CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2757/2003

New Delhi this the 10th day of August, 2006

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)

Smt. Indu Kapoor
W/o Shri R.K. Kapoor
B-6 Rubicon Mansions
Medical College P.O.
Thiruvananthapuram-695011. -Applicant

(By Advocate: Shri Kumar Parimal)

-Versus-

Union of India
Through the Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi-110011
& Others -Respondents

(By Advocate: Shri S.M. Arif)

1. To be referred to the Reporters or not? yes

2. To be circulated to outlying Benches or not? yes.

S. Raju
(Shanker Raju)
Member (J)

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1. Union of India
Through the Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi-110011.

2. Director General
D.G.H.S. Nirman Bhawan,
New Delhi-110011.

3. Principal & Medical Superintendent
Safdarjung Hospital
New Delhi.

4. Head of Office
D.M.S., Safdarjung Hospital
New Delhi.

5. Head of the Department
Rehabilitation Centre
Safdarjung Hospital
New Delhi.

6. Deputy Director (Administration)
Safdarjung Hospital
New Delhi.

-Respondents

(By Advocate: Shri S.M. Arif)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J)

Heard the counsel.

2. An order passed by the respondents on 7.6.2003, whereby applicant has been compulsorily retired from service treating the period of absence as dies non as well as the period of suspension w.e.f. 31.5.2001 till 7.6.2003 as not to be reckoned for pensionary benefits, are being assailed in this OA.

3. Brief factual matrix transpires that applicant joined as Physiotherapist in the Department of Rehabilitation. On account of unauthorized absence w.e.f. 7.1.99 she was proceeded against in a major penalty charge sheet under Rule 14 of CCS (CCA) Rules, 1965 by Memorandum dated 5.2.2000. During the course of enquiry, applicant had, in response to the Memorandum, admitted to have not only been unauthorizedly absent but also received the Memoranda issued to her with an explanation that this has been done in extenuating circumstances due to a telegram received regarding illness of her husband. Enquiry Officer, relying upon the admission of the applicant, recording his findings and sent his report to the disciplinary authority, which culminated into an order of compulsory retirement. The applicant preferred an appeal against the said order raising the issue of jurisdiction. The Appellate Authority by an order dated 29.1.2003 under Rule-27(2) (ii) of CCS (CCA) Rules, 1965 remitted the case back to the disciplinary authority to take action from the stage of receipt of the representation of the applicant and pass a detailed and speaking order. The aforesaid order was purportedly sent to the residence of the applicant as available in the official record of the respondents but the same was returned undelivered with the postal remarks dated 29.4.2003 that "the applicant is not available". The disciplinary authority by an order dated 7.6.2003 imposed upon the applicant a penalty of compulsory retirement, gives rise to the present OA.

4. Learned counsel for applicant at the outset, states that since the applicant has not admitted the charge levelled against her in absolute and unequivocal terms, the same cannot be relied upon to hold the applicant guilty of the charge. As per Rule 14(23) of the CCS (CCA) Rules, 1965, it is mandated upon the Enquiry Officer to record reasons on each articles of charge in his findings. If it is a detailed finding, then disciplinary authority would be absolved to pass a reasoned order but otherwise this requirement cannot be dispensed with. Learned counsel for applicant would also contend that an admission cannot be relied upon against the delinquent to hold her guilty of the charge. Learned counsel for applicant relies upon a decision of the Apex Court in **State of Bihar and Others** Vs. **Lakshmi Shankar Prasad** 2002 (10) SCC 351, to contend that after initiation of proceedings, the impugned order of punishment should incorporate a reasonable finding about the guilt of the delinquent on different charges levelled. Learned counsel on merit has also contended that absence of the applicant was on very mitigating circumstances due to severe sickness of her husband and, therefore, she can neither be held guilty of the charge nor can she be deprived of her right to continue further in service.

5. On the other hand, learned counsel of respondents vehemently opposed the contention and drawing our attention to the enquiry report stated that on admission of the charge, an opportunity to submit the documents has not been found relevant by the enquiry officer and in this view of the matter on the basis of the admission of the charge, which was only unauthorized absence and Memoranda issued where the leave of the applicant was rejected, she has been held rightly guilty of the charge by the enquiry officer. In such an event the appellate authority on the basis of the jurisdiction of the disciplinary authority remanded back the matter to

disciplinary authority. The disciplinary authority issued notices to the applicant on her available address and when the same were not responded to, passed the order, which is valid in law and is impugned in the present OA. Learned counsel stated that an absence of more than one year unauthorizedly, without any valid reason, has been dealt with in a comprehensive manner in spite of dispensing with the services of the applicant.

6. On careful consideration of the rival contentions of the parties, in a disciplinary proceeding, which is governed by the procedure laid down under Rule-14 of the CCS (CCA) Rules, 1965, a substantive procedure if not followed would constitute illegality not only in Enquiry Officer's report but also the consequential order passed. The admission of a Government servant regarding his misconduct actuated against her is a best piece of evidence, which does not need any support from other evidence if it is proved to be absolute and in unequivocal terms. Learned counsel stated that if a charge of misconduct is admitted by the Government servant, this cannot be treated as a sole basis of either holding the Government servant guilty of the charge or punishing him in any manner. The logic and object behind this principle is that once the charges are actuated against the Government servant and he has been afforded an opportunity to rebut in a disciplinary proceeding, then a statement of admitting the charges but not stating anything further would be an absolute and unequivocal acceptance of the misconduct. But once a defence has been raised as an explanation, the same requires an examination. In such an event, denial of such an admission in Constitution Bench Jagdish **Prasad Saxena** Vs. **The State of Madhya Bharat,** AIR 1961 SC 1070, has clearly shown a ratio decidendi ruled the above.

7. In our considered view, once the applicant has given a justification and tendered explanation as to admission of charges lost significance and would not be treated as a valid piece of evidence even by the standard of preponderance of probability in a disciplinary proceedings. In such view of the matter, the enquiry report to the extent of admission is misconceived. Perusal of the report of the enquiry officer revealed that apart from the admission of the applicant, the charge otherwise stood established against her. The finding of the enquiry officer is not reasoned. Both, i.e., the Presenting Officer and the Charged Officer submitted their briefs and thereafter discussed the documents. The reason recorded on each article of charge is a finding of the enquiry officer, which is as per under Rule-14(23) of the CCS (CCA) Rules, 1965. Any abrupt sentence here and there in the enquiry report cannot be read as a finding. In the light of the above, what has been pointed out by the learned counsel of respondents is the tendering of documents produced by the applicant in defence and thereafter the prosecution brief was submitted by the Presenting Officer as well as Charged Officer. In this view of the matter merely stating that the documents are not found to be of any relevance is not a finding recorded by the enquiry officer. Findings would be after prosecution briefs are submitted and its examination, the defence taken therein has also to be considered, which would culminate into a reasoned order enumerated as a finding. As none of the ingredients are present in the report of the enquiry officer on the *ipsi dixit*, this has not been in consonance with the rules and therefore cannot be valid and legal finding. In this connection, the decision of the Apex Court in Anil **Kumar** Vs. **Presiding Officer and Others** (1985) SCC (L&S) 815 is relevant, where it is ruled that finding is one where the enquiry officer takes into account the evidence of Presenting Officer as well as Charged Officer and then comes to the conclusion, which results in establishment of the charge. Applying

the aforesaid ratio, this finding of the enquiry officer cannot be considered to be a finding as per rules. In such view of the matter, what has been remitted back by the appellate authority is consideration by the disciplinary authority and to pass a speaking order, the disciplinary authority in the present case, by an order passed on 7.6.2003, more particularly on the premise that the enquiry officer has not recorded a detailed finding but only reviewed the order without recording any reasons on the penalty of compulsory retirement, imposed punishment upon the applicant

8. In a disciplinary proceedings, recording of reasons by the disciplinary authority is well explained in **Laxmi Shanker Prasad's** case (supra). More over, in **Director (Marketing) Indian Oil Corpn. Ltd & Anr**. Vs. **Santosh Kumar**, 2006 (6) SCALE 358, the Apex Court held that on non-application of mind order would be illegal.

9. In this view of the matter, without going into other merit of the case, we are satisfied that the order passed against the applicant compulsorily retiring her in review on directions of the appellate authority is non-speaking and shows non-application of mind and cannot be countenanced in the wake of principle of natural justice for want of recording of reasons. An application of mind on a quasi judicial side is to be inferred from the reasoning. The reasoning, if absent, would indicate that the contentions raised in defence have not at all been considered. This raises a presumption in law of an order passed like an ex-parte order *de-hors* the contention of the delinquent official.

9. In the result, for the foregoing reasons, this OA is allowed. Impugned order is quashed and set aside. Respondents are directed to reinstate the applicant in service forth-with. She would be entitled to all

consequential benefits but however, in the peculiar facts and circumstances of the case when the absence of the applicant has resulted in the aforesaid proceedings, we are not inclined to grant any back wages, but this period would be reckoned for the purpose of continuity of service. No costs.

(N.D. Dayal)
Member (A)

(Shanker Raju)
Member (J)

cc.