

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

**Present :-
The Hon'ble Mrs. UrmitaDatta(Sen)
MEMBER (J)**

-AND-

**The Hon'ble Mr. P. Ramesh Kumar
MEMBER(A)**

**J U D G E M E N T
-of-
Case No. OA-65 of 2014**

Dr. Obaidur Rahaman.....Applicant.

-Versus-

State of West Bengal & others....Respondents

**For the Applicants :- Mrs. Sonali Mitra,
Learned Advocate**

**For the State Respondents :- Mr. Biswa Priyo Roy,
Learned Advocate**

Judgement delivered on : :- 20-09-2019

**The Judgement of the Tribunal was delivered by :-
Hon'bleMrs. UrmitaDatta (Sen), Member(J)**

J U D G E M E N T

The instant application has been filed praying for the following reliefs :

- (a) **An order directing the respondents, their agents, subordinates and successors to rescind, cancel and/or withdraw the purported decision communicated by the respondent concerned under memo dated 06-12-2013 being Annexure 'F' to this application.**
- (b) **An order directing the respondents, their agents, subordinates and successors to regularize the pay and allowances of the petitioner.**
- (c) **An order directing the respondents, their agents, subordinates and successors to produce all records and proceedings so that conscionable justice may be administered by granting the relief for hereinabove;**
- (d) **To pass such other or further order or orders as to the Hon'ble Tribunal may deem fit and proper;**

As per the applicant, while he was working as E.M.O. at emergency of the New General Hospital, Berhampore on 13-11-2006, one lady patient called Nabanita Mukherjee, with acute renal failure, was brought dead in the emergency. However the family of the said patient alleged that the applicant did not attend the said patient in the car standing outside the hospital premises and had asked the patient's family to bring the patient in emergency for diagnosis. However she had already died when brought to emergency. The applicant was charge sheeted basically

on the basis of the said allegation of patient's family vide Memo dated 15-06-2009 (Annexure-A). In the mean time, the applicant has filed his reply on 02-12-2006 and 26-06-2009 (Annexure-B collectively) to the Chief Medical Officer of Health denying specifically such allegation and had submitted that there was no such incident of refusal to attend the patient in the car outside the premises, as he had met first time with the brought dead patient at emergency only on the said date. Therefore the allegation is baseless. In the mean time one enquiry officer was appointed on 15-06-2009 and who had asked the witnesses to depose before him vide Memo dated 17-07-2009 (Annexure-C) and ultimately the Enquiry Officer submitted his enquiry report on 10-03-2010 (Annexure-F). Thereafter the Disciplinary Authority served second show cause notice to the applicant on 16-09-2011. However, the Disciplinary Authority without considering the submission of the applicant, had imposed the penalty of reduction of pay by 4(four) steps for a period of 3(three) years during which he shall not earn his normal increments vide order dated 06-12-2013 (Annexure-G). Being aggrieved with, the applicant has filed the instant application. As per the applicant, the Disciplinary Authority had passed mechanical and non-speaking order on the basis of an enquiry report which is vague. Therefore the Counsel for the applicant has prayed for quashing of the Disciplinary Authority's order.

Though enough opportunity was granted to the respondents to file their reply since 2014 no reply has been filed. The Counsel for the respondents has submitted that the authority has rightly imposed punishment upon the applicant.

We have heard both the parties and perused the records. It is noted that the charge sheet was initiated on the basis of an allegation made by the family of the deceased patient. As per the claim of the patient party, the applicant did not attend the patient in the car standing outside the gate of the hospital, instead, had

directed to bring the patient in the emergency for diagnosis and treatment. However the applicant had vehemently denied the said allegation as baseless since the applicant had met with the patient and patient party first at emergency where the patient was brought in a trolley by her family members, who was found brought dead. From the perusal of the enquiry report, it is noted that the enquiry authority had stated inter alia :-

“The charged Officer appeared before the undersigned on 17-09-2009 and completely denied the charges against him(Annexure-C). PW-3, Dr. Piyali Kumar Singh (Yadav) in her deposition told that she received a phone call from the relative of the patient and tried to contact E.M.O. on duty (charged officer) regarding the severity of the case but E.M.O. did not receive he call. One Mr. Thakur (from Ward Master Office) received the call wherein he was informed to communicate the seriousness of the patient. She also attending emergency at 6-30 a.m. and came to know that the charged officer refused to examine the patient in car and thereby there was a delay. She also told that as the patient came in bad condition oxygen could be administered. She again joined in her duty shift on that day at 7-20 a.m. to relieve Dr. Rahaman as per duty roster at that time everything was started. PW-1 Dr. Barun Santra, ex. Dy. CMOH-1, Murshidabad in his deposition told that he was asked by CMOH to cause an enquiry regarding “Misbehaviour of Dr. Rahaman”, Dr. Rahaman (charged officer) did not cooperate in the same enquiry. As per his enquiry from patients relatives and other staffs who were present at that time. “Chaos could be avoided by Dr. Rahaman if he examined the patient in car when the patient arrived” (Annexure-D). In spite of best effort, other PW could not attend for deposition. It is also gathered

that there is no Ward Master named “Dilip Thakur”. There was one person named Dilip Thakur who was under the contractor.

Analysis of the case :-

From the evidence of PW-3, there is sufficient reason to believe that the charged officer did not promptly started examination and treatment of the moribund case. May be if he could start prompt treatment in time, the patient could expire but it is very unfortunate that the immediate steps were not taken as soon as the patient arrived in emergency.

Had it been so that the patient was not alive, when she arrived, it was the duty of the charged officer to inform police regarding the “brought dead” case. This was also not done.

Opinion :-

After going through all the relevant annexure, hearing from charged officer and the PWs, I am of the opinion that the charge framed against the charged officer is sustained and the charged officer is found guilty.”

On the basis of enquiry report, ultimately, the Disciplinary Authority has passed the final order dated 06-12-2013, holding inter alia :-

“AND WHEREAS the Governor being the disciplinary authority has agreed with the said recommendation of Public Service Commission, West Bengal;

NOW, THEREFORE, the Governor has been pleased to order that penalty of reduction of pay by four steps in the existing pay band for a period of three years during which he shall not earn his normal increments be imposed upon Dr. Obaidur Rahaman, E.M.O. in terms Rule 8(iv) of West Bengal Services (C.C. &A.) Rules, 1971.

The Governor has further been pleased to order Dr. Obaidur Rahaman, E.M.O. be debarred from promotion, if due, during the period of his undergoing penalty.”

From the perusal of the above, it is noted that the Disciplinary Authority did not consider the submission of the applicant. It is further observed that Enquiry Authority, on the basis of submission of one Dr. Piyali Kumar Singh(Yadav) and one Dr. Barun Santra, without considering the statement of defense filed against the submission, had come to a conclusion that the applicant denied to attend the patient in the car outside the premises of the hospital while the applicant was only one Doctor who was entrusted to the duty of emergency with other patients. Even both the Enquiry Authority as well as the Disciplinary Authority had come to a conclusion that the applicant is guilty on the basis of statement of two witnesses, who were also not present at the time of incident. From the above, it is observed that the Disciplinary Authority, while coming to the conclusion, did not consider the submission of the applicant, but has only imposed the punishment without disclosing or giving any reasons for his conclusion. It is pertinent to note that the duty of a Doctor is to attend his patients at his place of duty i.e. at emergency, where he was allotted with duty but not to attend patient outside the premises of the hospital on the request of another Doctor made over phone, keeping aside in waiting other patients in emergency, when he was the only Doctor on duty in the emergency. Further

there was no such allegation that he did not attend the said patient in emergency (when she was brought before him).

Therefore in our considered view, the order dated 06-12-2013 passed by the Disciplinary Authority is liable to be quashed and set aside. Accordingly, we quash and set aside the Disciplinary Authority's order and remand back the matter to consider the case afresh and passed a reasoned and speaking order within a period of 12 weeks from the date of receipt of this order.

Accordingly, the OA is disposed of with the above observations and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)