

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 15.03.2012
Judgment pronounced on: 30.3.2012

+ W.P.(C) 1336/2012

MUNICIPAL CORPORATION OF DELHI & ORS.

..... Petitioners

versus

D.P.RAY

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mrs Biji Rajesh for Mr Gaurang Kanth
For Respondent : Mr S.K. Gupta

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 22.09.2011 passed by the Central Administrative Tribunal, Principal Bench, whereby the charge memo dated 26.11.2009 issued to the respondent was quashed. The brief facts giving rise to the filing of the aforesaid OA are as under:-

By a Transfer order dated 12.01.2009, the respondent was transferred from Hindu Rao Hospital to Chest Clinic, Jhandewalan. The order relieving the respondent from Hindu Rao Hospital was also passed on 13.01.2009. The Transfer

Order was challenged by the respondent in OA No. 389/2009, which was disposed of vide order dated 16.02.2009 with a direction to the petitioner to dispose of the representation of the respondent and further directing maintenance of status quo till one week after the decision of the representation. The respondent sent a 'joining' letter dated 18.02.2009 to the Medical Superintendent of Hindu Rao Hospital, but, did not join at Chest Clinic, Jhandewalan. The representation submitted by the respondent was rejected by the Commissioner, MCD on 23.03.2009 and on 02.04.2009 the respondent, who received the stay order dated 23.03.2009 on 01.04.2009 joined duty at Chest Clinic, Jhandewalan.

OA No. 1151/2009 was filed by the respondent challenging the order dated 23.03.2009. The OA was allowed and the Transfer Order was quashed by the Tribunal vide order dated 15.12.2009. The aforesaid charge memo was served upon the respondent during the pendency of OA No. 1151/2009.

The charge-sheet was challenged by the respondent by filing of OA No. 2895/2010 which was allowed by the Tribunal vide order dated 22.09.2011.

2. The following are the charges served upon the respondent:-

“Dr. D.P. Ray while working as CMO, Hindu Rao Hospital in January 2009 was transferred vide office order no.UDC(M)/ADO(H)/2009/21 dated 12.01.2009 directing him to join chest clinic, Jhandewalan with immediate effect. In pursuance of the said order, MS/HRH relieved Dr. D.P. Ray on 13.1.09. But he failed to maintain devotion to

duty and committed gross misconduct which is unbecoming of municipal employee on the following counts:

1. He showed insubordination by way of disobeying the transfer order dated 12.1.09.
2. He also remained unauthorizedly absent from duty without sanction of leave from competent authority w.e.f. 22.2.09 to 1.4.09 causing hindrance in the smooth functioning of hospital administration.

He, thereby contravened Rule 3 (1)(ii)(iii) of CCS (Conduct) Rules 1964 as made applicable to the employees of MCD.”

3. During the course of arguments, the learned counsel for the petitioner stated that since the Transfer Order dated 12.01.2009 was quashed by the Tribunal on 15.12.2009 and that order was not challenged by MCD, they were not pressing the first charge and were confining the charge-sheet only to Charge No. 2 pertaining to unauthorized absence from duty from the period 22.02.2009 to 01.04.2009.

4. It is a settled proposition of law that the Tribunal or this Court can interfere with Disciplinary Proceedings at the stage of charge-sheet only for a few exceptional reasons. One of the grounds on which this Court can interfere with the charge-sheet is where the allegations made in the charge-sheet, even if taken as correct, do not constitute any misconduct.

In Union of India (UOI) and Ors. v. Upendra Singh, the Supreme Court, *inter alia*, observed that in the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges.

5. In the case before us the operative part of the order passed by the Tribunal on 16.02.2009 in OA No. 389/2009 reads as under:-

“In this view of this matter, the respondent No. 1 is directed to consider the request of the applicant dated 19.01.2009 (Annexure A-4) for retention in Hindu Rao Hospital, along with the other points raised in this OA, by treating this OA as a supplementary representation of the applicant, and take a decision on his request and inform him by a reasoned and speaking order within a period of six weeks from the date of receipt of a certified copy of this order. Until such time the decision is communicated, the status quo in respect of the applicant as of today may be maintained, and till one week thereafter, with regard to the transfer order dated 12.01.2009. If the applicant still feels aggrieved, he would be at liberty to seek redressal as are available to him in accordance with law.”

It was contended by the learned counsel for the petitioner that since the respondent had already been relieved from Hindu Rao Hospital on 13.01.2009, the

order of Tribunal directing status quo would mean that the respondent could not have worked at Hindu Rao Hospital and could have worked only at Chest Clinic, Jhandewalan. On the other hand, the learned counsel for the respondent has contended that since the Transfer Order dated 12.01.2009 had been challenged in OA No. 389/2009 and the representation made by the respondent as well as the plea taken by him in the OA was to allow him to continue at Hindu Rao Hospital, the Tribunal, while passing the aforesaid order had permitted the respondent to continue to work at Hindu Rao Hospital.

6. With a view to ascertain the true import of the order passed by the Tribunal, we directed the learned counsel for the respondent to file copy of OA No. 389/2009 so as to ascertain whether the relieving order dated 13.01.2009 had been disclosed in OA or not. We notice that in para M of the OA, the respondent, *inter alia*, stated as under:-

“The respondent No. 3 duly received the said application of the applicant and without considering the same, he has returned the said application with letter dated 29.01.2009 stating therein malafidely that “With reference to your application dated 13.01.2009 for medical leave you are hereby informed that you have already been relieved from Hindu Rao Hospital vide (O. 39 R. 1&2 CPC) No. HRH/Estt/2009/295 dated 23.01.2008” and return the same originally. This shows their malafide and also that they do not want to see the applicant in Hindu Rao Hospital at

any cost. The copy of the Leave application dated 23.01.2009 is annexed herewith as Annexure A-5.”

It would thus be seen that the respondent had disclosed in the OA that the petitioner was claiming to have relieved him from Hindu Rao Hospital vide order No. HRH/Estt/2009/295 dated 13.01.2008 (seems to be wrongly typed 23.01.2008). Since the Tribunal, despite having been informed that the petitioner was claiming to have relieved the respondent from Hindu Rao Hospital w.e.f. 13.01.2009, directed the parties to maintain status quo till a decision was taken by the Commissioner on the representation of the respondent and till one week thereafter, with respect to Transfer Order dated 12.01.2009, the only plausible interpretation which we can give to the order dated 16.02.2009 is that the Tribunal had practically stayed the Transfer Order dated 12.01.2009 till one week after the date on which an order was passed by the Commissioner on the representation of the respondent. If the Tribunal did not want to stay the Transfer Order, there would have been no occasion for it to pass any order of status quo at all. We cannot interpret the order to mean that the respondent was not required to join either at Hindu Rao Hospital or at Chest Clinic, since that would mean, the Tribunal had directed the respondent not to work either at Hindu Rao Hospital or at the Chest Clinic. In any case, if the respondent interpreted the order of the Tribunal dated 16.02.2009 to mean that the Transfer Order had been stayed by the Tribunal and, therefore, he was entitled to

work at Hindu Rao Hospital, and that is the reason, he sent joining report and worked at Hindu Rao Hospital, the interpretation given by him cannot be said to be untenable. We would like to note here that while passing the impugned order dated 22.09.2011, the Tribunal noted that the respondent was claiming to have actually worked in Hindu Rao Hospital during the period from 22.02.2009 to 01.04.2009. The Tribunal further noted that MCD was not disputing that factually the respondent had actually worked in Hindu Rao Hospital during the said period.

Since the Tribunal, in our interpretation, had stayed the Transfer Order dated 12.01.2009, the respondent was very much entitled to continue to work at Hindu Rao Hospital and, therefore, it cannot be said that his not joining at Chest Clinic, Jhandewalan from 22.02.2009 to 01.04.2009 was unauthorized absence from duty and consequently amounted to misconduct. We, therefore, find no legal infirmity in the view taken by the Tribunal and consequently, see no reason to interfere with the impugned order.

7. During the course of the arguments before us, the respondent in order to give a quietus to the matter, agreed to apply for leave for the period 22.02.2009 to 01.04.2009 despite his claim to have worked at Hindu Rao Hospital during the said period. Therefore, while dismissing the writ petition, we direct the respondent to apply for leave for the period from 22.02.2009 to 01.04.2009 within two weeks

from today. The petitioner will sanction leave of the kind admissible to the respondent within four weeks from the receipt of leave application.

The writ petition stands disposed of in terms of this order without any order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

MARCH 30, 2012
BG