



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A/351/1004/2019/AN

Date of Order: 24.07.2019

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

P. Hussain, son of P. Mohammad, aged about 44 years, residing at Calicut Village, District-South Andaman, Port Blair – 744105 and working as Driver in the G.B. Pant Hospital at Port Blair under the Directorate of Health Services under Andaman and Nicobar Administration.

--Applicant.

Vs.

1. Union of India service through the Secretary, Government of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi – 110001.

2. The Lieutenant Governor, Andaman & Nicobar Islands, Raj Niwas, Port Blair – 744101.

3. The Chief Secretary, Andaman & Nicobar Administration, Secretariat Complex, Port Blair – 744101.

4. The Principal Secretary (Health), Andaman & Nicobar Administration, Port Blair – 744101.

5. The Director of Health Services, Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.

6. The Assistant Director of Health Services, Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.

7. The Assistant Director (Administration), Andaman & Nicobar Administration, Directorate of health Services, Port Blair – 744101.

8. Dr. S.P. Buram, medical Superintendent of G.B. Pant Hospital under the Andaman and Nicobar Administration, Port Blair – 744101.

--Respondents.

For The Applicant(s): Mr. P. C. Das, counsel
Ms. T. Maity, counsel
For The Respondent(s): Mr. R. Halder, counsel

ORDER (Oral)

Per: Ms. Bidisha Banerjee, Member (J):

Heard ld. counsel for both the parties.

2. An appeal has been preferred to the Principal Secretary (Health), A&N, against the awarded penalty withholding of three increments under Rule 11(4) of CCS CCA Rules, 1965 by Dr. S.P. Burma, Medical Superintendent of G.B Pant Hospital and the applicant has alleged that Dr. S.P. Burma was not even competent to initiate proceedings under Rule 14 of CCS CCA Rules, which only a regular Director could do and other grounds which need to be decided by the Appellate Authority in accordance with Rule 27 of the CCS CCA Rules, 1965 which reads as under:-

"27. Consideration of appeal

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider-

- (a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

- (i) confirming, enhancing, reducing, or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases;

provided that-

- (i) The Commission shall be consulted in all cases where such consultation is necessary and the Government servant has been given an opportunity of representing against the advice of the Commission [within the time-limit specified in Clause (b) of sub-rule (3) of Rule 15]
- (ii) If such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and in inquiry under Rule 14 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a

consideration of the proceedings of such inquiry and make such orders as it may deem fit:

- (iii) If the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of rule 11 and an enquiry under Rule 14 has been held in the case, the Appellate Authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and
- (iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16, of making a representation against such enhanced penalty."

3. Therefore, we direct the Appellate Authority to consider the appeal in accordance with Rule 27 of the CCS CCA Rules and pass a reasoned and speaking order in accordance with rules within a period of 4 weeks from the date of receipt of a copy of this order.

The competent Appellate Authority shall pass order particularly in regard to i) Competence of Dr. S. P. Burma to initiate proceedings, ii) imposition of the penalty by the said Director, iii) other grounds taken by the applicant in his appeal.

4. The penalty which ^{now} is to take effect from 01.07.2019 shall abide by the result of the appeal.

5. O. A stands disposed of accordingly. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)