



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2221/1999

New Delhi this the 30th day of January, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Mange Ram
S/o Shri Gopi Ram
R/O H.No.189, Block-4, Mirdard Lane
New Delhi-02.

... Applicant

(By Shri U.Srivastava, Advocate)

-versus-

1. Government of N.C.T. Delhi through
Secretary
Govt. of NCT Delhi,
5, Sham Nath Marg
New Delhi.

2. The Medical Superintendent
Lok Nayak Jai Prakash Hospital
New Delhi.

... Respondents

(By Advocate Shri Ajay Gupta)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

For misconduct of unauthorised absence, disciplinary proceedings were initiated against the applicant who was working as a Sweeper in the Lok Nayak Jai Prakash Hospital, New Delhi. A penalty of termination of his services has been issued against him by the impugned order of 5.2.1999 annexed at Annexure A1. The order provides that the same has been passed by invoking the provisions of Rule 19(ii) of the C.C.S. (C.C.&A) Rules, 1965, (for short, the Rules. In other words, aforesaid order of penalty is issued by the disciplinary authority without holding an enquiry after having come to the conclusion that it will not be possible to initiate/hold any further disciplinary proceedings against the applicant in the

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normal course as his whereabouts were not available. The order recites that he was absent with effect from 2.7.1998 without intimation for which he was issued a notice through newspaper "Hindustan" Hindi published on 18.1.1999 calling upon him to join his duty within 10 days from the date of its publication. In spite of the said notice, he failed to submit any reply and also failed to join his duty till the date of the passing of the order. Aforesaid order is impugned by the applicant in the present OA.

2. Shri U.Srivastava, the learned advocate appearing on behalf of the applicant, has submitted that the second respondent who has passed the order was not justified in resorting to the provisions of Rule 19(ii) of the Rules which provides as under:-

"19. Special procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18-

(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."

Shri Srivastava has thereafter placed reliance on Government of India's instructions contained in para 6 under Rule 19(ii) of the Rules which, inter alia, provides as under:-

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"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 of 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.

It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to anticipate such circumstances as those that are likely to arise, possibly

later in time, as grounds for holding that it is not reasonably practicable to hold the enquiry and, on that basis, dispense with serving a charge-sheet on the Government servant.

(ii) Another important condition precedent to the application of clause (b) of the second proviso to Art.311 (2), or Rule 19 (ii) of the CCS (CCA) Rules, 1965, or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art.311 (2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order of penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules."

3. According to Shri Srivastava, if one has regard to the aforesaid instructions, second respondent was not at all justified in dispensing with the enquiry; he could at best have conducted the enquiry ex parte. He has pointed out that though the second respondent has recorded his reasons in writing for his satisfaction that it was not reasonably practicable to hold the enquiry contemplated by Article 311 (2) of the Constitution, the present case does not fall in the category of cases enumerated in paragraph 6 (i) of the aforesaid instructions. In our view, if the applicant was unavailable for the conduct

of the enquiry, the proper procedure to adopt was to conduct the enquiry ex parte rather than dropping the same. In the circumstances, the impugned order of termination of services without holding the enquiry is liable to be quashed and set aside. We order accordingly. It is clarified that the second respondent will be entitled to re-initiate the enquiry if so advised and pass appropriate orders in accordance with law. He will be entitled to proceed ex parte in case the applicant fails to appear in the enquiry.

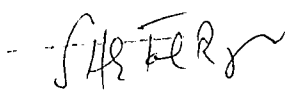
4. We have noticed that according to the applicant, he was unwell on account of some mental disorder and he had undergone medical treatment in G.B.Pant Hospital, New Delhi which is situated adjoining to Lok Nayak Jai Prakash Narain Hospital where he was employed. It is curious that he has chosen to take treatment not in the hospital where he was employed but in another hospital. Similarly it is curious that though he could go to take treatment in G.B.Pant Hospital, he has not chosen to make himself available for the enquiry in his hospital which is located by its side with merely one wall intervening between the two.

5. Since we have interfered in the present proceedings, as a matter of indulgence, we direct that the applicant will produce himself before respondent No.2 on 19.2.2001 at 11.00 a.m. on which date the second respondent may either proceed with the enquiry or fix a suitable date for the purpose. Applicant in

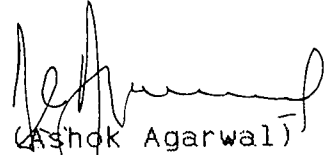
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the circumstances, will not be entitled to be served with a fresh notice in the enquiry. He will also not be entitled to be served with notices of further dates of the enquiry. It is once again clarified that in case the applicant fails to report on 19.2.2001 at 11.00 a.m. as directed, and on further dates of the enquiry that may be fixed, second respondent will be entitled to proceed ex parte and pass appropriate orders in accordance with law.

6. Present OA is allowed in the aforestated terms but without any order as to costs.


(S.A.T. Rizvi)
Member (A)

/sns/


(Ashok Agarwal)
Chairman