

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.3626 of 2016

Orders reserved on : 24.01.2019

Orders pronounced on : 07.02.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Hon'ble Mr. S.N. Terdal, Member (J)

Vidya Bhushan Kaushik
(age about 66 years, Gestetner Operator)
S/o late Shri H.K. Kaushik,
r/o C-14, Guru Nanakpura,
Patparganj Road, Delhi-92.

....Applicant

(By Advocate : Shri R.K. Jain)

VERSUS

1. Union of India
Through its Secretary,
Ministry of Health & Family Welfare,
Department Azad Road,
New Delhi.
2. Medical Council of India,
Through its Secretary,
Pocket – 14, Sector-8, Dwarka Phase –I,
New Delhi – 110077.

.....Respondents

(By Advocate : Shri A.K. Behera with Mr. T. Singhdev and Ms. Puja Sarkar)

ORDER

Ms. Nita Chowdhury, Member (A):

By filing this OA, the applicant is seeking the following reliefs:-

- “I. to quash and set aside the findings submitted by the Enquiry Officer and order dated 10.04.2002 passed by the Disciplinary Authority, whereby the applicant has been dismissed from service which was communicated to the applicant vide memorandum dated 19.04.2002 and order dated

02.08.2016 passed by the Appellate Authority vide which the appeal of the applicant has been rejected.

- II. direct the respondents to grant all consequential benefits alongwith arrears of pay with interest @ 18% from the date of entitlement till the date of payment.
- III. cost of proceedings may also be awarded to the applicant;
- IV. any other relief which this Hon'ble Tribunal may also be passed in favour of the applicant."

2. During the course of hearing as also on the previous date of hearing, learned counsel for the respondents submitted that earlier also the applicant has sought the relief of quashing of the inquiry report, disciplinary as well as appellate authorities orders on various ground in TA No.1397/2009 and this Tribunal considered the arguments of the applicant and vide order dated 26.5.2011 observed as under:-

"7. We have gone through the pleadings and given serious consideration to the rival submissions. It is a fact that the issue of appointment of a non-official is no longer res-integra. It has been decided by the Hon'ble Supreme Court in Alok Kumar (supra). The word 'authority' has not been defined under the rules. Therefore, it has to be understood in its generic sense. Power to conduct an inquiry can be conferred on a person who may not be in government service. Besides, it was not necessary for the respondents to permit the request of the applicant for the assistance of a trained lawyer when the prosecuting officer for the respondents was not a trained lawyer. The contention of violation of principles of natural justice by not supplying a copy of the inquiry report before issue of the show cause notice and by mentioning in the show cause notice tentatively the nature of punishment which the respondent authority wanted to inflict does not have much force. In

view of the law laid down by the Apex Court in the case of Alok Kumar (supra) that it is for the delinquent employee to establish de facto how any prejudice was caused to him. There is no dispute that he was given an opportunity to defend himself and it is only after considering his representation that the impugned order was passed. The impugned order has been communicated by the Secretary of the respondent organization and it says very clearly that the appointing authority by order dated 10.04.2002 had decided to impose the punishment of dismissal from service on the applicant. Therefore, the contention that the order has been passed by an incompetent authority is without any basis. The contention of the applicant is that he left the office on 23.03.2001 to attend the hearing of a court case and it was a legitimate work on the part of an office bearer of a union and in that context his temporary absence could not have been construed as unauthorized absence giving rise to the allegation of misconduct. Suffice to say that work relating to the office union cannot be accepted as legitimate office work. Admittedly, he was not deputed to attend the court hearing on that date. Therefore, we do not find anything unusual on the part of the respondents in asking him to apply for leave for his temporary absence. When he refused to submit any leave application, the disciplinary action was taken against him and he was charged with misconduct.

8. The submission of the learned counsel for the applicant is that the penalty imposed on him was unduly harsh and disproportionate to the gravity of the misconduct alleged against the applicant. He has also characterized the appellate order as cryptic in nature. Relevant portion of the appellate order is extracted below:-

“The Executive committee considered the appeal of Shri Vidya Bhushan kaushik requesting to review the order as per rule 50 of Standing Orders of the Medical Council of India. The Executive committee upon reconsideration noted that there is no substance in the appeal of Shri Vidya Bhushan which requires fresh consideration for reviewing the decision already arrived at and decided to reiterate its earlier decision of approving the penalty of “Dismissal from Service” imposed on him by the Disciplinary Authority which was duly approved by the General Body of the Council at its meeting held on 3rd & 4th June, 2002 and already communicated to him.”

8.1 It simply says that there was no substance in the appeal which required a review of the decision of the DA and on that ground rejected his appeal. There is no doubt that this order does not discuss the contentions raised by the applicant in his appeal. The applicant had specifically taken the plea of the punishment being harsh and disproportionate in nature along with many other. It is for the respondent authority to take a view on the nature of punishment which is to be given to an employee while considering over all facts and circumstances of the case.

9. From the case record and the inquiry report it is made out that the applicant used filthy and unparliamentary language against the IO. However, except for the statement of the S.O. and his complaint letter where it is said that the applicant wanted to kill the S.O. break his hands, there is no other corroborative evidence. The applicant has made a number of allegations against the S.O. and described him as personally inimical towards the applicant. It would be proper for the respondent authorities to take all the facts and circumstances of the case into account and to decide whether the punishment given to the employee was proportionate to the allegations brought against him. In any case, they are required to give a reasoned order in respect of all the grounds taken by the applicant in his appeal, which they have not done. In the circumstances, the matter is remitted to the Appellate Authority to take a fresh view on the appeal/review petition of the applicant.

9. The T.A. is allowed in terms of the aforesaid direction. No costs.”

2. Learned counsel for the respondents further submitted that from the aforesaid order, it is evidently clear that the matter was remitted back to the appellate authority to consider all the grounds taken by the applicant in his appeal and to take a fresh view on the appeal/revision as also to take all the facts and circumstances of the case into account and to decide whether the punishment given to the employee was

proportionate to the allegations brought against him. Counsel further submitted that thereafter the appellate authority passed the order dated 24.2.2012 on the applicant's appeal. However, the said Order was also challenged by the applicant by filing OA 1373/2012 and this Tribunal vide Order dated 11.9.2015 remitted the matter to the General Body of the Council, which is the appellate authority as on date, to consider the appeal preferred by the applicant in terms of the order dated 26.5.2011 passed in aforesaid TA and to pass a speaking order within a period of six months. In compliance of this Tribunal's aforesaid Order dated 11.9.2015, the respondents have passed the Order dated 2.8.2016, the operative part of the same reads as under:-

“Accordingly, the matter was placed before the General Body Meeting of the MCI held on 30th Marcy, 2016. Your matter was at Item No.413. The General Body of the MCI considered your appeal and passed the following order:-

“The Council after deliberating on the issue in detail that the appeal is without merit and the punishment of dismissal imposed on the delinquent employee is proportionate to the allegations brought against him.

The delinquent employee has earlier been inflicted with major penalty and despite several memos his conduct did not improve. The use of abusive language and leaving the work without prior permission amounts to gross misconduct and therefore, lesser punishment on the delinquent would not be in the interest of justice nor would be in the interest of maintaining discipline in the office. Therefore, the punishment of dismissal imposed on the delinquent employee vide Order dated 19.04.2002 is maintained and the appeal filed by the delinquent employee is dismissed as the same is without merit.

The above minutes were read and confirmed in the meeting itself and the decision be expeditiously communicated to the Applicant as directed by the Hon'ble Central Administrative Tribunal under the seal and signature of Secretary (Incharge)."

3. Counsel for the respondents states that the said order is speaking and reasoned order and the present OA deserves to be dismissed by this Tribunal.

4. We also found that in the instant OA, the applicant is seeking again quashing of inquiry report, orders of disciplinary authority and appellate authority, which has now been passed on 2.8.2016 pursuance to the directions of this Tribunal in OA No. 1373/2012 decided on 11.9.2015.

5. In view of the above facts and circumstances of this case, this Tribunal having regard to the aforesaid orders passed in TA as well as in OA 1373/2012, it is required in this matter whether number of allegations levelled against the S.O. and described him as personally inimical towards the applicant as also all the facts and circumstances of the case have been taken into account for consideration by the appellate authority and to decide as to whether the punishment given to the employee was proportionate to the allegations brought against him or that the order passed by the appellate authority is a reasoned one or not.

6. As we have already quoted above the relevant portion of the impugned appellate authority's order dated 2.8.2016. But from the perusal of the same, we do not find that the same is

a reasoned one as the appellate authority has not adverted upon any of the contentions of the applicant as raised by him in his appeal but simply stated that ‘the appeal is without merit and punishment imposed upon the applicant is proportionate to the allegations brought against him and has stated that the respondent has also taken into consideration the past conduct of the applicant. It is regrettable that respondent – MCI has not passed orders as per the directions contained in TA No.1397/2009 decided on 26.5.2011 because of which this matter is remitted back to the respondent – MCI for passing a speaking order dealing with the contents of the appeal preferred by the applicant and to answer all points raised by him in a reasoned and speaking order.

7. In view of the above facts and circumstances of this case, we quash the order dated 2.8.2016 passed by the appellate authority and consequently, the matter is again remitted back to the appellate authority to consider the appeal of the applicant in the light of the observations of this Tribunal in TA No.1397/2009 and passed a reasoned and speaking order within a period of 90 days from the date of receipt of a certified copy of this order. This OA is disposed of in above terms. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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