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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1295/2002

New Delhi this the 4th day of October, 2002

**Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)**  
**Hon'ble Shri V.K.Majotra, Member (A)**

Shri Goodwin David,  
S/o Late Shri J.David,  
R/O B-82, Moti Bagh I,  
New Delhi-21

..Applicant

(By Advocate Shri K.K.Sharma )

VERSUS

1. Govt.of NCTD through  
Chief Secretary,  
Medical Secretary,  
Delhi Sachivalya, Vikas Marg,  
Delhi.
2. Director of Health,  
Dte.of Health Service,  
Govt.of NCT of Delhi,  
F-17, Karkardooma, Ott's Bldg.,  
Delhi.
3. Medical Superintendent,  
Rao Tula Ram Memorial Hospital,  
Jaffarpur, New Delhi-73

..Respondents

(By Advocate Shri George Paracken )

O R D E R (ORAL)

**(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)**

The applicant is aggrieved by the action followed by the imposition of penalty of removal from service by order dated 5/7.12.2001 issued by respondent No.3.

2. The main contention taken by Shri K.K.Sharma, learned counsel for the applicant is that the applicant was ill at the time he had submitted leave applications. However, without giving any reasons, the respondents have issued the aforesaid order removing him from

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service under the provisions of the CCS (CCA) Rules, 1965 (hereinafter referred to as "the Rules"). Learned counsel has submitted that presumably these powers have been ~~exercised~~<sup>8/</sup> extracted under rule 19(ii) of the Rules. He has submitted that the respondents have not conducted any enquiry in accordance with the Rules and they had allegedly got a press notice published in some Newspaper with a direction to the applicant to report for duty within 15 days from the date of publication. It was further stated in the Newspaper publication that if he failed to report for duty, action would be taken against him for unauthorised absence from duty under Rule 19 (ii) of the Rules. In the facts and circumstances of the case, he has submitted that the respondents have acted in a malafide and arbitrary manner to ~~have~~<sup>8/</sup> avoid holding an enquiry and resorting to Rule 19 (ii) of the Rules without giving any reasons as to why this was not practicable to hold disciplinary proceedings against the applicant. Learned counsel has submitted that the applicant has rendered about 17 years service as Dark Room Assistant with the respondents and he is also entitled for the benefits under Rule 46 of the CCS (Leave) Rules, 1972 as he has an ~~8/~~ infectious communicable disease which is creating hurdles in his official work. According to him, that benefit has not been given to him. He has also prayed this relief in para 8 (3) of the OA.

3. We have seen the reply filed by the respondents and heard Shri George Paracken, learned counsel for the respondents. The respondents have taken a preliminary objection that this application is pre-mature as the ~~8/~~

applicant has not availed of the Departmental remedies, as available to him, under the Service Rules, namely, appeal against the disciplinary authority's order dated 5/7.12.2001. Hence, learned counsel has submitted that this application should be dismissed, having regard to Section 20 of the Administrative Tribunals Act, 1985. According to the respondents, the applicant was habitually absenting himself without intimation/application. In the circumstances, they have thought it fit to issue show cause notice in <sup>the</sup> leading Newspaper under Rule 19(ii) of the Rules. They have stated that as they had given sufficient time to the applicant to report for duty but he did not turn up, the Department had no alternative except to terminate his services by the order issued by the respondent No.3 on 5/7.12.2001.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. With regard to the preliminary objection taken by the learned counsel for the respondents that the OA is premature, it will be necessary to see the provisions of Section 20 of the Administrative Tribunals Act, 1985. Section 20(1) of the Administrative Tribunals Act reads as follows:-

" A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances".

6. This application has been filed on 14.5.2002 and notice was issued to the respondents, including on interim

relief where a prayer has been made to release his salary for the intervening period from the date of issuance of the notice in the leading Newspaper till the date of removal from service. It is further relevant to note that this OA has not been admitted. Having regard to the provisions of Section 20 of the Administrative Tribunals Act, 1985 and the facts in the present case, we do not consider that it will be necessary for the applicant to file an appeal before coming to the Tribunal ~~as it~~ has to be borne in mind that the respondents have issued the impugned removal order dated 5/7.12.2001 purportedly ~~to act~~ under the provisions of Section 19(ii) of the Rules because the applicant was unauthorisedly absent from duty.

7. Rule 19(ii) of the Rules reads as follows:-

19 i) .....

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules, or

(iii) .....

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided .....

8. In the present case, learned counsel for the applicant has contended that because of <sup>the</sup> medical conditions of the applicant he was not able to join duty and had sent leave applications to the respondents for their consideration. We find from a perusal of the impugned order dated 5/7.12.2001

that the reasons given by them for imposing the extreme penalty of removal from service are that they have issued <sup>a</sup> press notice in some leading newspaper, whereby the applicant was directed to report for duty within 15 days from the date of publication and if he failed to report for duty, action would be taken against him for unauthorised absence under Rule 19(ii) of the Rules.

9. Taking into account the facts and circumstances of the case, we do not consider that the reasons recorded by the respondents fall within the provisions of Section 19(ii) of the Rules. It is relevant to note that this Rule is a special procedure in certain cases where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided under Rules 14 to 18 of the Rules, the same may be dispensed with. No such reasons have either been referred to or recorded in writing by the disciplinary authority, <sup>Further</sup> ~~because~~ it is settled law that even after issuing <sup>the 18/</sup> show cause notice and commencing enquiry proceedings under the provisions of Rules 14 to 18 of the Rules power is vested with the competent authority to proceed ex parte if the circumstances <sup>no</sup> warrant ~~under the~~ ~~the case~~. In the facts and circumstances of the case, without going into the merits of the case we find that the impugned order is not sustainable under law and the same is liable to be set aside.

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10. In the result, for the reasons given above, the OA is allowed with the following directions:-

The impugned order dated 5/7.12.2001 is quashed and set aside. Accordingly, respondents are directed to reinstate the applicant in service within one month from the date of receipt of a copy of this order. He shall be entitled to consequential benefits in accordance with law rules and instructions.

(ii) In the circumstances of the case, liberty is granted to the respondents to proceed further in the matter in accordance with law.

No order as to costs.

V.K.Majotra  
(V.K.Majotra )  
Member (A)

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Lakshmi Swaminathan  
(Smt.Lakshmi Swaminathan )  
Vice Chairman (J)