IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.No.27283 of 2003

S.Tamilselvan .. Petitioner

versus

1. The Registrar
Tamilnadu Central Administrative Tribunal
Chennai-104.

2. Director
(Administration and Vigilance)
Directorate General of Health Services
Nirman Bhavan
New Delhi.

3. Director
(Disciplinary Authority)
Directorate General of Health Services
JIPMER, Govt. of India
Pondicherry-6. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus calling for the records relating to the order dated 10.6.2003 passed in O.A.No.651 of 2002 on the file of the Registrar, Central Administrative Tribunal, Madras Bench, High Court Buildings, Chennai-104 (the first respondent herein) confirming the order dated 19.6.2002 passed in C.16013/6/97-AV on the file of the Director (Administration and Vigilance) Directorate General of Health Services, Nirman Bhavan, New Delhi (the second respondent herein) confirming the order dated 16.9.1997 passed in No.Estt.13(13)/95 on the file of the Director (Disciplinary Authority), Directorate General of Health Services, Jawaharlal Institute of Post Graduate, Medical Education and Research, Government of India, Pondicherry-605 006 (the third respondent herein) dated 10.6.2003 and to quash the same and to direct the third respondent to reinstate the petitioner

as X-ray Technician with all continuity of service with all such benefits in the third respondent Institute.

For petitioner : Mr.Vijay Narayan
Senior Advocate for
Mr.S.Subbiah

For respondents-2 and 3 : Mr.K.Veeraraghavan, S.C.G.S.C.

ORDER

CHITRA VENKATARAMAN,J.

The petitioner in the writ petition was working as an X-ray Technician in Jawaharlal Institute of Post Graduate, Medical Education and Research, Pondicherry. On the basis of a complaint given by one Amudha dated 10.7.1995, the third respondent in the writ petition, issued a charge memo to the petitioner. The sum and substance of the memo read that:

(i) the writ petitioner misbehaved with a patient in the X-ray room and kept the Attendant accompanying the patient in another room by locking her therein; thus had behaved in a manner unbecoming of a Government Servant; thereby violated Conduct Rules 3(1) (iii) of 1964;
(ii) by intimidating the patient and forcing her to withdraw the complaint;
(iii) by giving false information/statement during the Fact Finding Enquiry; thereby had not maintained integrity; and
(iv) had not maintained devotion to duty and had not followed the instructions of the Head of the Department.

All the charges, thus violated Rule 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

2. By order dated 16.9.1997, the third respondent dismissed the petitioner from Government service with immediate effect. Aggrieved of the order of dismissal, the petitioner preferred an appeal before the Director General of Health Services, the second respondent herein. By order dated 19.6.2002, the order of dismissal was confirmed and the appeal dismissed. Aggrieved of the same, the petitioner filed an Original Application in O.A.No.651 of 2002 before the Central Administrative Tribunal, Madras Bench. The said O.A. was dismissed by order dated 10th June 2003. The contention of the petitioner before the Tribunal rested on the footing that the

charges were based mainly on the complaint given by the said Amudha, who was not examined by the prosecution at all; that the findings of the authorities had no basis when the complaint dated 10.7.1995 was withdrawn by the said Amudha even within a few hours of the complaint and the said withdrawal letter was once again reiterated in her reply dated 20.7.1995; the order was passed on irrelevant evidence produced by the prosecution; in the circumstances, the charges rested merely on surmises and assumptions; that if the complaint dated 10.7.1995 could be acted upon for initiating action, then the other letters dated 10.7.1995 and 20.7.1995 ought to have been given due credence to drop action. The contention of the petitioner before the Central Administrative Tribunal was countered by the respondents that the petitioner did call the said complainant Amudha on 9.7.1995 on a sunday for taking X-ray again for which he could not adduce proper and satisfactory reasons; that the disciplinary action was taken after going through the entire records and there was strong reason to believe that the petitioner had prepared the withdrawal letter from the said Amudha and also used pressure on the said Amudha to see that she did not attend the preliminary enquiry on 10.7.1995; that the Fact Finding Authority had correctly arrived at the conclusion after going through the relevant facts and circumstances. The Tribunal analysed the various facts and ultimately rejected the prayer of the petitioner to quash the order of dismissal.

3. Mr.Vijay Narayan, learned senior counsel appearing for the petitioner, took us through the enquiry conducted in detail to impress on the fact that in the context of the withdrawal letter and the non-examination of the complainant, there was absolutely no evidence to proceed against the petitioner for a serious consequence. Learned senior counsel further pointed out that there was no direct evidence for proceeding against the petitioner; that the presence of the petitioner on a holiday to accommodate a co-worker should not be viewed with a suspicion to draw an adverse inference against this petitioner. Learned senior counsel also placed reliance on the decision reported in 2005 (4) CTC 202 in the case of ERAJAN,P. Vs. THE DEPUTY INSPECTOR GENERAL OF POLICE and (1999) 8 SCC 582 in the case of HARDWARILAL Vs. STATE OF U.P. AND OTHERS to support the contention that non-examination of a material witness made the charge baseless. Such denial of request to examine the witness would be in clear violation of the principles of natural justice. Consequently, the findings of the enquiry officer and the disciplinary authority are not sustainable in law.

4. A perusal of the order of the Tribunal shows that admittedly there was a complaint given by the patient by name Amudha against the petitioner herein. The Tribunal had extracted the complaint in

its order and referred to the admitted fact before the enquiry officer that the petitioner called the patient Amudha on a Sunday for taking X-ray again, as according to him, the one taken by him on 8.7.1995 was not proper. It also found as a matter of fact that the petitioner was not on duty on 9.7.1995 being a sunday and that he exchanged duty with one Srinivasa Rao voluntarily. The Tribunal also referred to the fact that the petitioner had admittedly kept the sister of the complainant in a room at the time of the incident. Taking note of all these facts, the Tribunal held that the petitioner had called Amudha on a Sunday, on a day which was not allotted to him, with an ulterior motive. Consequently, the withdrawal of the complaint and the non-examination of the complainant could not be fatal to the charge which is of serious nature concerning the employee of a public hospital. In the light of the various facts and circumstances, the Tribunal rightly held that there was no infirmity in the enquiry or in the order of the disciplinary authority.

5. A perusal of the enquiry officer's report clearly shows that the petitioner had admitted as a matter of fact that 9th July 1995 was not his duty day and that his contention that he had taken KUB X ray on the patient instead of chest X ray was because of the confusion that there were two patients in the name of Amudha reported on the same day for taking X-ray was also not substantiated through materials. There was no satisfactory explanation from the petitioner that when there was no urgency for taking an X-ray on a Sunday, the summoning of the said patient Amudha on a Sunday after exchanging duty from a regular technician who was supposed to be on duty was without any explanation from him. The support that he sought to derive from the evidence of one Srinivasa Rao does not appear to be too strong, particularly when the evidence of Srinivasa Rao itself is not free from doubt. It is seen from the records that the second respondent had opened Room Nos.3 and 4 in contravention of the orders of the Head of the Department of Radio Diagnosis. Further, in the evidence, Dr.A.K.Sharma, Associate Professor of Radio Diagnosis, as P.W.3, had stated that a chest X-ray was properly taken on one Amudha on 8.7.1995 case sheet No.172497 (complainant) and that a plain X-ray abdomen (errect, supine) was also correctly taken on the person Amudha with case sheet No.172589. The evidence of Dr.A.K.Sharma, Professor, Radio Diagnosis, also shows that he had seen the report submitted. It is also seen from the cross-examination done that there was nothing to support the stand of the second respondent that the X-ray originally taken on the complainant was KUB X-ray. In the context of such an evidence from P.W.3 and in the absence of any material contra from the second respondent, the claim of the second respondent giving the reason for calling the complainant Amudha for a proper X-ray to be

taken on the next day fails as totally an excuse to cover up the allegation made on the second respondent. The statement as found by the enquiry authority is a false statement. The enquiry authority had correctly arrived at the findings and no fault can be found on this score which is totally substantiated by material evidence, as stated by P.W.3. We may further state that in the background of these facts too, the non-examination of the complainant Amudha is not fatal to the disciplinary proceedings taken. The depositions during the enquiry are good enough to prove the charge against the second respondent. The second respondent cannot take shelter under the withdrawal of the letter of complaint from Amudha for the simple reason that it does not clear any doubt as regards the complaint already made which is substantiated by ample evidence herein. However, apart from all these, it is a matter concerning discipline of an Institution rendering a public service and in matters of this nature, the responsibility to take action as well as the responsibility to disprove the allegations deserves to be viewed between an employer and an employee. In these circumstances, rightly the Tribunal has also viewed that it is the bounden duty of the employer, namely, the Government of India, to enquire into the serious allegations of this nature as regards the conduct of a person who is expected to maintain the dignity of the job that he does.

6. On the question of violation of the principles of natural justice, learned senior counsel pleaded strongly that there was serious violations of principles of natural justice in not examining the complainant Amudha who had later on withdrawn the complaint. Learned counsel placed reliance on the decision of this Court in 2005 (4) CTC 202 in the case of ERAJAN,P. Vs. THE DEPUTY INSPECTOR GENERAL OF POLICE and submitted that for the non-observance of the principles of natural justice, the punishment confirmed by the Tribunal is arbitrary and hence, deserves to be quashed by this Court.

7. While dealing with a similar case wherein disciplinary proceedings were taken against a post-graduate teacher to terminate the services on the ground of his improper conduct with a girl student wherein the delinquent teacher was not given an opportunity to cross-examine and hence contended that the procedure adopted was in violation of the said legal principles of natural justice, the Supreme Court, in the case of AVINASH NAGRA Vs. NAVODAYA VIDYALAYA SAMITI AND OTHERS reported in (1997) 2 SCC 534, approved of the decision of the High Court confirming the order of dismissal. In the course of its judgment, while emphasising the necessity of

maintaining high degree of discipline and dedication in a profession which is endowed with a responsibility of imparting knowledge and moulding the calibre, character and capacity of the students to sustain them in later years of life as a responsible citizen in different responsibilities, the Supreme Court held:

> " The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; It is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail in the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. "

In the context of the facts found, the Supreme Court approved of the decision of the Director not to conduct the proceedings exposing the students and modesty of the girl and to terminate the services of the delinquent teacher, considering that the statements were supplied to the delinquent officer and an opportunity was granted to controvert the correctness thereof. The Supreme Court approved of the termination of the services of the officer.

8. Similar is the view taken by the Supreme Court in the case of STATE OF HARYANA Vs. RATTAN SINGH reported in AIR 1977 SC 1512, wherein, the Supreme Court held that in a domestic enquiry, the strict and sophisticated rules of evidence under the Evidence Act may not apply.

> " The simple point is, was there some evidence or was there no evidence – not in the sense of the technical rules governing regular Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. "

The Supreme Court, in that case, found that the evidence of the Inspector of flying squad had some force which had relevance to the charge levelled against the delinquent Conductor, who, after collecting the fares from certain passengers, was guilty of not issuing the tickets. The Supreme Court held that merely because statement of objections was not recorded by the Inspector of flying squad, the order was not vitiated. The non-recording of a statement when the passengers declined to give a statement, the psychology of the passengers in such circumstances was understandable. Ultimately, the Supreme Court held that the evaluation of the evidence on the strength of the co-conductor's testimony is a matter not for the Court but for the Administrative Tribunal. Viewed in the context of the evidence of the various witnesses examined by the disciplinary authorities, the inference drawn thereon cannot be faulted now or re-appreciated solely on the fact that the complainant Amudha was not examined. As had been held by the Supreme Court, the non-examination of the said Amudha is not fatal to the case, since the evidence on the strength of the other witnesses clearly point to the fact that there was some evidence which are good enough and relevant to the charge made against the second respondent thus resulting in an order of dismissal. In the above circumstances, we have no hesitation in upholding the order of the Tribunal.

9. We are of the view that there is no fundamental error in the order of the Tribunal confirming the order of dismissal. It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of the facts. The technical rules of evidence have no application in the case of a disciplinary enquiry. The preponderance of probabilities and the material records are sufficient to arrive at the conclusion by the disciplinary authority; inasmuch as the petitioner was given a fair and reasonable opportunity to make his defence and participate in the enquiry, he cannot complain of violation of the principles of natural justice. Support for this can be drawn from the decision of the Supreme Court reported in (2003) 3 SCC 583 in the case of LALIT POPLI Vs. CANARA BANK & OTHERS and (1999) 1 SCC 759 in the case of APPAREL EXPORT PROMOTION COUNCIL Vs. A.K.CHOPRA.

10. The Tribunal is not an appellate forum nor this Court under Article 226, to substitute its own inferences or go into the sufficiency or adequacy of evidence in support of the particular conclusion. On going through the various aspects of the matter, we are satisfied that there is no error committed, and the evidence relied on by the disciplinary authority is sufficient enough to support the conclusion arrived at. There is no manifest error of law to interfere with the order of the Tribunal.

In the light of the above, the non-examination of the complainant Amudha, would not, by itself, render the order of the authorities as based on no evidence or in violation of the principles of natural justice. Consequently, the writ petition fails and is accordingly dismissed and the order of the Tribunal confirmed. There will, however, be no order as to costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Registrar
   Tamilnadu Central Administrative Tribunal
   Chennai-104.

2. The Director (Administration and Vigilance)
   Directorate General of Health Services
   Nirman Bhavan
   New Delhi.

3. The Director
   Directorate General of Health Services
   JIPMER, Govt. of India
   Pondicherry-6.

+ 1 cc to Mr.M. T. Arunan, ACGSC Advocate SR No.3015
+ 1 cc to Mr.M.K. Veeraraghavan, SCCG Advocate SR No.3043