

\$~4

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

% **Judgment Dated: 16th September, 2016.**

+ W.P.(C) 8089/2016
DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL SCIENCES
..... Petitioner
Through: Mr.R.K.Gupta, Advocate.

versus

SANJIV CHATURVEDI & ORS Respondents
Through: Respondent No.1 in person.
Mr.Sanjeev Narula, CGSC with
Mr.Ajay Kalra and Ms.Vinitha,
Advocates for R-2/UOI.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

Caveat Nos.805-806/2016

Since the caveator/respondent has entered appearance, the caveats stand discharged.

C.M.No.33537/2016 (Exemption)

Exemption granted, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 8089/2016 and C.M.No.33536/2016 (stay)

1. Challenge in this writ petition is to the order dated 17th August, 2016 passed by the Central Administrative Tribunal (hereinafter referred to as “the Tribunal”) by which the Tribunal has quashed the memo dated 7th

January, 2016 and order dated 30th March, 2016 passed by the petitioner herein.

2. Learned counsel for the petitioner/AIIMS submits that the respondents had approached the Tribunal and had made various prayers in the O.A. Counsel further submits that when the matter came up for hearing on 17th March, 2016 and as noted by the Tribunal in the impugned order itself, time was sought by the respondents No.3 & 4 (before the Tribunal) to file reply to the amended O.A. Time was also sought by respondents No.1 & 2/Union of India (before the Tribunal) to file their reply. Counsel for the respondent No.3 had made a grievance that they had not received a copy of the amended O.A. as also copy of M.A. No.1893/2016. Counsel submits that while the Tribunal allowed time to file reply to the respondents-AIIMS (including petitioner herein and others), the prayer of the petitioner (respondents herein) to quash memo dated 7th January, 2016 and order dated 30th March, 2016 was without granting an opportunity of hearing and without waiting for the pleadings to be completed. It is submitted that the order of the Tribunal is bereft of any reasoning and thus is liable to be quashed.

3. The respondent, who appears in person, submits that the petitioner had filed their reply before the Tribunal and the petitioner has not disputed the fact that prior to issuing memo dated 7th January, 2016, no show cause notice nor any opportunity of hearing was granted to the respondent. In these circumstances the respondent submits that the memo dated 7th January, 2016 and the subsequent order dated 30th March, 2016 of rejecting his appeal are patently illegal and thus the Tribunal rightly quashed the aforesaid two orders.

4. We have heard the learned counsel for the petitioner and the respondent, who appears in person.

5. To appreciate the submissions of learned counsel for the petitioner, we reproduce the order dated 17th August, 2016, which reads as under:-

“17.08.2016

M.A./100/1893/2016

O.A./100/1342/2016

SANJIV CHATURVEDI

V/S

M/O HEALTH AND FAMILY WELFARE

ITEM NO:9

FOR APPLICANTS(S) ADV. : Applicant in person

FOR RESPONDENTS(S) ADV.: Shri Hanu Bhaskar for R-1 & 2 –

UOI

*Shri B.P. Gupta with Shri A. K. Singh
for R-3*

Shri R. K. Gupta for R-4 & 5

<i>Notes of The Registry</i>	<i>Order of The Tribunal</i>
	<i>Heard the applicant in person and the learned counsel on behalf of the respondents.</i> <i>2. Learned counsel for respondents No.4 & 5 states that they need two weeks' time to file reply to the amended O.A.</i> <i>3. Learned counsel for the respondents No.1 & 2 – UOI also seeks two weeks' time to file their reply.</i> <i>4. Learned counsel for the respondent No.3 states that they have not received copy of the amended O.A. as well as MA 1893/2016.</i> <i>5. Applicant is directed to served a copy of the amended O.A. and MA to the counsel for respondent No.3. Time is allowed for filing reply to respondents- AIIMS and UOI.</i> <i>6. Admittedly, the orders dated 07.01.2016 and 30.03.2016 passed by the respondents to the</i>

	<i>applicant with copies to other concerned Ministries including Chief Secretary, Uttarakhand is without issuing a show cause notice to him. This being against the principles of natural justice. Both these orders are quashed.</i> <i>7. Through MA 1893/2016, the applicant has prayed that the Reporting Officer – the Deputy Director, AIIMS, Reviewing Officer – Director, AIIMS and Accepting Officer – President, AIIMS be restrained from writing his APAR. On this prayer, order has already been passed on 01.06.2016 that if the respondents No.6, 7 and 8 make any entry in ACR for the year 2015-16, that shall be subject to the outcome of the O.A. and there is no need for reconsideration.</i> <i>8. The applicant, however, drew my attention to order dated 02.06.2016 of the Hon'ble High Court in CWP No. 4426/2016, in which one Shri Asheem Srivastav had filed the writ petition and the Hon'ble High Court had directed that till further orders, the ACR of the petitioner for the year 2015-16 should not be written.</i> <i>9. We have gone through the order of the Hon'ble High Court dated 02.06.2016. The facts and circumstances seems to be different. Therefore, the order dated 01.06.2016 shall remain in operation. The MA is, accordingly, dismissed.</i> <i>10. Post the O.A. on 13.09.2016.</i> <i>Order <u>DASTI</u>.</i> <i>sd/- (P.K. Basu) Member (A)</i>
--	--

6. Since the order dated 17th August, 2016 does not give any background as to what was sought to be quashed and what was the grievance of the applicant in the O.A. or the response of the respondents, we also deem it

appropriate to reproduce the memo dated 7th January, 2016, which reads as under:-

"07.01.2016

ALL INDIA INSITUTE OF MEDICAL SCIENCES
Ansari Nagar, New Delhi -29

No.F.6-96/2012-Estt.I

Dated: 07 JAN 2016

MEMORANDUM

***Sub:- None observance of Discipline by Sh. Sanjiv Chaturvedi,
Deputy Secretary, AIIMS.***

The Director places on record its displeasure with his insubordination, indiscipline and lack of work ethic during winter session of Parliament 2015.

A copy of the memo should be kept in the personal file of the officer for consideration for his APAR for the period 2015-16.

The issues with approval of the competent authority.

sd/-

(LALIT ORAON)

ADMINISTRATIVE OFFICER (DO)

*Sh. Sanjiv Chaturvedi
Dy. Secretary,
AIIMS*

Copy To:

- 1. The Secretary
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi*
- 2. The Secretary,
Ministry of Environment & Forests,
New Delhi.*
- 3. The Chief Secretary, Uttrakhand.*
- 4. PPS to Director/PS to DD (A)*

7. We may note that after the memo of 7th January, 2016 was issued, the respondent made a comprehensive representation on 11th January, 2016 running into 5½ pages which representation was also rejected by order dated 30th March, 2016, which has also been quashed by the Tribunal, which reads as under:-

“ALL INDIA INSITUTE OF MEDICAL SCIENCES
Ansari Nagar, New Delhi -29

No.F.6-96/2012-Estt.I(Main File)

Dated: 30 MAR 2016

ORDER

The Director AIIMS had placed on record his displeasure on insubordination, indiscipline and lack of work ethic of Sh. Sanjiv Chaturvedi, Deputy Secretary AIIMS during the winter session of parliament 2015 vide memorandum of even number dated 07.01.2016.

Sh. Sajiv Chaturvedi, Deputy Secretary, AIIMS had written to Director AIIMS on 11.01.2016 threatening the administration that the memorandum may be withdrawn failing which he would resort to appropriate legal proceedings against Director and Deputy Director Administration in personal capacity for which the whole responsibility would be that of Director AIIMS.

The letter of Sh. Sanjiv Chaturvedi, Deputy Secretary, AIIMS has been examined by the Institute in consultation with Ministry of Health & Family Welfare. The representation of Sh. Sanjiv Chaturvedi, Deputy Secretary, AIIMS has been rejected.

The President AIIMS has upheld & reiterated the displeasure memorandum of the Director AIIMS issued on insubordination, indiscipline and lack of work ethic of Sh. Sanjiv Chaturvedi during the winter session of Parliament 2015.

President, AIIMS has further directed that this may be sent to the Secretary, Ministry of Health Family Welfare and Cadre

Controlling Authority.

This issues with approval of President AIIMS.

sd/-
(CHAKARVARTHY E.V.S.)
ADMINITRATIVE OFFICER (DO)

Sh. Sanjiv Chaturvedi
Dy. Secretary, AIIMS,
New Delhi – 110 029

Copy to:

1. *Shri B. P. Sharma,*
Secretary (Health),
Ministry of Health & Family Welfare,
Nirman Bhavan,
NEW DELHI.

2. *Shri Ashok Lavasa,*
The Secretary,
Ministry of Environment & Forests,
NEW DELHI.

3. *Shri Shatrughan Singh,*
Chief Secretary,
Uttarakhand, Dehradun
PPS to Director/PS to DD (A)_____.”

8. We may also take into account that the respondent herein had approached the Tribunal seeking the following reliefs:-

- “a. To quash the Memorandum no.06-96/2012-ESTT.I dated 07.01.2016, along with subsequent order number 6-96/2012-Estt.I dated 30.03.2016, issued by respondent institute, being in violation of principle of natural justice, bereft of any reason and the specific instruction/incident giving rise to the said orders.*
- b. To restrain the present incumbent respondent nos. 6, 7 & 8 from acting as accepting authority, reviewing authority and reporting authority respectively for the purpose of writing of APAR for the*

financial year 2015-16 in view of their extreme personal mala fide/malice against the applicant, as elaborated from para 4.3-4.21 and to direct the respondent no.1 to notify appropriate authority for the purpose of evaluation of APAR of the applicant for the financial year 2015-2016.

- c. To direct respondent no.1 to take appropriate action against respondent no.7 and 8 for issuing the said Memo in violation of Principles of Natural Justice and for their various omissions and commissions mentioned in para 4.2-4.21 for which CBI has already indicated them explanation has been sought by vigilance wing of DoPT”.*

9. The respondent submits that there was absolutely no bar in deciding the O.A. in part and granting relief as this relief was granted on the basis of admission made by the petitioner herein (respondent before the Tribunal) and there is no bar in law for the same.

10. While principally we find the submissions of the respondent to be correct, but in the facts of the present case we are unable to comprehend the manner in which the Tribunal has passed the order dated 17th August, 2016. In case the Tribunal had reached a conclusion that the order was being passed on the basis of admission, the Tribunal ought to have given at least some background of the matter as the reading of the said order would show that the order does not even reflect the nature of dispute between the parties, the prayer made by the respondent herein and in what manner the admissions were made by the petitioner herein before the Tribunal. We may also notice that admittedly the amended O.A. had been filed and the Tribunal had granted time to the respondents before the Tribunal to file their respective replies. The order, in our view, has been passed by the Tribunal in a great hurry and without recording either the facts or the reasoning. Accordingly, we quash the order of the Tribunal dated 17th August, 2016 as

far as it relates to its quashing the memo dated 7th January, 2016 and order dated 30th March, 2016. We make it clear that we have not made or expressed any opinion on the merits of the case.

11. We are informed that the matter is next listed before the Tribunal on 7th November, 2016. It would be open for the Tribunal to hear the parties and thereafter pass appropriate orders in accordance with law.

12. In view of the aforesaid, nothing further remains to be considered in this writ petition which is accordingly disposed of in the above terms.

Dasti to the parties.

G.S.SISTANI
(JUDGE)

I.S.MEHTA
(JUDGE)

SEPTEMBER 16, 2016
'dc'