

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

% *Judgment Reserved on: March 12, 2015*
Judgment Delivered on: March 23, 2015

+ **W.P.(C) 2838/2012**

M.L.BHUYAN

..... Petitioner

Represented by: **Ms.Madhusmita Bora &
Mr.Bijay Pradhan, Advocates**

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: **Mr.Amit Mahajan, CGSC for
UOI**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. By way of the present writ petition, the petitioner lays a challenge to the order dated October 11, 2011 imposing a penalty of reduction of his pension by 25% for a period of five years for the alleged act of gross misconduct in the year 1999-2000 in purchase of medicines.

2. The factual matrix concerning the writ petition is that the petitioner joined Sashastra Seema Bal (SSB) as a Doctor in the year 1974. On attaining the age of superannuation he retired as DIG (Medical) on May 31, 2009. The petitioner was posted as CMO, Divisional HQ, Itanagar, A.P. in the year 1999-2000. During his tenure as CMO, under Border Area Development Programme (BADB Scheme) medicines worth ₹10 lacs were purchased. Certain irregularities in the purchase of medicines were revealed in the 10th

PV (physical verification) Report by DACS. Audit objection was raised by 10th PV party triggering a communication dated January 8, 2002 to DO AP SSB, Itanagar asking the supplier to refund the excess cost above MRP charged by him. The supplier refunded an amount of ₹88,797/- being charged higher than the MRP against the supply of medicines to AO Ziro. The petitioner alleged that after an inordinate and unexplained delay of about ten years, a inquiry was initiated against the petitioner, Dr. (Mrs.) N.Bhuyan, Commandant (Medical), Dr.S.M.Singh, Assistant Surgeon (Veterinary), Shri D.K.Thungon, Sub Area Organiser and Shri Dalbir Gogoi, Senior Field Assistant (Medic). A charge memo was issued to the petitioner for initiating the inquiry under Rule 14 of CCS (CCA) Rules, 1965 which was duly replied by the petitioner on April 15, 2008. The petitioner was charged as under for his alleged act of gross misconduct:-

“(1) Statement of Article of Charges Framed Against Dr.M.L.Bhuvan, the then CMO, Divisional Hqrs, Itanagar, AP Division Now DIG (Medical), SSB (Retired)

ARTICLE-I

That the said Dr.M.L.Bhuyan, the then CMO (now DIG (Medical) while functioning as I/C MI Room restored to local purchase of Medicines amounting Rs.10 lakh during the year 1999-2000, violating the established laid down procedures, thereby committing misconduct and an act most unbecoming of a Government servant of his rank and status hereby violating the provision of Rule 3 Sub Rule(1) Clause (ii) & (iii) of the CCS(Conduct) Rules, 1964.

ARTICLE-II

That the said Dr. M.L.Bhuyan, during the period 1999-2000 had not adopted the open tender system required for processing of purchases which are exceeding ₹ 2 lakh and instead invited

quotations from local firms which is contrary to para 28 Annexure below Rule 102(1) of GFR thereby violating the established laid down procedure and committing misconduct and an act most unbecoming of a Government servant of his rank and status, hereby violating the provision of Rule 3 Sub Rule (1) Clause (ii) & (iii) of the CCS (Conduct) Rule, 1964.

ARTICLE-III

That the said Dr.M.L.Bhuyan, while processing the procurement of medicines, being the presiding officer for opening of quotations under Border Area Development Programme during 1999-2000 at the erstwhile Divisional Hqrs, Itanagar AP Division had failed to observe that costs of medicines quoted by M/s Orient Pharmacy were on higher side than the MRP printed on the medicines. He also changed the medicines approved, on his own, without seeking approval of the Competent Authority which shows his negligence and lack of devotion to duty on the part of a responsible officer of his status and rank thereby committing misconduct and an act most unbecoming of a Government servant of his rank and status thereby violating the provision of Rule 3 Sub Rule (1) Clause (ii) & (iii) of the CCS (Conduct) Rule, 1964.

ARTICLE-IV

That the said Dr.M.L.Bhuyan while processing the procurement of medicines signed on a false certificate recorded by Shri D.Gogoi, SFA (Medic) on the bill, thereby exhibiting gross negligence and supervision and hence committed misconduct and act most unbecoming of a Government servant of his rank and status thereby violating the provision of Rule 3 Sub Rule (1) Clause (ii) & (iii) of the CCS (Conduct) Rule, 1964.

ARTICLE-V

That the said Dr.M.L.Bhuyan while processing procurement of medicines during the period 1999-2000 purchased medicines on a higher rate than the MRP and also purchased medicines which were meant for CGS Supply only and were not meant for open sale thereby committing a grave misconduct and an act most unbecoming of a Government servant of his rank and status thereby violating Rule 3

Sub Rule (1) Clause (i) to (iii) of the CCs (Conduct) Rules, 1964.”

3. The petitioner sought quashing of DE on account of delay by filing W.P.(C) No.7139/2009.
4. Since the inquiry report was submitted during the pendency of the above writ petition, the petitioner withdrew the petition with liberty that if as a result of the inquiry report any adverse action is taken against the petitioner, petitioner would have a right, while challenging the same to urge pleas raised in the writ petition which go to the root of the matter pertaining to the charge-sheet issued against the petitioner.
5. The Inquiry Officer submitted his report holding the petitioner guilty for the charges under Article III and V and noted the following facts for arriving at the conclusion:

‘Article III

- (a) Whether the cost of medicines purchased by the CO was in the higher side then the MRP printed on the medicines?*
- (b) Whether he has failed to observe that at the time of purchase?*
- (c) Whether the CO has changed some of the medicines?*
- (d) If so, whether that has been done at his own and without approval from the competent authority?*
- (e) Whether the CO committed misconduct by changing the medicines?*

Article V (a) Whether the CO has purchased medicines on higher rate?

- (b) Whether the CO has purchased medicines which were meant for CGS supply and not for sale?*

Conclusion on Article of Charge III:

- (i) Medicines have been purchased at a price higher than the MRP printed on the medicines which fact was revealed only during physical

verification by 10th PV Party.

(ii) The supplier company admitted this fact and when asked to return the excess amount, refunded a sum of ₹ 88,797/-.

(iii) Four items of medicines were substituted without seeking approval from the competent authority on the file. The plea of the petitioner (Charged Officer) that such direction used to be oral during daily meetings at Tea Time with the D.O. has been considered, not out rightly rejected except noting the fact that written approval of the D.O. had been taken.

Conclusion on Article of Charge V:

(a) The fact that the medicines purchased were of higher rate has already been discussed under Article III (a) above. This is repetition of same charge as regards the fact that the medicines were meant for CGS supply and not for sale, the same has been stamped on the medicines checked during PVR.

(b) The CO vide his letter dated 26th April 02 (P-24) and subsequent reminder dated 27.05.02 (page 197 of the file) to M/s Chinar Pharmaceuticals sought clarifications regarding "CGS not for sale". The Company viz, M/s Chinar Pharmaceuticals vide their letter dated 5th June 2002 (D-1) gave clarification as "we have made numerous supplies of "tab Dilomet" and other items to various SSB divisions in the country. All the products supplied to SSB are marked with "CGS not for sale" on the foil and the cartoons and there has been no objection from any division as on date... such markings are made on Government goods to ensure that there is no pilferage of the subject products in the open market." The CO in his written brief gave a reference to above letter to justify his act. It is a conclusive proof that the CO had purchased "tab Dilomets" marked with "CGS not for sale" he could not point it out at the time of the purchase. It came to his notice only when 10th PV party made an objection to it.

6. Since during the pendency of the inquiry, the petitioner superannuated

on May 31, 2009, the Disciplinary Proceedings continued against him in accordance with Rule 9 of CCS(Pension) Rules, 1972. Copy of the inquiry report was sent to the petitioner vide memo No.13/SSB/A4/2005(4)-1370-71 dated February 05, 2010. The petitioner accordingly furnished his defence statement on the said inquiry report vide his letter dated March 01, 2010.

7. On being satisfied that the acts of the petitioner amount to serious misconduct which was most unbecoming of a Government servant of his rank, a penalty to reduce the pension by 25% for a period of 5 years was imposed on the petitioner.

8. Written submissions have been filed by the parties.

9. On behalf of the petitioner Ms.Madhusmita Bora, learned counsel for the petitioner has submitted that after the issue was highlighted by the 10th PV Party, necessary steps were taken by the petitioner to get the excess price refunded from the supplier firm which was refunded too. On the issue of stamp marking 'CGS not for sale' also, clarification was obtained from the manufacturer to satisfy the audit and get the objection dropped. Thereafter the whole issue was laid to rest. The issue resurfaced when the petitioner sent representation against his supersession and thereafter the inquiry was initiated for the alleged misconduct in the year 1999-2000.

10. Learned counsel for the petitioner has further submitted that the impugned order is unfair having been passed arbitrarily ignoring the explanation given by the petitioner in his response to the findings on Article III and V. It has also been urged before us that penalty under Rule 9(1) of the CCS(Pension) Rules could not have been imposed as Rule 9(1) only speaks of recovery from the Charged Officer's pension of the whole or part of any pecuniary loss caused by him to the Government if in any

departmental or judicial proceedings, the petitioner is found guilty of grave misconduct or negligence during the period of his service. Since no pecuniary loss was caused to the Government in this case, the petitioner could not have been penalized by deducting 25% of his pension for five years. Learned counsel for the petitioner further submitted that in respect of the purchase made in the year 1999-2000 inquiry was initiated and concluded after a long period with no explanation being offered for the delay which has the effect of vitiating the inquiry proceedings. Thus the impugned order is liable to be quashed with direction to the respondent to release the pensionary benefit of the petitioner with immediate effect. Learned counsel for the petitioner has relied upon CWP No.5552/2000 decided on August 27, 2002 titled as Tara Chand vs Union of India (UOI) & Ors., (2005) 6 SCC 636 P.V.Mahadevan vs. MD, T.N.Housing Board, 1990 (Supp.) SCC 738 State of Madhya Pradesh vs. Bani Singh & Another, and (2006) 5 SCC 88 M.V.Bijlani vs. Union of India & Ors. in support of above contentions.

11. The respondent justified its action to penalise the petitioner for gross misconduct which is permissible under Rule 9(1) of the CCS(Pension) Rules claiming that the same has been passed after completing all codal formalities. Learned counsel for the respondent submitted that the petitioner cannot claim that no pecuniary loss was caused to the respondent due to his alleged misconduct as during his tenure at concerned Headquarter Lucknow in his capacity as incharge of the Medical Branch he had written a letter to M/s Orient Pharmacy, Itanagar (AP) for refund of the excess amount of ₹2,66,391/- which the firm charged over and above MRP in violation of laid down policy of Drug Price Control Rules. This letter established that

petitioner had accepted that the medicines were purchased at higher rates than the MRP. The firm had refunded an amount of ₹88,797/- confirming higher rates of medicines being charged more than the printed MRP.

12. Learned counsel for the respondent further submitted that petitioner along with other officers were served on March 10, 2008 with the charge-sheet. Inquiry Officer was appointed on January 29, 2009 who gave his report on September 18, 2009. The petitioner himself was dealing with the matter for a substantial pension. The irregularities were highlighted by Inspector General, Frontier Hqrs, SSB, Lucknow (the then AP Divisional Hqrs, SSB, Itanagar) vide DO Letter No. FTRL-XII/09002/1/03/Med-861 dated September 10, 2004. A preliminary inquiry was conducted which disclosed the involvement of the petitioner and others. Proposal was sent to MHA. In February, 2006 for initiation of DE against the person allegedly involved the matter was considered by MHA and CVC and only thereafter proceedings under Rule 14 of CCS(CCA) Rules for major penalty were initiated and charge memo dated March 10, 2008 was served on the petitioner after necessary approval from the Competent Authority for Group 'A' officers.

13. The petitioner's main grievance is that on account of delay in initiating the proceedings, serious prejudice has been caused to him and due to delay, the inquiry stands vitiated as held in Tara Chand vs Union of India (UOI) & Ors. (supra), P.V.Mahadevan vs. MD, T.N.Housing Board (supra), State of Madhya Pradesh vs. Bani Singh & Another (supra), and M.V.Bijlani vs. Union of India & Ors. (supra) wherein the Apex Court has quashed the inquiry proceedings on account of delay.

14. The above submission being two fold raise the questions : (i) whether

on account of delay any prejudice has been caused to the petitioner, and (ii) whether there was no proved grave misconduct and the finding against the petitioner are perverse.

15. It is no longer *res integra* that mere delay in concluding the domestic inquiry proceedings is not fatal and it depends on facts and circumstances of each case. In the case (2007) 14 SCC 49 Government of A.P. & Ors. vs. V.Appala Swamy the question of delay as well as the prejudice caused due to delay have been answered in paras 9 to 11 of the report as under:

'9. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefore. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) Where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) Where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the Inquiry Officer.

10. This aspect of the matter is now squarely covered by the decisions of this Court in Secretary to the Govt., Prohibition & Excise Deptt. v. L. Srinivasan. MANU/SC/1108/1996 : (1996)IILLJ245SC ; P.D. Agrawal v. State Bank of India and Ors. MANU/SC/8122/2006 : (2006)IILLJ877SC ; Deputy Registrar, Co-op Societies. Faizabad v. Sachindra Kath Pandey and Ors. MANU/SC/0650/1995 : (1995)ILLJ1069SC .

11. Learned Counsel appearing on behalf of the respondent, however, placed strong reliance on a decision of this Court in M.V. Bilani v. Union of India and Ors. MANU/SC/1857/2006 : (2006)IILLJ800SC . That case was decided on its peculiar facts. In that case, even the basic material on which a

departmental proceedings could be initiated was absent. The departmental proceedings was initiated after 6 years and continued for a period of 7 years. In that fact situation, it was held that the appellant therein was prejudiced. Bijlani (supra), therefore, is not an authority and, in fact, as would appear from the decision in P.D. Agrawal (supra), for the proposition that only on the ground of delay the entire proceedings can be quashed without considering the other relevant factors therefore.'

16. The record evince that the gross misconduct in purchase of medicines under BADB Scheme came to limelight only during physical verification in 10th PV report by DACS. Thereafter preliminary inquiry was conducted. It can also be seen from the record that necessary communication was sent to the firm to refund the excess amount charged above the MRP printed on the medicines and clarification was also sought from the firm about the stamping 'CGS not for sale'. Preliminary inquiry was conducted to ascertain the names of the persons involved as well their role. Thereafter necessary communication with Ministry of Home Affairs (petitioner was Group 'A' officer) and CVC was made and after clearing of the hurdles, disciplinary proceedings were initiated. It is emerging on record that after receiving the approval from MHA for holding common proceedings against all the Charged Officers vide CR No.4705/2008/Pers-III dated December 05, 2008 and examining the statement of defence of all the Charged Officers, IF, FTR HQ, Gauhati was appointed as Inquiring Authority. The Inquiry Officer submitted the inquiry report on September 18, 2009. Approval of MHA to continue the proceedings against the petitioner after his retirement was conveyed on October 07, 2009.

17. It is by now a settled proposition of law that the Court, while

considering challenge to the orders passed in disciplinary proceedings does not act as an Appellate Authority and does not reassess the evidence led in the course of the inquiry nor can it interfere on the ground that another view in the matter is possible on the basis of the material available on record. If the Court finds that the inquiry has been conducted in a fair and proper manner and the findings rendered therein are based on evidence, the adequacy of evidence or the reliability of the evidence are not the grounds on which the Court can interfere with the findings recorded in the departmental inquiries. It is not open to the Court to interfere with the finding of fact recorded in such inquiries unless it is shown that those findings are based on "no evidence" or are clearly perverse. A finding would be considered to be perverse if no reasonable person could have recorded such a finding on the basis of material available before him. Another ground on which the Court can interfere with the findings recorded in a disciplinary proceeding is violation of principles of natural justice or statutory rules or if it is found that the order passed in the inquiry is arbitrary, mala fide or based on extraneous considerations. This proposition of law has been reiterated by Supreme Court in a number of cases including 1995 (6) SCC 749 B.C. Chaturvedi v. Union of India, 1997 (7) SCC 463 Union of India v. G. Gunayathan, 1999 (5) SCC 762 Bank of India v. Degala Suryanarayana and 2001 (1) SCC 416 High Court of Judicature at Bombay v. Shahsi Kant S. Patil.

18. Examining the case of the petitioner in the light of above settled principles, we notice that by the time 10th PV was done most of the stock was already consumed. Thereafter steps were taken to recover the excess payment made to the supplier firm and during the said period the petitioner

was an Incharge. We do not find any unexplained delay in this case. Further before the Inquiry Officer the petitioner did not plead any prejudice being cause to him on account of delay. In the inquiry report, while holding the petitioner guilty for the charges under Articles III and V, the Inquiry Officer noted the admitted position based on documentary evidence and communication to supplier firm not only by other officers but even by the petitioner to recover the payment in excess of MRP and seeking explanation why Tablet Dilomets had the stamping 'CGS not for sale'.

19. In the facts and circumstances of the case, placing reliance on Tara Chand vs Union of India (UOI) & Ors. (supra), P.V.Mahadevan vs. MD, T.N.Housing Board (supra), State of Madhya Pradesh vs. Bani Singh & Another (supra), and M.V.Bijlani vs. Union of India & Ors. (supra) by the petitioner is of no advantage to him.

20. Another contention raised by learned counsel for the petitioner is that the respondents failed to explain the relevant rules under which the penalty of reduction of pension by 25% for five years could be imposed.

21. The impugned order dated October 11, 2011 passed in the name of President of India provides an answer to it. The impugned order records that the Charged Officer retired from government service on May 31, 2009 (afternoon) from Composite Hospital Salonibari and therefore the disciplinary proceedings initiated against him were continued as per provisions contained under Rule 9 of Central Civil Services (Pension) Rules, 1972.

22. There is no bar in continuance of the disciplinary proceedings even after the retirement of the Government servant for imposing the punishment as contemplated under Rule 9 of CCS (Pension) Rules, 1972.(Ref.AIR 2009

SC 2925).

23. The next question to be answered is whether the charge falls in the category of grave misconduct so as to invite penalty under Rule 9 of CCS (Pension) Rules, 1972. The contention of the petitioner that no pecuniary loss was caused to the Government is incorrect. Although a partial recovery was effected, various communications record that a sum of ₹ 2,66,391/- still remains unrealised from the said firm and on various letters being sent to the supplier firm, it was reported that the said firm was not traceable.

24. The purchase of medicines by the petitioner at a price higher than MRP, substituting four items of medicines without written approval of the D.O., Tablet Dilomets bearing stamp marking 'CGS not for sale' do satisfy the requirement of Rule 9 of CCS (Pension) Rules, 1972 as falling under the category of (i) pecuniary loss caused to the Government, (ii) a grave misconduct or negligence, justifying imposing of penalty of reduction of pension by 25% for a period of five years.

25. The writ petition has no merits and is accordingly dismissed.

26. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

March 23, 2015

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