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

% *Date of decision: 10th September, 2024*

+ W.P.(C) 10328/2021 and CM APPL. 31798/2021

GOVT OF NCT OF DELHI & ORS.

.....Petitioners

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

versus

DR SOMA ROY

.....Respondent

Through: Mr. V.K. Garg, Sr. Advocate with Mr. Sagar Saxena, Mr. Parmeet Singh, Mr. Karandeep Singh Rekhi and Mr. Sarthak Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present petition under Article 226 read with 227 of the Constitution of India has been filed by the petitioners against the order dated 07.04.2021 passed by the learned Central Administrative Tribunal (the 'Tribunal'), New Delhi in O.A. No. 1732/2017 whereby the learned Tribunal has set aside the charge memo dated 10.06.2016 issued against the respondent.
2. Notice issued. Learned counsel appearing on behalf of the respondent accepts notice.
3. With the consent of learned counsel for the parties, the present



petition is taken up for final hearing and disposal.

4. The respondent in OA No.1732/2017 pleaded before the learned Tribunal that she was a Medical Officer under Central Health Service (CHS). She further pleaded that she had gone to her hometown by taking leave for 25.09.2009 and 26.09.2009 during which period, charge was given to one Dr. A.K. Dewan. On 29.09.2009, a theft took place in the stores of the hospital and a large number of items were stolen. She was placed under suspension on 07.10.2009 but she was reinstated on 22.03.2010.

5. On complaint of the police, the culprits were nabbed and the stolen items were recovered. However, she was issued a Charge Memo dated 10.06.2016 alleging that she failed to ensure proper maintenance of record of medical items and distribution thereof.

6. The respondent pleaded before the learned Tribunal that on the day theft took place, she was on leave and even during the course of investigation, the police did not allege any complicity against her and also that there was an inordinate delay in issuing the charge memo.

7. The stand of petitioners in their counter-affidavit before the learned Tribunal was that even though the respondent was on leave, she did not take adequate steps for maintenance of record and that if she had taken adequate care, the theft had not taken place. The petitioners also contended that much time was consumed in consulting the Central Government of which the respondent was original employee and so the delay in issuing the charge memo occurred.

8. The learned Tribunal, on the basis of the pleadings of the parties, observed that once the respondent had joined the services of CHS, her



services were governed by the GNCTD and so the delay caused in taking approval from Central Government was totally unnecessary.

9. Learned Tribunal observed that the theft of medical items had taken place on 29.09.2009 and that the respondent was on leave from 26.09.2009 to 29.09.2009. The respondent was put under suspension on 07.10.2019 i.e. after a lapse of ten years. Even in the criminal case, in respect of theft, no official of the Hospital was shown as accused and she was thereafter reinstated on 22.03.2010.

10. The learned Tribunal took note of the fact that the disciplinary proceedings were initiated against the respondent after a long gap and in such eventuality, the employee is at serious disadvantage to defend.

11. The Tribunal noted that the respondent was not employee of GNCTD and thus, the order of suspension was without any competence and the charge memo could have been issued only by the Disciplinary Authority, who can be inferior in rank.

12. The challenge to the impugned order dated 05.04.2021 passed by the learned Tribunal is on the ground that the learned Tribunal erroneously observed that the suspension order was passed by incompetent authority as the respondent was CHS Cadre Officer and her controlling authority at that point of time was Ministry of Health and Family Welfare, Govt. of India.

13. During the course of hearing, learned counsel appearing on behalf of the petitioner submitted that a charge sheet cannot be quashed or stayed when the charge is related to the financial irregularities and the learned Tribunal failed to appreciate that there was no delay in issuing



the charge sheet against the respondent. Thus, setting aside of impugned order dated 07.04.2021 is sought.

14. On the other hand, learned senior counsel appearing on behalf of the respondent submits that the impugned order suffers from no infirmity and does not call for any interference by this Court.

15. Upon hearing learned counsel representing both the sides and on perusal of the impugned order as well as other material placed before this Court, we find that there is no dispute that respondent had joined as Medical Officer under Central Health Service (CHS) and after an option was given, she opted for DHS cadre w.e.f. 24.11.2010. On 25.09.2009 and 26.09.2009, the respondent proceeded on sanctioned leave after handing over charge to Dr.A.K. Dewan. A theft in the medical stores of the hospital took place on 29.09.2009. She was served a Charge Memo dated 10.06.2016 for the said incident of theft which occurred on 29.09.2009. The Order of Suspension was issued by DHS authorities, whereas at the time of alleged incident respondent was under CHS Cadre. Thus, the Tribunal has rightly held that DHS was not the competent authority to either issue the Charge Memo or suspend respondent's service.

16. The respondent was served a Charge Memo dated 10.06.2016 for an alleged incident of theft in medical stores of the hospital which occurred on 29.09.2009. The learned Tribunal, has rightly taken serious note of the fact that there was long delay on the part of the petitioners to issue charge memo or to initiate departmental inquiry.



17. Also, pertinent to note here that the FIR in respect of the alleged incident was lodged on 05.10.2009 i.e. after a lapse of 7 years. Moreover, none of the official of the Hospital was accused in the FIR.

18. Furthermore, two of the inquiry committee members, one Dr. A.K. Dewan was In-charge of the store while the respondent had proceeded on sanctioned leave and the second member, Dr. R.K. Gupta was the Nodal Officer for security services of the hospital at the relevant time.

19. In view of the fact that at the time when the alleged incident of theft took place, Dr. A.K. Dewan had taken charge of medical store in the absence of respondent and Dr. R.K. Gupta being the In-charge of security, was responsible for any lapse or breach in the security; therefore, both could not have been the members of the Inquiry Committee. However, since the inquiry against the respondent was conducted by these two members, it cannot be ignored that by making these two persons judges in their own cause, the petitioners have tried to shelter them by putting entire blame on the respondent. Moreover, it is not in dispute that the culprits of the theft incident were nabbed and substantial quantity of medical items was recovered.

20. In the aforesaid view of the case, finding no error in the impugned order dated 07.04.2021 passed by the learned Tribunal, the present petition is dismissed.

21. Pending applications are disposed of as infructuous.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

SEPTEMBER 10, 2024/uk/r