CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. No. 1973/91

New Delhi this the 15th day of October 1996

Hon'ble Mr. T.N.Bhat, Member (J)
Hon'ble Mr. R.K.Ahooja, Member (A)

Smt. Raj Kohli,
W/o Shri Balram Kohli
R/o 323, Pocket C, Sarita Vihar,
New Delhi- 110 044.

(By Advocate: Shri G.D.Gupta) .....Applicant

Versus

1. Lt. Governor/Administrator of
Union Territory of Delhi,
Raj Bhawan,
Delhi- 110 054.

2. Delhi Administration
through its Chief Secretary,
5, Sham Nath Marg,
Delhi- 110 054.

3. The Chief Secretary,
Delhi Administration,
5 Sham Nath Marg,
Delhi- 110 054.

4. The Secretary(Education),
Delhi Administration,
Old Secretariat,
Delhi- 110 054.

5. The Director of Education,
Delhi Administration,
Old Secretariat,
Delhi- 110 054. ....Respondents

(By Advocate: None)

ORDER

Hon'ble Shri T.N.Bhat, Member(J)

The applicant in this OA was working as Post Graduate Teacher (PGT) under the Directorate of Education, Delhi Administration, when she applied for leave for two years to enable her to join her husband in Kuwait. The leave was sanctioned which commenced from 15-8-81. She subsequently applied for extension of leave w.e.f. 15-7-83 by her letter dated 29-4-1983 but her request was rejected

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vide memo dated 18-6-1983 and she was directed to report for duty on 15-7-1983, failing which she was threatened with disciplinary action.

2. It is averred by the applicant that after receiving the said memo dated 15-7-1983 she again requested for extension of leave and also sent medical certificate as proof of her illness but that her requests were not acceded to.

3. Eventually, the applicant was served with an order dated 7-1-1986 informing her that penalty of dismissal from service had been imposed upon her. It is averred by the applicant that she was neither served with any charge-sheet nor was any enquiry held. The impugned order dismissing the applicant from service dated 7-1-86 itself shows clearly that the disciplinary authority was of the view that it was not "practically possible" to hold an enquiry. The applicant asserts that there were no grounds on the basis of which it could be held that holding of an enquiry was not reasonably practicable. It is also vehemently denied by the applicant that the disciplinary authority had made any attempt to send the charge-sheet to the applicant on the proper address in Kuwait. It is also denied that any notice was published in the 'Press Media' before passing of the impugned order of dismissal or that any such item came to the notice of the applicant.

4. The applicant has also assailed the order dated 2-2-87/12-3-87 passed by the Appellate Authority and the order dated 28-2-89/20-3-89 passed by the Reviewing/Revisional Authority by which the appeal and the review/revision application filed by the applicant have been rejected.

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5. The respondents have contested the claim of the applicant by filing a detailed counter affidavit in which it has been contended that the disciplinary authority was right in holding that an enquiry was not reasonably practicable in the circumstances. It has been further averred that charges were framed against the applicant.

6. The applicant has also filed rejoinder to the counter reply of the respondents in which the contentions made in the OA have been reiterated. It has been further stated that the disciplinary authority was through-out in know of the applicant's address in Kuwait as also the post Box Number of the applicant, but that the charge-sheet was never sent on that address and that there-by the disciplinary authority had erred in denying the applicant opportunity to defend herself in the disciplinary proceedings.

7. We have heard the learned counsel for the applicant, the respondents having chosen to remain absent when the case came up for hearing. We have also perused the material on record.

8. As already stated, the disciplinary authority passed the impugned punishment order without holding any enquiry. The only reason given for not holding the enquiry is that "No defence reply have been received from the applicant and notice was also published through the 'Press Media' directing the applicant to produce her defence" but that she had failed to comply with the direction. It is only in the aforesaid circumstances that the disciplinary authority came to the conclusion that it was not "Practically possible" to hold an enquiry in the manner provided under the Rules'. The Disciplinary Authority proceeded to decide

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the matter under Rule 19 (2) (ii) of CCS (CCA)Rules,1965. The aforesaid provision in the Rules as also sub-clause (b) of clause(2) of Article -311 of the Constitution of India provide that where the Disciplinary Authority is satisfied that 'it is not reasonably practicable to hold the enquiry' contemplated by Clause(2) of Article-311, the Disciplinary Authority can say so and give its reasons for coming to that conclusion. It is only then that the enquiry can be dispensed with.

9. The question that however arises is as to what are the circumstances under which it can be said that holding of an enquiry is not reasonably practicable. It is difficult to enumerate all such circumstances. But we are convinced that the mere absence of the delinquent employee or his/her non-appearance before the Disciplinary Authority cannot be considered to be a sufficient ground to come to the conclusion that an inquiry is not reasonably practicable. The Hon'ble Supreme Court has in its Judgement delivered in Union of India Vs Tulsi Ram Patel (AIR 1985 Supreme Court 1416) given a few illustrative examples of circumstances that may lead to the conclusion that an enquiry would not be reasonably practicable. The examples are as follows;

i) Where the Government servant together with his associates so terrorizes, threatens or intimidates the witnesses who are going to give evidence against him;

ii) Where the Government servant by himself or together with or through others threatens,intimidates or terrorizes,the officer who is the disciplinary authority or members of his family so that he is afraid to hold the enquiry or direct it to be held;

iii) Where it would not be reasonably practicable to hold the enquiry in view of the atmosphere of violence or of general in-discipline or in-subordination.

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10. It is true that the question of reasonable practicability of holding an enquiry is a matter of assessment to be made by the Disciplinary Authority, and it is the Disciplinary Authority who is the best Judge. But it is equally true that in a case where the delinquent Government servant does not appear in pursuance of the summon/ notice of the disciplinary authority calling upon him to participate in the disciplinary enquiry, there can be no justification for the disciplinary authority to say that it is not reasonably practicable to hold an enquiry. As held by the Hon'ble Supreme Court in Tulsi Ram Patel case (Supra), a disciplinary authority is not expected to dispense with the disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely to avoid holding of an enquiry.

11. A question similar to the one involved in this OA also came up for adjudication before the Hyderabad Bench of this Tribunal in the case of Shri Mir Asad Ali Khan Vs. U.O.I. and Others (OA 41/89) and in the Judgement of that Bench of the Tribunal dated 1-11-91, reported as (1992)19 Administrative Tribunal's cases 6, it was held that if the delinquent Government servant does not turn up despite publication of notice in the local newspaper or even service of notice upon him personally, the enquiry authority should conduct the enquiry and that the mere absence of the delinquent employee could not render the conduct of the enquiry not reasonably practicable. In that case also the applicant before the Hyderabad Bench had proceeded on Medical leave and did not appear in the enquiry. On his continued absence and non-response to charge memo his services were terminated without holding an enquiry and it was stated by the Disciplinary Authority

that holding of an enquiry was not reasonably practicable, as the charge memo sent to the employee by Registered Post had been returned unserved and a notification published in some Newspaper did not get any response from the employee. The order of termination of service was quashed by the Tribunal and it was held that even if the employee had not responded to the notices sent and publication of notice in the local Newspapers the Disciplinary Authority should have conducted the enquiry ex-parte in accordance with the procedure prescribed in Rule-14 of CSS (CCA) Rules,1965. A reference was in this regard also made to Government instruction No-6 below Rule-14 which has been extracted in Swamy's Compilation of CCS (CCA) Rules, 19th Editions and the subsequent Editions. Although the aforesaid note-6 below Rule-14 quotes the instructions issued by the Department of Posts under the provisions contained in Rule-63 and 64 of the P&T Manual Vol-III the principles laid down in the said note would be very much attracted even in the case of the employees who belong to other Departments. Further more, sub-Rule (20) of Rule-14 itself states that if the Government servant does not submit the written statement of defence or does not appear in person before the enquiry authority or otherwise fails or refuses to comply with the provisions of this Rule the enquiry authority may hold the enquiry ex-parte. Holding of an enquiry ex-parte does not by any stretch of reasoning mean dispensing with the enquiry al-togather. The Disciplinary Authority is required to examine the evidence that is sought to be produced against the delinquent employee and only than give its decision and record its findings. It cannot just dispense with the enquiry by stating that due to the absence or non-appearance of the delinquent employee

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holding of an enquiry is not reasonably practicable.

12. In view of what has been held and discussed above we are of the considered view that the impugned order dated 7-1-1986 and the Appellate and Revisional/ Review orders mentioned above cannot be sustained and are liable to be set aside.

13. We accordingly quash the impugned orders and partly allow the OA. However, we do not find any merit or justification in the claim of the applicant for being exonerated of all the charges levelled against her and for her consequent re-instatement into services immediately, as stated in Clause (ii) & (iii) of Sub-para-8 of Para-8 of the OA. An enquiry will have to be held into the charges levelled against the applicant and the Disciplinary Authority has to comply with the provisions contained in Rule-14 of the CCs (CCA) Rules 1965. It is only after the conclusion of the enquiry that the disciplinary authority will record its findings on the Article of charge and also take a decision on the question as to how is the period of absence of the applicant to be treated. However, the applicant is enetiled to be reinstated in service, unless the Competent Authority decides to place her under deemed suspension. We however direct that the disciplinary authority shall, as far as practicable, complete the enquiry and take a final decision within a period of three months from the date of receipt of a copy of this order. If the Competent Authority decides to place the applicant under deemed suspension the applicant shall be entitled to subsistence allowance under the Rules. If the Competent Authority does not decide to keep the applicant under deemed suspension, the applicant shall be entitled to pay and allowances admissible to her from the date

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of reinstatement till a final decision is taken on the question as to how is the period of her absence to be treated.

14. This OA is disposed of with the above directions, leaving the parties to bear their own costs.

(R.K.AHOOJA)
Member(A)

(T.N.BHAT)
Member (J)

15.10.1996

cc.