

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

M.A. No. 698/2003
O.A. NO. 829/2003

NEW DELHI THIS 12th DAY OF December ~~NOVEMBER~~ 2003

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Shri S.K. Verma, Pharmacist
12/519 Rishi Nagar,
Sonapat, Haryana

.....Applicant

(By None)

VERSUS

Govt. of NCT of Delhi
Through Principal Secretary,
Ministry of Health & Family Welfare Department
9th Level, 'A' Wing,
Delhi Secretariat
IP Estate, New Delhi

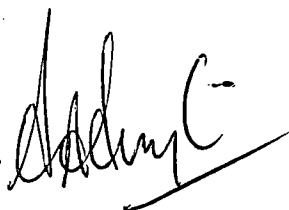
.....Respondent

(By Advocate: Shri Vijay Pandita)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant has filed MA No. 698/2003 for condoning of 28 days delay as he could not re-file the OA due to the clerk entrusted with the case having to leave for his house to attend his mother's serious sickness. The respondents prayed that OA may be dismissed as being time barred since the same was filed some time after 10.2.2003 whereas in the first page of the index the applicant has deliberately shown as OA No.\2002 instead of 2003. The respondent has relied upon a number of Supreme Court's judgements on this issue and cited the case of Ex. Captain Harish Uppal Vs UOI (JT 1994(3) page 126) that parties are expected to pursue their rights and remedies promptly and if they just slumber over their rights the court should decline to interfere. They have also relied upon in the case of Ratan Chandra Samanta (JT 1993(3) SC Page 418)

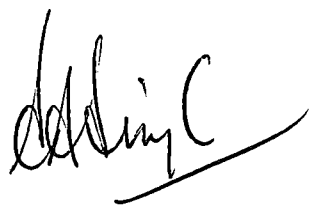


where in Hon'ble Supreme Court has held the view that delay deprives of the remedy available and if the remedy is lost the right also is lost.

2. In the present case, the delay in re-filing is attributed to the non-availability of the clerk entrusted with case. He had to leave to attend to his seriously ill mother. In view of the fact that the delay is re-filing and only of 28 days, it is condoned.

3. The applicant (S.K. Verma) was appointed as Pharmacist in Delhi Health Scheme 20.9.1971 and was transferred to Guru Teg Bahadur Hospital on 15.2.1993. He was placed under suspension, on 10.6.93, for unauthorised absence and negligence. He had absented himself without prior permission in the morning shift of 06.06.93 and acted in a negligent manner by handing over, on 6.7.1997, keys of Dispensary No.30 of Guru Teg Bahadur Hospital, without permission/knowledge of the Medical Officer, Incharge, Pharmacy, to one Shri Manoj Kumar, trainee pharmacist. As a consequence, hospital medicines worth Rs.400/- were stolen on 6.6.1993. The aforesaid Shri Manoj Kumar along with certain other accused were prosecuted for theft. However, they were latter acquitted by the Court of Metropolitan Magistrate Karkardoma by an order passed on 09.02.96. Suspension order against the applicant was revoked on 12.01.94 i.e. prior to the order of acquittal of said Manoj Kumar and others.

4. The applicant filed OA No.874/2001 for grant of his service benefits such as Selection Grade, Annual Grade increments etc. There was no response from the respondents



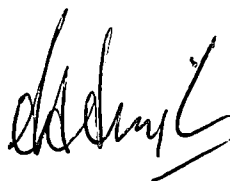
to the several representations.

5. The Tribunal directed the respondents to consider the representation of the applicant and communicate their decision expeditiously within a period of three months, from the date of service and in default the respondents were required to release all the service benefits which had otherwise become available to the applicant i. e. annual increments, selection grade since 1993.

6. The applicant filed CP No. 422/2001 alleging contumacious non compliance of the Tribunal order dated 11/4/2001 in OA No. 374/2001. The said Contempt Petition was disposed of on 7.3.2002 with the following directions:

"6. As there is none appeared on behalf of the applicant to press the CP, we dispose of the same with a direction to the respondents to dispose of applicant's representations listed in the order dated 11.4.2001 by a detailed, speaking and reasoned order in accordance with rules and instructions under intimation to the applicant within two months from the date of receipt of a copy of this order."

7. The Directorate of Health Services Delhi passed Office Order No.175 dated 15.5.2002 concerning the representations of the applicant dated 26/2/2000, 22/6/2000, 10/11/2000 and 15/01/2001 and with respect to payment of arrears the respondents paid an amount of Rs.1,25,287/- on 01.11.2001. The Director of Dte. of Health Services passed orders No.43(7)E-II/GTBH/39547-557 dated 31.12.2001 and F.9(28)/93/Vig. GTBH/399553-66 dated 31.12.2001 in case of charge-sheets Nos 9(28)/93/Vig/GTBH/583 dated 19.4.96 and No.



F.9(20)/96/Vig/GTBH/3693 dated 17.3.98 respectively, under rule 14 of CCS CCA Rules 1955. The applicant filed appeals against both the orders of 31.12.2001 passed by the Directorate of Health Services to the Principal Secretary, Dept of Health & Family Welfare. The Principal Secretary (Health & Family Welfare) GNCT of Delhi set aside (Dte. of Health Services) order No.F9(28)93/Vig/GTBH/3958-66 dated 31.12.2001 and exonerated the applicant in respect of charges contained in Charge Sheet No.. F9(20)/96/Vig/GTBH/3693 dated 17.3.98.

3. With respect to Charge Sheet dated 14.4.96 the appellate authority considered the matter and found that though the applicant acted in a irresponsible manner but since he was not directly involved in the theft case the penalty of reducing him to the lower stage of pay scale with cumulative effect as too harsh and accordingly set aside the penalty and imposed a penalty of reduction by four increment stages in the pay scale with cumulative effect w.e.f. 19-4-1996 (i.e. date of issue of charge sheet). The respondent gave the following reasons for its orders:

" The Director, Directorate of Health Services vide his order No.43(7)E/II/93/GTBH/39547-557 dated 31.12.2001, passed in respect of charge sheet NO> ((28)/93/Vig./GTBH/583 dated 19.4.96, held that Shri S K verma, Pharmacist acted in a manner of unbecoming of a Government servant and failed to maintain absolute integrity by failing to inform the MO I/C or any other officer of his intention of remaining on leave on 6.6.93 and also by handing over keys to one of the trainee pharmacists, who was residing in Sonapat, Haryana, and was later on apprehended along with others with stolen medicines. The Director, Directorate of Health Services, in

Handwritten signature

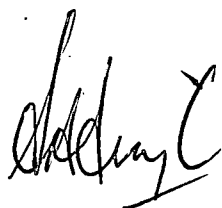
(5)
view of his observations imposed a penalty of reduction to the lowest stage of scale with cumulative effect w.e.f. 19.4.96, the date of issuing of charge sheet, upon Shri S K Verma, Pharmacist."

9. Aggrieved by the respondents impugned order dated 3.12.2002 the applicant filed the present CA for quashing of said order and payment of amounts deducted from the salary of the applicant.

10. The grounds for seeking the reliefs by the applicant are that the appellate authority had not applied its mind before passing the order dated 3.12.2002 and that the allegations against the applicant are based on a incident of theft of medicines by some other persons and that they had already been acquitted by the competent court of law. Hence any punishment is illegal, arbitrary, malafide and unconstitutional.

11. The respondents, in their counter reply, submitted that the CA is liable to be dismissed alone on the ground of non-joinder of parties. Even ~~if~~ ^{though} the applicant, has annexed order dated 31.12.2001 of the appointing authority, which is the disciplinary authority in his case, (namely Directorate of Health Services), he has not impleaded the disciplinary authority nor the Guru Teg Bahadur Hospital.

12. The respondents further submitted that as per the directions of the Tribunal the Disciplinary Authority i.e. the Directorate of Health Services has passed a speaking order No. 175 dated 16.5.2002. Further appellate authority after examining the appeal against the order has reduced the severity of the penalty by order dated 3.12.2002 and that orders are perfectly valid being neither arbitrary or malafide. They were passed after due consideration of appeal of applicant and examining of



(5)

entire documents. The applicant in short has no cause of action not even a prima facie case.

13. We have considered the matter and from the documents brought on record we note that there were two charge sheets dated 19.4.96 and 17.3.98 served on the applicant. The charge sheet which concerns the present OA is one dated 19.4.96. Punishment has been imposed for failing to inform the Medical Officer Incharge or any other officer of the applicant's intention to be on leave on 6.6.1993 and secondly handing over the keys to one of the trainee pharmacists and not for theft. Consequently leading to the theft of medicines worth Rs. 400/- . The applicant has admitted that he was not present on 6.6.93 due to illness of his son and has not denied handing over the keys to one of the trainee pharmacists. The penalty has been imposed on the applicant for unauthorised absence and handing over the keys to the trainee pharmacist and not for theft. Theft is not the reason for awarded of penalty.

14. We find that the appellate authority has reduced the quantum of penalty awarded by the Disciplinary Authority from reduction to the lowest stage of the scale with cumulative effect to reduction by four increment stages in the pay scale with cumulative effect from 19.4.96 i.e. date of issue of charge-sheet. The appellate authority has come to this conclusion after examining the evidence and through a reasoned and lucid order that though the applicant had acted in a irresponsible manner, however, the penalty was too harsh and hence moderated as above.

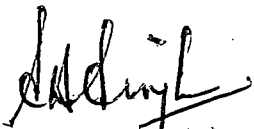
15. From the above it is clear that the respondents have passed the orders after taking all facts into consideration

Shady C


(13)

(7)

and we find no grounds for interfering in the matter.
Accordingly the OA is dismissed. No costs.


(S.A. Singh)
Member (A)

Patwal


(V.S. Aggarwal)
Chairman