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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.337/94

New Delhi, This the 9th Day of August 1994

Hon'ble Shri J P Sharma, Member (J)

Hon'ble Shri P T Thiruvengadam, Member (A),

Sh Girdhari Lal, s/o Sh Babu Lal  
aged about 30 years, worked as Sweeper in  
Lok Nayak Jai Parkash Narain Hospital,  
New Delhi

r/o B-326, Sangam Park, Delhi 110007.

...Applicant

By Shri Mahesh Srivastav, Advocate

Versus

1. Government of National Capital Territory of Delhi, through its Chief Secretary, Govt of N C T of Delhi 5 Shamnath Marg, Delhi.
2. Medical Superintendent Lok Nayak Jai Parkash Narain Hospital New Delhi.

...Respondents

By Shri SK Gupta, Proxy counsel to  
Shri B S Gupta, Advocate

O R D E R (Oral)

Hon'ble Shri J.P. Sharma, Member (J)

1. The applicant was engaged as a sweeper in Lok Nayak Jai Parkash Narain Hospital, New Delhi. By the order dated 10.1.91 invoking the proviso of Rule 19(ii) of the CCS(CCA) Rules 1965 the Deputy Medical Superintendent (Administration) imposed a punishment of removal from service with immediate effect. The applicant filed this application in Feb 94 seeking the relief that the aforesaid order be quashed. The respondents on notice filed reply

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stating that the application is barred by limitation and further the order of removal was served on the applicant on 25.2.91 and was also published in the Paper in wide circulation in Delhi, But the appeal of the applicant against that order having been filed after 45 days, which is the stipulated period provided under Rule 23 of the CCS(CCA) Rules no orders were passed on the same.

2. In the counter further, the respondents stated that the applicant is a habitual absentee from duty and because of that absence from duty as para medical staff he was inefficient in the discharge of duties towards the ailing patients coming for treatment in the Hospital.

3. No rejoinder has been filed. However the learned counsel for the applicant states that before commencing the argument to-day he apprised the bench that a copy of rejoinder is handed over to respondents to-day and the same is being filed in the course of the day. However in any manner inadvertently or otherwise we could not get the actual intention of the learned counsel and commenced the hearing of the case and also seen the departmental file.

4. Shri S R Gupta appeared as proxy counsel for Shri B S Gupta, counsel for respondents. The provisions which have been invoked in this case are provided under Rule 19(ii) of the CCS (CCA) Rules 1965 which lays down that where <sup>the</sup> 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, ~~then~~ the disciplinary may consider the circumstances of the case and make such order therein. These proviso falls from para (2) of

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proviso to article 311 of the Constitution of India which lays down that ~~clause~~ that ~~any~~<sup>no</sup> person shall be dismissed or removed or reduced ~~him~~<sup>in rank</sup> except after an enquiry in which he has been informed about the charges against him and given a reasonable opportunity of being heard in respect of the charges ~~accepting~~ where the authority ~~has~~<sup>having</sup> power to remove a person or reduce him should record the reasons in writing that it is not practicable to hold such enquiry. This matter has been dealt in detail in the case of UOI versus Tulsiram Patel 1985(3) SCC page 398.

5. We have considered the point of limitation. In fact the impugned order <sup>is</sup> of 1991 <sup>and</sup> of the applicant filed this in Feb 1994. However, the applicant has preferred an appeal which was admitted by the respondents in their reply. A copy of appeal has also been filed on record and that is dated 12-10-92. The learned counsel for the applicant placed before the Bench a postal receipt of sending the appeal by post which bears the stamp of the post office and which was sent with acknowledge due addressed to the Medical Supdt LJP Hospital, New Delhi received in his office on 13.12.92. The respondents particularly the Appellate Authority was under bounden duty to dispose of this appeal may be on the point of limitation having preferred after the statutory period of 45 days. So long as the appeal was not disposed of the issue of limitation cannot be said to be exhausted against the applicant as the order of the Appellate Authority merges in the order of the disciplinary authority as held by the Hon'ble Supreme Court in the case of B S Rathore Vs State of MP reported in AIR SC page 10. Though the applicant could not assail the order of removal at the relevant point of

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time but the limitation continues running so long as the appeal remains pending and is not disposed by the Appellate Authority. Thus the application is therefore ~~is~~ not barred by limitation.

6. We considered the main grounds of attack of the impugned order and legally also the order cannot be sustained because the disciplinary authority had not given any reasons whatsoever what to say of the speaking order. Though it is the prerogative of the administration to withhold the reasons on the ground that the enquiry is not practicable at that point of time still it is open to a judicial review whether the disciplinary authority has reasonably applied its mind in coming to the conclusion in deciding that enquiry. We have also gone through the departmental file and the departmental file too does not give any more reasons than what has been placed by the disciplinary authority in the impugned order of 10.1.1991.

7. A Government servant cannot be removed from service by his mis-conduct alleged against him except by holding an enquiry and that has not been done in this case. The case has been taken under the exception provided under sub para (2) of Rule 19 of the CCS(CCA) Rules 1965 <sup>but</sup> the disciplinary authority has not given any reason as to how the enquiry can be dispensed with in <sup>his</sup> case particularly where the applicant <sup>is</sup> alleged to have been absent on earlier occasions <sup>and</sup> did not report for duty and remained unauthorisedly absent in that period. Unless the applicant is given a show cause in the form of chargesheet and <sup>is</sup> duly heard on the basis of his representation <sup>any</sup> order passed will be against the principles of natural justice as well as also

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as against the provision of article 311 sub para(2) proviso 2.

8. We could have directed the respondents to dispose of the appeal and that exercise will be futile in nature when the order of the dismissal is a non speaking order and does not give any reason as to <sup>why</sup> whether the disciplinary authority has taken this action. Therefore the order of the disciplinary authority dated 10.1.91 cannot stand.

9. The application is therefore allowed and the impugned order of 10.1.91 is quashed and set aside. The applicant will be re-instated in service within a period of one month from the date of the receipt of the copy of this order. However, it is open to the respondents to proceed against him departmentally as envisaged under the CCS(CCA) Rules 1965 and may take action against him according to law and this order will be subject to the final order. The respondent shall also consider the period of absence earlier to the order of removal from service and also for the period he remained without duty from 10.1.91 till he is ordered to join by virtue of this order and decide payment of wages according to law. The application is disposed of with no order to costs.

*P. J. Thiruvengadam*

(P. T. THIRUVENGADAM)  
Member (A)

LCP

*J. P. Sharma*

(J. P. SHARMA)  
Member (J)