

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/1098/2013

Reserved on: 22.10.2019

Pronounced on:25.11.2019

Between:

Adem Prabhakar,
S/o. late Shri A. Anjaneya Reddy,
Aged: 67 years,
Occ: Retd. Dy. Chief Labour Commissioner (Central),
R/o. "Subha Shree" House No. 552 (Old No. 6-3-252/1/2),
Erram Manzil, Hyderabad – 500 082.

... Applicant

And

Union of India,
Represented through its Secretary,
Ministry of Labour & Employment,
Government of India,
Shram Shakti Bhavan, Rafi Marg,
New Delhi – 110 001.

... Respondent

Counsel for the Applicant ... Mr.J. Sudheer

Counsel for the Respondents ...Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Ms. Manjula Das, Judicial Member

Hon'ble Mr. B.V. Sudhakar, Administrative Member

ORDER

{As per B.V. Sudhakar, Administrative Member}

2. OA is filed assailing the Order No. C-19020/1/2005-CLS.II, dated 19.03.2012 of the disciplinary authority imposing the penalty of withholding 20% of the monthly pension, otherwise admissible for a period of 2 years and forfeiture of 25% of gratuity.

3(i) Brief facts of the case are that the applicant was initially appointed as Labour Officer in the erstwhile wing of Labour Officer (Central Pool) in the respondent Ministry in 1977 on selection through the Union Public Service Commission. He was subsequently promoted as Senior Labour Officer in 1988. Respondent notified the Central Labour Service Rules, 1987 on 03.03.1987 creating a Central Labour Service by merging three wings of the respondents Ministry viz., i) Central Industrial Relations Machinery; ii) The Labour Officers (Central Pool), and iii) the Labour Welfare Organization. He was in an analogous post of Regional Labour Commissioner (Central) in the CIRM wing of the respondent Ministry in 1989. Subsequently, he was promoted as Welfare Commissioner in the Labour Welfare Organization at Bhubaneswar which he took charge on 24.4.1997. The Welfare Commissioner is assigned with the duty of procurement and distribution of medicines to the dispensaries under his control for treatment of unorganized workers and he has scrupulously followed the rules, guidelines and instructions in this behalf and there was no adverse remark whatsoever against him.

(ii) Applicant submits that he was directed to hold the additional charge of the Welfare Officer at Hyderabad, consequent to the retirement of the incumbent, and he took charge on 01.02.2001. Accordingly, was required to look after both the regions at Bhubaneswar and Hyderabad. He submits that, upon enquiry from Hyderabad office, he was informed that procurement is done based on lowest tender from the Public Sector Undertakings (PSUs) and there was no practice of adopting open tender system even if the expenditure is in excess of 5 lakhs. Since open tender system is time consuming process and the Medical Officers were asking for supply of medicines at the earliest, it was decided to follow the limited tender system only, with a modification to include private sector along with public sector suppliers as the Ministry of Labour vide letter dt. 17.05.1985 permitted for purchase of medicines from the firms on rate contract of DGSD, approved State Firms, CGHS rate contract or even hospital rates in order to avoid considerable delay. Accordingly, quotations were invited from 35 private firms and PSUs with conditions namely, (i) the supplier should be a manufacturer of the drug; (ii) the drugs should have 2 year period of expiry and should have price quotient at hospital rate. Quotations received were subjected to scrutiny and it was found that quotation submitted by M/s. Ortin Laboratories, Hyderabad was not in order since it is not the manufacturer of most of the drugs for which quotation was submitted and the said firm also admitted in writing that it was not manufacturing the medicines which they quoted. Accordingly, its quotation was rejected though it quoted lowest rate. Upon completion of process of selection of supplies, applicant convened a meeting with them and requested them for

concession in rates. Resultantly, drugs were supplied at a rate less than the quoted rates, thereby saving more than Rs.8.0 lakhs to the Government. Applicant prepared a detailed letter indicating reasons for not following the open tender system for procurement of medicines in Hyderabad Region for 2001-02. Pursuant to his letter, Sri T.K. Rao, successor of the applicant, in response to the letter dt.25.4.2001 of the Welfare Commissioner (HQ), Ministry of Labour & Employment, sent a reply on 21.07.2001 stating that he has approved the letter of the applicant. He also stated that he had consulted Welfare Commissioner at Nagpur and Bangalore and was informed they too did not follow the open tender system in 2001-02. In August 2002, Ministry of Labour formulated a policy for procurement of medicines in the Labour Welfare Organization and advised all the Welfare Commissioners to strictly adhere to the same.

(iii) Applicant further submits he placed the indent on the suppliers as selected by the Purchase Committee consisting of Sr. Medical Officers and AAO for supply of medicines to 39 dispensaries located in Andhra Pradesh and Tamilnadu for the year 2001-02. He was relieved of his additional charge at Hyderabad on 12.07.2001 and Sri T.K. Rao took charge as Welfare Commissioner, Hyderabad on 13.07.2001. Drugs were supplied and payments were also made during the tenure of Sri T.K. Rao and the same were distributed by him to the beneficiaries. 257 medicines were indented during the year 2001, out of which, 111 medicines were supplied and discrepancy was found in respect of 24 medicines, while there was no discrepancy in respect of 87 items.

(iv) Sri T.K. Rao lodged complaint against the applicant to the CBI, Hyderabad on 31.03.2003 alleging that applicant placed indent on the higher bidder for supply of 24 items of medicines instead of the lowest bidder during 2001-02, thereby causing a loss of Rs.13,26,376/- to the Department. However, in the enquiry, it was informed to the CBI that Sri T.K.Rao did not take into account the discount of Rs.3,82,977.84 given by the firms in respect of 24 drugs and accordingly, CBI arrived at a loss of Rs.9,43,398.16. Sri T.K. Rao closely monitored and initiated action on receiving consignment from the earlier selected/ approved suppliers and made payments to them. Assuming that the applicant had committed procedural irregularity in placing the order for supply of medicines, his successor could have stopped the transaction and followed fresh procedure, which he did not. The CBI was not examined by the Inquiry Officer nor Sri T.K. Rao was made equally responsible for procurement of medicines.

(v) Even during the enquiry, the CBI has not indicated as to dishonesty or misappropriation on the part of the applicant in the said transactions. Upon the CBI report, when explanation was called, applicant submitted a detailed explanation. However, ignoring the same, a charge sheet was served on him and consequential departmental enquiry was held, in which, despite requests by the applicant, the Enquiry Officer failed to ensure evidence and cross examination of the CBI official, who investigated the matter. Therefore, the enquiry proceedings suffer from laches and were solely aimed at to implicate the applicant.

(vi) The Enquiry Officer came to the conclusion that the applicant was guilty of procedural irregularity. The disciplinary authority concurred with the findings of the Enquiry Officer and imposed the penalty of withholding of 20% of monthly pension for a period of 2 years and forfeiture of 25% of gratuity, which is likely to cause a total loss of Rs.3,36,652/- in the terminal benefits of the applicant. Therefore, the OA.

4. The contentions of the applicant are that the order dt. 19.03.2012 is bad in law, arbitrary, violative of principles of natural justice. Though he preferred an appeal on 13.04.2012 against the order of the disciplinary authority, the appellant authority so far has not communicated its decision. The Enquiry Officer and the disciplinary authority failed to appreciate the evidence of DW1 wherein it was emphasized that the medicine of good quality must be preferred rather than substandard medicines from the firms, even though they are the lowest bidders. The respondent failed to appreciate that M/s. Ortin Laboratories Limited is a black listed company and does not manufacture many of the drugs for which it quoted low price and a case is pending against the said firm in Warangal Court for supplying substandard/ spurious drugs. In such a situation, the respondent and the Enquiry Officer erred in coming to the conclusion that the rejection of lowest quotation of the said firm has incurred a loss of Rs.9,43,398/- to the Government. The respondent also ignored the effort of the applicant in obtaining discount and saving Rs.8.0 lakhs to the government exchequer while imposing severe punishment on him for no fault of his. He followed the same procedure hitherto adopted

by the Hyderabad office with only modification to include the private suppliers. Even the CBI could not find any misappropriation or dishonesty against him. Sri T.K. Rao, who succeeded the applicant, was also charge sheeted, but let off with a minor penalty of censure, which shows that the respondent was biased towards the applicant. Despite insistence by the applicant, the CBI Inspector was not examined by the Enquiry Officer.

5(i) Respondents contested the OA by filing a reply statement, wherein they state that the applicant while working as Welfare Commissioner, Hyderabad did not follow the provisions of General Financial Rules (GFR) in spite of the clear instruction issued by the Ministry vide letter dt. 21.04.2001. As per para 28 of Annexure to Rule 102(1) of GFR, Open Tender System should be used as a general rule in case the estimated value of purchase is Rs.50,000/- and above. As per para 36, Limited Tender System may be adopted for purchase of Rs.50,000/- and above if it is not in the public interest to call for tenders through advertisements or the demand is urgent or source of supply is definitely known and possibility of fresh source is removed. Office of DGLW, Ministry of Labour, vide letter dt. 5.1.1984, instructed all the Welfare Commissioners that the orders for purchase of medicines, etc. manufactured by public sector undertakings should be placed with them directly. For the medicines that are not manufactured by PSUs, order should be placed with Medical Stores Department (MSD) only. Only in very rare and exceptional cases and when it becomes necessary to purchase medicines from local market to meet emergent requirement,

calling of tenders as laid down in the GFRs should be strictly adhered to or supply should be obtained from the firms on DGS &D rate contract. Subsequently, on 25.04.2001, the Welfare Commissioner (HQ), MoLE wrote to the applicant that provisions of GFR are to be followed in case of purchase of medicines and that no purchase preference was available to PSUs, which have to compete with other firms against open tender, but the said directions were not adhered to. Proper proceedings of the Purchase Committee were not prepared and no specific reasons were mentioned for not going for L1. No proper record was maintained of the negotiations conducted with these firms for obtaining discount over and above the prices mentioned in the purchase order.

(ii) Respondents submit that discrepancy was found in purchase of 27 medicines. GFR provisions were not followed in selecting the suppliers of medicines for 39 dispensaries located in AP and TN for 2001-02. As soon as the procedural irregularities in the matter of purchase and supply of medicines for 39 dispensaries, the matter was taken up by Sri T.K. Rao with the Office of DGLW, which is nodal authority of Labour Welfare Organization and with its approval, an FIR was registered with CBI. A charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 was served on the applicant on 29.12.2006. The charges were split into two components by the Inquiry Officer viz., i) the delinquent did not follow Government guidelines; ii) did not place purchase orders on the lowest bidders, thereby causing loss of Rs.9,43,398.16 to the Department. The Departmental enquiry was conducted by the Commissioner of Departmental Inquiries CVC. IO held both the components of the

charges against the applicant as proved. The IO held the loss caused to the Government as Rs.7,81,320.16 as against Rs.9,43,398.16 as alleged in the charge sheet.

(iii) Respondents submit that copy of IO report was forwarded to the applicant for submitting his representation on the findings of the IO and the representation submitted by him was examined in detail and with the approval of the disciplinary authority, the case was subsequently referred to CVC for 2nd stage advice in the case and on the receipt of the CVC advice, a copy of the second stage advice of CVC was also forwarded to the applicant for submission of his representation, if any. Representation submitted by the applicant thereon was also examined in detail. Disciplinary authority concurred with the views of the competent authority that applicant is liable to be punished by means of suitable cut in his pension and the matter was referred to UPSC for advice with respect to quantum of penalty. Upon the advice by the UPSC, the impugned penalty was imposed on the applicant vide order dt. 19.03.2012.

(iv) Applicant preferred appeal dt. 13.04.2012, which was addressed to Secretary (L & E) and not the Hon'ble LEM, the Disciplinary authority on behalf of the President. Further, as per Rule 22(i) of the CCS (CCA) Rules, 1965, no appeal shall lie against any order passed by the President. However, in the interest of natural justice, the said representation was examined in detail as Revision/ Review Petition under Rule 29/29-A of the CCS (CCA) Rules, 1965. All the evidences, documentary and others

submitted by the applicants during the inquiry and also in his representations on the findings of the IO and second stage advice of CVC, were examined in detail and presented before the disciplinary authority and UPSC.

(v) Sri T.K. Rao, successor of the applicant, was also proceeded against departmentally on the charges of effecting the payments for the medicines whose indents were placed by the applicant and in the said inquiry, it was revealed that, approvals for release of payments were granted by Sri V.G.K. Rao, the then AAO & also a member of the Purchase Committee headed by the applicant. Minor penalty of Censure was imposed on Sri T.K.Rao which was set aside by this Tribunal vide order dt. 20.11.2012 in OA 885/2011.

(vi) Respondents state that information received from O/o. DGLW indicated that though probably Open Tender System in toto was not in practice, departmental guidelines issued by the Ministry vide letter dt. 05.01.1984 were being followed in procurement of medicines during 2001. Respondents further state that CBI investigation as well as Departmental Inquiry did not unearth any direct link or conspiracy between the private suppliers and the accused public servants including the applicant and the same was accepted and conveyed to UPSC. They further contend that, submission of the requisite reasons in his representations in the course of proceedings may not be treated as substitute for proper recording of reasons while exercising exception in making official purchases. They contend that the applicant himself

admitted that he followed the procedure in practice but with some modifications. Respondents submit that investigation report submitted by CBI Hyderabad led to initiation of disciplinary proceedings, which culminated in the impugned penalty imposed on the applicant on the basis of outcome of the independent inquiry conducted by the Commissioner of Departmental Inquiries, CVC. There is no procedural irregularities in conducting the enquiry and as such, the OA is liable to be dismissed.

(vii) Applicant filed rejoinder stating that he was informed by the office that procurement of medicines is done based on the lowest tender from the PSUs and there was no practice of adopting open tender system even if the expenditure involved is in excess of Rs.5.0 lakhs. His predecessor Welfare Commissioner, Hyderabad Sri R. Ramalingam in his deposition dated 6.10.2008 also stated that provision as to purchase of medicines of the value beyond Rs.5 lakhs through an open tender system was not brought to his notice during his tenure from 1995 to January 2001 and the medicines required for all the dispensaries being run under Hyderabad Region were purchased from PSUs only or the Govt. Medical Stores Depot during his tenure. Ministry of Labour vide letter dt. 25.04.2001 clarified that the PSUs have to participate and compete with other firms and also advised to identify the requirement by the generic name of the drug and follow the requirements of the Indian Pharmacopoeia. But, the process of invitation of tenders by the Hyderabad office was completed by the time the said instructions were received. However, the Purchase Committee considered the tenders in the light of the guidelines of the

Ministry dt. 25.04.2001 and selected the suppliers. Applicant submits that, in reply to the communication dt. 25.04.2001, he prepared a detailed letter indicating the reasons as to why he did not follow the open tender system, but the said communication could not be sent since he was relieved of his additional charge at Hyderabad. He contends that Ex. B9, 10, 13, 14, 15, 16 & 17 produced by him before the IO are relevant vis-à-vis the comments made by the CBI and IO that no proper record is maintained about the discounts availed.

(viii) Applicant submits that as he was over-burdened with the work of two regions at Bhubaneswar and Hyderabad, an instance or two in not timely preparation of supporting notes on files may occur, but it does not warrant a charge as leveled against him to the effect that “he has committed gross misconduct and lack of integrity and acted in a manner unbecoming of a public servant and failed to maintain devotion to duty.” He contends that, though the number of officers were involved in the episode, instead of conducting common proceedings under Rule 18 of CCS (CCA) Rules, 1965, the respondent have chosen to initiate disciplinary proceedings against him alone. He relied upon the judgment of the Hon’ble Supreme Court in J. Ahmed Vs. UOI (AIR 1979 SC 1922) as to what is meant by misconduct. He also relied upon the judgment of the Apex Court in Harwarilal vs. State of UP & Others (JT 1999(8) SC 418) wherein it was held that in the absence of non-examination of the material witnesses, the enquiry held is not proper and it is to be quashed and set aside on that ground alone. He further submits that in ***Roop Singh Negi Vs. Punjab National Bank (2009) (2) SCC 570***, Hon’ble

Apex Court held that “..mere production of documents is not enough - Contents of the documentary evidence have to be proved by examining the witnesses... The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding.” In the instant case, the PW5 i.e. the Inspector of CBI who has investigated the matter initially was neither examined by the Presenting Officer nor got him cross-examined by the applicant, despite request by the applicant in this regard. Applicant while holding additional charge of the Welfare Commissioner, Hyderabad from 01.02.2001 to 12.07.2001, initiated the process of procurement of required medicines and immediately after placing indents, he was relieved of the additional and new incumbent Sri T.K. Rao took charge on 13.07.2001. After lapse of one and half years after his relieving from additional charge, a complaint/ FIR against him was lodged with the CBI, Hyderabad on 31.03.2003 alleging financial irregularities in the matter of purchase of medicines. The said complaint was lodged behind the back of the applicant without affording an opportunity to explain and the CBI registered the said complaint on 01.04.2003 as RC No. 10(A)/2003 and investigated the matter. The said action is in contravention of the law laid down by the Hon’ble Apex Court in the State of UP vs. Bhagwat Kishore Joshi, AIR 1964 SC 221; P. Sirajuddin Vs. State of Madras, 1970 (1) SCC 595 and State of Haryana Vs. Bhajanlal, AIR 1992 SC 604, wherein it was cautioned that some suitable preliminary investigation of the allegation should be made before registering the FIR. He is also relying on the latest judgment of

the Hon'ble Supreme Court in the State of Punjab Vs. Davinder Pal Singh Bhullar, 2014 SCC (L&S) 208.

(ix) The applicant has taken the plea that CBI is not the recommending authority as per the provisions of CCS (CCA) Rules. Charge Memo dt. 29.12.2006 issued to the applicant indicates that the same was issued based on the report of the CBI, which is not correct. His further plea is that the complaint/ FIR was registered with CBI with due approval of the office of the Director General (Labour & Welfare), but the said authority is neither the appointing authority nor the disciplinary authority for the applicant. Therefore, the said complaint/FIR to the CBI is without sanction of the competent authority. Since it is not a case of raid or search by the CBI, any action to lodge a complaint/ FIR without approval of the competent authority would run counter to Article 311 of the Constitution.

(x) The respondents filed additional reply statement to the rejoinder denying violation of Article 311 of the Constitution in initiation of disciplinary proceedings against the applicant. They add that CBI conducted investigation in the complaint/FIR lodged by the Ministry and no such approval from the disciplinary authority is required for conducting simple investigations in a complaint. Findings and recommendations of CBI submitted in the form of investigation report were suggestive in nature and not binding on the Ministry.

6. Heard both the counsel and perused the pleadings and material on record.

7(I) The case revolves around the initiative taken by the applicant to procure medicines. The question is to whether the medicines were procured as per procedure or otherwise. Applicant claims that he has followed the procedure of calling for limited tender as was followed hitherto by Hyderabad Office and by some other offices of the respondents organization in different States. Respondents claim that for procuring medicines of value greater than Rs.5.0 lakhs, open tender has to be followed as per rules. For violating the same, they issued charge memo and imposed the penalty of withholding 20% of monthly pension for 2 years and forfeiture of 25% Gratuity.

(II) An analysis of the issue threadbare indicates that a purchase committee consisting of doctors has recommended the purchase of the drugs. CBI did not find the applicant dishonest or having misappropriated funds. Loss to the tune of Rs.9.43 lakhs was worked out based on the rates quoted by the firm M/s.Ortin Laboratories Limited, which was not qualified to quote the rates and later through an RTI inquiry, it was revealed that the said firm was blacklisted. Hence, comparison of rates with an unqualified firm is usually not done. Applicant through hard negotiations has obtained discounts of around Rs.8.0 lakh. Inquiry Officer has reduced the loss to around Rs.7.81 lakhs.

(III) Respondents claim that GFR norms have not been followed. However, they did not explain as to why the same procedure was followed by the Hyderabad office. Sri R. Ramalingam, predecessor to the applicant deposed on 6.10.2008 that Hyderabad office did not follow open tender system between 1995 and January 2001. Applicant after consulting Nagpur & Bangalore offices has adopted the procedure prevalent in the respondent organization. Medicines are to be supplied in time and that too, of good quality. It is not the case of the respondents that the applicant infringed rules for personal gain. In a way, applicant has roped in private firms of repute to enhance the competition with the PSUs and obtain competitive price. Incidentally, the entire process was open and was not done surreptitiously for undue gain. Applicant admitted that he has followed a modified procedure. However, applicant followed the convention more than the rule, which has led to the lapse. Therefore, we can term the lapse as negligence for adopting the usual bureaucratic approach of turn the page and learn the work. In psychological terms, it refers to herd behaviour. Others have done it without any issue and therefore, why not I, since many succeeded without any adverse consequences visiting them. In fact, the line of least resistance in taking a decision is to follow the beaten path. Applicant followed the principle and invited the consequences in question. Indeed, convention/ practice is understood as an unwritten rule in law. Therefore, the lapse noticed can at best be nomenclatured as negligence and not misconduct. Hon'ble Supreme Court has held that negligence is

not misconduct, in J. Ahmed vs. Union of India, AIR 1979 SC 1022, as under:

“...There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high....”

(IV) Interestingly, respondents in the context of medicines being procured in crores, all over the country have not come up with a clear cut policy and implement it with the rigour required. They are only harping on age old norms, but they did not explain as to how the aberrations from the rule were allowed in other offices of the respondent organization spread over the country. In fact, respondents have admitted that an open tender system was probably not followed in toto. Respondents did come up with a policy after the process of invitation of tenders was completed by the applicant. Silence of the respondent in regard to procurement policy would have been perennial, but for the complaint made by Mr. T.K. Rao, successor to the applicant. Nevertheless, respondents have let him off with a penalty of censure, albeit Mr. T.K. Rao has procured medicines at alleged higher rates approved by the applicant, on the ground that the Accounts Officer has passed the bills without the knowledge of Mr. T.K. Rao. Their argument lacks substance since Mr. T.K. Rao was the Head of the Office and passing of bills without the approval of the Head of the Office is an indication that there is lack of balance in taking an appropriate view on an issue by the respondents. Even the censure was set aside by this

Tribunal in OA 885/2011. Equality has to be shown both in respect of extending benefits and as well as in respect of imposing penalties. Employees cannot be discriminated on either of the aspects. When Mr. T.K. Rao was let off with a minor penalty of 'censure', it is but natural to expect a similar penalty being imposed on the applicant, given the depth and range in which both of them were involved in procuring the medicines. We take support of the judgment of the Hon'ble Supreme Court in stating so, in *Man Singh v. State of Haryana, (2008) 12 SCC 331*, at page 337:

"20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."

Respondents have accepted that the CBI/ Departmental investigation have not established any questionable link between the applicant and the private suppliers. This view was also accepted by the UPSC. Applicant gave detailed reasons in his letter dated 25.04.2001 for not following the open tender system. Exhibits B9, 10, 13, 14, 15, 16 & 17 produced by the applicant before the Inquiry Officer explains about the records maintained. Therefore, when one another employee was let off with a minor penalty with censure, can the applicant be penalized with harsh punishment as the one in question is something respondents

should have introspected with proper application of mind, as it goes against the legal principle laid by the Hon'ble Supreme Court cited supra.

(V) Even during the inquiry, the CBI Investigator's report was relied upon. However, Inquiry Officer has not examined him, despite applicant's request, which is crucial to the case. This again is a gross infringement of the inquiry process, as laid down by the Hon'ble Supreme Court in ***Roop Singh Negi Vs. Punjab National Bank & Ors, (2009) 2 SCC 570*** as under:

"The mere production of documents is not enough but its contents have to be proved by examining the witnesses. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceedings."

(VI) Usually, a preliminary inquiry is conducted and after providing a reasonable opportunity to the employee, further measures are taken, if a prima facie case is found to exist. In the instant case, the complaint was lodged and CBI registered the case as RC No.10(A) 2003. It would have been fair and proper to conduct a preliminary inquiry as observed by the Hon'ble Supreme Court in ***P.Sirajuddin Vs. State of Madras [1970 (1) SCC 595]***. In ***State of Punjab vs. Davinder Pal Singh Bhullar [(2014) SCC (L&S) 208: (2011) 14 SCC 770]***, Hon'ble Supreme Court has held as under:

"Thus, in view of the above, it is evident that a constitutional court can direct the CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful

activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.”

Brushing aside a preliminary inquiry as asserted by the respondents is not in agreement with the Hon’ble Supreme Court observations referred to above.

(VII) Therefore, to sum up, it is abundantly clear that the applicant was not involved in a case of procurement of medicines to enrich himself. He followed the procedure as was followed by others. Respondents failed to lay down a firm policy in procuring medicines. They did so only after the limited tender process was completed by the applicant, who has candidly admitted as to what he has done. CBI did not report that the applicant was dishonest. After traversing through the case details, we found it to be more a case of negligence on the part of the applicant and lack of balance in imposing penalties by the respondent for more or less similar lapses by employees involved in the issue. A purchase committee comprising doctors, who are aware as to the quality of medicines to be procured, was involved. Applicant cannot be solely made responsible for the alleged lapses. It was collective wisdom which prevailed in taking the decision of procuring medicines. Action of the respondent is thus not in congruence with many legal principles laid down by the Hon’ble Supreme Court cited supra, in regard to various aspects of the issue. However, one should not ignore the aspect that the applicant being a senior officer, should have exercised caution in

procurement by adhering to basic financial rules. Work load does not entail any liberty to take wrong decisions. However, the applicant was found not to be dishonest. He followed what others did and his fellow colleague was let off with a minor penalty.

(VIII) Hence, keeping the above in view, to uphold justice, we set aside the penalty imposed vide impugned order 19.03.2012 and keep it open to the competent authority to review and modify the punishment to a lesser penalty, which is commensurate to the lapse committed by the applicant and to be on par with others who were found to err in the issue under question. Pension and consequential benefits be accordingly regulated. Time permitted to implement the order is five months from the date of judgment.

OA is accordingly allowed. No order as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

Dated, the 25th day of November, 2019

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