was conducted by one Shri C.S. Gautam and a report was submitted by him proving the charges against President and staff. It is claimed that applicant was never associated in enquiry and only one Vijay Kumar has been associated. A proposal was made to issue charge sheet to number of persons including applicant. It is claimed that matter was sent to ADA, who enquired / suggested that before issuing charge sheet, whether it is to be issued for minor or

major penalty. Thereafter, two sets of charge sheets were prepared and it was also suggested that since in preliminary enquiry, allegations against Vijay Kumar and other Association Members stand proved, thus, quantum of punishment from minor to major under rule 8 of 1970 Rules may be imposed. Thus, she claims that she had already been held guilty, even before start of inquiry. The applicant submitted a reply on 13.5.2017 (Annexure A-4).

5. In order to prove the charges, Sh. H.R. Ganger, IAS (Retired) was appointed as Inquiry Officer to hold inquiry vide order dated 27.7.2017 (Annexure A-5). Vide letter dated 8.8.2017, the applicant and others were directed to be present before the I.O. on 16.08.2017. Office Superintendent, HA-1 Branch was appointed as Presiding Officer. Sh. Sohan Singh, Retired Superintendent, was appointed as Defence Assistant. Statements of PW-1 to PW-6 were recorded and they deposed that no such incident of manhandling had taken place. The applicants were told that only two witnesses could be allowed to be examined. The applicants wanted to produce six witnesses but they were allowed only two witnesses. They submitted defence statement that since charges have not been proved, the same may be dropped. Then disciplinary authority passed order dated 8.11.2017 (Annexure A-8) imposing the penalty of stoppage of three grade increments with cumulative effect. An appeal was filed by her on 27.11.2017 (Annexure A-9), which was partly accepted reducing penalty of stoppage of three increments with cumulative effect to that of only one increment with cumulative effect, with warning on 1.8.2018 (Annexure A-11). Hence the O.A.

6. The pleas taken by the applicants are that non supply of inquiry report has prejudiced their defence and is in violation of principles of natural justice. Forcing the applicants to examine only two witnesses is

illegal and arbitrary and is against rule 8 (XVII) of Rules of 1970, which does not bar examination of more than two witnesses. They submit that it is a case of no evidence, as witnesses did not support the case of the prosecution that any manhandling had take place. The copy of preliminary enquiry was not supplied to the applicants. The allegation that applicants entered office without permission is false. In fact Association had visited the office at fixed time at 9.20 AM on 11.11.2016, which has been proved by two witnesses. The meeting of Association had nothing to do with gathering of Nursing Staff. It has come on record that there was no aggressive behavior on the part of the applicants. The complaint was made on 17.11.2016, whereas incident had taken place on 11.11.2016, thus, its veracity is under question. The charges were framed in consonance with the penalties to be imposed upon the applicants, well in advance. In other words, cart was placed before horse, which vitiates the principles of natural justice. Initially, decision was taken to issue minor charge sheets, but it was converted into major proceedings, without any logic or reason. During cross examination, Ms. Prem Lata, ANS, was giving vital information, which prejudiced the inquiry proceedings. Statement of PO could not be taken on record without supply of same to the applicant. The statements of two defence witnesses and prosecution witnesses has being ignored, which show that applicants had not indulged in pushing anybody. The applicants had gone there as Elected Members and not as Staff Nurse, thus, no charge sheet could be issued to them. The IO has recommended that suitable punishment be imposed against applicants, which is illegal and has prejudiced mind of disciplinary authority. The applicants have been implicated on the basis of statement of three ANS

who wanted to entangle the applicants in false case. Nothing has been done against interest of GMCH by the applicants.

7. The respondent no.2 initially filed a short reply clearly stating that as per rule 9 (4) of 1970 Rules, if DA is of the opinion that any of the penalties specified in clause (v) to (ix) should be imposed on the government employee, it shall make an order imposing such penalty and it shall not be necessary to give the Government employee any opportunity of making representation on the penalty proposed to be imposed, therefore, the inquiry report and show cause notice were not supplied to the applicant. In detailed reply, it is submitted that applicants have not availed remedy of review provided under rules and as such OA is not maintainable. They submit that inquiry report was not required to be supplied to the applicants. Moreover, no prejudice has been shown to have been caused to the applicants due to non supply of inquiry report or notice. The penalty is in consonance with charge levelled and proved against the applicants. A court of law does not indulge in appreciation of evidence, which is the job of the disciplinary authorities.

8. The applicant has filed a replication. It is submitted that order of punishment was prepared on 8.8.2017 and inquiry was completed on 3.10.2017, thus, it is clear that respondents had already made up their mind to punish the applicant, at all costs. It is a case of no evidence. She claims that meeting was fixed verbally and Ms. Kiranbala, regular ANS was on leave. No manhandling had taken place on that date.

9. We have heard the learned counsel for the parties at length and examined the material on file with the able assistance of learned counsel for the parties.

10. To begin with, learned senior counsel for the applicants vehemently urged that the punishment order is dated 8.8.2017, whereas the inquiry was completed only on 3.10.2017, thus, it shows that the order had already been prepared in anticipation that the applicants would be held guilty and punished accordingly, which has the effect of vitiating the inquiry. However, this plea was resisted by learned counsel for the respondents with record that it was a mistake on the part of the department in putting date of 8.8.2017 as in fact it was passed subsequently after inquiry report was submitted and we are convinced of this fact and do not find any reason to disbelieve the respondents as it was only a clerical error, which would not afford any valid ground to the applicants to claim any benefit on the basis of the same.

11. The learned senior counsel for the applicants vehemently argued that the respondents could not have curtailed number of witnesses to be produced by them in support of their defence as it has prejudiced their defence. The plea to our mind, does not have any substance as it is for the IO to determine as to how many witnesses are to be allowed to prove a fact particularly in this case where only one particular fact as to whether manhandling had taken place, was to be proved and witnesses had stated that no manhandling had taken place. Thus, non production of further witnesses does not appear to have prejudiced the case of the applicants, in any manner.

12. The learned senior counsel for the applicants argued and with vehemence, that the copy of inquiry report was to be supplied to the applicants and show cause notice also before imposing penalty and this flaw in decision making process has caused prejudice to the applicants. No doubt, the admitted position is that the applicants were not supplied

with inquiry report or show cause notice, but that does not appear to have caused any prejudice to the applicants. Rather, the appellate authority has considered their pleas and has toned down the penalty imposed by the disciplinary authority. In any case, the Hon'ble Apex Court in C.A. No. 18558/2017 - **UTTARAKHAND TRANSPORT CORPORATION VS. SUKHVEER SINGH**, decided on 10.11.2017 (Annexure R-1), has that mere non-supply of the inquiry report does not automatically warrant quashing of the proceedings. It is incumbent upon on the delinquent employee to plead and prove that he suffered a serious prejudice due to the non-supply of the inquiry report. On examining facts in that case, the court held no prejudice was caused to the employee by non supply of enquiry report. The High Court committed an error in allowing the writ petition filed by the Respondent without examining whether any prejudice was caused to the delinquent employee by the non supply of the inquiry officer's report along with the show cause notice. Court felt satisfied that no prejudice was caused to the delinquent employee by the non supply of the report of the inquiry officer along with the show cause notice. Hence, no useful purpose will be served by a remand to the court below to examine the point of prejudice. The case in hand is on better footing in view of rule position relied upon by the respondents, which does provide that for minor penalties, report of inquiry officer or show cause notice is not required to be provided to the concerned delinquent employee.

13. The learned senior counsel for the applicants argued, with some amount of vehemence, that it is a case of no evidence, as the witnesses have openly deposed that they had not seen any mishandling on the part of the applicants, which has been resisted by other side with equal vehemence. In fact it has come on record that sanctity of the office

was broken by the President and others on 11.11.2016 which has even been accepted by the President Mr. Vijay Kumar. That being the factual position on record, one cannot claim from any angle, that it was a case of no evidence. In any case, appreciation or re-appreciation of evidence is not the job of the courts or Tribunal. In the case of **STATE OF TAMIL NADU VS. S. SUBARAMANIAM** [(1996) 7 SCC 509], the court has considered the scope of the power of judicial review vis-à-vis re-appreciation of evidence and concluded as under:-

The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complainant, did not rely on it to prove the above charges. On that basis, it set aside the order of the removal. Thus this appeal by special leave. The only question is: whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the constitution of India was taken away by the power under Article 323A and invested the same on the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence has no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the court or tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."

14. Not only that, the Hon'ble Supreme Court of India in its judgments in the case of **STATE BANK OF INDIA VS. SAMARENDRA KISHORE** **ENDOW** [1994 (1) SLR 516) and **UOI VS. UPENDRA SINGH** (1994 27

ATR 200) has reiterated that a High Court or Tribunal has no power to substitute its own discretion for that of the disciplinary authority. The jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226, which is one of judicial review. The Tribunal has no jurisdiction to go into correctness or truth of the charges and can interfere only if, on the charges framed, or misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.

15. In view of the above discussion, these O.As turn out to be devoid of any merit and are dismissed, leaving the parties to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: JANUARY , 2018

HC*

