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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

No.O A.351/1300/2019(A&N)

Date of order : 25.9.19.

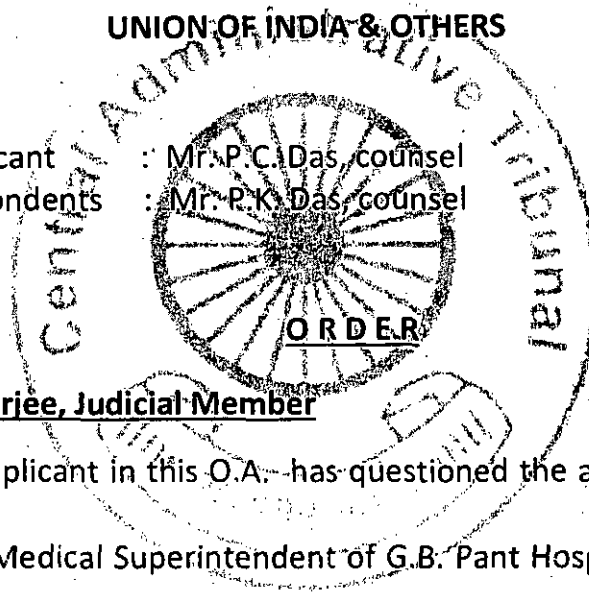
Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

P. HUSSAIN

VS.

UNION OF INDIA & OTHERS

For the applicant : Mr. P.C. Das, counsel
For the respondents : Mr. P.K. Das, counsel



Bidisha Banerjee, Judicial Member

The applicant in this O.A. has questioned the authority of Dr. S.P. Burma, Medical Superintendent of G.B. Pant Hospital, Port Blair, who is holding the additional charge of Director of Health Services, A&N Administration, to issue charge sheet dated 24.04.2018 and minor penalty order dated 31.07.2018 and challenged the consequent order of the Appellate Authority dated 03.09.2019 issued by the Principal Secretary(Health) on the ground that the

order has been issued in violation of the direction of this Tribunal in O.A.No.351/1004/2019(A&N).

2. Ld. counsels were heard.

3. At hearing, ld. counsel for the applicant invited our attention to the directions issued by this Tribunal in the earlier round i.e. while disposing of the O.A. No.351/1004/2019(A&N) which reads thus:-

"3. Therefore, we direct the Appellate Authority to consider the appeal in accordance with Rule 27 of the CCS CGA 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 was to take effect from 01.07.2019 shall abide by the result of the appeal.

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

Ld. counsel for the applicant would submit that pursuant thereto, but in violation thereof the Appellate Authority issued an order on 03.09.2019 stating that since Dr. S.P. Burma was given additional charge of the posts of Director of Health Services by the Lieutenant Governor, A&N Administration vide order No.210 dated 19.01.2018 in terms of Sub-Rule (3) of FR 49, he can exercise the

statutory powers under CCS(CCA) Rules. Ld. counsel would vociferously oppose the said stand of the respondent Principal Secretary(Health) on the ground that unless an officer holds a position substantively, he cannot be permitted to exercise statutory powers of such post or issue orders as a Disciplinary Authority, unless there is an express delegation of power and in view of the specific bar in terms of O.M. dated 16.04.2015 issued by the DOPT which says that *"While, the language of the FR 49, provides for appointment to a higher post, no occasion for appointing a Government servant to a post next above or even higher than the post next in hierarchy should arise. Such appointments may not be made without the approval of Department of Personnel and Training"*. Ld. counsel would submit that the appointment of Dr. S.P. Burma as Director of Health Services was not issued with the approval of DOPT and, therefore, merely because he has been allowed to hold additional charge of the post of Director of Health Services, he cannot have the statutory powers attached to the post, therefore, any order where the incumbent is attempting to exercise power as a Disciplinary Authority is bad in law.

4. To refute such allegation, Id. counsel for the respondents would place the guidelines on additional charge of current duties of another post under FR 49. The guidelines are explicit that :-

"When an officer is required to discharge all the duties of the other post including the statutory functions, e.g., exercise of power derived from Acts of Parliament such as Income Tax Act or the Rules, Regulations, By-Laws made under various Articles of Constitution such as FRs, CCS(CCA) Rules, CSRs, DFRs, etc., then steps should be taken to process the case for getting the approval of the Competent Authority and formal orders appointing the officer to the additional post should be issued. On appointment, the officer should be allowed the additional remuneration as indicated in FR 49."

5. Admittedly in the present case, Dr. S.P. Burma has been allowed to hold the additional charge of current duties of Director of Health Services without the authority of DOPT, while his substantive position is that of Medical Superintendent and he has not been allowed any additional remuneration. Therefore, we are not concerned that he is permitted/authorised/statutorily empowered to exercise the powers of Director of Health Services as a Disciplinary Authority .

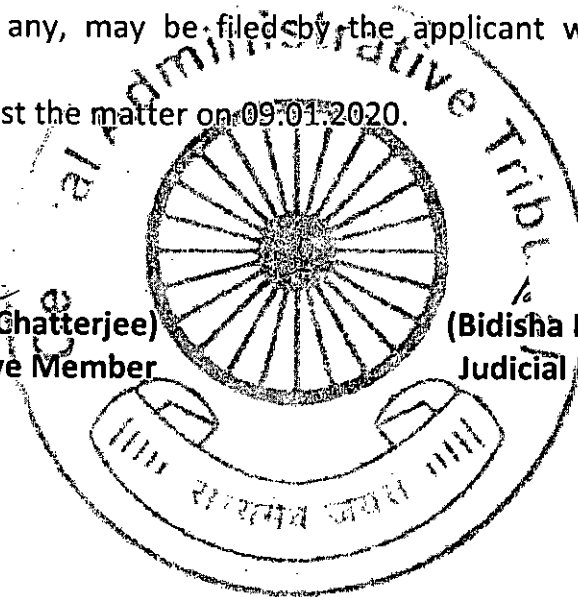
6. In view of the above, since the balance of convenience is heavily tilted in favour of the applicant who appears to be penalised by an officer not empowered to act as his Disciplinary Authority due to the reasons enumerated hereinabove and also due to the fact

that the Appellate Authority has not taken the pain to clarify whether Dr. Burma is authorised to act as Disciplinary Authority or taken a correct view while issuing the speaking order, the penalty order as well as the speaking order under challenge in the present O.A., are stayed.

7. Respondents are granted 4 weeks' time to file reply. Rejoinder, if any, may be filed by the applicant within 2 weeks thereafter. List the matter on 09.01.2020.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member



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