CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.684/2002

New Delhi this the 13th day of September,2002.

HON'BLE MR.JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE MR.V.K.MAJOTRA, MEMBER (A)

Dr.Hridaya Narain
S/o Shri Shyam Narain Singh
R/o E-33,Greater Kailash-III
Masjid Moth,
New Delhi-110048 ... Applicant

(By Shri T.N.Singh, Shri H.L.Srivastava and
Shri T.N.Saxena, Advocates)

-versus-

1. Union of India, through the
Secretary to the Department of Health
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhawan,New Delhi.

2. The Secretary (Health)
Department of Health & Family Welfare,
Government of N.C.T. of Delhi,
Indraprastha Sachivalaya
I.P.Estate,New Delhi-110002.

3. The Director of Health Services,Delhi
(School Health Scheme)
Saraswati Bhawan
Connaught Place,
New Delhi.

4. The Secretary,
Union Public Service Commission
Dholpur House,
Shahjahan Road,
New Delhi. ... Respondents

(None for the respondents)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Dr.Hridaya Narain) had applied for the post of Medical Officer in the Central Health Services in response to an advertisement issued through the Union Public Service Commission. Consequent upon his selection on the recommendation of

the Union Public Service Commission, he was appointed as Medical Officer under the Delhi Administration on 25.1.1988. The applicant had started discharging his duties and applied for leave from 15.3.1993 to 25.5.1993 for repairs/renovation of his ancestral house at Varanasi. The leave had been sanctioned. He further requested for grant of leave upto 28.8.1993 which was not sanctioned. Applicant had sent a letter for grant of leave for a period of one year which had not been sanctioned.

2. Applicant resumed his duties on 12.7.1994 and thereafter was allowed to discharge his duties as Senior Medical Officer in Deen Dayal Upadhyay Hospital. He received a Memorandum dated 25.7.2000 intimating a statement of imputations of misconduct/misbehaviour in support of articles of charge. The applicant had submitted a reply. He was under tremendous pressure of the then existing circumstances and could not anticipate and perceive the serious implication and admitted the charge. The applicant was dismissed from service. By virtue of the present application, he seeks setting aside of the order dismissing him from service.

3. In the reply filed, the respondents contested the application and controverted the facts alleged. It was admitted only that applicant had been appointed. But regarding his application for leave,

the respondents' plea was that in fact the applicant had taken up a foreign assignment in Musurata (Libya) without the permission of the competent authority i.e., the Minister for Health & Family Welfare. When the applicant proceeded abroad, he reportedly suppressed the information about his being a Government servant while he applied to the Regional Passport Office to get his passport. Disciplinary proceedings were initiated against him. He accepted the assertions in the charge. It is denied that there is any violation of Article 311(2) of the Constitution. There was no need to hold an enquiry because the applicant had admitted the charge.

4. The learned counsel for the applicant highlighted the fact that no enquiry had been held and, therefore, principles of natural justice and the provisions of Article 311(2) of the Constitution have been violated.

5. To appreciate the said contentions,a reference can be made to certain facts which are not in controversy. The articles of charge against the applicant read as under:-

"Article-I

"That the said Dr.Hridaya Narain, a CHS Officer, while working as Sr.Medical Officer in the D.D.U. Hospital, New Delhi, has failed to maintain devotion to duty and acted in a manner unbecoming of a Government Servant in as much as he has been unauthorisedly absent from 1.7.93 to 11.7.1994 thereby violating Rules 3.1(ii) and 3.1 (iii) of CCS (Conduct) Rules, 1964.

Article-II

That while being on leave w.e.f. 15.3.1993 to 30.6.1993, Dr.Hridaya Narain, SMO, had taken up a foreign assignment in Musurata Central Hospital, Libya, w.e.f.22.3.1993 to 20.6.1994 without permission of the competent authority thereby violating Rule 3.1(ii) and 3.1(iii) of CCS (Conduct) Rules 1964.

Article-III

Dr.Hridaya Narain has suppressed information about his being a Government Servant while applying to Regional Pass Port Office, Delhi.

By his aforesaid act, Dr.Hridaya Narain has contravened the provisions of Rule 3.1 (ii) and 3.1(iii) of CCS (Conduct) Rules, 1964."

When the applicant had been served with the said articles of charge, he had admitted the facts. He did not ask for any personal hearing and had requested only for a sympathetic view. After consultation with the Union Public Service Commission, it was held that the charges against the applicant stood proved and, therefore, the penalty of dismissal from service was imposed.

6. The learned counsel for the applicant relied upon sub-rule (10) of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 to urge that enquiry in this regard was mandatory and sine qua non before holding the applicant guilty of the said charge. We are of the considered opinion that the said arguments are totally devoid of merit. Sub rules (9),(10) and (11) of Rule 14 of CCS (CC& A) Rules hold the key to the said arguments and read as

under:-

"(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

NOTE:- If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

NOTE:- The Government servant shall indicate the relevance of the documents

required by him to be discovered or produced by the Government."

7. Perusal of the aforesaid rules clearly show that once an article of charge is admitted necessarily it becomes unnecessary to hold further enquiry. In fact it would be an exercise in futility. The sequence in which the said sub-rules appear clearly provide the answer that enquiry becomes unnecessary on the admission of the articles of charge. To the same effect is the decision of the Supreme Court in the case **Channabasappa Basappa Happali** v. **The State of Mysore**, 1971 (1) SCC 1 where a similar question on being considered was answered in the following lines:-

"4. The pleas of the petitioner are quite clear; in fact he admitted all the relevant facts on which the decision could be given against him and therefore it cannot be stated that the enquiry was in breach of any principle of natural justice. At an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. In this case, the facts were two-fold, that he had stayed beyond the sanctioned leave and that he had proceeded on a fast as a demonstration against the action of the authorities and also for what he called the upliftment of the country etc. These facts were undoubtedly admitted by him. His explanation was also there and it had to be taken into account. That explanation is obviously futile, because persons in the police force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of every one of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desperately ill or is otherwise reasonably prevented from attending to his duties. This is not the case here. The petitioner took upon himself the decision as to whether leave could be extended or not and acted upon it. He did go on a fast. His later explanation

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> was that he went on a fast for quite a different reason. The enquiry officer had to go by the reasons given before him. On the whole therefore the admission was one of guilty in so far as the facts on which the enquiry was held and the learned Single Judge in the High Court was, in our opinion, right in so holding."

Therefore, the said plea must be held to be devoid of any merit.

8. The learned counsel for the applicant in that event has contended that after the period for which he had applied for leave was over, he was allowed to rejoin the duty and the charges were served on him after almost six years of the said incident. Even on that count, we have no hesitation in rejecting the said contention. It is true that the departmental enquiry should ordinarily be initiated at the earliest. But in the present case, the respondents even explained the cause of delay. It has been contended that the leave of the applicant had not been sanctioned. Ministry received the original documents and certain particulars only in 1998. Since the applicant had been on unauthorised absence and taken foreign assignment, it had been decided to initiate disciplinary proceedings. The delay thus has been explained and cannot be termed in the facts to be so inordinate by this Tribunal to intervene. As regards permitting him to join duty indeed that will not stand as an estoppel against the respondents to serve the charge-sheet for the earlier dereliction of duty.

9. Lastly in that event, it has been urged that punishment awarded is not commensurate with the nature of default on the part of the applicant. Indeed there is no dispute with the proposition that the punishment must be proportionate to the gravity of the misconduct. On trivial charge of negligence, dismissal orders should not be passed. To that effect is the decision of the Supreme Court in the case of **Bhagat Ram** v. **State of Himachal Pradesh and Others,** (1983) 2 SCC 442 followed by a subsequent decision of the Supreme Court in the case of **Ranjit Thakur** v. **Union of India and others,** (1987) 4 SCC 611 and also **Mehnga Singh, Ex-Sub Inspector** v. **Inspector General of Police & Ors.,**(1995) 5 SCC 682. However, the facts cannot take a hind seat. In the present case, it is not merely absence from duty without the leave being sanctioned, instead it is a case where applicant applied for leave on the ground that his house had to be repaired but proceeded to Libya without permission of the competent authority. He suppressed the information about his being a Government servant while applying for passport to the Regional Passport office.

10. It appears that the applicant was not stopping at any stop. He suppressed the information and proceeded abroad not only without leave but also by suppressing the facts. When such is the position, it cannot be termed that it was one of the defaults

which could be ignored. Indeed, it was a grave misconduct and, therefore, the impugned order had rightly been passed.

11. For these reasons, the application being without merit must fail and is dismissed. No costs.

Announced.

(V.K.Majotra)
Member (A)

(V.S. Aggarwal)
Chairman

/sns/