



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

211

CWP-25798-2017

Date of Decision: 22.01.2025

SOM NATH GABA

...Petitioner(s)

Versus

**PT. BHAGWAT DAYAL SHARMA UNIVERSITY OF HEALTH
SCIENCES AND ANOTHER**

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Dinesh Arora, Advocate
for the petitioner.

Mr. S. S. Brar, Advocate
for the respondents/University.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* setting aside the order dated 08.07.2016, Annexure P-8, whereby the petitioner's appeal against order of punishment has been dismissed, and also the order dated 04.01.2001, Annexure P-3, whereby punishment of stoppage of five increments with cumulative effect has been imposed upon him. Prayer has also been made to set aside the disciplinary enquiry report dated 02.12.1997, Annexure P-2, being illegal and violative of the Principles of Natural Justice.

2. As per facts apparent on record, in brief, on 02.02.1973 the petitioner joined as Laboratory Technician in Medical College, Rohtak, which was later upgraded as the respondent-University. While working as such he had been chargesheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal Rules), 1987, (for short, 'the Service Rules') vide



chargesheet dated 08.08.1988, for the misconduct of doing private practice in violation of Service Rules. During enquiry into the charges, the petitioner admitted that he used to go to Vikas Clinic owned by his father-in-law for private practice after office hours. He also undertook not to do so in future, and perform his official duty with honesty and sincerity. Taking a lenient view of the matter, punishment of stoppage of two annual grade increments with cumulative effect was imposed upon him vide office order dated 29.06.1991, Annexure P-1.

2.1. Subsequently, he was again chargesheeted under Rule 7 of the Service Rules, vide chargesheet dated 18.03.1996, *inter alia*, on the allegations of doing unauthorised practice at Gaba Clinic, Patel Nagar, Rohtak, and using medicines, bandage, etc. of the Medical College/PGIMS, Rohtak in his clinic. A disciplinary enquiry was instituted, and the Enquiry Officer in his report, dated 02.12.1997, concluded though the complainant could not be traced, nor any documentary evidence could be gathered from the residents of the locality where the alleged Clinic was situated, it could be deduced from the facts and personal visits of the then officiating Principal and the Enquiry Officer that the petitioner had been working as medical practitioner at Gaba Clinic in the evening hours, and charging money for the services rendered.

2.2. Based upon these findings, the disciplinary authority awarded punishment of stoppage of five increments with cumulative effect to the petitioner vide impugned order dated 04.01.2001. He filed an appeal against it before the Commissioner and Secretary Health, dated 20.02.2001, specifically taking a ground that the enquiry was conducted in violation of the basic principles of law, wherein he was not allowed to participate or cross-examine



the witnesses. And the Enquiry Officer was biased against him as he conducted the enquiry in a *mala fide* manner. The appeal was, however, not decided, forcing him to approach this Court by filing a petition, CWP-3447-2013, which was disposed of by directing the respondents to consider and decide the appeal expeditiously. Thereupon, vide impugned order dated 08.07.2016, the appeal was dismissed.

3. In this factual background, learned counsel for the petitioner has contended that the impugned orders passed by the disciplinary as well as appellate authorities are not sustainable, since the same are based upon findings arrived at by the Enquiry Officer in violation of the Principles of Natural Justice. He failed to act as an independent adjudicator and himself collected the evidence/material to record adverse findings. He acted in a biased manner, to the petitioner's prejudice.

4. Learned counsel for the University, on the contrary, contends that the petitioner had earlier been chargesheeted on similar charges, and was punished as well by stoppage of two annual grade increments, vide office order dated 29.06.1991. He had admitted to indulging in private practice after office hours. The same misconduct was again committed by him leading to the second chargesheet and the passing of the impugned order of punishment. Learned counsel, however, is not in a position to dispute that the chargesheet in question is not a continuation of or based upon the earlier chargesheet.

5. Submissions made by learned counsel for the parties have been considered.

6. The petitioner was chargesheeted under Rule 7 of the Service Rules on the allegations of doing private practice without any authorisation, and using medicines, injectables, glucose bottles and bandage of the Medical



College in his clinic. He denied the charges and a disciplinary enquiry was instituted in the matter. No witness was examined before the Enquiry Officer, nor was any other material produced before him to establish any of the charges. The Enquiry Officer, however, took upon himself to collect the evidence/material against the petitioner and visited the alleged clinic several times in a clandestine manner. Not only that, finding nobody in the clinic, he spoke to the people staying around the area, even to a *rehriwalla*, but nobody was willing to make a statement in the enquiry. Not to be deterred, the Enquiry Officer visited the area by disguising himself as a commoner late in the evening(s), and tried to question some of the alleged patients in the said clinic, who refused to disclose their identity and only stated that they had come to pay a courtesy visit to the petitioner. He also checked the medicines, injectables, glucose bottles, etc., lying in the clinic but did not find any evidence that any of those belonged to the Medical College. Nevertheless, by referring to these obsessive efforts of his, he concluded that the petitioner worked as a medical practitioner at the said clinic in the evening hours, and also 'imagined' that he had been charging money for the services rendered.

6.1. The enquiry report is as under:

The witnesses-Shri Vinod, Sh. Mahesh, Smt. Premo, Sh. K.L. Batra and three others could not be contacted. The registered letters sent to their available addresses were received back with the remarks "Patta Adura Wapis" return incomplete address" Even Dr. V.K. Grover, the then Offg. Principal Dental College, Rohtak, in his witness statement said that it was not possible to trace the complainants and that it had been discussed at length with the authorities (Director).

In his statement recorded on 29.11.96 in my office, Sh. Som Nath Gaba, Lab. Technician, pleaded himself to be innocent



and denied all the charges leveled against him. However, in my opinion all his replies are no tenable.

I personally visited the alleged 'Clinic' premises of Sh. Som Nath Gaba a number of times. I visited the area as a commoner on 16.1.97, 6.2.97 and 20.3.97 all these visits being between 12.00 Noon and 4.30 P.M. Then on 22.4.97 and 30.5.97, I went to the locality (Patel Nagar, Gandhi Nagar, Labour Chowk, Rohtak) in the fore-noon. In all these occasions the alleged 'Clinic' was found closed. This 'Clinic' has a board displayed outside which carries the following details.

Gaba Clinic

Dr. D.R. Gaba

Patel Nagar, Gandhi Nagar, Rohtak.

The very fact that the 'Clinic' was found closed on all my visit mentioned above indicates that in all probability this 'Clinic' does not function before the evening hours, which is hard to believe.

Next, I visited the locality on 12.9.97 after a deliberate silent period of about three months. This silent period was planned keeping in mind the thought that Sh. Som Nath Gaba may start taking things easy presuming that nothing is being contemplated against him as far as the enquiry is concerned. I made this visit around 5.30 in the evening. Though the 'Clinic' was open, there was nobody sitting inside. Talking to people around the 'Clinic' premises. They agree that Sh. Som Nath Gaba runs this 'Clinic' in the evening hours, generally from 5 to 10 P.M., but none wants to be quoted in this connection on one pretext or the other, None of them seemed to be knowing anything about Dr. D.R. Gaba.

My visit on 27.10.97 in the evening hours again proved futile. The 'Clinic' was open but there was no one manning it at that particular time. Again, talking to a Rehriwallah, I was told that Sh. Som Nath Gaba. "A doctor in Medical College" runs this



'Clinic' only in the evening hours as he has to attend to his duties before evening. He, too, refused to be quoted.

After another month, I went to the locality under reference on 29.11.97 around 6'o clock in the evening and stayed at some distance from the 'Clinic'. To be precise, I stationed myself at a shop in Gandhi Nagar run by Sh. Roshan Lal s/o Sh. Tara Chand. This time around, rather than using my Car. I used my personal Scooter which I parked in the dark at quite some distance from the alleged Clinic. Within fifteen minutes of my being there, I was Sh. Som Nath Gaba entering the 'Clinic' which was already open. I rushed to the Clinic and saw Sh. Som Nath Gaba giving medicines to a female child. (approx. 8-9 years old) who kept mum when I questioned her. Another person sitting there clearly refused to disclose his identity and merely stated that he was there to make a courtesy call on Sh. Som Nath Gaba.

The fact that there was nobody else available in the 'Clinic' apart from Sh. Som Nath Gaba coupled with the fact that it was he who was giving medicines to a child makes one believe that he is running this 'Clinic' in the evening hours. The courtesy caller came to the 'Clinic' to meet Sh. Som Nath Gaba. This again means possibly that he is available in the 'Clinic' in the evening hours.

On my questioning Sh. Som Nath Gaba answered that Dr. D.R.Gaba was away to Sonipat and that he had come to the 'Clinic' only this day. Three persons in the vicinity of this 'Clinic' Sh. Roshan Lal s/o Sh. Tara Chand, Smt. Babli w/o Sh. Sant Lal Ranjan M/S Babli Cycle Rickshaw Works and Sh. Satish Kumar Batra s/o Sh. Ramji Dass Batra, while conversing with me definitely agreed that it was Sh. Som Nath Gaba, an employee of Dental College, Rohtak who runs this Gaba Clinic generally between 5 to 10 P.M. But these three again refused to give anything in writing.

After seeking permission from Sh. Som Nath Gaba, I had a look on the medicines injectables, glucose bottles etc. lying in the



'Clinic' but there was no evidence to the effect that any item belonged to P.G.I.M.S., Rohtak.

To conclude, though the complainants (listed as witnesses in the case) could not be traced and no documentary evidence could be gathered from the residents of the locality wherein the alleged clinic is situated, one can deduce from the facts narrated above and the personal visits of Dr. V.K. Grover, the then Offg. Principal, Dental College, Rohtak and myself the Enquiry Officer that Sh. Som Nath Gaba, Lab. Technician, functions as a Medical Practitioner in the evening hours at Gaba Clinic, Patel Nagar, Gandhi Nagar, Rohtak. Further, it can very well be imagined that he must be charging money in lieu of the services rendered.

6.2. The petitioner had objected to the findings and the conclusion arrived at by the Enquiry Officer, the same, however, were not considered by the disciplinary authority, and the order of punishment was passed based upon the impugned enquiry report. The appeal was also dismissed in a cursory manner without advertg to the relevant facts or the contentions.

6.3. Disciplinary proceedings are quasi-judicial in nature, and the Enquiry Officer is required to act as an independent adjudicator in a fair and transparent manner. The proceedings have to be conducted in compliance with the Principles of Natural Justice by affording due opportunity of hearing to the parties. The conduct of Enquiry Officer, as is apparent from a perusal of his report, has been far from satisfactory. He acted in a biased and one-sided manner, and himself made strenuous efforts to collect evidence/material by visiting the alleged clinic, at times stealthily, and speaking to the persons in and around the place with a view to establishing the charges. This over zealousness on the part of Enquiry Officer to frantically go around collecting material against the petitioner not only violates all cannons of justice and fairness, it indicates his personal interest in the matter. Despite none of the

witnesses agreeing to be associated with the enquiry, nor their statements or the collected material having been disclosed to the petitioner, the Enquiry Officer held him guilty of misconduct in running a private clinic unauthorisedly. The conclusion has been arrived at in the absence of any material on record, by throwing procedural fairness to the winds. Also, the findings are bereft of any reasoning and based on sheer imagination of the Enquiry Officer who acted in a biased manner unabashedly; it renders the enquiry report illegal being violative of the Principles of Natural Justice. The impugned order of punishment which is solely based upon the findings in the report also becomes unsustainable, accordingly. The order in appeal, dated 08.07.2016, is non-speaking and does not consider any of the grounds raised by the petitioner making it untenable.

7. In view of the discussions, the petition is allowed. The enquiry report dated 02.12.1997, punishment order dated 04.01.2001, and the order in appeal dated 08.07.2016, are set aside, and the respondents are directed to release all consequential benefits, including revision of pension, to the petitioner within four weeks of receiving a certified copy of the order. The arrears of salary as well as pensionary benefits shall carry interest at the rate of six per cent per annum from the due date till actual payment.

(TRIBHUVAN DAHIYA)
JUDGE

22.01.2025
Ad

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>