

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Original Application No. 898 of 1994.

Date of decision : This the 22nd day of July, 1999.

HON'BLE MR. JUSTICE D.N. BARUAH, VICE-CHAIRMAN.
HON'BLE SRI N. SAHU, ADMINISTRATIVE MEMBER.

Surjit Viridy
39, Ajit Nagar,
Amritsar

...Applicant

By Advocate : Miss Nitya Ramakrishnan.

-versus-

1. N.C.T.D.
Through
Secretary Education
Old Secretariat,
Delhi-54

2. Director of Education
N.C.T.D.
Old Secretariat
Delhi-54

... Respondents

By Advocate : None is present

ORDER (ORAL)

BARUAH J. (V.C.).

In this application the applicant has challenged the Annexure-A order dated 3.9.1987 issued by the Director of Education, New Delhi. An article of charge along with the statements of imputation was served on the applicant on 16.2.1987 asking her to show cause as to why disciplinary action should not be taken against her. The applicant replied to the said notice. The applicant desired to go on voluntary retirement and accordingly the applicant submitted Annexure-D application dated 1.3.1984. In that application she requested the authority to relinquish her from duties with effect from 30.3.1984. She also requested for one and half month earned leave with effect from 31.3.1984 to 15.5.1984.

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However no action was taken. Two years thereafter, the charges were framed. The applicant filed an appeal within the stipulated period before the Appellate Authority and the Appellate Authority disposed of the appeal rejecting the appeal of the applicant. Hence the present application.

The respondents have filed counter in this case. Today none appears on behalf of the respondents. Ms Nitya Ramakrishnan, learned counsel for the applicant however is present.

We have heard Ms Nitya Ramakrishnan, learned counsel for the applicant. The submission of the learned counsel for the applicant is that the punishment was awarded on the basis of facts which are incorrect. Besides Ms. Ramkrishnan submits that Annexure-A order dated 3.9.1997 was illegal and without jurisdiction in as much as penalty was imposed dispensing with the enquiry under Rule 19(ii) of CCS(CCA) Rules without recording any reason for not holding enquiry. In this connections, she has drawn out attention to Annexure A order dated 3.9.97. We quote the relevant portion:

"AND WHEREAS it is not practically possible to hold enquiry as provided under Rule-14 of CCS(CC&A) Rules, 1965, so I have left with no other alternative but to invoke Rule-19 (ii) of CCS(CC&A) Rules, 1965 in this case.

I have given the case my considered thought and after careful consideration of chargesheet and other material available on record have come to the conclusion that charges stand established against Smt. Surjit Virghy which are of serious nature. Therefore, in exercise of the powers conferred upon me under Rule-12 of CCS(CC&A) Rules, 1965 read with Rule 11 (viii), I hereby impose penalty of removal from service on said Smt. Surjit Virghy, TGT. Her unauthorised absence will be treated as dies non."

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In the Appellate order the Appellate Authority however did not consider as to whether actually it was practicable or not to hold an enquiry. The Appellate Authority also did not consider as to whether the reasons have been assigned before taking decision to invoke Rule 19 (ii) of CCS (CC &A) Rules, 1965. The Appellate Authority observed in its order as follows :

".....In fact, it is clearly mentioned in Rule 19(ii) that where 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 these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deemed fit. It is seen from the record that the appellant had left the country on 3.4.84 without getting prior permission of the competent authority and her whereabouts were not known. Even the two letters issued from the department thereby directing her to resume duties were received back undelivered. However, a notice was also published in leading Newspaper (Navbharat Times) requiring therein to resume her duties within 15 days and also to submit her reply, but also evoked no response from her."

It is true this only shows that the disciplinary authority made endeavour to issue notice. If the applicant was not available the authority could not have straightway imposed punishment without making any enquiry.

The enquiry could be held ex-parte and after considering the materials on records passed an order. This was however not done. The Appellate Authority also did not address itself to this aspect of the matter. Law has been settled in this regard by the Supreme Court in the case of Union of India Vs. Tulsiram Patel reported in 1985 (3) SCC 398 where ^{Supreme Court} had an occasion to deal with the Article 311(2) of the Constitution regarding dispensation of the enquiry. The provision contain in Rule 19(ii) para meterial with Article 311(2) of the Constituion. The Supreme

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✓ Court in that case observed as follows : (10)

152. It was however, argued that the penalty imposed upon the respondent was not of dismissal or removal from service but of compulsory retirement and, therefore, clause (a) of Article 311(2) did not apply. The argument cannot be accepted. The compulsory retirement of the respondent was not by reason of his reaching the age of superannuation or under other rules which provide for compulsory retiring a government servant on his retirement in this case was under clause (i) of Rule 19 of the Civil Services Rules and was by way of imposing upon him one of the major penalties provided for in Rule 11. It is now well settled by decisions of this Court that where an order of compulsory retirement is imposed by way of penalty, it amounts to removal from service and the provisions of Article 311 are attracted (See State of UP Vs. Shyam Lal Sharma and the cases referred to therein)."

In the said decision the Supreme Court also held that this decision should be taken prior to the order of imposing penalty. In this case from the records it does not appear that such a decision was taken by the Disciplinary Authority.

In our opinion as per clause 19(ii) of the CCS (CC &A) the decision ought to have taken by the authority and reason for invoking the provision of Rule 19(ii) of CCS (CC&A) should be recorded.

✓ In view of the above we find that the procedure adopted by the authority concerned was not in accordance with law and contrary to the decision of the Apex Court. Accordingly we have no other alternative than to set aside the impugned orders. However we leave it to the authority to hold an enquiry if so advised. In that enquiry the authority should also take into consideration the application for voluntary retirement submitted by the applicant. Enquiry must be completed within a period of four months from the date of receipt of the copy of this order if the authority considers.

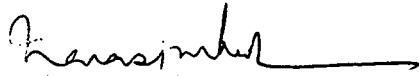
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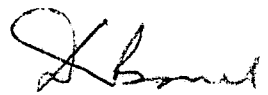
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With the above directions, the application is disposed of.

Considering the facts and circumstances of the case, we however, make no order as to costs.


(N.SAHU)
Member(A)


(D.N.BARUAH)
Vice-Chairman

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