

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00429/2018

Date of Reserve: 15.05.2019

Date of Order:30.07.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Dr.Gaurav Das, aged about 30 years, S/o. Nagendra Kumar Dash of Deulasahi, PO-Tulasipur, PS-Bidanasi, District-Cuttack – at present working as Senior Resident, Department of Dermatology, All India Institute of Medical Sciences (in short AIIMS), At-Sijya, PO-Dumduma, Bhubaneswar-751 019, District-Khurda.

...Applicant

By the Advocate(s)-Mr.S.Nayak
-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Health and Family Welfare, New Delhi-110 011.
2. All India Institute Medical Science, Bhubaneswar, Sijua, PO-Dumduma, Bhubaneswar-751 019, District-Khurda.
3. Director, All India Institute of Medical Science, Bhubaneswar, Sijua, PO-Dumduma, Bhubaneswar-751 019, District-Khurda.
4. Registrar, All India Institute of Medical Science, Bhubaneswar, Sijua, PO-Dumduma, Bhubaneswar-751 019, District-Khurda.
5. Heads of Department Dermatology, All India Institute of Medical Science, Bhubaneswar, Sijua, PO-Dumduma, Bhubaneswar-751 019, District-Khurda.

...Respondents

By the Advocate(s)-Mr.J.K.Nayak

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) Admit the Original Application.
- ii) To quash the notice dated 25.07.2018 under Annexure-A/7 passed by the Registrar, AIIMS, (Respondent No.40 and further direct the authorities to allow the applicant to continue in his post till the tenure is completed as per letter of engagement.
- iii) To pass any other appropriate order/orders direction/directions as this Hon'ble Tribunal deems fit and

proper keeping in view the facts and circumstances of the case.

2. Applicant is a Senior Resident in the Department of Dermatology being posted in the All India Institute of Medical Sciences (AIIMS), Bhubaneswar. His grievance is directed against the letter dated 25.07.2018 passed by the Registrar, AIIMS, Bhubaneswar (Respondent No.4) whereby he has been given one month prior notice for termination of his tenure engagement without any show cause notice.

3. Undraped facts of the matter are that in response to an advertisement made by the AIIMS authorities, the applicant was selected and posted as Senior Resident in Dermatology Department at AIIMS, Bhubaneswar and joined as such on 25.09.2017. While working as such, he was issued with a letter dated 25.07.2018 by the Respondent No.4, which according to him, one month's notice for termination of his tenure engagement to be made effective from 23.08.2018 (AN). Aggrieved with this, the applicant has approached this Tribunal in the instant seeking for the reliefs as mentioned above.

4. The grounds on which the applicant has based his claim are that the impugned notice of termination is illegal, arbitrary, mala fide and contrary to the sound principles of law. According to him, the Hon'ble Apex Court in Mahipal Singh Tomar vs. State of Uttar Pradesh reported in 2013 (12) SCALE 304 has laid down that in administrative law the "rules of natural justice" have traditionally been regarded as comprising "Audi Alteram Partem" and Nemo Judex in causa sua" the first of these rules requires the maker of a decision to give prior notice of the proposed decision to the persons affected by it and an opportunity to them to make representation. This principle is of a great importance because it embraces the rule of fair procedure or due

process. Generally speaking, the notion of a fair hearing extends to the right to have noticed of the other side case, the right to bring evidence and the right to argue. This has been used by the courts for nullifying administrative actions. The promise on which the courts extended their jurisdiction against the administrative action was that the duty to give every victim a fair hearing was as much a principle of good administration as of good legal procedure. Further, the applicant has placed reliance on the decision of Hon'ble Supreme Court in *Mrs. Menaka Gandhi vs. Union of India* (AIR 1978 SC 597), in which it has been held by a Constitution Bench that "although there are no positive words in the statute requiring that the party shall be heard, yet justice of the common law will supply the omission of the legislature. The principle of *Alteram Partem*, which mandates that no one shall be condemned unheard, is a part of the rules of natural justice.

5. Laying emphasis on the above mentioned decisions, the applicant has pointed out that neither the Head of the Department, Dermatology nor the Registrar (Res.No.4) has ever served any notice to show cause with regard to the alleged misconduct nor was he ever heard before issuing notice of termination under A/7 and therefore, the impugned notice of termination having been issued without complying with the principle of natural justice is liable to be quashed and set aside.

6. This matter came up for admission on 20.08.2019 and while directing notice to the Respondents, this Tribunal did not grant interim relief sought for by the applicant. Being dissatisfied, the applicant had approached the Hon'ble High Court of Orissa in W.P.(C) No.15567 of 2018. The Hon'ble High Court vide order dated 24.08.2018 disposed of the said Writ Petition in the following terms:

"Considering the above factual position, this Court is not inclined to entertain the writ petition at this stage.

However, considering the factual scenario, we request learned Tribunal for fixing up an early date for final disposal of the case, preferably by end of September, 2018. It would be open to learned Tribunal to re-consider interim prayer afresh, if the petitioner so advised to move for reconsideration of the same along with certified copy of this order.

The writ petition is disposed of accordingly".

7. In response to notice, the respondents-AIIMS have filed their counter opposing the prayer of the applicant. Respondents have submitted that termination order was issued in pursuance of Paragraphs-2 & 3 of the offer of Tenure Engagement letter No.AIIMS/BBS/Dean/SR/49-A/7395 dated 20th September, 2017, which reads as under:

- "2. During the tenure engagement period, you will be governed by AIIMS, Bhubaneswar Rules as applicable in addition to the relevant provisions of Central Residency Scheme as issued by the Govt., Of India. Your engagement is liable to be terminated in case of misconduct or if your antecedents are reported to be unsatisfactory at a later stage.
3. Your posting shall be rotational in allied Departments and made according to the requirement by the Competent Authority. Also your engagement may be terminated at any time with one month notice by either side. In case the notice period falls short of one month, the Competent Authority at his discretion may accept the notice, if the proportionate remuneration for the period falling short of one month is deposited by you".

8. It is the case of the respondents that one month's notice is deemed to have been served on the applicant as per A/7 indicating the proposed date of termination of his service on the ground of misconduct as reported by HoD Dermatology in terms of Central Residential Scheme of Government of India. It

has been submitted that there was a complaint from Dr.Aparna Palit, Prof. & HoD, Department of Dermatology and Venereology, AIIMS, Bhubaneswar that the applicant had misbehaved with her for the third time. This misconduct was enquired into by the Additional Medical Superintendent, Dr.Jawahar Pillai, who submitted his report on 19.07.2018. In his report, Dr.Pillai had verified and stated that Dr.Dash, the applicant had snatched the patient's history sheet from the HoD, which amounts to misbehaviour and insubordination. It is contended that applicant was on tenure engagement and in temporary service. According to Para-5(1) (a) of CCS(Temporary Service) Rules, 1965, the service of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant. Further, according to Senior Residency Scheme, Para (iv) of the Senior Residents serving in Institutions/Hospitals under the direct control of the Government will be treated as temporary Government servant and governed by the CCS(Temporary Services) Rules, 1965. Therefore, they have submitted that the O.A. being devoid of merit is liable to be dismissed.

9. Applicant has filed a rejoinder to the counter, in which it has been submitted law is well settled that as per Article 311(2) of the Constitution of India "no person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of charges. According to applicant, the complaint as produced by the respondents to the counter vide R/3 is false, concocted and after thought. Since prior to termination, no notice to show cause was issued nor the applicant was

afforded an opportunity of being heard, this action by itself being violative of the principles of natural justice does not stand to judicial scrutiny.

10. We have heard the learned counsels for both the sides and perused the records. We have also gone through the various citations submitted by the applicant in support of his case. Amongst other, in Union of India (UOI) & Ors. Vs. Mahaveer C.Singhvi AIR 2010 SC 3493, the Hon'ble Supreme Court has held as follows:

“Whether a probationer can be discharged from service without conducting an enquiry or without giving him reasonable opportunity to defend himself – held, that whether an order of termination of a probationer is punitive depends on whether the allegations which caused termination are the Motive or Foundation – Where termination is preceded by an enquiry, evidence is received and findings as to misconduct of a definite nature are arrived at behind the back of the officer and where on the basis of such a report the termination order is issued, such an order would be in violation to the principles of natural justice...” Further, it has been held that if the termination was punitive and was brought about on the ground of misconduct, Article 311(2) of the Constitution of India would be attracted and in such a case a departmental enquiry would have to be conducted – if an order of discharge of a probationer is passed as a punitive measure, without giving him an opportunity of defending himself, the same would be invalid and liable to be quashed”.

11. Admittedly, Dr.Aparna Palit had complained about the misconduct of the applicant to the Director, AIIMS, Bhubaneswar, vide her letter dated 12.7.2018(R/3). It has been submitted by the respondents that the matter was enquired into by Dr.Jawahar Pillai, Additional Medical Superintendent, who submitted his report on 19.7.2019 confirming the misconduct of the applicant. In view of the misconduct as reported, the applicant was issued with the impugned letter dated 25.7.2018, the relevant part of which reads as under:

“The undersigned has been directed to serve you one month (30 days) prior notice for termination of your

tenure engagement at AIIMS, Bhubaneswar with effect from 25th July, 2018 on the ground of misconduct, as reported by HoD Dermatology, in terms of Central Residential Scheme of Govt. Of India.

Accordingly your service as Senior Resident in the Department of Dermatology, AIIMS, Bhubaneswar, will be terminated on 23rd August, 2018 (AN)".

12. From the above, it is quite clear that the letter of termination was preceded by an enquiry, evidence received and findings as to misconduct of a definite nature arrived at behind the back of the applicant. Therefore, the letter of termination definitely suffers violation to the principles of natural justice. Besides, this, in the instant case, termination of service of the applicant appears to be punitive as the same had been issued on the ground of misconduct. Therefore, the provisions of Article 311(2) of the Constitution of India having been attracted, a departmental enquiry ought to have been conducted after affording the applicant a reasonable opportunity to defend his case. This having not been followed by the respondent-AIIMS, the letter/order of termination dated 25th July, 2018 (A/7) is liable to be quashed and accordingly, the same is quashed. Consequently, the AIIMS authorities are directed to allow the applicant to resume his duty as before and in such an eventuality, the applicant shall be entitled to consequential financial and service benefits from the date of termination of service till the date of his reinstatement. Respondents to comply with this order within a period of thirty days from the date of receipt of this order.

13. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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