CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.1500/2013

New Delhi, this the 26th day of July, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Shri Dharam Pal Dharra,
Age 60 years,
S/o Late Ram Lal
R/o Village Goela Khurd,
Post Office, Chhawala,
Nazafgarh, New Delhi-71. .. Applicant

(Argued by: Mr. S. K. Gupta, Advocate)

Versus

Delhi Jal Board through :

1. Chief Executive Officer,
Varunalaya Building,
Phase-2, Jhandewalan,
Karol Bagh, Delhi-110 055.

2. Member (Administration),
Delhi Jal Board,
Varunalaya Building,
Phase-2, Jhandewalan,
Karol Bagh, Delhi-110 055. ..Respondents

(By Advocate: Shri Himanshu Upadhyay)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The challenge in this Original Application (OA), filed by applicant, Dharam Pal Dharra S/o Late Shri Ram Lal (since retired), is to the impugned order dated 19.10.2012 (Annexure A-1), whereby dispensing with the procedure of regular enquiry and invoking the provisions of Rule 19(2) of Central Civil

Services (Control, Classification & Appeal) Rules, 1965 [hereinafter to be referred as "CCS(CCA) Rules"], a penalty of removal from service was imposed on the applicant by the Disciplinary Authority (DA) and order dated 01.04.2013 (Annexure A-2), vide which his appeal was dismissed by the Appellate Authority (AA) as well.

2. The matrix of the facts and material, culminating in the commencement, relevant for disposal of instant OA, and exposited from the record, is that, applicant was stated to have secured his appointment as Lower Division Clerk (LDC), in the year 1975 in Delhi Water Supply & Sewage Disposal Undertaking (for short "DJB") on the basis of fake Scheduled Caste (SC) Certificate dated 06.03.1971, showing his caste as "Chamar". Subsequently, he was promoted to the post of UDC against the reserved quota of SC/ST. On the basis of complaint, caste certificate was got verified, which was found to be fake. Thus, he failed to maintain absolute integrity & devotion to duty, and contravened Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

3. As a consequence thereof, applicant was accordingly charge sheeted vide order dated 10.09.1993 (Annexure A-3) and was dealt with departmentally, under Rule 14 of CCS(CCA) Rules. Thereafter, an Enquiry Officer (EO) was appointed, who concluded that charges against the applicant stand proved, vide enquiry report dated 20.10.1994 (Annexure A-4).

4. Agreeing with the findings of the EO and after following the due procedure, initially the applicant was removed from service vide order dated 27.06.1995 (Annexure A-5) by the DA. The appeal filed by him was also dismissed vide order dated 9/13.10.1995 (Annexure A-6) by the AA.

5. Meanwhile, the applicant was acquitted from criminal case on a similar charge, registered against him vide FIR No.64 dated 06.03.1997 under Section 420 IPC in Police Station, Subzi Mandi, vide judgment of acquittal dated 24.09.2004 by Metropolitan Magistrate, Delhi (Annexure A-8).

6. Dissatisfied with the impugned punishment orders in Departmental Enquiry (DE), the applicant filed ***W.P. (C) bearing No.1204/1996*** (Annexure A-7), which was allowed and respondents were directed to take back the applicant into service without back wages, vide order dated 25.10.2005 (Annexure A-9).

7. Then, the applicant filed ***LPA bearing No.481/2006*** claiming the back wages, in which, the following order was passed on 08.02.2007 (Annexure A-11), by a Division Bench of Hon'ble High Court of Delhi:-

> "1. The appellant herein challenges the order of the learned single Judge on the ground that back wages have been wrongly declined to the appellant.
>
> 2. On going through the records, we find that in this case the appellant claims to be a person belonging to the 'reserved category' but at one stage his caste certificate was cancelled by the Deputy Commissioner, Caste Certifying Section on the ground that he had obtained the said certificate fraudulently.
>
> 3. Considering the fact that the appellant claims to be a person belonging to the 'reserved category' and has been appointed to a post meant for a 'reserved

category' person, we would like to get an enquiry caused as to whether or not the appellant actually belongs to 'reserved category'. We, therefore, direct the Deputy Commissioner, Caste Certifying Section to examine, verify and if required conduct an enquiry whether or not the appellant actually belongs to a 'reserved category'.

4. The appellant is directed to appear before the Deputy Commissioner, Caste Certifying Section on 15th February, 2007 at 3 p.m. Copy of this order shall be furnished to the Deputy Commissioner, Caste Certifying Section. Report shall be submitted by the Deputy Commissioner, Caste Certifying Section in respect of the aforesaid enquiry within six weeks.

5. Renotify on 2nd April, 2007.

6. Copy of this order be given dasti to the counsel appearing for the parties."

8. Thereafter, the applicant was permitted to withdraw the LPA. However, liberty was granted to the respondents to proceed against the applicant, in accordance with law, as a consequence of enquiry made in pursuance to the directions given to the Deputy Commissioner, Caste Certifying Section on 08.02.007 (Annexure A-11), vide order dated 22.05.2009 (Annexure A-12). The order reads as under:-

"LPA No. 481/2006

Learned counsel for the appellant, on instructions, seeks to withdraw the appeal.

Dismissed as withdrawn.

We make it clear that the dismissal of the appeal will not come in the way of the respondents to proceed in accordance with law as a consequence of the inquiry made in pursuance to the directions given to the Deputy Commissioner, Caste Certifying Section on 08.02.2007."

9. In compliance of the order of High Court of Delhi, the Deputy Commissioner has conducted the enquiry and concluded that the caste certificate issued to Shri Dharam Pal Dharra was fake, vide his report dated 30.03.2007.

10. Taking into consideration the report of Dy. Commissioner dated 30.03.2007, a Memorandum dated 04.09.2012, proposing to impose the penalty of removal from service, was issued to the applicant under the garb of Rule 19 (ii) of CCS (CCA) Rules, was again served. After availing the period of Earned Leave, the applicant joined duty on 27.09.2012 instead of 20.09.2012. Thereafter, the same very Memorandum dated 04.09.2012 was delivered to him on 27.09.2012 itself.

11. Instead of initiating the regular Departmental Enquiry (DE) against the applicant on the basis of report of Dy. Commissioner under Rule 14 to 18, surprisingly enough, the punishing authority straightaway jumped to proceed against the applicant under Rule 19(i) of CCS (CCA) Rules and removed him from service by means of impugned order dated 19.10.2012 (Annexure A-1). The appeal filed by him was also dismissed vide order dated 01.04.2013 (Annexure A-2).

12. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, on the following grounds:-

> "A. Because while passing the impugned orders, the office of respondents have erred in law as well as facts.
>
> B. Because it is a fact that the Hon'ble High Court of Delhi vide order dated 22.05.2009 had ordered for proceedings against the applicant in accordance with law but never ordered to invoke Rule 19 (ii) of CCS(CCA) Rules which empowers the disciplinary authority to dismiss or removal the employee without holding the inquiry on the plea that the inquiry is not practically possible.

C. Because the fact cannot be ignored that the inquiry report submitted by Sh. Rajeev Kale, Dy. Commissioner, Distt. South West was unilateral inquiry wherein, right of cross examination of the witnesses namely Sh. Satish Kumar, Sh. Surender Kumar and Sh. Amarjeet Singh were not given to the applicant and hence, the aforesaid inquiry report cannot be used against the applicant.

D. Because it is further submitted that the inquiry report of Sh. Rajeev Kale, Dy. Commissioner was not the report in terms of the Rule 14 of CCS (CCA) Rules but was the report which can be used for the purposes of initiating the statutory inquiry in terms of CCS(CCA) Rules. The aforesaid report can be best be termed as fact findings report, moreso, based upon the statement of witnesses who were not given the opportunity to cross examine by the applicant.

E. Because the fact cannot be ignored that in criminal trial, the applicant was exonerated/acquitted on merits vide order dated 24.09.2004 and the acquittal of the applicant was not on technical grounds but based upon merits.

F. Because the fact remains, when the applicant was tried departmentally in pursuance to the charge sheet dated 10.09.1993 by submitting the report dated 20.10.1994, the applicant was removed from service vide order dated 27.06.1995 and on rejection of the appeal, vide order dated 13.10.1995, the applicant filed writ petition which was allowed vide order dated 20.10.2005 and thereupon, the applicant was reinstated in service vide order dated 02.01.2006 but w.e.f. 27.06.1995 when he was removed from service. The fact cannot be ignored that the respondents never filed any appeal challenging the orders dated 25.10.2005 and thud, the entire action in issuing the show cause notice, passing the order of removal and rejecting the appeal is not in accordance with law and hence, all the orders as impugned are bad in law.

G. Because the fact cannot be ignored that the applicant has since been crossed the age of 60 years as his date of superannuation was 31.10.2012 being date of birth as 15.10.1952 and as such, in case, the respondents decide to issue fresh charge sheet, the same is not permissible under Rule 9 of CCS(Pension) Rules, 1972."

13. According to the applicant, the impugned orders are illegal, arbitrary and without jurisdiction. On the strength of the aforesaid grounds, the applicant sought to quash the impugned orders, in the manner indicated hereinabove.

14. The contesting respondents refuted the claim of the applicant and filed their reply, wherein it was pleaded that, in terms of directions and liberty granted by Hon'ble High Court of Delhi, Memorandum dated 04.09.2012 was issued to the applicant by the competent authority under Rule 19 of the CCS (CCA) Rules, proposing to impose the penalty of removal from

service on the basis of report of Dy. Commissioner. Its copy was supplied to the applicant. It was alleged that competent authority has fixed the date of personal hearing on 12.10.2012 in his chamber vide letter (Annexure R-3). Thereafter, competent authority, after going through the facts and circumstances of the whole case, imposed the penalty of removal from service on the applicant under the provisions of Rule 19 (ii) of the CCS (CCA) Rules, vide impugned order dated 19.10.2012 (Annexure A-1). The appeal was stated to have been rightly dismissed vide order dated 01.04.2013 (Annexure A-2) by the AA.

15. Virtually, acknowledging the factual matrix and reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations and grounds contained in the main O.A and prayed for its dismissal.

16. Controverting the allegations of reply filed by the respondents and reiterating the grounds contained in the O.A, the applicant filed the rejoinder. That is how we are seized of the matter.

17. Having heard the learned counsel for the parties, having gone through the records with their valuable help, we are of the considered opinion that the present OA deserves to be allowed for the reasons mentioned herein below.

18. As is evident from the record that the initial order of punishments dated 27.06.1995 (Annexure A-5) of DA and dated 13.10.1995 (Annexure A-6) of AA were set aside by the Hon'ble

High Court of Delhi in **W.P. (C) No.1204/1996**, vide order dated 25.10.2005 (Annexure A-9). In LPA, the High Court of Delhi gave the liberty to the respondents to proceed in accordance with law as a consequence of enquiry made in pursuance of the direction given to Deputy Commissioner vide (Annexure A-11), by means of order dated (Annexure A-12). The order of the High Court was stated to have given the fresh cause of action to the respondents, to initiate the departmental proceedings against the applicant, on the same very pointed charges. Thus, it would be seen that the facts of the case, are neither intricate nor much disputed.

19. Such this being the legal position and material on record, now the short and significant question for our consideration is, as to whether the DA has the jurisdiction to remove the applicant without initiating the regular DE, in terms of Rule 14 to 18, under the garb of provisions of Rule 19 of the CCS (CCA) Rules.

20. Having regards to the rival contention of the learned counsel for the parties and perusing the record, we are of the firm view that the answer must obviously be in the negative.

21. What cannot possibly be disputed here is that Article 311(2) of Constitution postulates that no public servant shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of

those charges. Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry.

22. Sequelly, Rule 14 (1) of CCS (CCA) Rules, postulates that no order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act. The statutory procedure to conduct a DE is provided under Rule 14 to 18 of CCS(CCA) Rules.

23. Likewise, Rule 19(ii) of the CCS (CCA) Rules, envisaged that, where the DA 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, the DA may consider the circumstances of the case and make such orders, as it deems fit.

24. Meaning thereby, the procedure to conduct DE provided under Rule 14 to 18 of the CCS (CCA) Rules, is general & mandatory in nature, whereas the applicability of Rule 19 (ii) is an exception. The regular departmental enquiry can only be dispensed with where the competent authority **is satisfied that for some reason to be recorded in writing, it is not reasonably practicable to hold such enquiry**. Thus, before

denying a Government servant his constitutional/statutory right to an enquiry, including the opportunity of being heard before removing him from service, the competent authority has to be fully satisfied that for some cogent reason it is not reasonably practicable to hold such an enquiry.

25. A bare perusal of the impugned order would reveal that in the instant case, the main grounds which appears to have been weighed with the DA to dispense with the procedure of regular DE and to invoke the special provisions of Rule 19, were that (i) overall conduct of applicant shows that he has been trying to linger on the matter to delay the imposition of proposed penalty as he proceeded on leave without giving his proper address, during leave period; (ii) he did not give his present residential address whereas the house, as per service record, was sold by him some 20 years back; (iii) he overstayed the period of applied leave from 20.09.2012 to 26.09.2012 and joined his duty on 27.09.2012; (iv) a Press Notice had to be issued for cancellation of leave; (v) he also sent his medical application for period from 20.09.2012 to 29.09.2012 along with medical certificate issued by a doctor of Jaipur (Rajasthan), whereas officially he had proceeded to Mumbai only; (vi) the documents demanded by him, vide his letter dated 11.10.2012, are not of such importance without which he could not file a representation/reply to Memorandum of 04.09.2012 ; and (vii)

he also did not avail of opportunity of personal hearing granted to him for making his oral submission.

26. These reasons, to our mind, are not the cogent circumstances, to arrive at a satisfaction by DA, to dispense with an enquiry and to invoke special provisions of Section 19 of the CCS (CCA) Rules. It is now well settled proposition of law that the special provisions of Section 19 of CCS (CCA) Rules, can only be invoked, if all the essential ingredients are fulfilled and not otherwise. This matter is no more res integra and is now well settled.

27. An identical question came to be decided by a Constitutional Bench of Hon'ble Apex Court in a celebrated judgment in case ***U.O.I. and Another Vs. Tulsiram Patel 1985 (2) SLR 576*** wherein, having examined the similar provision of proviso to Article 311(2) and principle of natural justice, it was ruled that dispensing of enquiry takes away the right to make representation, consideration of fair play and violation of natural justice requiring an opportunity of hearing to be given before major penalty is imposed and exercise of such power is not legally permissible under the given set of circumstances.

28. Similarly from the crux of law laid down by the Apex Court in cases **Satyavir Singh and others etc. v. Union of India and others, 1985 (4) SCC 252; Chief Security Officer and others v. Singasan Rabi Das, 1991 (1) SCC 729; Jaswant**

Singh v. State of Punjab and others, 1991 (1) SCC 362; Union of India and others v. R. Reddapa and another, 1993 (4) SCC 269; Kuldip Singh v. State of Punjab and others, 1996 (10) SCC 659; Sudesh Kumar v. State of Haryana and others, 2005 (11) SCC 525; Ikramuddin Ahmed Borah v. Superintendent of Police, Darrang and other, AIR 1988 SC 2245; Onkar Lal Bajaj and others v. Union of India and another, (2003) 2 SCC 673; Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and others, (2005) 7 SCC 764; Chandigarh Administration, Union Territory, Chandigarh v. Ajay Manchanda, 1996 (3) SCC 753; Ram Chander v. Union of India and others, AIR 1986 SC 1173; and **Sahadeo Singh and others v. Union of India and others, (2003) 9 SCC 75**, the following essential conditions for dispensing with regular department enquiry emerged:-

> "(i) reasons for dispensing with the regular departmental enquiry must be established by holding that it is `not reasonably practicable' to do so and reasons for this must be recorded in writing;
>
> (ii) disciplinary enquiry should not be dispensed with lightly or arbitrarily or out of ulterior motive;
>
> (iii) disciplinary enquiry should not be dispensed with to avoid the holding of an enquiry or because the department's case against the government servant is weak and must fail;
>
> iv) the reason for dispensing with enquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of second proviso;
>
> (v) the authority is obliged to show that his satisfaction is based on objective facts. The decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authority;
>
> (vi) the subjective satisfaction must be fortified by independent material to justify dispensing with the enquiry envisaged by Article 311 (2);

recourse to Article 311 (2) (b) can be taken even after enquiry has been started;
the gravity of offence is not a ground for dispensing with regular departmental enquiry and invoking Article 311 (2) (b);

(ix) courts can interfere with such orders on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised, notwithstanding clause (3) of Article 311;

(x) in examining the relevance of reasons, the court will consider the situation, which led the disciplinary authority to conclude that it was not reasonably practicable to hold the enquiry;

(xi) court should examine whether the reasons are relevant and in order to do that the court must put itself in place of the disciplinary authority and consider what in the then prevailing situation a reasonable person acting reasonably would have done. Where two views are possible, the court will decline to interfere;
when the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of whim or caprice of the concerned officer. Subjective satisfaction recorded in the order has to be fortified by any independent material to justify the dispensing with the enquiry envisaged by Article 311 (2) of the Constitution; and
that the appellate authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by the concerned officer in the appeal."

29. In the instant case, the DA has neither recorded the requisite legal satisfaction nor cogent reasons for dispensing with the regular DE, which are condition precedent in this regard. On the contrary, the special provisions of Rule 19 were invoked on indicate vague and unsubstantiated grounds, which is not legally permissible. Once, it is fairly proved on record that the competent authority has by-passed the mandatory provisions relating to dispensing with the regular DE, the impugned order (Annexure A-I) cannot legally be sustained, which is even against the principles of natural justice.

30. Not only that, the DA was required to follow the due procedure of DE, but at the same time, it was also required to consider the import and effect of quashment of initial punishment order by the Hon'ble High Court of Delhi, by means of judgment dated 25.10.2005 (Annexure A-9). Therefore, the by-passing of the mandatory provisions of DE by the competent authority, in a very casual manner, is not only illegal, but perverse, arbitrary and against the principles of natural justice as well. Hence, the ratio of law laid down in the indicated judgments m*utatis mutandis* is applicable to the present case and is a complete answer to the problem in hand.

31. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As discussed hereinabove, the main ground which appears to have weighed with the DA to dispense with the procedure of regular DE was Earned/Medical Leave and non-availability of the applicant. These are not the cogent grounds to invoke the special provisions of Section 19 of the CCS(CCA) Rules. Assuming for the sake of argument that the applicant was not available to participate in the enquiry, even then, it was the mandatory duty of DA to appoint the EO to go into the charges alleged against the applicant or otherwise. The EO was required to record and appreciate the evidence, to conclude the enquiry report ex-parte in the absence of the applicant and to submit his report regarding the culpability of the applicant. Thereafter, the competent authority was required

to act on the report of EO and pass appropriate speaking orders accordingly in the matter, which is totally lacking in the present case. Reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in ***Roop Singh Negi Vs. Punjab National Bank and Others 2009 (2) SCC 570*** and ***State of U.P. and Others Vs. Saroj Kumar Sinha 2010 (2) AISLJ 59.***

32. Therefore, dispensing with the procedure of regular DE under Rule 14 to 18, invoking the provisions of Rule 19 of CCS (CCA) Rules and then passing the impugned order of removal by the competent authority without any enquiry in a very casual manner, was not only arbitrary and illegal, but without jurisdiction and against the principles of natural justice as well. Surprisingly, the same very mistake was committed by the AA as well. Thus, the impugned orders are vitiated and cannot legally be sustained, in the obtaining circumstances of the case.

33. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

34. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order of dismissal dated 19.10.2012 (Annexure A-1) passed by the Disciplinary Authority and order dated 01.04.2013 (Annexure A-2) passed by the Appellate Authority, are hereby set aside with all consequential benefits. However, since the applicant has not actually worked on the post, so he will not be entitled to back wages of that period on

the principle of “no work no pay”. However, the parties are left to bear their own costs.

Needless to mention, that the Disciplinary Authority would be at liberty to take fresh appropriate action against the applicant, after following the due procedure of Departmental Enquiry, in accordance with law.

(V.N. Gaur)
Member (A)

(Justice M.S. Sullar)
Member(J)
26.07.2016

Rakesh