

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

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No.O A.621/ 2012

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member**  
**Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member**

Dr. Sujit Chakraborty,  
Son of Late Bejoy Kumar Chakraborty,  
Worked as Specialist Grade I (Radiotherapy),  
CNCI, Kolkata,  
Residing at 84, Pubali Gardens,  
North Ramchandrapur,  
Post Office –Narendrapur,  
District – South 24-Parganas,  
P.S. – Sonarpur  
Pin Code – 700 103.

... Applicant.

Versus

1. Union of India  
Service through the Secretary,  
Department of Health & Family Welfare,  
New Delhi – 110 011.
2. The Secretary,  
Department of Health & Family Welfare,  
New Delhi – 110 011.
3. Chittaranjan National,  
Cancer Institute,  
37, S.P. Mukherjee Road,  
Kolkata – 700 026.
4. The Governing Body of Chittaranjan  
National Cancer Institute,  
Service through the Director,  
37, S.P. Mukherjee Road  
Kolkata – 700 026.
5. Director-cum-Member Secretary  
Of the Governing Body,  
Chittaranjan National Cancer Institute,  
37, S.P. Mukherjee Road,  
Kolkata – 700 026.

6. Nisit Kumar Pal,  
Enquiry Officer,  
Service through the Director,  
Chittaranjan National Cancer Institute,  
37, S.P. Mukherjee Road,  
Kolkata – 700 026.

7. Administrative Officer,  
Chittaranjan National Cancer Institute,  
37, S.P. Mukherjee Road,  
Kolkata – 700 026.

... Respondents.

For the applicant : Mr. B. Chatterjee, counsel  
For the respondents : Mr. M.K. Basu, counsel  
Mr. H.S. Chakraborty, counsel

Heard on : 30.08.2018

Order On : 13.11.18

### ORDER

**Bidisha Banerjee, Judicial Member**


This application has been filed in order seek the following reliefs:-

"8.(a) An order be passed setting aside the entire disciplinary proceeding initiated under the Memorandum of Charges dated 29.03.2000, the enquiry report, the alleged order of disagreement with the finding of the enquiry officer dated 30.03.2005 and the final order of dismissal dated 22.05.2012 communicated upon the petitioner on 13.06.2012;


(b) A direction do issue upon the respondents to forthwith allow the petitioner to resume duties at the Chittaranjan National Cancer Institute as Specialist Grade-I and Head, Department of Radiotherapy of Chittaranjan National Cancer Institute and to pay the petitioner all admissible dues to which the petitioner is entitled to had there been no such order of dismissal dated 22.05.2012 served upon the petitioner on 13.06.2012 together with interest at the rate of 18% per annum on all sum fallen due and payable to the petitioner within a particular period of time to be specified by this Learned Tribunal."

2. The admitted facts that could be culled out from the pleadings of the parties are that the applicant was a Group 'A' officer in Chittaranjan Cancer Institute (hereinafter referred to as CNCI). While rendering his services in the

capacity of Grade I specialist (Radiotherapy) in C.N.C.I, having got an opportunity to enhance or acquire superior knowledge in the form of an offer to serve as Oncologist in a highly reputed hospital, namely, Mount Mirium Hospital in Malaysia, he applied for extraordinary leave to join his services at Malaysia. On 01.09.1998, a letter was issued by the Administrative Officer to the applicant informing him that necessary permission has not been received from the Ministry of Health and Family Welfare, Government of India regarding EOL and further not to leave the country. Government of India, Ministry of Health and Family Welfare on 08.09.1998 however issued 'No Objection' addressed to the applicant for overseas assignment. Having learnt that the necessary permission has not been granted by Ministry of Health & Family Welfare regarding EOL, the respondent authorities realized that the applicant should be brought back and consequently the Administrative Officer issued a letter on 07.10.1998 directing him to return to the country and resume his services. On 08.10.1998 the Ministry of Health and Family Welfare, Government of India, New Delhi advised the Director for disciplinary action against the applicant on the ground of unauthorised absence, if he failed to join his duties. A letter was issued on 02.11.1998 to the applicant by the Administrative Officer of the Institute requesting him to return to India and resume his duties immediately. On 30.11.1998 a fax was received from the applicant whereby he sought for regularisation of his absence as per rules. On 02.12.1998 a letter was issued to the applicant by the Administrative Officer requesting him to resume his duties immediately without further delay. On 27.08.1998 a letter was issued by the Ministry to the Director informing him that the permission to go abroad under EOL from CNCI is not permissible under the existing Rules. On 29.10.1998 Administrative Officer issued a letter to the



applicant informing that the leave was not granted and once again requested the applicant to return to country and resume his duties immediately. On 26.02.1999 a letter was issued from the Ministry to the Director of CNCI directing disciplinary action against the applicant as per Rule 14 of CCS(CCA) Rules, 1956 for imposition of major penalty. On 29.03.2000 charge sheet was framed against the applicant on the ground of unauthorised action and taking employment in foreign country without prior permission. It was received by the applicant on 20.04.2000. On 23.05.2000 the applicant submitted reply to the charge sheet to the Director of the Institute. On 06.06.2000 he requested for supply of certain documents. A letter dated 12.07.2000 was issued to the applicant by the Director of the Institute granting additional 15 days and supplied the necessary documents as prayed for. On 16.03.2001 the Ministry issued a letter to the Director of the Institute informing that Shri Nishit Kumar Pal retired Regional Development Commissioner was appointed as an enquiry officer. By an order dated 07.08.2001 order was issued by the Director of the Institute appointing Dr. Durga Prasad Jena as Presenting Officer. Proceedings were held on 18.10.2001, 20.11.2001, 21.11.2001, 5.12.2001 and 14.12.2001. Witnesses were examined and cross-examined by both the parties. The applicant duly participated in the disciplinary proceedings and was given full opportunity to defend his case. On 20.09.2002, the enquiry officer submitted his report. On 30.03.2005 a letter was issued by the Director, Ministry of Health & Family Welfare, Government of India, New Delhi wherein the Ministry of Health & Family Welfare disagreed with the report of the enquiry officer and sought for reply on the disagreement note. On 21.08.2010, in the 12<sup>th</sup> Governing Body Meeting, it was unanimously decided that disciplinary action may be concluded as per Rule. On 10.09.2010 the Director of the Institute



issued a letter to the Ministry of Health and Family Welfare, Government of India, New Delhi seeking approval to impose penalty for removal from service. On 09.10.2012 a Director of the Institute wrote a letter to the Ministry of Health and Family Welfare, Government of India, New Delhi requesting to pass the final order against the petitioner. On 02.08.2011 the applicant made a representation to the Director of the Institute expressing his willingness to join his duties. On 16.05.2012 the Ministry of Health and Family Welfare issued a letter to the Director informing him that Ministry has approved the order of dismissal of service of the applicant.

Therefore, having violated the order by which he was asked to resume his duties, he was dismissed from service.

The applicant is aggrieved as the order of dismissal did not mention about the provision of appeal or his right to prefer an appeal before the appropriate authority. Therefore, instead of preferring an appeal he filed the instant O.A. seeking the reliefs as extracted supra.

3. The applicant has alleged that neither the Enquiry Officer nor the Disciplinary Authority(D.A in short) found him guilty of the charges yet D.A. ordered for dismissal. The applicant further alleged that the enquiry was conducted in a most casual manner without consulting the relevant evidence and the findings were not based on any relevant, cogent and evidential material. The applicant also alleged that the dismissal order was not in accordance with the Regulation 7 of the Regulations adopted by the respondent authorities.

4. Ld. counsel for the applicant would submit that in **O.A. 1968 of 2010 (Sri Dulal Chandra Pramanik vs. Union of India & Ors.)** having noticed that no

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appellate authority was mentioned in the rules and the governing body exercised the power both as the Disciplinary Authority and the Appellate Authority, this Tribunal opined that Regulation 7 was not in conformity with the principles of natural justice as well as CCS(CCA) Rules, 1965 and the spirit of Article 311 of the Constitution of India, therefore, in absence of the provisions of appeal in the regulations, the dismissal order ought to be set aside.

5. Per contra, Id. counsel for the respondents submitted that the order of this Tribunal, where this Tribunal held that making no provision in the conduct rules of an appeal violated Article 311 of the Constitution, was considered by the Hon'ble High Court in W.P.C.T.274 of 2016 and the order was stayed.

6. The respondents alleged that the instant case is a burning example of how people for their personal gain cause tremendous loss by absenting themselves for 14 years at a stretch from services of an institution which primarily deals with terminal disease like cancer.

7. The respondents further alleged that from 1998 till 02.03.2016 the applicant was in Malaysia, therefore, only because he had no right of appeal he should not be exonerated. The respondents contended that the order passed by Director with prior approval of the competent authority was ratified by Governing Body in its meeting dated 21.08.2010. They placed reliance on the decisions reported in **2006 Volume 5 SCC-96, 2007 Volume 2 SCC-588 and 2007 Volume 10 SCC-662** in support of their contention.

8. Id. counsel for the applicant at hearing would contend that the applicant was never permitted to perform his duties. The order dated 08.09.1998 permitting him to avail EOL, was never communicated to him. The Enquiry Officer

had held charge not proved. Since the order dated 08.09.1998 was not communicated, it was too harsh on the part of the disciplinary authority to have dismissed him from service. The applicant could have been let off with some leniency.

9. Id. senior counsel for the respondents vociferously objecting to the same would submit that not only the applicant was away for so long, he had kept the quarter under lock and key and, therefore, he did not deserve any leniency and absence of any appellate forum did not entitle him to be reinstated since even in such cases where Disciplinary Authority is the President, no appeal lies. Further, drawing our attention to the 1965 Rules, Id. counsel would submit that for officers from Grade 1 to 4 the Appellate Authority is the Governing Body. For the officers above 4 no Appellate Authority is prescribed in the rules. The applicant being Grade 1 officer, there is no provision for appeal and that the order the applicant banked upon was stayed by the Hon'ble High Court.


10. We heard the Id. counsels and perused the materials on record.

11. We noticed that on 20.01.1997 the applicant had sought for permission from the Director, CNCI to take up a foreign assignment and his release to join Mount Mirium Hospital, Penang in Malaysia on contract basis for three years. Government of India granted a "No objection" for the purpose as informed to the Director, CNCI vide communication dated 04.07.1997. Letter dated 01.09.1998 was issued to him which was attempted to be served on 01.09.1998 and 02.09.1998 but due to his absence it could not be served. On 07.10.1998 a letter was issued by the Administrative Officer of CNCI communicating to the applicant that in response to his letter dated 28.08.1998 the office issued to him a letter

dated 01.09.1998 requesting him not to avail the EOL and leave the country and to contact office immediately, and further that the Government of India, Ministry of Health and Family Welfare has not accorded permission either to grant him EOL or to go to Malaysia to take up employment at Mount Mirium Hospital. The applicant was, therefore, asked to resume duties immediately. On 02.11.1998(Annexure A/5) vide letter that was faxed to the applicant at Malaysia, the applicant was again asked to resume duties since by an order dated 14.09.1998 the earlier letter issued on 10.09.1998 was treated as cancelled and withdrawn.

It is, therefore, evident that the permission granted on 08.09.1998 was cancelled on 14.09.1998 before it got translated into a formal order which fact was duly intimated to the applicant vide letter dated 07.10.1998 followed by further reminders.

12. The applicant had ample opportunities to come back and resume his duties, yet he chose to continue with his persistent defiance. Long thereafter on 29.03.2000 charges were drawn up against the applicant. The applicant responded to the charge memo vide reply dated 23.05.2000 and asked for supply of documents through letter dated 06.06.2000. He was duly informed about appointment of Enquiry Officers and Presenting Officer. The enquiry was held on 18.10.2001, 20.11.2001, 21.11.2001, 05.12.2001, 06.12.2001 and 14.12.2001 when witnesses were examined and cross examined by both the parties. These facts inarguably and indubitably lead to the inevitable conclusion that the applicant duly participated in the proceeding, but at no stage whatsoever he demonstrated his dissatisfaction with the non-observance of due procedure. It implies that he was given a fair treatment.





13. On 09.08.2002 the Enquiry Officer submitted his report in favour of the applicant stating as follows:-

*"Findings of the Inquiry Officer on each Article of Charge.*

- a) The Inquiry officer, on the basis of his assessment of evidences made in 10(a), 10(b)(i) & 10(b)(ii) above, find that the charge as per articles of charge – Article –I in Annexure –I enclosed with the Memorandum No.GA/24(20)/86/CNCI/HOSP/PF-1559 dated 29.3.2000, framed against the charged officer is sustained only in respect of Rule – 15(1) (b) of C.C.S.(C.C.A.) Rules 1965 because the Director, C.N.C.I., Calcutta failed to inform the Charged officer about the decision of the Govt. of India, Min. of H & F.W. New Delhi in letter No.V.22011/18/97-B dated 3.3.1998, between the period 9.3.98/16.3.98 and 28.8.98.
- b) The Inquiry Officer on the basis of his assessment of evidences made in 10(a), 10(c),(i) & 10(c) (ii) above finds that the charge as per Articles of charge – Article –II in Annexure –I enclosed with the Memorandum No.GA/24(20)/86/CNCI/HOSP/P.F.-1559 dated 29.3.2000, framed against the charged officer is sustained in respect of an act of "misconduct" within its meaning under Rule -3of C.C.S.(Conduct) Rules 1964 because of the definite lapses on the part of C.N.C.I., Calcutta as well as the Director , C.N.C.I., Calcutta. But the charge of violation of Rule FR-17A is not established.
- c) The Inquiry officer on the basis of his assessment of evidences made in 10(a), 10(d), (i) & 10(d)(ii) above finds that the charge as per Articles of charge Article –III in Annexure –I enclosed with Memorandum No.GA/24(20)/86/CNCI/HOSP/PF-1559 dated 29.3.2000 framed against the charged officer is sustained only in respect of the failure on the part of the charged officer to resume duty at C.N.C.I., Calcutta till the date of issue of Memorandum dated 29.3.2000 and such act on the part of the charged officer is violation of Rule – 3(1) of C.C.S. (Conduct) Rules, 1964. But the charge in respect of abandonment of service and in subordination are not sustained
- d) The Inquiry Officer on the basis of his assessment of evidences made in 10(a) & 10(e) above, finds that the charge as per Articles of charge – Article –IV in Annexure –I enclosed with Memorandum No.GA/24(20)/86/CNCI/HOSP/PF-1559 dated 29.3.2000 framed against the charged officer is not to be sustained."

14. On 30.03.2005 a letter was issued by the Deputy Secretary, Ministry of Health and Family Welfare, Government of India to the Director, CNCI, Kolkata intimating that the Ministry had disagreed with the report of the Enquiry Officer. A disagreement note to that effect was forwarded and a reply was sought for. He duly replied to the note. On 21.08.2010, in the 12<sup>th</sup> Governing Body meeting, it was unanimously decided that the disciplinary action may be concluded as per rules. On 10.09.2010 the Director sought approval and imposed penalty of removal from services. It was only thereafter on 02.08.2011 that the applicant expressed his willingness to join his duties. On 16.01.2011 the Ministry issued a letter directing to initiate disciplinary action against the applicant and on 16.05.2012 the dismissal was approved by the Ministry.

15. The relevant rule being Regulation 7 and the Schedule attached to the Bye-laws are reproduced herein below:



**"7. Conduct, discipline and penalty:**

*Till appropriate rules are framed by the Governing Body the Central Civil Service(Conduct) Rules, 1964 as amended from time to time and part.iv(Suspension), Part v(Penalties as disciplinary authorities), Part vi(Procedure for imposing implementing penalties) Part vii(Appeals) and Part viii [Review of the Central Civil Services(Classification,Control and Appeal) Rules, 1965 as amended from time to time, shall apply mutatis mutandis to the employees of the Institute provided that for purposes of the bye laws:-*

- (i) *Group A, Group B, C and D posts shall correspond to the Central Civil Services Group A, B, C and D posts respectively.*
- (ii) *Appointing authority, Disciplinary authority for the several posts in the institute shall be as provided in the schedule appended to these Bye-laws.*
- (iii) *In respect of Central or State Government servants borrowed by the Institute provisions respective of Rule 20 and 21 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall apply and Institute shall exercise the functions of the Centre or State Government, as the case may be for the purpose of the said rule aforesaid.*

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- (iv) For the purpose of these regulations except where specifically provided otherwise the Governing Body shall exercise the same powers in respect of the employees of this Institute as are exercisable by the President of the Union of India in respect of Government employees. Powers of the disciplinary authority shall be exercised by the appointing authority and the powers of the appellate authority shall be exercised by the next higher authority. Where the disciplinary authority is the Director, the appellate authority will be the Governing Body.
- (v) No consultation with Union Public Service Commission shall be necessary in any case.

**The appointing, Disciplinary Appellate Authority for the various Posts in the Chittaranjan National Cancer Institute, Kolkata**

Description of Post	Appointing authority	Authority competent to impose penalties and penalties which it may impose with reference to rule 11 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965		Appellate Authority
		Disciplinary Authority	Penalties under Rule 11 of Central Civil Services(Classification, Control & Appeal) Rules, 1965	
<u>Group 'A' posts</u> Director	Governing Body	Governing Body	All	
Other Gr.A posts	Governing Body	a)Governing Body b) Chairman	All (i)to (iv)	Governing Body
Group 'B' posts	Director	a)Governing Body b) Director	All (i)to (iv)	Governing Body
Group 'C' posts	Director	Director	All (i)to (iv)	Standing Finance Committee
Group 'D' posts	Director	Director	All (i)to (iv)	Standing Finance Committee

*On perusal of Schedule it reveals that in case of an employee of Group A post excluding Director, the appointing authority would be the Governing Body for all types of penalties provided in the Rule 11 of the CCS(CCA) Rules 1965. However, Chairman of the Governing Body would be the disciplinary authority, if punishment is provided under (i) & (iv) i.e. for minor penalties. The appellate authority was also shown to be the Governing Body."*

16. In **B.C. Chaturvedi v. Union of India & Others, (1995) 6 SCC 749**, the Hon'ble Apex Court on the scope of judicial review has held as under:

*"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the inquiry was held by a Competent Officer or whether the inquiry was held by a Competent Officer or whether Rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical Rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the Disciplinary Authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the Rules of natural justice or in violation of statutory Rules prescribing the mode of inquiry or where the conclusion or finding reached by the Disciplinary Authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."*

- Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has observed as under:

*"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of*

*the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:*

- (a) the enquiry is held by a Competent Authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case."*

In **Ranjit Thakur v. Union of India & Others, 1989(1)SLJ 109 (SC)=(1987)4 SCC 611**, the Hon'ble Supreme Court evolved the principle of proportionality in the following words:

*".....It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."*

17. Having understood the true import of the decisions supra and the limited scope of interference in disciplinary proceedings we noted the fact that the order dated 08.09.1998 was never translated into any order permitting the applicant to leave the country on EOL, yet he left. His leaving the country on EOL to join foreign institution was, therefore, palpably illegal, unauthorized and in violation of the statutory rules. Further, failure to resume duties despite repeated directions and having never bothered to seek permission to resume his duties for so long, the dismissal from service as ordered against the applicant could not be faulted. No extenuating circumstances prevail which would tempt us to pass orders impelled by benediction. Accordingly the O.A. is dismissed. No costs.

(Nandita Chatterjee)  
Administrative Member  
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(Bidisha Banerjee)  
Judicial Member