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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1845/2001

New Delhi this the 10th day of April, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Sh. Gurdev Singh,
S/o Sh. Jodh Singh Malhotra,
R/o C-3/316, Janak Puri,
Delhi. -Applicant

(By Advocate Shri Raj Singh)

-versus-

1. Govt. of N.C.T. of Delhi,
through its Chief Secretary,
Players Building, I.P. Estate,
New Delhi.

2. The Secretary, Medical,
Govt. of N.C.T. of Delhi,
Players Building, I.P. Estate,
New Delhi.

3. The Medical Superintendent,
Lok Nayak Hospital,
Jawahar Lal Nehru Marg,
New Delhi.

-Respondents

(By Advocate Sh. Ashwani Bhardwaj and Sh. Mohit Madan,
proxy for Mrs. Avnish Ahlawat)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 11.10.99 wherein after resorting to Rule 19 (ii) of the CCS (CCA) Rules, 1965 dispensing with the enquiry applicant's services have been terminated. He has sought quashment of the same with grant of consequential benefits.

2. Applicant joined as a Lab Attendant in Maulana Azad Medical College on 20.12.1968 and was promoted as Lab Assistant in 1974. Two daughters of applicant are residing in Australia. In the year 1997 due to family problem applicant proceeded to Australia and for this he applied for grant of E.L. for the period 21.4.97 to 20.7.97 vide his application dated 5.4.97. A request for

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grant of no objection certificate to go to abroad was also made. Applicant left for Australia on 27.4.97 and while in Australia applicant developed hypertension and anxiety depression and was declared unfit for air travel for which applicant sent his medical certificates to respondents. While staying in Australia applicant got his ribs fractured in June 1998 and was immobilised. He made a request for extension of leave till his recovery and in support from time to time submitted medical records.

3. By an order dated 10.10.98 applicant has been directed to furnish in a proforma two medical certificates. Applicant submitted the requisite certificates and also separate medical certificates dated 21.11.98. Applicant received letter dated 5.6.99 as the grounds adduced by him have been found doubtful and untenable he was afforded an opportunity to join his duties within 30 days failing which an action under Rule 19 (ii) would be taken. Aforesaid communication was observed to be sent to his residential address as well as published in the newspapers. Applicant vide letter dated 9.9.99 sought voluntary retirement with immediate effect after completion of 30 years of qualifying service.

4. Applicant received the impugned order dated 11.10.99, terminating his services against which a request has been made to change the termination order into voluntary retirement. Finding no response, present OA has been filed.

5. Learned counsel for applicant Sh. Raj Singh has assailed the order on the ground that as per Rule 19 (ii) in case of absence enquiry cannot be dispensed with as the alternate mode of holding enquiry ex-parte is available. As the enquiry was very much reasonably practicable the same should not have been dispensed with by adoption of secondary procedure to dispense with the service of applicant. It is further stated that the aforesaid action of respondents is an anti thesis to the principles of natural justice and offends the law laid down by the constitutional Bench of Apex Court in Union of India v. Tulsiram Patel, AIR 1985 SC 1416.

6. It is stated that under Rule 19 (ii) and as per the guiding principles for dispensing with the enquiry as laid down in OM dated 11.11.85 and 4.4.86 as there exist no valid reasons the action of the respondents is contrary to law.

7. Lastly, it is stated that as applicant had already completed 30 years of service his request for voluntary retirement could have been acceded to which would not have deprived him of his retiral benefits.

8. On the other hand, respondents' counsel vehemently opposed the contentions and stated that grant of leave cannot be claimed as a matter of right. Applicant has left the country without giving any particulars as to his visit in his application for seeking NOC and without any permission by the authorities left the country.

9. Medical record submitted by applicant from Australia are not admissible and accordingly he was asked to report for duty failing which suitable action was to be taken. Medical certificates were manipulated as applicant despite direction has not joined duty apart from sending communication to his residential address. Information was also published in National Newspapers. Having failed to respond and as there were no reasonable prospects of completion of disciplinary proceedings and it was not reasonably practicable to hold the same, action under Rule 19 (ii) was taken which is in accordance with rules and law.

10. In so far as his request for voluntary retirement is concerned, it was received after his termination and as such the same was not dealt with. As applicant was terminated, he is not entitled to any pensionary benefits.

11. We have carefully considered the rival contentions of the parties and perused the material on record. Rule 19 (ii) of the CCS (CCA) Rules, 1965 provides dispensation of disciplinary proceedings provided under Rule 14 of the Rules for the reasons to be recorded it is not reasonably practicable to hold an enquiry. In pursuance of the decision of the Apex Court in Tulsi Ram Patel's case (supra) and in CA-576/82 Satyavir Singh & Ors. v. Union of India, Government of India, DOPT vide OM dated 11.11.85 and 4.4.86 laid down the following guidelines to dispense with the enquiry:

"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--

(i) There must exist a situation 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--

(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

(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

(c) Where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

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."

12. 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:

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"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 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."

13. 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.

14. In the light of the aforesaid decision we find that even if applicant has not responded and has absconded, as alleged by respondents there the situation never existed which could have brought the case of applicant within the purview of Rule 19 (ii) ibid as held by the Apex Court in Iulsiram Patel's case (supra) to

resort to the special procedure to dispense with the enquiry. Moreover, in case of absence nothing prevented the respondents from resorting to ex parte procedure envisaged under Rule 19 of the CCS (CCA) Rules, ibid. As the decision to dispense with the enquiry and terminating the service of applicant is not in consonance with the decision of the constitutional Bench in Iulsiram Patel's case (supra) as well as contrary to the instructions issued by the Government which are binding on respondents the impugned order cannot be sustained.

15. However, we may observe that respondents' action although was against law but applicant is also to be blamed for the aforesaid action, as despite opportunities and valid service he has not responded and participated in the enquiry nor joined his duties although there was an explanation of mitigating circumstances of illness. As transpires from the record that applicant at that time on completion of 30 years service had requested the respondents for voluntary retirement under Rule 48 of the CCS (Pension) Rules, 1972 and the application was received by respondents after termination of applicant's services, in the peculiar facts and circumstances of the present case though we set aside the impugned orders, but direct the respondents to re-consider the request of applicant for voluntary retirement which would be effective from the date application has been received by them and in the event same is accepted in accordance with rules and instructions applicant shall be accorded all his terminal benefits, as permissible under 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)

(Govindan S. Tampi)
Member (A)