Central Administrative Tribunal
Principal Bench

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O.A. No. 46/2002

New Delhi this the 23rd day of April, 2003

Hon'ble Shri Shanker Raju, Member (J)

Mrs. Meena
Farash, EMP No.433,
W/o Shri Phool Kumar
R/o 1514, Pana, Mamoor Pur,
Narela, Delhi.

-Applicant

(By Advocate: Ms. Rachan Tiwari with
Shri Alok Lakhanpal)

Versus

1. Delhi Administration
Ministry of Health
Through its Secretary,
Delhi.

2. Lok Nayak Jai Prakash Narain Hospital
through its Director (Admn.)
New Delhi-110002

3. Medical Superintendent
Lok Nayak Jai Prakash Narain Hospital
New Delhi.

-Respondents

(By Advocate: Shri Vijay Pandita)

ORDER (Oral)

Applicant, an ex-farash, impugns respondents' order dated 26.6.2000, whereby after dispensing with the disciplinary proceedings under Rule 19 of the CCS (CCA) Rules, 1965 her services have been terminated. She has sought quashment of the same with direction to re-instate her with full back wages.

2. Applicant joined on ad hoc basis on 26.9.86 and by an order dated 21.10.87 she was granted temporary status w.e.f. 24.9.86. As husband of applicant was untraceable for many years and due to her illness in October, 1999 and she ultimately suffered Tuberculosis (TB) of lungs for which she got treatment

in CGHS and she could not join her duties.

3. Respondents on the basis of the postal remarks that applicant is not found at the given address and has left, published a notice in the daily newspaper on 26.4.2000 directing applicant to resume duties within 10 days and ultimately on account of her absence as enquiry was not found practicable dispensed with the same under Rule 19 (ii) of the Rules ibid and terminated her services.

4. Applicant preferred an appeal against the order, which has not been responded to, giving rise to the present OA.

5. Learned counsel for applicant contended that applicant's absence from 16.10.1999 to 24.8.2000 was on account of her severe illness as she was suffering from TB of lungs for which set was getting treatment in government hospital, for which an intimation was sent to respondents. As the notices have not been served upon applicant, when she approached respondents with medical record she was informed that she has already been terminated.

6. It is further stated that in a case of absence provisions of Rule 19 (ii) cannot be resorted to, as the alternate mode of proceeding applicant ex-parte was very much available with respondents and the enquiry was very much reasonably practicable.

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7. Lastly, it is stated that her medical record and genuine ground of illness have not at all been considered by the authorities and arbitrarily his appeal has been withheld and no orders have been passed thereon.

8. Sh. T.D. Yadav, learned counsel appearing for Sh. Vijay Pandita strongly rebutted the contentions and stated that from the previous record of applicant it is established that she is a habitual absentee and wilfully absented herself from 16.10.99. The grounds adduced are after thought. She has not informed the department and the medical record produced is not genuine. When the treatment was available in LNJP Hospital for TB why applicant has resorted to CGHS.

9. Sh. Yadav contended that several communications sent at the address of applicant received undelivered and lastly notice was published in the newspaper. Despite this applicant had not responded and accordingly it was found that the enquiry could not be held and is not reasonably practicable and as such rightly the resort has been made to Rule 19 (ii), which does not suffer from any legal infirmity.

10. I have carefully considered the rival contentions of the parties and perused the material on record. As applicant has got temporary status and had continued in employment for more than 14 years there is a presumption of her confirmed status, as such respondents initially sought for initiating

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disciplinary proceedings against applicant. Rule 19 (ii) of the CCS (CCA) Rules, 1965 is a special procedure notwithstanding the provisions of Rule 14 ibid and where the disciplinary authority is satisfied for the reasons to be recorded in writing that it is not reasonably practicable to hold an enquiry, a resort can be made to the aforesaid provisions. While dealing with the issue of dispensation of enquiry as not reasonably practicable under Rule 19 (ii) the Apex Court in a Constitution Bench decision in Union of India v. Tulsi Ram Patel, AIR 1985 SC 1416 as well as in Satyavir Singh & Ors. v. Union of India, AIR 1986 SCC (L&S) 1 laid down the following proposition:

> "6. There are two conditions precedent which must be satisfied before action under Clause (b) of second proviso is taken against a Government servant. These conditions are--
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> (i) There must exist a situtation which makes the holding of an inquiry contemplated by Art.. 311 (2) not reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be--
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> (a) Where a civil servant, through or together with his associates, terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear or reprisal in order to prevent them from doing so; or
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> (b) where the civil servant by himself or with or through others threatens, intimidates and terrorizes the officer who is the Disciplinary Authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or
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> (c) Where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.
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> The Disciplinary Authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or

because the Department's case against the civil servant is weak and, is, therefore, bound to fail."

11. A coordinate Bench at Ernakulam in R. Raghavan v. Divl. Rly. Manager (Ernakulam), 1989 (10) ATC 195 in a case of an employee remaining absent from duty and whose whereabouts were not known on resort of the respondents therein to Rule 14 (ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 which is akin to Rule 19 (ii) ibid observed as follows:

"7. Further, even, if it is presumed that by displaying on the notice board the charge memo is deemed to have been served on the applicant the respondents should have nonetheless conducted an ex parte enquiry under sub-rule (23) of Rule 9, which reads as follows:

(23) If the railway servant, to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the enquiry authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiry authority may hold the inquiry ex parte.

The concept of ex parte enquiry where the delinquent official wilfully absents himself is well known in service jurisprudence. Such an enquiry obliges the disciplinary authority to assess or cause to be assessed all available evidence documentary or oral which the respondents have in support of the charge-sheet and then draw his objective conclusions about the guilt or otherwise of the delinquent officer. The absence of the delinquent officer enhances the burden on the disciplinary authority of discharging his duty objectively to assess how far the charges against the delinquent government servant have been established. This obligation cannot be sidetracked by the disciplinary authority by taking recourse to the extraordinary provisions of Rule 14 which have been prescribed in pursuance of the second proviso to clause (2) of Article 311 of the Constitution. The enquiry can be dispensed with only when it is not reasonably practicable to hold an enquiry because of circumstances like local commotion or where the witnesses are terrorised. Since in the instant case before us there is no such averment and the only reason indicated is the

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disappearance of the petitioner it cannot be held that it was not reasonably practicable to hold an enquiry which includes even an ex-parte enquiry."

12. In OA-1200/2000 decided on 24.1.2002 by the Principal Bench in Mrs.Shailamma Lawrence v. Medical Superintendent & Another a similar view has been taken.

13. If one has regard to the aforesaid decision even if applicant has not responded, though there is no valid legal service upon her, under no circumstance respondents could have resorted to Rule 19 (ii) as a situation never existed which could have brought the case of applicant within the purview of Rule 19 (ii). As applicant was not cooperative respondents could have initiated the proceedings and resorted to ex-parte proceedings as provided under Rule 14 of the CCS (CCA) Rules, 1965. In the instant case even without ordering a disciplinary proceeding the same has been dispensed with as not reasonably practicable. The aforesaid dispensation of enquiry is also contrary to the DOPT instructions laid down vide OM dated 11.11.1985 as well as 4.4.1986.

14. A Division Bench of this Court in OA-1845/2001 - Sh. Gurdev Singh v. Govt. of N.C.T. of Delhi & Others, decided on 10.4.2003 relying upon the aforesaid rulings and instructions set aside the order of punishment.

15. Moreover, I also find that appeal preferred against termination has not been disposed of by respondents and no satisfactory reply has been put-forth to explain as to why the same is still pending. As OA has been filed

after six months from the expiry of preferring an appeal as per Section 19 (4) of the Administrative Tribunals Act, 1985 pending appeal is abated.

16. In the result, for the foregoing reasons, as the impugned orders are not sustainable in law, the same are quashed and set aside. The O.A. is partly allowed and respondents are directed to re-instate applicant in service and in that event she would not be entitled to any back wages. However, respondents, if so advised, are at liberty to take up appropriate proceedings against applicant in accordance with law. These directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

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