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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1682/2004

This the 1st day of April, 2005.

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Aloysia Beck W/O N. Beck,
Presently working as
Assistant Nursing Midwifery,
Lal Bahadur Shastri Hospital,
Kalyan Vas, Delhi.

... Applicant

(By Shri S.K.Gupta, Advocate)

Versus

1. Government of N.C.T. of Delhi through
Chief Secretary,
Players Building, I.P.Estate,
New Delhi-110002.
2. Secretary (Health),
Government of N.C.T. of Delhi,
Delhi Secretariat,
Players Building, I.P.Estate,
New Delhi-110002.
3. Director,
Directorate of Health Services,
F-17, Karkardooma, Delhi.

... Respondents

(By Shri George Paracken, Advocate)

ORDER

Applicant impugns respondents' order dated 1.10.2002 imposing upon her penalty of withholding of three increment for a period of three years without cumulative effect with loss of increment and treating the period of absence as *dies non*.

2. Applicant was issued a chargesheet for minor penalty under rule 16 of the C.C.S. (C.C.A.) Rules. The disciplinary authority ordered an enquiry by issuing a draft chargesheet as per the provisions of rule 16 (1) (b) whereafter on

NO

the basis of the findings, imposed a penalty which was allegedly received by applicant on 6.8.2003, to which an appeal preferred and sent through post remained unresponded, giving rise to the present O.A.

3. The learned counsel of applicant states that once the appeal is pending with respondents and the OA is admitted, under Section 19 (4) of the Administrative Tribunals Act, 1985 no order is required to be passed and the appeal abates.

4. On merits, it is stated that whereas an enquiry was held for a minor penalty under rule 16 (1) (b), yet the procedure laid down under sub-rules (3) to (23) of rule 14 *ibid* has not been followed, which vitiates the enquiry.

5. On the other hand, respondents opposed the contentions and denied receipt of any appeal. Shri Paracken stated that the O.A. is barred by limitation and on merits, it is stated that the proper procedure has been adopted and the orders passed are absolutely in accordance with law. It is also stated that applicant in her reply had accepted the allegations.

6. I have carefully considered the rival contentions of parties and perused the material on record.

7. Applicant has vehemently urged that she received copy of the punishment order on 6.8.2003 which has not been rebutted. Accordingly, her appeal preferred through Speed Post with request for condonation of delay with an acknowledgement, is a clear presumption under General Clauses Act to have been received. In this view of the matter as the appeal was not disposed of, the OA filed on 13.7.2004 is within the limitation as per Section 21 of the Administrative Tribunals Act. Moreover, if an appeal is pending and no orders have been passed, as per Section 19(4), the same abates.

8. On merits, rule 16(1)(b) *ibid* provides, in case the disciplinary authority decides to hold an enquiry, to adopt the procedure laid down under sub-rules (3) to (23) of rule 14. I find that after the draft chargesheet no such procedure was adopted which is a clear infraction of the procedure, which has prejudiced the applicant in the matter of her defence. On this count alone, the impugned order cannot be sustained in law. Moreover, I find that though applicant had taken several contentions in her defence, yet none of these have been paid any heed to, and a non-speaking order has been passed, which cannot be accepted as a fair play from the quasi judicial authorities who are obligated to pass a reasoned order as per DOP&T instructions dated 5.11.1985 as well as in the light of the decision of the Apex Court in *Mahavir Prasad v State of U.P.*, AIR 1970 SC 1302.

9. In result, for the foregoing reasons, OA is allowed. Impugned order is set aside. Applicant is entitled to all consequential benefits. No costs.

S Raju
(Shanker Raju)
Member (J)

/as/