
(2020) 10 CAT CK 0160

In the Central Administrative Tribunal

Case No : Original Application No. 2019 Of 2017

Col. (Retd.) Dr.Saroj Kumar Ojha

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 28-10-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14

General Financial Rules, 2005 — Rule 145, 146, 151, 178, 179, 180, 181

Citation : (2020) 10 CAT CK 0160

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : A.K.Barua, Ashok Sharma, J.P.Tiwari

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant retired from the Indian Army as a Colonel. Thereafter, he was appointed as Joint Secretary by the Dental Council of India (DCI), the

3rd respondent herein on 28.02.2012,. He was also placed on probation for a period of two years. It is stated that he was placed under suspension on

16.07.2015. Thereafter, disciplinary proceedings were initiated under Rule 14 of the CCS (CCA) Rules, 1965 by issuing a memorandum of charge

dated 04.03.2016, framing 11 articles of charge. The applicant submitted his reply on 14.03.2016. Not satisfied with the explanation, the disciplinary

authority ordered inquiry. It is stated that the inquiry officer submitted a report on 16.03.2017, holding that the charges under articles I to V, VIII, X

and XI are held proved. A copy of the report was furnished to the applicant, together with a show cause notice dated 02.04.2017, requiring him to

explain as to why, suitable punishment be not imposed. The applicant submitted his reply on 20.04.2017. The General Body Meeting of the DCI,

decided to impose the punishment of removal from service, vide its resolution passed in the meetings held on 14th and 15th May 2017. The resultant

order was passed on 17.05.2017, imposing the punishment of removal from service.

2. The applicant filed this OA challenging the memorandum of charge dated 04.03.2016, the inquiry report, the show cause notice dated 2.04.2017, and the order of punishment dated 17.05.2017.

3. The applicant raised several contentions. According to him, the President of the 3rd respondent Council did not have the competence since he

suffered disqualification on account of using the office of Respondent No.2 as an usurper, without a valid membership. It is also stated that an FIR has

been registered against the President in RC AC 1 of 2017 A 0002 for an offence punishable under Section 120-B, r/w 420 of IPC and various

provisions of Prevention of Corruption Act.

4. The applicant contends that when he did not permit certain objectionable activities of the President, the charge memo was issued. It is also stated

that a retired employee was appointed as an Inquiry Officer and that the same is impermissible in law. Another contention is that he was denied

permission to take assistance of a defense assistant.

5. The applicant submits that the findings of the Inquiry Officer are untenable and contends that the various allegations made against him are without

any basis. By referring to certain provisions of the Dentists Act and the Dental Council of India Regulations made thereunder, he contends that the

proceedings initiated against him do not accord with law.

6. On behalf of the respondents, a detailed reply is filed. It is stated that there is no post of the Joint Secretary in the establishment of the 3rd

respondent and the appointment of the applicant was only a stop gap arrangement, till the Secretary is appointed. They point out that though the

engagement of the applicant could have been terminated straightaway on account of his not being a regular employee, the disciplinary proceedings, in

accordance with Rule 14 of the CCS (CCA) Rules, 1965 were initiated and a detailed inquiry was conducted. They state that the charges framed

against the applicant are very serious in nature and on the basis of the findings

in the inquiry, an order of removal from service was passed.

7. The arguments on behalf of the applicant were advanced by Shri Nalin Kohli, for Mr.A.K.Barua, learned counsel for the Applicant, and those on

behalf of the respondents were advanced by Shri Vikas Singh, learned Senior Counsel for Mr. Ashok Sharma, learned counsel for the Respondents 2

and 3, and Shri J.P.Tiwari, learned counsel for Respondent No.1.

8. We find certain extraordinary features in this case. The 3rd respondent is a creature under the Dental Council of India Act. Neither under Act nor

under the Rules made thereunder, there exists any post of Joint Secretary. Despite that, not only the applicant was appointed to that post but was also

placed under probation. The second is that the applicant devoted 25 pages to give a synopsis of his case and a substantial part is devoted to attack and

criticize the President of the Council. Whatever be the circumstances under which the applicant came to be appointed as Joint Secretary, the fact

remains that he was issued with a charge memorandum on 04.03.2016 with 12 articles of charges. They read as under:

Article-I

Col. (Retd.) Dr.Saroj Kumar Ojha, at present under suspension, was working substantially, as Joint Secretary, Dental Council of India during

01.04.2012 to 31.03.2014 and during his tenure has committed serious financial irregularities in procuring goods and services from various private

suppliers without following any duly established process and have acted in breach of Rules 145, 146, 151, 178, 179, 180 and 181 of the General

Financial Rules, 2005 and passed bills and made payments for the same.

Further, Dr.Ojha further procured goods and services amounting to Rs.24,09,217.00 (Twenty Two Hundred and Seventeen only) in clear violation of

Rules 145, 146, 151, 178, 179, 180 and 181 of the General Financial Rules, 2005. These goods/services were procured arbitrarily by Dr.Ojha from

private suppliers instead of Kendriya Bhandar, without following due procedure as laid down in the General Financial Rules, 2005.

Furthermore, Dr.Ojha had ordered the clearance of the invoice raised by the said private suppliers and service providers, clearly overlooking the

irregularities in the invoices, thereby clearly causing financial loss to the Council.

Article-II

While functioning in the aforesaid office Dr.Ojha has accepted cheques in place of demand drafts from Dental Colleges/Institutions in breach of the rules and regulations of DCI and compromised with the financial interests of the Dental Council of India. Dr. Ojha has even failed to take action as per law laid down in the Negotiable Instruments Act, 1881 when the said cheques got dishonoured.

Article-III

While in office and in his official capacity, Dr.Ojha has committed several acts of willful insubordination and disobedience unbecoming of Officiating Secretary DCI during the period of 2014-15.

Article-IV

While, in office Dr.Ojha seriously tarnished the image of DCI and also the office held by him by using unparliamentary, abusive and offensive words in the office of the DCI against the President of DCI. Dr. Ojha has also ridiculed various employees that belong to the Scheduled Castes and Scheduled Tribes on various occasions by using derogatory languages against them.

Article-V

While functioning in his official capacity, Dr. Ojha has destroyed many files, records, and correspondences, which were kept in his custody, without prior permission of or intimation to the Executive Committee or General Body of the DCI. Dr. Ojha's act of destroying the aforesaid documents of DCI was in willful insubordination and disobedience to the decisions taken by the General Body of the DCI in its meeting held on 24th and 25th February 2015 amounting to misconduct and abuse of the position of the Officiating Secretary of Dental Council of India.

Article-VI

While functioning in his official capacity, Dr. Ojha has deliberately withheld vital information from the Dental Council of India. Dr. Ojha even failed to furnish annual return of his properties and assets in breach of the service rules.

Article-VII

While functioning in the aforesaid office, and by misusing his position as Officiating Secretary, he unauthorizedly accessed his own service books and affixed his signatures and entries in the Place of the President of Dental Council of India as the attesting officer, in his service books indicating that

Dr. Ojha intended to attest on his own behalf which clearly he, as a government servant, was unauthorized to do. Therefore, the aforesaid acts of Dr.

Ojha amounts to misconduct and is unbecoming of Government servant.

Article-VIII

While discharging his official duties, Dr. Ojha also tried to usurp the power of the Executive Committee of DCI. With regard to the dispute in

connection with the membership of Dr. Debashis Banerjee, Dr. Ojha received a letter from the Govt. of India dated 10.06.2015 and while the matter

was pending before the Executive Committee of the DCI, Dr. Ojha issued a letter to Dr. Debashis Banerjee inviting his comments for the same. On

02.07.2015, Dr. Ojha received the comments from Dr. Debashis Banerjee and on perusal of the same, Dr. Ojha himself was of the opinion that the

matter may be placed before the Executive Committee of the DCI. But before, any decision could be arrived at by the Executive Committee of the

DCI, Dr. Ojha arbitrarily overstepped his jurisdiction being the Officiating Secretary of DCI and usurped the power of the Executive Committee of the

Dental Council of India and unauthorizedly and unilaterally decided to cease the membership of Dr. Debashis Banerjee and communicate such decision

Government of India in clear violation of the provisions of the Dentists Act, 1948 and Regulations made thereunder.

Article-IX

While functioning in the aforesaid office, Dr. Ojha has made several attempts of illegal advancements towards the female contractual staff of DCI

namely Ms. Kiran Goswami and thereby tarnished the image of DCI.

Article-X

It has come to the knowledge of DCI, that while still acting as the Joint Secretary, Dr. Ojha continued private practice, as a dentist in breach of the

service rules wherein being a full time employee Dr. Ojha was not entitled to private practice.

Article-XI

Dr. Ojha has also tarnished the image of the Dental Council of India and its female employees by widely circulating/publicizing the illicit video CDs,

when Dr. Ojha in his official capacity was expected to take corrective measures at his own level or in the alternative, was obliged to inform the higher

officials of the same. Dr. Ojha failed to discharge the responsibilities cast under the provisions of Sexual Harassment of Women at workplace

(Prevention, Prohibition and Redressal) Act, 2013.

Article-XII

Dr.Ojha, while acting as the officiating and Joint Secretary, has indulged in gross misuse of his powers and authority by suspending and punishing

various officers at the cadre level without obtaining approval from either the President or the Executive Committee.

9. A perusal of the same discloses that hardly any facet of misconduct or indiscipline was left out. The applicant submitted his explanation and not

satisfied with that, the disciplinary authority ordered inquiry. The applicant raised several objections in the course of inquiry. In fact, he filed an OA

before this Tribunal in the context of availing the services of a defense assistant. At every stage, he came forward with one objection or the other.

Ultimately, the inquiry officer submitted a report holding the Articles of charge I to V, VIII, X and XI as proved. The applicant was furnished a copy

thereof. On a consideration of the explanation submitted by him, the competent authority decided to remove him from service.

10. In the course of arguments, reference is made to certain provisions of the Dentist Act to drive home the point that the applicant was holding the

post of Secretary, and that the procedure to be followed for any proceedings against the Secretary, was not followed. Once it is not disputed that the

applicant was appointed as Joint Secretary and not as Secretary, the question of referring to relevant provisions of the Act or Regulations relevant for

the post of Secretary framed thereunder does not arise.

11. The disciplinary proceedings were initiated on the basis of the decision taken by the General Body of the Council. There is no authority higher than

that. Though the applicant filed an OA on an earlier occasion, he did not raise the plea that the charge memo was issued by an authority not vested

with power. The inquiry was proceeded with and a report emerged. The purport of the various articles of charge has already been extracted in the

preceding paragraphs. Majority of them were held proved and each one of them is serious in nature. They include the cases of financial defalcation,

insubordination and the like. Even, part of them are sufficient to impose the punishment of removal.

12. Though an effort was made to convince us that the findings in the report are not correct, it is fairly well settled that the Tribunal cannot function as an Appellate Authority against the findings of the inquiry officer. It is only when the findings are found to be based on no evidence or when the inquiry suffered from any legal infirmities that the Tribunal can interfere. No such grounds are pleaded, much less established.

134 The applicant, who comes from Armed Forces, was required to be highly disciplined. However, the findings recorded in the inquiry disclose that he did not live up to what was expected from him.

13. We do not find any merit in the OA and the OA is accordingly dismissed. No order as to costs.