

J U D G E M E N T

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

(A) A direction do issue upon the concerned respondent authorities to forthwith set aside/rescind/revoke/withdraw the impugned Final Order dated 19-06-2013 passed by the Director of Health Service and Ex-officio, Secretary, Department of Health And Family Welfare, West Bengal and the Appellate Order dated 26-11-2013 passed by the Principal Secretary, Department of Health And Family Welfare, Government West Bengal, upholding the same being Annexures-“D” and “E” herein, together with the entire Departmental Proceeding initiated under Memo No. C/35 dated 07-02-2012 drawn up against the applicant and to comment them to act strictly in accordance with law;

(B) A direction do issue upon the concerned respondent authorities to forthwith release all the terminal benefits in favour of the applicant and to restrained them from acting in any

manner whatsoever prejudicial to the interest of the applicant;

(C) A direction do issue upon the concerned respondent authorities to forthwith produce and/or cause to be produced the entire records relating to the applicant's case and on such production being made render conscionable justice upon perusing the same;

(D) And/or to pass such other or further order or orders as to this Hon'ble Tribunal may deem fit and proper.

2. As per the applicant, while working as Store Keeper at Lumbini Park Mental Hospital, Calcutta, he was served with a Memorandum dated 07-02-2012 basically on the charges that he had caused mental assault to Dr. Kalidas Dutta, the then Superintendent of Lumbini Park Mental Hospital, Calcutta on 11-05-2011. Further it has been alleged that he did not cooperate with the Enquiry Committee constituted for the purpose of conducting enquiry with regard to the expired medicine of Rs. 2058.70/- (Annexure-A). In response to that, the applicant filed written statement of defense dated 29-02-2012 controverting the allegation leveled against him and the Inquiry Officer subsequently submitted his enquiry report dated 19-10-2012 (Annexure-B Collectively). Thereafter the Disciplinary Authority issued a second show cause notice dated 10-12-2012 proposing punishment.

The applicant submitted his reply to the said second show cause notice (Annexure-C Collectively). However the Disciplinary Authority imposed the punishment vide final order dated 19-06-2013(Annexure-D) inflicting the punishment of reduction of pay of one lower stage in the time scale of pay till he attains his age of superannuation and during this period he will earn increment and on expiry of such period the reduction will have the effect of postponing the future increments of his pay in terms of Rule 8 (IV) of W.B. Services (C. C. & A.) Rules, 1971 against which the applicant preferred an appeal dated 26-07-2013 (Annexure-E). However as per the applicant, the said appeal was rejected without considering the grounds taken in the appeal petition by way of cryptic and non-speaking order. Being aggrieved with, he has filed the instant application.

3. It has been submitted by the applicant that :-

- i) The Appellate order being non-speaking and cryptic one is liable to be quashed.
- ii) Though it is a settled principle of law that the charge officer should be allowed to cross examine the witnesses by whom the Article of Charges are proposed to be established. But unfortunately, the eye witness was not examined by the Enquiry Authority in presence of the applicant. Therefore there is no scope to cross examine the said sole eye witness, which would be evident from the enquiry report dated 19-10-2012.

- iii) In terms of Rule 10(3) W. B. S. (C. C. & A) Rules, 1971, the Disciplinary Authority is bound to serve the list of documents and list of witnesses along with the charge memo but the authority concerned did not follow the said Principle of Rule despite several request from the applicant to that effect.
- iv) The Enquiry Committee without conducting formal enquiry by way of examining or granting cross examination of witnesses had mechanically come to the conclusion against the applicant on the basis of preliminary enquiry.
- v) From the enquiry report dated 19-12-2010, it would be evident that the Enquiry Authority had come to the conclusion upon the statement of one Mr. Ratan Roy, G.D.A. of the said Lumbini Park Mental Hospital, Calcutta, who according to the authority was only eye witness of the said incidents. However there was no such G.D.A. called Ratan Roy at the Lumbini Park Mental Hospital, Calcutta at the material point of time.
- vi) With regard to the charge no. 2 i.e. non-cooperation with the Enquiry Committee headed by the Deputy D.H.S. (M.E.R.T.), it has been categorically stated that he was never called to appear before the said committee in his reply which was not denied by the E.O. However the Disciplinary Authority as well as Appellate Authority while passing the order had not considered the said submission which shows non-application of mind of the authority.

4. The respondents have filed their reply wherein they have submitted that the applicant never cross examined the prosecution witness. Moreover there is not mandatory for provision appointment of Presenting Officer. However as in the mean time, the applicant retired from service on 30-09-2013, all his retrial benefit i.e. P.P.O., Gratuity, Commutation Payment Order etc. has been sanctioned and he was already granted the Group Insurance and Leave Salary. The Arrear Salary from the period from 09-04-2010 to 25-08-2010 and 50% pay for the period of suspension from the period from February 2012 to December 2012 yet to be paid.

5. The applicant has filed his rejoinder wherein he has specifically denied the contention of the respondent that he was allowed to cross examine of P.W.s on 24-09-2012 as because the said witnesses was never examined by the Enquiry Authority, therefore there is no scope to cross examine the said witness.

6. Heard both the parties and perused the records. It is noted that the applicant has basically challenged the Disciplinary Authority's order dated 19-06-2013 and Appellate Authority's order dated 26-11-2013 on the ground that both the orders are non-speaking and cryptic one as the authorities never considered the submission made by the applicant before them. It is noted that the applicant had categorically submitted in his reply to the second show cause notice as well as before Appellate Authority even in the instant application also that there is no existence of any person called Ratan Roy, G.D.A. at the said Lumbini Park Mental Hospital, Calcutta, who has been considered as only one eye witness of the incident but the charge was never

even denied by the respondents at any point of time. Moreover the enquiry report with regard to the charge no. 1, the Enquiry Authority had come into conclusion inter alia :-

“Sri Dwijendra Chandra Dey has denied the fact without any evidence/proof and decline to cross examine any Employee including Sri Ratan Roy, GDA, who is only eye witness of that incidence.

Observation of 1.A.

Sri Dwijendra Chandra Dey, Storekeeper L.P.M.H. has produced nothing in his defense except denying.

Conclusion :

As per written statement given by Sri Ratan Roy, GDA (only eye witness of that incidence) in front of the 1A. Sri Dwijendra Chandra Dey Ex Store Keeper Lumbini Park Mental Hospital (L.P.M.H.) is guilty and may be charged with misconduct, misbehavior which tantamount to violate RULE 3 of the W.B.S (duties, rights & obligations of the Govt. Employees) rules, 1980.”

7. It is further observed that the Disciplinary Authority had passed the following order :-

“Whereas Shri Dwijendra Chandra Dey, Store Keeper, attached to the Lumbini Park Mental Hospital, Kolkata was charge sheeted vide D.H.S. Memo No. C/35 dated 07-02-2012 for his misconduct, misbehavior and other unbecoming activities;

And whereas Dr. Tapas Kumar Nandi, Dy. Director of Health Services (Mental), West Bengal, Swasthya Bhaban, Salt Lake City, Kolkata-91 was appointed as Inquiring Authority vide DIIS order C/36 dated 07-02-2012 to

enquire into the charges framed against Shri Dwijendra Chandra Dey, Store Keeper;

And whereas the said Inquiring Authority has completed his enquiry and has since submitted his report;

And whereas a 2nd show cause notice was issued vide No. 379 dated 10-12-2012 proposing the following penalty with the direction to submit his say, if any, in defence of the proposed penalty,

“Reduction to 1(one) lower stage in the time scale of pay of Shri Dwijendra Chandra Dey, Store Keeper, till he attains his age of superannuation and during this period he will earn increment and on expiry of such period the reduction will have the effect of postponing the future increments of his pay in terms of Rule 8 (IV) of W.B. Services (C.C. & A.) Rules, 1971.”

And whereas the said Shri Dwijendra Chandra Dey, has submitted his say raising therein some points about conduction of enquiry;

And whereas all the points raised by Shri Dwijendra Chandra Dey in his defence statement have been examined in true sense;

And as such, on going through the relevant papers/documents including the submission of Shri Dwijendra Chandra Dey and applying mind on to it, I, the Director of Health Services, West Bengal being the appointing and disciplinary authority of the post held by Shri Dwijendra Chandra Dey, Store Keeper, hold the view that, Shri Dey, S/K has acted not in accordance with Rule 3 of the W.B.S (duties, rights & obligations of the Govt. Employees) Rules, 1980 and is found guilty of the charges leveled against him and accordingly order the following penalty against him :-

“Reduction to 1(one) lower stage in the time scale of pay of Shri Dwijendra Chandra Dey, Store Keeper, till he attains his age of

superannuation and during this period he will earn increment and on expiry of such period the reduction will have the effect of postponing the future increments of his pay in terms of Rule 8 (IV) of W.B. Services (C.C. & A.) Rules, 1971.”

8. Further the Appellate Authority had passed the following order :-

“Whereas Shri Dwijendra Chandra Dey, Ex-Store Keeper, Lumbini Park Mental Hospital was found guilty of the charges under Rule-3 of the W.B.S. (D.R.O.) Rules, 1980;

And whereas the Director of Health Services, West Bengal, being the appointing and disciplinary authority of the post held by Shri Dey imposed following penalty against him vide Order No. C/254 dated 19-06-2013 :-

“Reduction to 1(one) lower stage in the time scale of pay of Shri Dwijendra Chandra Dey, Store Keeper, till he attains his age of superannuation and during this period he will earn increment and on expiry of such period the reduction will have the effect of postponing the future increments of his pay in terms of Rule 8 (IV) of W.B. Services (C.C. & A.) Rules, 1971.”

And whereas Shri Dey had appealed on 26-07-2013 against Order No. C/254 dated 19-06-2013 of Director of Health Services, West Bengal, under Rule-15 of W.B.S.(CCA) Rules, 1971;

And as such, after hearing Shri Dey in person on 28-10-2013 and on going through the relevant papers/documents including the statements of Shri Dey and after due consideration of the case with judicious mind, I, the Principal Secretary of H & F.W. Department, West Bengal, being the appellate

authority hold the view that there is no ground for reducing the penalty and hence the appeal is dismissed.”

9. From the perusal of the above 2(two) orders, it is noted that though the applicant had raised different question of fact and law. However both the Disciplinary Authority and Appellate Authority had passed their order without observing/considering such grounds in a cryptic and mechanical manner. Therefore in our considered opinion both the Disciplinary Authority and Appellate Authority order are liable to be quashed and set aside being cryptic one.

10. Accordingly, we quash and set aside the order dated 19-06-2013 as well as the order dated 26-11-2013 and remand back the matter to the Disciplinary Authority for consideration of the case of the applicant after granting him proper opportunity especially with regard to the eye witness on the basis of whose statement the charge against the applicant has been proved. However since the applicant has retired in the mean time. The respondent authority is directed to act as per Rules and conclude the disciplinary proceeding within a period of 12(twelve) weeks from the date of receipt of this order. However the respondent should disburse the admissible amount of retrial benefit to the applicant immediately, if not paid already.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)

