

Superintendent, Govt. T. B. Sanatorium and Another

Vs

J. Srinivasan

Civil Appeal No. ... of 1996 (arising out of Slp (C) No. 21884 of 1995)

(B.P. Jeevan Reddy, K.S. Paripoornan JJ)

08.04.1996

ORDER

1. Leave granted.
2. Heard learned counsel for the parties.
3. This appeal is preferred against the judgment of a learned Single Member of the Tamil Nadu Administrative Tribunal allowing the original application filed by the respondent.
4. The respondent was a Male Nursing Assistant in the TB Hospital. The charge against him is that he tried to misbehave with the wife of an in-patient during the night. Even earlier he had tried to tease her. The proceedings were initiated on the basis of a complaint filed by the said lady. Actually, the lady and her husband left the hospital and went to their place in the State of Andhra Pradesh where the husband is said to have died later of TB.
5. On the basis of the preliminary enquiry report, a regular enquiry was ordered. The Enquiry Officer examined a co-worker and certain other persons who were present in the ward at the relevant time. In spite of efforts being made, the presence of the lady (with whom the respondent is said to have misbehaved) could not be secured. Even so on the basis of the evidence available, the Enquiry Officer reported that the respondent is guilty. (The enquiry was actually conducted by a team of two doctors, Dr Rangarajan and Dr Mancy Alexander.) On the basis of the enquiry report, the disciplinary authority ordered the removal of the respondent.
6. The Tribunal has allowed the original application on two grounds, viz., (i) that a copy of the preliminary enquiry report was not furnished to the respondent and (ii) that the complainant or her husband were not examined at the enquiry and, therefore, the respondent had no opportunity to cross-examine them.
7. After hearing the counsel for both the parties, we are satisfied that the order of the Tribunal cannot stand. Taking the second ground first, we find that even though the complainant or her husband were not examined at the regular enquiry, there is other evidence including the evidence of the co-worker and another co-patient upon which the finding recorded against the respondent can be sustained. The Tribunal could not have gone into the adequacy of evidence. It could interfere only if it is a case of "no evidence" - and that is not the case here. Coming to the first ground, the respondent has not shown that there is any rule requiring that the preliminary enquiry report should be served upon the delinquent officer/employee before commencing the enquiry. No prejudice is shown to have resulted to the respondent on account of not supplying the said report. In the

circumstances, the findings of the disciplinary authority could not have been interfered with by the Tribunal.

8. The appeal is accordingly allowed and the judgment in order to the Tribunal is set aside. No costs.