

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM:

The Honourable Mr. Justice K.K. SASIDHARAN

W.P.No.29371 of 2013
& M.P.No.1 of 2013

Dr.K. Girija

... Petitioner

-vs.-

1. The State Government
Rep. by Principal Secretary to Government
Health and Family Welfare Department
Secretariat
Chennai-9.
2. The Director of Medical and Rural
Health Services
Employees State Insurance
Chennai-600 006.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari Mandamus calling for the records of the second respondent proceeding in G.O. (D).No.501 dated 21 May 2013 and consequent order passed by the second respondent order passed by the second respondent relating to the passing of the impugned order issued in proceedings reference No.41666/ESI/SC/1/2002 dated 30 August 2013 and confirming the order in the proceedings of the first respondent in Letter No.25898/K-1/2003-19 dated 24 November 2008 and letter No.25898/K1/2003-31 dated 15 July 2010 and quash the same, the respondent to confer all attendant and other benefits to the petitioner.

For Petitioner : Mr.Muthukumarasamy
Senior Counsel
for Mr.R. Raman Laal

For Respondents : Mr.P. Sanjaigandhi
Addl. Govt. Pleader

ORDER

This writ petition is directed against the order in G.O.(D). No.501, Health and Family Welfare (K1) Department dated 21 May 2013, whereby and whereunder the Government decided to impose the punishment of cut in pension of Rs.1000/- per month for six months for the proven charge against the petitioner that she failed to curb unethical practices by imparting proper supervision over her subordinates.

The facts:

2. The petitioner was initially appointed as Assistant Surgeon. She joined the service on 16 August 1978. While the petitioner was working as Selection Grade Assistant Surgeon at Villivakkam ESI Dispensary, the first respondent issued a charge memo dated 10 March 2007 alleging that the petitioner abused her official position by making entries in the unused Insured Cards as if medicines were properly issued to the Card Holders during 1998 to 2001. The second charge relates to her failure to curb the practice of imparting proper supervision over her subordinates. The petitioner in her explanation to the charge memo pleaded that she was not responsible for issuing I.P.cards and that she was expected only to examine the patients. The first respondent appointed an enquiry officer. The Joint Director of Public Health conducted enquiry. The enquiry officer submitted a report on 25 January 2008 holding that the charges were not proved.

3. The first respondent by letter dated 24 November 2008 informed the petitioner that he was not in agreement with the findings recorded by the enquiry officer in respect of charge No.1. The first respondent agreed with the findings with respect to charge No.II. The petitioner was directed to submit her explanation as to why punishment should not be imposed on her in respect of charge No.I. The petitioner submitted her explanation to the notice dated 24 November 2008. The Government thereafter passed the impugned order directing to cut a sum of Rs.1000/- per month from her pension for a period of six months. Feeling aggrieved by the said order, the petitioner is before this Court.

4. Even though sufficient time was given to the respondents to file counter affidavit, the fact remains that counter affidavit has not been filed till the date of final hearing.

Submissions:

5. The learned Senior Counsel for the petitioner contended that the petitioner was not responsible for issuing I.P. cards. According to the learned Senior Counsel, the petitioner was expected to examine the patients, who would appear before her along with the I.P. cards issued by the concerned staff. There was no duty cast on the petitioner to verify each individual card to test the genuineness. The learned Senior Counsel further contended that the petitioner was rightly exonerated from the charges by the enquiry officer. The learned Senior Counsel has taken a substantial contention that the first respondent erred in taking a decision to punish her without issuing a show cause notice as to why the Government should not deviate from the findings of the enquiry officer. The learned Senior Counsel contended that the Government have taken a decision to deviate from the findings of the enquiry officer with regard to charge No.I and thereafter issued a notice to the petitioner. The learned Senior Counsel placed reliance on the decision of the Supreme Court in S.P.Malhotra v. Punjab National Bank 2013(7) SCC 251 in support of his contention that the disciplinary authority is bound to record reasons for disagreeing with the findings of the enquiry officer and supply a copy thereafter to the delinquent.

6. The learned Additional Government Pleader justified the impugned order.

Factual Analysis:

7. The first respondent issued a charge memo dated 10 March 2007 alleging two acts of misconduct. The charge memo reads thus:

Charge No.I:

"that you, Dr.K. Girija, as Medical Officer during the period from 5 June 1998 to 31 October 2000 at ESI Dispensary Kondithope - 1, Chennai had issued medicines intended for the enrolled employees and families in the ESI Care to non insured persons/patients who are otherwise not eligible to avail the ESI Care under the ESI Scheme, by abusing your official position as Medical Officer, by making entries in the Unused Insured Cards, as if the medicines were properly issued to the Card Holders during 1998 to 2001 in violation of Section 46, 56 and 60 of the Employees State Insurance Act, 1948. This amounts to irregularity of negligence in the discharge of official duties with a dishonest motive."

Charge No.2:

"that you, Dr.K. Girija, as Medical Officer

of ESI Dispensary Kondithope - 1 has failed to curb the practice by imparting proper supervision over your subordinate. This amounts to failure to integrity and devotion to duty unbecoming of a Government servant and violation of Rule 20(1) and 20(2) of the Tamil Nadu Government Servant Conduct Rules, 1973."

8. The explanation submitted by the petitioner was not accepted by the first respondent and the same resulted in appointing the Joint Director of Public Health, Erode as Enquiry Officer. The enquiry officer conducted a detailed enquiry and submitted his report on 25 January 2008. The enquiry officer very clearly held that the charges were not proved. The report submitted by the enquiry officer was considered by the first respondent. The first respondent without enclosing a copy of the tentative reasons for disagreeing with the views expressed by the enquiry officer, passed an order to differ from the enquiry report and issued a show cause notice to the petitioner. The first respondent agreed with the findings of the enquiry officer with respect to charge No.2.

9. The first respondent issued a show cause notice on 24 November 2008 calling upon the petitioner to submit her explanation within a period of fifteen days. Annexure to the notice dated 24 November 2008 contained reasons for holding the charges as proved. The first respondent very clearly stated that the Government have arrived at a decision that the finding given by the enquiry officer with respect to charge No.1 was incorrect, erroneous and perverse warranting reversal of the said finding. Therefore it is very clear that the Government have already taken a decision to reverse the finding. It is an admitted case of the parties that the first respondent failed to issue notice to the petitioner earlier with a tentative finding and supporting reasons before deviating from the findings of the enquiry officer.

10. The question raised by the petitioner with regard to the procedural illegality came up for consideration before the Supreme Court in Punjab National Bank v. Kunj Behari Misra (1998) 4 SCC 84. The Supreme Court in the said decision made it very clear that in case the disciplinary authority is of the view that the enquiry officer is not correct in arriving at a particular decision, it must record its tentative reasons for such disagreement and must call upon the officer to offer remarks before recording its finding. The relevant observation reads thus:

"19. The result of the aforesaid discussion would be that the principles of natural justice

have to be read into Regulation 7(2). As a result, thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its finding. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, required the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

11. The view taken in Kunj Behari Misra was reiterated by the Supreme Court in S.P.Malhotra v. Punjab National Bank (2013) 7 SCC 251. The Supreme Court made it very clear that the disciplinary authority is bound to record reasons for disagreeing with the findings of the enquiry officer and must supply a copy thereafter to the delinquent. The Supreme Court indicated that failure to furnish copies of recorded reasons for disagreement would prejudice the delinquent and hence the consequent order of punishment would stand vitiated.

12. There is no dispute that the disciplinary authority failed to record its tentative reasons before proceeding further. In the subject case, it was only after taking a decision to deviate from the views expressed by the enquiry officer with respect to charge No.I, the petitioner was called upon to submit her explanation. The subsequent explanation would only be an empty formality. The petitioner lost her chance of convincing the disciplinary authority that the findings were correctly recorded by the enquiry officer and that it does not call for disagreement at the hands of the disciplinary authority.

13. The petitioner has taken up a contention on merits also. According to the petitioner, she was not responsible for verifying the I.P.Card. The materials available on record shows that it is the duty of the nominated attendant to verify the I.P Cards. The duty of

the petitioner is to examine the patient, who is armed with I.P cards and prescribe medicines. Here in the subject case, Medical Officer is punished on account of the failure on the part of the concerned official, to verify the I.P.Cards. In case the Medical Officer is made to verify each and every I.P. Cards produced by the patients, it would not be possible for her to discharge the duty. This aspect was correctly stated by the enquiry officer in his report. In fact, enquiry was conducted by none other than the Joint Director of Public Health, Erode who is in charge of the Medical Administration in the District of Erode. Such being the factual position, the first respondent was not correct in arriving at a conclusion that the petitioner failed to verify the I.P. Cards and as such charge No.I was proved. I am therefore of the view that even on merits, there is absolutely no material to connect the petitioner with the misconduct in question and to punish her.

14. The first respondent failed to consider the factual matrix in a proper perspective and without any valid reason for disagreeing with the findings recorded by the enquiry officer with respect to charge No.I, punished the petitioner. Even the subsequent proceedings were not conducted in accordance with the settled legal principles. I am therefore of the view that the petitioner must succeed.

Disposition:

15. In the result, the impugned orders dated 21 May 2012 and 30 August 2013 are set aside. The respondents are directed to pass a consequential order granting all the eligible service benefits to the petitioner.

16. In the upshot, I allow the writ petition. Consequently, the connected MP is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Tr/

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To

1. The Principal Secretary to Government
Health and Family Welfare Department
Secretariat
Chennai-9.
2. The Director of Medical and Rural
Health Services
Employees State Insurance
Chennai-600 006.

+2cc's to Mr.R.Raman Laal, Advocate, S.R.No.17832
+1cc to the Government Pleader, S.R.No.18407

W.P.No.29371 of 2013

SAI (CO)
CA(09/04/2015)



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