

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

Pronounced on 29.8.2019

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Original Application No.330/00653/2011
(U/S 19, Administrative Tribunal Act, 1985)

Dr. R.R. Rana, Specialist Medical Officer, Gr. I (Gynecologist), Ordnance Factory Hospital, Armapur, Kanpur

1/1 Dr. Smt. Raj Chandra Lekha

Applicant

By Advocate: Sri K.P. Singh

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, Department of Defence Production & Supplies, South Block, New Delhi.
2. Under Secretary, Ministry of Defence, Govt. of India, Department of Defence Production & Supplies, Sena Bhawan, New Delhi.
3. The Chairman, Ordnance Factory Board, 10 A, Government of India, Ministry of Defence, 10-A, Shaheed K. Base Road, Kolkatta-700001.
4. Sr. General Manager, Ordnance Factory Kanpur (OFC), Ministry of Defence, Kalpi Road, Kanpur.
5. Dr. R.S. Verma, Personnel No. 982008, Chief Medical officer (Retired), OFC, Kanpur through Sr. General Manager, Ordnance Factory, Kanpur (OFC), Ministry of Defence, Kalpi Road, Kanpur.
6. Dr. N.S. Chauhan, Chief Medical officer, Ordnance Factory Hospital, Ordnance Factory Muradnagar, Ghaziabad, U.P.
7. Sri N.K. Varshney, General Manager, Ordnance Clothing Factory, Avadi, Chennai.

Respondents

By Advocate: Sri Abhinav Tripathi

ORDER

By Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Applicant, Dr. R.R. Rana was selected through Union Public Service Commission, New Delhi and was posted as Specialist Medical Officer Gr.II (Junior scale in the grade of Rs. 10000-

15000).. He was posted in Ordnance Clothing Factory (hereinafter referred as OCF), Shahjahanpur and subsequently he was transferred from OFC, Shahjahanpur to Ordnance Factory Kanpur (OFC) on 22.1.2007 as Specialist Medical Officer Gr. I.

2. Dr. Rana, as serving doctor for Government of India (GOI) under Ministry of Defence, was supposed to render his services only under the command and control of GOI. However, he was found doing private practice for his personal gains, simultaneously drawing non-practicing allowance, completely against prevailing rules. He was found operating upon a patient, namely Smt. Sunita Singh wife of Sri Sunil Singh , employee of Ordnance Factory Kanpur (referred to by Dr. Rana himself) at Chandani Nusing Home (Chandani Hospital) Kanpur during duty hours at about 5 p.m. on 17.12.2007.

3. It is pertinent to point out that a complaint had been made to Dr. R.S. Verma, the then Medical Officer, Ordnance Hospital Armapur (in short CMO/OHA). It appears that applicant had left Ordnance Factory Hospital Kanpur at 4.30 PM during duty hours. Dr. R.S. Verma, CMO/OHA along with Dr. N.S. Chauhan reached Chandani Nusing Home (Chandani Hospital) and found that applicant was operating upon a patient.

4. On investigation, they came to know that the said patient was referred to by Dr. Rana himself on 15.12.2007. This information was sent to higher authorities as private practice involving surgery upon factory employee's wife in private hospital by Government doctor during duty hours was a serious offence.

5. Chief Medical Officer sent show cause notice dated 25.1.2008 to the applicant. Reply was submitted denying all allegations enshrined in show cause notice. Reply of applicant was not accepted and charge sheet dated 18.9.2008 was issued

to the applicant. It is pertinent to point out that applicant was placed under suspension by Ministry of Defence vide order dated 16.10.2008 under sub- Rule 1 of Rule 10 of CCS (CC&A) Rules, 1965.

6. Inquiry was entrusted to one Sri N.K. Varshney, Additional Principal Director, Ordnance Factory Institute of Learning , Kanpur and Sri N..R. Ramtake was appointed as Presenting Officer. The applicant moved an application on 2.2.2009 requesting the disciplinary authority to change the inquiry officer. On the request of the applicant, the inquiry officer was changed and one S. Yamdagni, Principal Director, Ordnance Factory Institute of Learning , Kanpur was made inquiry officer. Following charges were framed against the applicant:-

- i) That the said Dr. R.R. Rana while functioning on the said post in the said hospital during the period of his employment is charged with Gross Misconduct of doing private practice for his personal gains.
- ii) That he was drawing non-practicing allowance under the provision of Government of India , Ministry of Health and Family Welfare O.M. No. A 45012/11/97- CHS V dated 7.4.1998.
- iii) That he was found engaged in private practice operating a patient viz. Smt. Sunita Singh w/o Sri Sunil Singh, UDC/ Bill Group, Ordnance Factory, Kanpur.
- iv) That he referred the above mentioned patient to Chandani Nursing Hose on 15.12.2007.
- v) The incident took place during the duty hours at about 5.00 pm on 17.12.2007.

7. Inquiry Officer held applicant guilty of sub-charge Nos (ii) and (iii) vide inquiry report dated 10.12.2009. The Disciplinary Authority examined the Inquiry Report and established tentatively one more sub-charge i.e. sub charge no (i) stating that if it is established that Dr. Rana was operating upon a patient in a private hospital, the charge of doing private practice for personal gain also stands established as a necessary corollary.

8. The dissenting findings of the disciplinary authority and inquiry report was forwarded to the applicant vide letter dated 23.11.2010. The applicant submitted representation dated 10.1.2011 against inquiry report and dissenting findings of disciplinary authority. After considering the inquiry report and representation dated 10.1.2011 submitted by the applicant, the disciplinary authority found the applicant guilty of sub charges (i), (ii) and (iii) and imposed the penalty of dismissal from service vide order dated 8.4.2011.

9. This order is under challenge before this Tribunal.

10. Respondents have filed counter reply denying all the allegations and has argued that all Principle of Natural Justice were observed during inquiry and subsequent proceedings. Substantial opportunity was given to the applicant to defend himself and applicant did use those opportunities. He has not only cross examined the witnesses but also produced evidence on his own behalf.

11. Counter affidavit has further claimed that part of allegation has already been accepted by Dr. Rana as he has accepted that he was present in Chandani Nursing Home during duty hours in Operation Theater in scrubs. It is further stated that he was seen by Dr. R.S. Verma and Dr. N.S. Chauhan while conducting

surgery inside private Chandani Nursing Home. He was present in the operation theater along with anesthetics and a nurse.

12. The claim of Dr. Rana that he was present there to enhance his professional skill is not acceptable as he was present there during duty hours.

13. Learned counsel for the applicant has argued that there is no evidence against the applicant for attributable offence mentioned in the charge sheet. Mere presence of Dr. Rana inside the operation theater does not constitute violation of any prevailing rules. He has further argued that evidence given by various witnesses does not inspire confidence. Submission is that there is no evidence on record to establish the guilt of applicant.

14. On the contrary, Sri Abhinav Tripathi, learned counsel for respondents has claimed that this Tribunal does not possess the appellate jurisdiction against the impugned order and that applicant himself admitted his presence inside operation theater of Chandani Nursing Home in scrubs during duty hours. He was in fact operating upon wife of an employee, who was otherwise entitled of medical assistance by Dr. Rana in the govt. hospital itself. He has also pointed out that two days prior to this operation, Dr. Rana had referred the patient to himself. Reference slip is available on record.

15. Heard Sri K.P.Singh advocate for applicant and Sri Abhinav Tripathi advocate for respondents.

16. It is pertinent to point out that this Tribunal is not an Appellate Authority of disciplinary decisions pursuant to the disciplinary proceedings. We merely review the manner in which the decision is made. It is the duty of this Tribunal to ensure that delinquent employee receives a fair treatment. The Tribunal has to see whether the inquiry into the charges of misconduct has been

conducted by observing the principles of natural justice and prevailing rules. Tribunal has to consider whether conclusions are based on some evidence and whether the authority had the jurisdiction to conduct the inquiry. It can only interfere if it appears that delinquent employee has been dealt with in the manner inconsistent with statutory rules prescribed for conducting the inquiry or whether the conclusions are based on perverse interpretation of evidence or no evidence.

17. Ordinarily, the Tribunal does not interfere with the quantum of punishment unless the inflicted punishment shocks the conscience of the adjudicatory authority.

18. It is pertinent to point out that the award of punishment is essentially within the domain of Disciplinary and Appellate authorities. Tribunal and Court cannot assume the function of Disciplinary Authority and decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of Competent Authority. The adjudicatory authority has very limited jurisdiction to interfere with the punishment imposed by Disciplinary Authorities. We can interfere only in cases where such penalty is found to be shocking to our conscience. In this case we find that punishment is adequate.

19. It is now well settled that exercise of power of judicial review is not concerned primarily with correctness of fact on the basis of which orders are passed, as long as these findings are reasonably supported by evidence. If inquiry officer and other disciplinary authorities have not committed serious procedural illegalities, then the Tribunal cannot upset the impugned order and substitute its own judgment for that of administrative authorities as the Tribunal is not a court of appeal.

20. If conclusion reached by the authorities are based on some reasonable evidence, then Tribunal cannot re-appreciate the evidence and come to contrary findings based on such re-appreciation. The only consideration of the Tribunal is whether the conclusion of administrative authorities is based on evidence on record.

21. The Hon'ble Apex Court in the case of **Parma Nanda Vs. State of Haryana and others** reported in 1989 (2) Supreme Court Cases 177 has held that "*The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.*"

22. The claim of applicant that applicant Dr. Rana was not busy in surgery in private nursing home is not acceptable for the simple reason that Dr. Rana himself in writing has accepted his presence in scrubs in Operation Theater (O.T.) of Chandani Nursing Home. Dr. R.S. Verma and Dr. N.S. Chauhan have testified that not only Dr. Rana was present inside the operation theater of Chandani Nursing Home during duty hours but he was in fact in scrubs along with anesthetic and a nurse. Dr. Verma, the Chief Medical Officer was very specific in his testimony during inquiry proceedings. He has in fact, testified that when he opened the door of O.T. of Chandani Nursing Home, he found that Dr. Rana was having medical instrument in his hand and he was in fact conducting operation. Similarly, Dr.N.S. Chauhan has also testified in similar manner. He has also established the presence of Dr. Rana inside O.T. of Chandani Nursing Home. He has testified that Dr. Rana was inside O.T. and was conducting surgery. There is nothing on record to demonstrate that testimonies of these two eye witnesses could have been rejected by the inquiry officer. It is pertinent to point out that surgery was conducted upon wife of one Sunil Singh UDC/Bill/OFC. He has also testified that his wife was referred to Chandani Nursing Home by Dr. Rana himself. Inquiry Officer was convinced of available evidence on record. There is nothing on record to demonstrate that his satisfaction has been vitiated in any manner.

23. Learned counsel for applicant has drawn attention of this Tribunal towards the judgment of Hon'ble Apex Court in the case of **Ratan Lal Sharma Vs. Managing Committee, Hari Ram (Co-education) Higher Secondary School and others (Civil Appeal no. 2860 of 1993 (arising out of SLP No. 3476 of 1991) decided on 14.5.1993.** We are afraid that this judgment will not

help the applicant for the simple reason that facts of Ratan Lal Sharma (supra) case are quite different from the facts of present case. In the case of Ratan Lal Sharma (supra), the disciplinary proceeding was set aside on the ground of violation of principle of natural justice. In this case, this Tribunal is convinced that a proper inquiry was conducted observing principle of natural justice.

24. The applicant has also drawn the attention of this Tribunal towards the case of **Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa (Civil Appeal No. 679 and 680 of 1957 decided on 14.5.1959)**. In this case, the appellant was given benefit because adjudicatory authority had arrived at the conclusion indulging in suspicions, conjectures and surmises and acted without any evidence. Again, the facts of aforesaid case are different from the present case. The Tribunal is convinced that there is sufficient evidence against the applicant and disciplinary authority has not indulged in suspicions, conjectures and surmises. This Tribunal cannot forget that eye witnesses account of Dr. R.S. Verma and Dr. N.S. Chauhan have reinforced the allegations against the applicant.

25. In the light of the above discussion, this Tribunal is of the view that since the applicant has failed to demonstrate any violation of principle of natural justice or any illegality or irregularity in conducting the inquiry. This Tribunal is also of the view that punishment awarded by the disciplinary authority is not arbitrary.

26. O.A. is devoid of merit and is liable to be dismissed. O.A. is accordingly dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)
HLS/-

(Justice Bharat Bhushan)
Member (J)

