

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1475 OF 2015**

Shri Pramod Baliram Dhake

..Petitioner

Vs.

The Secretary, Governing Council & Ors

..Respondents

Mr. Y. B. Lengare I/b Mr. S. Y. Lengare for the Petitioner

Mr. S. K. Talsania Senior Advocate a/w Mr. Agnel Carnevro I/b M/s Mulla & Mulla Craigie Blunt & Caroe for the Respondent

CORAM :R. M. SAVANT, &

M. S. KARNIK, JJ

DATE : 26th SEPTEMBER, 2018

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 20-3-2014 passed by the Appellate Authority which has been communicated by the Secretary of the Appellate Authority i.e. Governing Council of the Tata Memorial Center. By the said order, the order dated 30-10-2012 passed by the Disciplinary Authority imposing the punishment of compulsory retirement on the Petitioner came to be confirmed.

2 The Petitioner herein was working as Pharmacist from 1-7-1983 i.e. the date of his appointment with the Tata Memorial Center. It seems that the Petitioner was thereafter promoted as Pharmacist Category-D. A complaint came to be received from one M. N. Rao Head Constable, Jhansi, U.P., on behalf of a patient Ms M. Shruti having file No.CD/1548. The said

complaint was revolving around the fact that the said patient who was receiving treatment in the said Tata Memorial Hospital was billed for an item (Meronem-1 gm injection) for an amount of Rs.2745.60 which in fact was never supplied nor was it mentioned in the patient's indent. In the background of the said complaint the Petitioner was suspended on 11-9-2008 and a show cause notice came to be issued to the Petitioner on 22-10-2008 as to why a departmental enquiry should not be held against him. The Petitioner it seems replied to the said show cause notice vide his letter dated 30-10-2008 and denied the allegations which were made against him. Upon being dissatisfied by the reply of the Petitioner a charge sheet came to be issued to the Petitioner on 27-11-2008. After following the gamut of process of holding a departmental enquiry, the Enquiry Officer submitted his report on 20-6-2010 holding that the charges were not proved against the Petitioner. The Disciplinary Authority considered the said report and did not agree with the findings of the Enquiry Officer especially having regard to the fact that the Petitioner in the course of the enquiry had admitted to his misdemeanor. The Disciplinary Authority is eloquent as regards the reasons why the Disciplinary Authority arrived at a conclusion that the charge in respect of billing the patient without supplying the medicine was proved against the Petitioner. The Petitioner thereafter availed of the remedy by way of an Appeal before the Governing Council of the Tata Memorial Hospital. Since the Disciplinary Authority i.e. the Director TMC is part of the Governing Council, the

Disciplinary Authority recused himself from being the Appellate Authority. The Governing Council as indicated above has by the impugned order dated 20-3-2014 dismissed the Appeal and thereby confirmed the order passed by the Disciplinary Authority imposing punishment of compulsory retirement.

3 The Learned Counsel appearing on behalf of the Petitioner Mr. Lengare would contend that the Disciplinary Authority was swayed by the opinion of the Central Vigilance Commission and it is on account of the said fact that though the Enquiry Officer had exonerated the Petitioner, the Disciplinary Authority did not agree with the findings of the Enquiry Officer. It was also the submission of the Learned Counsel for the Petitioner that only one of the charge out of the 5 charges which were levelled against the Petitioner have been proved. It was also the submission of the Learned Counsel that the Petitioner has not been heard by the Appellate Authority.

4 Per contra, the Learned Senior Counsel Mr. Talsania appearing on behalf of the Respondents would submit that the Disciplinary Authority has for the reasons recorded in its order has arrived at a conclusion that the charge has been proved against the Petitioner. The Learned Senior Counsel would submit that the Rules of the Tata Memorial Hospital in so far as the Appeal is concerned do not envisage any hearing to be granted to the delinquent. The Learned Counsel in support of the said contention placed reliance on the

Judgment of the Apex Court in the matter of **Oriental Bank of Commerce & Anr Vs. R. K. Uppal**¹ It was the submission of the Learned Senior Counsel that in matters of departmental enquiry the jurisdiction of the Writ Court is restricted to only seeing as to whether there is any evidence on record to sustain the finding of guilt against the delinquent and that Writ Court cannot act as an Appellate Court so as to re-appreciate the evidence whilst considering the orders passed by the Disciplinary Authority as well as the Appellate Authority.

5 We have considered the rival contentions. As indicated above the gravamen of the allegations against the Petitioner is in respect of his misdemeanor of billing the patient without supplying the medicine. It is required to be borne in mind that the patients in the Tata Memorial Hospital are those who are suffering from a debilitating disease like cancer, hence such a conduct of a person like a pharmacist is therefore unacceptable. In so far as the departmental proceedings are concerned, it is required to be noted that during the course of the departmental proceedings, the Petitioner has virtually admitted his misdemeanor. The said fact has been recorded in the order passed by the Disciplinary Authority and it is on an over all basis that the Disciplinary Authority has come to a conclusion that the charge has been proved against the Petitioner. The papers were sent by the Disciplinary Authority to the Central Vigilance Commission for its concurrence. The

¹ (2011) 8 Supreme Court Cases 695

Central Vigilance Commission has accordingly recorded its concurrence. The Appellate Authority thereafter did not find any reason to interfere with the finding of the Disciplinary Authority. We have with the assistance of the Learned Senior Counsel for the Respondents perused the inquiry papers as well as the orders passed by the Disciplinary Authority and the Appellate Authority. On such perusal we find that the orders passed by both the authorities cannot be said to be suffer from any illegality or infirmity for us to interdict in our Writ Jurisdiction. This is not a case where it can be said that there is absolutely no evidence to bring home the charge levelled against the Petitioner. Reliance placed on a decision of the Apex Court in Oriental Bank of Commerce (supra) in support of the contention that no hearing is contemplated at the Appellate stage appears to be apposite.

6 In our view therefore, no case for interference in the Writ Jurisdiction of this court is made out. The Writ Petition is accordingly dismissed.

[M. S. KARNIK, J]

[R.M.SAVANT, J]

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