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\$~2 (2021)

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 16.08.2021

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W.P.(C) 3157/2021 & CM Nos. 9582/2021, 26329/2021

DR. PRABAL PAL

.....Petitioner

Through: Mr. Abdhesh Chaudhary, Ms.  
Manisha Suri, Mr. Nishikant Singh,  
and Ms. Geetanjali Setia, Advs.

versus

EMPLOYEES STATE INSURANCE CORPORATION & ORS.

.....Respondents

Through: Mr. V K Singh, Adv. for R-1 &  
3/ESIC. Mr. Arnav Kumar, Senior  
Panel Counsel for R-2/UOI.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE TALWANT SINGH**

**RAJIV SHAKDHER, J. (ORAL):**

[Court hearing convened via video-conferencing on account of COVID-19]

**CM No. 26329/2021**

1. This is an application filed on behalf of the petitioner seeking leave to bring additional documents on record.

2. Counsel for the respondents says that he has no objection to the prayer made in the captioned application being allowed. The prayer made in the captioned application is, accordingly, allowed. The additional documents are taken on record.

**W.P.(C) 3157/2021 &**

**CM No. 9582/2021 [Application filed on behalf of the petitioner seeking stay on the operation of the impugned order dated 10.08.2020]**

W.P.(C) 3157/2021

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physical file have been compared the  
digital data is as per the physical file

3. This writ petition is directed against the order dated 10.08.2020, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short "the Tribunal"), in OA No. 3285/2019.

3.1. The petitioner had approached the Tribunal against the memorandum of charge dated 11.07.2019, issued by the respondents.

4. In substance, the charges levelled against the petitioner, as per the aforementioned memorandum, were:

(i) First, the petitioner had displayed professional incompetence, by trying to extract a healthy tooth of a 9-year-old patient, instead of extracting his infected tooth, without administering proper anaesthesia, which led to severe pain and breathing problems for the patient. It was further alleged that, the petitioner used abusive language and manhandled the minor patient as well as his father i.e., Mr. Prasenjit Santra/complainant, during the treatment, and left the patient bleeding and unattended.

(i)(a) This incident took place on 13.10.2015.

(ii) The second allegation was that, the petitioner had exhibited professional incompetence and unethical behaviour by attempting internal fixation surgery of maxillary fracture suffered by one, Mr. Prasenjit Bhandari, under inadequate local anaesthesia. It was alleged that; the petitioner did not possess the relevant qualification for undertaking the said surgery.

(ii)(a) This incident took place on 26.09.2016.

5. The First Fact Finding Committee [in short "FFFC"], which was appointed via order dated 06.05.2016, exonerated the petitioner qua the complaint lodged against the petitioner, *inter alia*, by Mr. Prasenjit Santra. The competent authority, however, reopened the issue and directed fresh

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inquiry, via order dated 05.07.2016, without giving due opportunity to the petitioner to make a representation. Aggrieved by this, the petitioner filed a writ petition before the Calcutta High Court bearing no. W.P 14084 (W) of 2016, which was disposed of vide order dated 07.09.2016.

5.1. The Calcutta High Court, *via* the abovementioned order dated 07.09.2016, set aside the order of the competent authority dated 05.07.2016, whereby the conclusion reached by the FFFC was reopened. Furthermore, the Calcutta High Court directed that the competent authority will permit the petitioner to make a representation with regard to the inquiry report already on record. Besides this, the Calcutta High Court also held that, the competent authority will, thereafter, be at liberty to take a decision, as per law. The petitioner was granted two weeks' by the Calcutta High Court, to make a representation; commencing from the date of its order i.e., 07.09.2016.

5.2 It appears that no representation was made although the petitioner, was transferred from Joka, Kolkata to Faridabad, Haryana, on 10.08.2017.

5.3 On 20.08.2018, a second attempt was made, via a Second Fact Finding Committee [in short "SFFC"] to inquire into the complaint made by the father of the 9-year-old patient i.e. Mr. Prasenjit Santra. Resultantly, an investigation report, i.e., report dated 04.10.2018 was generated whereby, even while recording that since the petitioner had been transferred, his deposition could not be recorded - some observations were made on the merits of the matter.

6. The investigation report dated 04.10.2018, generated by the SFFC, according to Mr. Abdhesh Chaudhary, who appears for the petitioner, makes observations which are inimical to the interests of the petitioner. For the sake of convenience, the relevant parts of the said report are extracted are

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hereafter:

*"G. Evaluation of evidence/record and observations by VIU: The doctor, against whom the charges are labeled i.e. Dr Prabal Pal, has already been transferred from ESIPGIPSR, ESIC Medical College and ESIC Hospital & ODC(EZ), Joka to ESIC Medical College and Hospital, Faridabad, and hence could not be heard. In absence of his version, no concrete and conclusive findings could be derived by VIU. However, based on the submission of the complainant, available witnesses and scrutiny of the files/records, the VIU has observed as under:*

*i. Apparently, there was non-cooperation from Dr Prabal Pal for detail inquiry into the allegation of the IP made against him. This is quite evident from the inquiry committee report dated 31.05.16, vide which the committee intimated that Dr Prabal Pal had refused to interact with the committee members stating that his advocate would communicate on his behalf.*

*ii. The narratives of the eyewitnesses corroborate the veracity of each allegations made by the IP Shri Santra against Dr Pal in r/o the incident on 13.10.15, particularly regarding his (Dr Pal) using of abusive and filthy language, throwing of dental instruments here and there, shouting wildly and beating the minor patient during the surgical procedure, stating that "I am a Professor, nobody can touch me" and then leaving the patient midway without completing the procedure while the minor was bleeding.*

*iii. Submissions of the eyewitnesses (Annex-A/7, A/8 & A/9) as well as the complainant (Annex-A/10) and also copy of prescription (Annex-A/11), as furnished by the complainant, prima facie suggest that the patient Shri Soumodip Santra was under the treatment of Dr Prabal Pal. Attendance records (Annex-A/12) of Dr Prabal Pal and other eyewitnesses also suggest that all of them were present and on duty on the day of the incident. It is also evident from the prescription that subsequently the subject patient was treated by Dr. Supratim Ram, Asst Professor, Dental Dept., which also endorse the claim of the complainant. Eyewitnesses confirmed that on request of the patient's father, Dr Supratim Ram treated and extracted the tooth of the patient successfully, who was otherwise left midway by Dr Pal without completing the*

procedure.

*It is further reiterated that above observations of VIU is purely based on submissions of complainant, statements of available eyewitnesses and official records only. The VIU, comprising non-medical persons, does not have the requisite expertise and hence cannot comment on wrong/improper treatment [i.e. removing of healthy tooth instead of affected tooth without application of proper injection/anesthesia etc.] by Dr Pal on Shri Soumondip Santra on 13.10.15, as alleged by the complainant. Nevertheless, if the submission of the eyewitnesses are to be relied upon, the actions taken by Dr Pal during the tooth extraction procedure i.e. using of abusive and filthy language, throwing of dental instruments here and there, shouting wildly and beating the minor patient during surgery and leaving the patient midway without completing the procedure while the minor was bleeding are highly unprofessional, unethical and certainly unbecoming of a Government servant."*

7. To be noted, the enquiry committee set up qua the complaint lodged against the petitioner, by Mr. Prasenjit Bhandari, was appointed via order dated 07.03.2017.

7.1 Mr. V.K. Singh, who appears on behalf of respondents no.1 and 3, says that, since a fresh inquiry has been ordered, based on the impugned memorandum of charges dated 11.07.2019, the investigation report dated 04.10.2018 i.e., the conclusions of the SFFC qua the complaint of Mr. Prasenjit Santra, which are captured therein, and are against the petitioner, cannot have an impact on the fresh proceedings.

8. Given the aforesaid circumstances, we have put to Mr. Chaudhary that, since Mr. Singh has conceded that the observations made in the investigation report dated 04.10.2018, generated by the SFFC qua the complaint of Mr. Prasenjit Santra, will not come in the way of his defence vis-a vis the impugned memorandum of charges dated 11.07.2019 – whether his client

would be amenable to participate in the inquiry proceedings?

8.1. Mr. Chaudhary says that, the petitioner has been participating till now in the proceedings which have been triggered via the impugned memorandum of charges dated 11.07.2019. According to Mr. Chaudhary, the inquiry proceedings are presently positioned at the final stage, and that the written submissions have to be filed by the parties.

8.2. This position is not disputed by Mr. Singh.

8.3. Mr. Choudhary says that the petitioner will participate in the proceedings as long as no reliance is placed on the 04.10.2018 report generated by the SFFC.

9. Accordingly, the writ petition is disposed of with a direction that the inquiry officer, while preparing the report qua the impugned memorandum of charges dated 11.07.2019 will not take into account the observations made in the investigation report dated 04.10.2018 qua the complaint of Mr. Prasenjit Santra, to the extent, they are adverse to the interests of the petitioner.

9.1. The inquiry officer will reach a conclusion, one way or the other, without being burdened by the observations made in the investigation report dated 04.10.2018 qua the complaint of Mr. Prasenjit Santra.

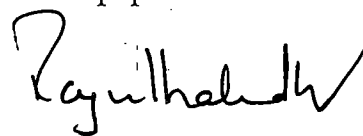
10. Needless to add, observations made hereinabove will not impact the proceedings qua the memorandum of charges dated 11.07.2019, which are pending before the inquiry officer.

11. Since the instant judgement involves personal details, concerning the 9-year-old child, the Registry is directed, not to upload the same, on the website of this Court. Furthermore, if a certified copy of the instant judgement is sought, the same will be generated, only after masking the relevant personal details.

12. Since a complete copy of the investigation report dated 04.10.2018 has

not been placed on record, although, the same has been emailed to the Court Master attached with this Court, for the purposes of good order and record, the Court Master is directed to place a complete copy of the investigation report dated 04.10.2018 on record.

13. Pending application(s) shall stand closed. The case papers shall stand consigned to record.

  
RAJIV SHAKDHER, J

  
TALWANT SINGH, J

AUGUST 16, 2021/nk

[Click here to check corrigendum, if any](#)