

**Central Administrative Tribunal
Principal Bench**

OA No. 2676/2012

New Delhi this the 8th day of November, 2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

Mrs. Sumitra Chaudhary,
W/o Shri Sanjeev Chaudhary,
Ex-Staff Nurse,
R/o 88, Deshbandhu Apartments
Kalkaji, New Delhi-110019

- Applicant

(By Advocates: S/Sh. Dinesh Kumar Garg, Dipak Mishra and
Dhananjay Garg)

VERSUS

1. The Secretary of Health,
NCT of Delhi,
Indraprastha Sachivalay,
ITO Complex, New Delhi
2. The Director Health Services,
Govt. of NCT of Delhi,
E-6, Saraswati Bhawan,
Saraswati Bhawan,
Connaught Place,
New Delhi
3. Medical Superintendent,
Kalkaji Colony,
Colony Hospital, Kalkaji,
New Delhi

- Respondents

(By Advocate: Ms. Alka Sharma)

ORDER (Oral)

Mr. V. Ajay Kumar, Member (J):

Heard both sides.

2. The applicant, while working as Staff Nurse under the respondents, was removed from service vide impugned

Annexure A-1 dated 30.11.2000 on the ground of unauthorized absence for certain period.

3. The applicant said to have preferred an appeal against the said removal order, but no orders have been passed by the appellate authority. This Tribunal, on 31.03.2015 after having heard both sides extensively and noticing that the respondents, before passing the impugned removal order, have not followed the required procedure under Rule 14 of the CCS (CCA) Rules, 1965 i.e., by issuing charge-sheet etc, directed the respondents to file a specific additional reply stating whether they have fully complied with Rule 14 of the CCS (CCA) Rules or not before passing the order of major penalty of removal. In compliance of the said order, the respondents have filed an additional affidavit on 05.02.2016, whereunder they have categorically stated that no inquiry under Rule 14 of the CCS (CCA) Rules was conducted before passing the impugned removal order. Though it is submitted that under Rule 19(ii) of the CCS (CCA) Rules, the respondents have power to dispense with the inquiry, we cannot accept the same, since they have not even shown that the requirements under the said Rule 19(ii) of CCS (CCA) Rules for dispensing with the inquiry have been followed.

4. In the circumstances, the OA is allowed and the impugned removal order is quashed and set aside and the respondents are directed to reinstate the applicant in service with all consequential benefits. However, the respondents are

at liberty to proceed against the applicant, in respect of the alleged unauthorized absence in accordance with law and rules. No costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

After having dictated the order, as above, in OA No.2676/2012 in the open court, we have noticed that the action appears to have been taken under the second Proviso to Article 311(2)(b) of the Constitution of India. For the sake of clarity, we reproduce the extract from the order as to why it was not practicable to hold an inquiry:-

“Smt. Sumitra Chaudhary, Staff Nurse has neither reported for duty nor given any response to the notice within the stipulated time. As no response was received from Smt. Sumitra Chaudhary, Staff Nurse to the communications sent to her at known address, the disciplinary authority is satisfied that it is not reasonably practicable to hold an inquiry against her as per the provisions of CCS (CCA) Rules 1965.

xxxx xxxx xxxx

Smt. Sumitra Chaudhary, Staff Nurse is hereby given an opportunity for making a representation, if she so desires, on the penalty proposed to be imposed on her within a period of one month from the date of issue of this memorandum. In case no representation is received within the stipulated period, it would be presumed that she has to make no representation and action as proposed to be taken shall be taken without further notice.”

2. This fact had not been brought to the notice of the Tribunal by either of the parties. Therefore, the order dictated in the open court has been passed *per incuriam* of this fact and the case is required to be heard afresh.

3. Hence, we *suo moto*, reopen the O.A. and list on 10.11.2016 for fresh hearing.

Issue notice to both sides. List on 09.12.2016.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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