

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1872/2018

Reserved on : 23.04.2019
Pronounced on : 29.04.2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Jagdish Prasad Singh S/o Shri Ganeshi Lal,
R/o A-57, Ordinance Apartment,
Vikaspuri, New Delhi-110018. ... Applicant

(By Mr. Ajesh Luthra, Advocate)

Versus

1. Principal Secretary,
Department of Health and Family Welfare
(Vigilance Branch), Government of NCT of Delhi,
Level-9, A Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002.
2. The Lieutenant Governor of Delhi
through Department of Health and Family
Welfare, Government of NCT of Delhi,
Level-9, A Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002.
3. Deen Dayal Upadhyay Hospital,
Government of NCT of Delhi,
through Medical Director,
Clock Tower Chowk, Hari Enclave,
Hari Nagar, New Delhi-110064.
4. Government of NCT of Delhi
Directorate of Vigilance
through Special Secretary (Vigilance),
4th Level, C-Wing, Delhi Sachivalaya,
New Delhi-110002. ... Respondents

(By Mr. Amit Anand, Advocate)

O R D E R

Justice L. Narasimha Reddy, Chairman :

The applicant is working as Chief Medical Officer (NFSG) in the Government of NCT of Delhi, the 1st respondent herein. He was issued a charge memorandum dated 06.02.2018. It was alleged that he was taking up private medical practice for monetary gain at a clinic in Vikas Puri, New Delhi, in violation of the provisions of Rule 15 of CCS (Conduct) Rules, 1964. The list of documents and witnesses was also appended. The same is challenged in this OA.

2. The applicant contends that the very basis for issuing the charge memorandum is a pseudonymous complaint, and according to the circulars issued by the CVC and DoP&T, initiation of disciplinary proceedings on the basis of anonymous and pseudonymous complaints, is impermissible in law. It is also stated that a preliminary inquiry was conducted into the matter, and even after the Committee reported that the complaint is pseudonymous in nature, the charge memorandum was issued. The applicant denied the allegations made against him.

3. On behalf of the respondents, counter affidavit is filed. It is stated that a complaint was received, which contained the particulars of the complainant, and when inquired by a Preliminary Committee, he not only appeared, but also admitted the contents thereof. It is further stated that the complainant made available, a CD and certain other material, and in that view of the matter, it cannot be treated as anonymous or pseudonymous complaint. The respondents contend that the approval of the Lt. Governor was obtained for initiation of the disciplinary proceedings, and that the truth or otherwise of the allegations made against the applicant can be ascertained in the disciplinary inquiry.

4. We heard Shri Ajesh Luthra, learned counsel for the applicant, and Shri Amit Anand, learned counsel for the respondents.

5. The applicant is working as a medical Doctor in a Government hospital. According to the Service Rules, he is not supposed to undertake any private practice. A complaint signed by one Mr. Parul was received by the respondents. It was alleged that the applicant was doing private practice in a clinic at Vikas Puri, New Delhi. A CD and certain prescription

slips were enclosed to it. They were forwarded to the Medical Superintendent, Deen Dayal Upadhyay Hospital, the 3rd respondent herein. He, in turn, constituted a Committee comprising a Chairman and two Members, to verify whether any *prima facie* case exists. The Committee submitted its report stating that when contacted, the signatory of the complaint appeared before them, and stated that he submitted it. It was, however, observed that he was not able to show his complete identity, and on that basis, the Committee treated the complaint as 'pseudonymous' one. At the same time, they felt that the prescription slips and the video clippings enclosed to the complaint dated 24.05.2017, need to be verified. It is in view of this development, that the charge memorandum was issued.

6. The principal contention urged by the applicant is that what is relied upon by the Department is a pseudonymous complaint, and according to the circulars issued by the CVC from time to time, no proceedings shall be initiated on the basis of the same.

7. In this regard, we propose to first examine as to whether the complaint dated 24.05.2017 can be treated as

pseudonymous at all. For the sake of convenience, we reproduce the same, in its entirety. It reads:

"Sub: Complaint against Dr. J.P.Singh (HOD)
Casualty, Deen Dayal Upadhyay Hospital,
Hari Nagar ND-64, for cheating with
government and towards public is being a
Senior Government Official in Delhi
Government Hospital.

Respected Sir,

I am citizen of India, I love my country. The brief story like this:-

Recently when I visited to my Sister house, Due to some Health problem with my knees. My Sister took me to Private Child specialist clinic in Vipaspuri near Heam giri apartment; Vikaspuri Delhi, along with my knees for escort my sister. While sitting outside chair in clinic, I saw the face. I was shocked while looked him from outside; immediately I remember the face which I have seen in DEEN DAYAL Uphadhaya Hospital about 8-9 days back. I have gone in casualty along with my friend for accidental injury to his leg due to slip of his bike.

After waited for more than 1hr to 1and ½ hr emergency x-ray was not given to us for whom we asked from security to where we can complaint. He replied Go to CMO room or H.O.D. room. We didn't found CMO that time One of Police Official, Sir tell us to meet HOD in his room. There I had gone and verbal complaint given. That time he answered very painfully that stand in queue, before I told the problem he said go out. I kept mum; I could not able to react that time how to speak with senior Doctor. I stunned after waiting for 4 hr. MY FRIEND was discharged, but I remembered the face of this doctor. After review my thoughts in his clinic, which he sit to run clinic on some other Doctor's name but he writing on her prescription or some fake clinic name, Immediately I turned my Camera and recorded the full incidence also confirms again. I had gone with my servant for his daughter who is not ill. But this is

very busy Doctor for making money by doing private practice.

Sir, I have recorded two HD Footage along with two prescriptions, which I am sending to you for Justice in the public interest. One sided government giving assurance for free service with quality and quantity. How this can possible when Doctor cannot concentrate on one work how he can improve the system. Who is busy already in western interest? I know that Government servant cannot do practice in Delhi. It's a Crime or Cheating this has to be decided by the LG Sir. I am ready to give witness, if you required. Here by I am submitting the Photocopy (black and white) document with HD Footage. So you can take strict action against the culprit who is cheating/misguiding to the government.

Yours faithfully

sd/-
Mr. Parul
Mob no: 8285046777

Copy: Secretary (Health & Family Welfare)
Delhi-110002"

8. The complaint was signed, and the mobile number of the complainant was also furnished. It has been mentioned earlier that the 3rd respondent constituted a Committee. On a requisition made by them, the complainant appeared and vouched for the contents thereof. Therefore, it cannot be treated as a pseudonymous complaint. The only basis for treating it as pseudonymous, is the observation made by the Committee in its report dated 28.09.2017. It is essential to take

note of certain paragraphs in the preliminary inquiry report, which is filed as Annexure A-8. One of it reads as under:

“1. The complainant who appeared before the enquiry committee on the basis of Whatsapp message sent on the telephone number provided in the complaint could not produce any documentary proof of being Parul, the name mentioned in the complaint. However, he identified himself as Rahul S/o Sh. Ravi Kumar aged about 25 years (mob. 8285046777) with a PAN CARD bearing number DNKPS5124K. He refused to furnish his address and ID Proof. He claimed that he has filed the complaint in the name of Parul.”

9. Once the person responded to the notice, appeared before the Committee, and vouched for the contents of the complaint, it was not necessary for the said Committee to further probe into other aspects. Such matters were required to be left to be dealt with in the regular inquiry. However, in their conclusions, the Committee stated as under:

“1. The complaint appears pseudonymous as the complainant could not establish his identity as Mr. Parul and did not appear well conversant with the contents of the complaint as well as name of the doctor.

2. Although denied by Dr. J.P. Singh, the doctor examining the patients in the video clippings appears to be Dr. J.P. Singh. Since the committee members are not an expert in technicalities, it is felt that a forensic examination of the clippings is essential and desirable for confirmation.

3. The dates on the photocopies of the prescriptions are not legible. Also the photocopies of the two prescriptions did not bear any signatures.
4. Although Dr. J.P. Singh has denied but the handwriting on these prescriptions needs to be verified from forensic experts for confirmation.

The committee is of the opinion that although the complaint appears pseudonymous and needs to be dealt as per directions in this regard, yet from the video clippings and the photocopies of the prescription handed over to the committee the possibility that the two patients were examined by Dr. J.P. Singh outside hospital premises cannot be conclusively proved as well as cannot be ruled out.”

10. It is true that the DoP&T and CVC issued circulars from time to time, discouraging the Departments from initiating disciplinary proceedings against employees on the basis of anonymous and pseudonymous complaints. This is because the complainant would not be available or traceable, and it would be difficult for the Department to prove the charges. Initiation of proceedings on the basis of such complaints would not only be a futile exercise, but also would put the employees to hardship.

11. Where, however, the complainant is available and owns up the contents of the complaint, a totally different situation emerges, and the occasion to treat the complaint as anonymous or pseudonymous does not arise at all. Even if a

different name is written by the person to keep his identity secret to certain extent, his readiness to respond can certainly pave the way for further steps. Added to that, if the material such as video clippings is made available, it can certainly be taken into account. Further, if any relevant information is furnished, which can be verified independent of the complaint, the proceedings can certainly be initiated. The observations made by the Hon'ble Supreme Court in the recent past that even if the source of the material is objectionable, the contents thereof can be taken note of by the courts, become relevant.

12. Reliance is placed upon the judgment of the Delhi High Court in *Union of India v Vijay Khanna and others* [WP(C) No.507/2007, decided on 22.01.2007]. In that case, a charge memorandum was issued to an officer of the Indian Revenue Service, on the basis of two complaints received from M. P. Sarada. A preliminary inquiry was also held. It is not known as to whether the complainant revealed his identity, or whether he turned up for the preliminary inquiry. The Tribunal found that the complaint was pseudonymous in nature, and accordingly, has set aside the charge memorandum by placing reliance upon the instructions issued by the CVC.

The writ petition filed by the Union of India was dismissed. In the instant case, it has already been mentioned that the complainant furnished his mobile number in the complaint, and also appeared before the Committee.

13. Learned counsel for the applicant has also placed reliance upon the judgment of the Madras High Court in *P. M. Ramalingam v Director General of Police, CRPF & others* [Writ Petition Nos.11543 and 11544/2000, decided on 26.09.2003]. Disciplinary proceedings were initiated against the petitioner therein on the basis of anonymous complaint. The charge sheet issued on that basis was set aside by the High Court. Since there was no dispute that the very basis for the disciplinary proceedings was the anonymous complaint, the result could not have been otherwise.

14. In the other precedents relied upon by the applicant, the proceedings were initiated on the basis of anonymous or pseudonymous complaints, and the charge memoranda were set aside. As mentioned earlier, the situation in the instant case is totally different.

15. We are convinced that there existed adequate material for initiation of disciplinary proceedings against the

applicant, and the complaint dated 24.05.2017 cannot be treated as a pseudonymous one.

16. CVC issued circular No.03/03/16 dated 07.03.2016, laying down the guidelines, to be followed in the context of initiation of proceedings on the basis of anonymous and pseudonymous complaints. The purport of the judgments rendered by this Tribunal, the High Courts and the Supreme Court, and the opinion of the Attorney General, was taken note of. It was summed up as under:

“5. Based on the opinion furnished by Ld. AG, the following clarifications are being issued:-

- i. No action should be taken on anonymous/pseudonymous complaints in line with Commission's present instructions dated 25th November, 2014 and such complaints should be filed.
- ii. However, where the action was initiated on anonymous/pseudonymous complaints prior to the issue of CVC's circular dated 29.6.1999 and was pending as on 29.6.1999, it can be pursued further to its logical end.
- iii. Where action was initiated on anonymous/pseudonymous complaints between the period 11.10.2002 and 25.11.2014 with prior concurrence of CVC but is pending, further action is permissible on such complaints.
- iv. Material/evidence gathered during the investigation/verification of anonymous complaints when the action was prohibited on such complaints (i.e. between 29.06.1999 & 11.10.2002), or where such enquiry was initiated

without the approval of CVC, can be utilized for further initiation of disciplinary proceedings on misconducts noticed in such verification/enquiry.”

There cannot be any second opinion about the purport thereof. However, the phrases, such as “No action should be taken”, “action was prohibited”, are being pressed into service as though the objective of the CVC is to prevent action against the employees, and protect them from disciplinary proceedings. It is clear that the objective of the CVC was to inform the Departments that it is not safe or advisable to base the disciplinary proceedings on such complaints. An attempt is being made in certain cases to project or depict the CVC as an authority to protect the officers from being exposed to disciplinary proceedings. When the very purpose of creation of the CVC is to bring about transparency, there is no room for drawing such inferences. The judgments of the various Courts are required to be understood in the same sense. The ultimate test is to verify whether the person who has complained, is available for examination and verification. Once he is available and is forthcoming, the guidelines cannot act as a protective shield for the concerned employee.

17. In the instant case, the Committee was also convinced that the matter is required to be examined. Its conclusions as to the nature of the complaint do not appear to be based upon any thorough analysis.

18. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/