

Central Administrative Tribunal, Principal Bench

Original Application No.180 of 1996

New Delhi, this the 13<sup>th</sup> day of January, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman(J)  
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

Shri Kishori Lal (Ex. BAILIFF) Son of  
Shri Hari Singh, Aged about 54 years,  
previously employed in Delhi  
Administration, resident of Village  
Garhi-Kundli, P.O. Kundli, Distt.  
Sonapat - Haryana.

- Applicant

(By Advocate - Shri Shankar Raju)

Versus

1. Lt. Governor of N.C.T. Delhi  
(Through its Chief Secretary)  
Government of N.C.T. Delhi,  
Service-II Deptt. 5, Alipur Road,  
Delhi.

2. The Dy. Commissioner, Revenue Estt.  
Branch, Government of N.C.T. Delhi,  
New Courts Building, Tis Hazari,  
Delhi-110054.

3. Additional District Magistrate  
(Revenue), Government of N.C.T.  
Delhi, New Courts Building, Tis  
Hazari Courts, Delhi-110054.

- Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R

By R.K. Ahooja, Member (Admnv) -

The applicant states that while working as a Bailiff in the Office of the Deputy Commissioner of Delhi he was granted leave with effect from 19.5.1983 to 19.7.1983. He could not rejoin duty after expiry of his leave on account of serious illness. The applicant states that he was thereafter falsely implicated in a criminal case under Section 409 IPC and was treated as under deemed suspension with effect from 28.11.1983. The applicant alleges that behind his back a memorandum under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was issued on 31.1.1985 alleging that the applicant had been

9

wilfully absenting himself from duty with effect from 19.5.1983 and further that he had failed to deposit the receipt books and had also not deposited the recoveries of Government dues made by him amounting to Rs.21,723/-. The applicant states that these allegations and charge sheet were never issued and received by the applicant though a notice was issued in some Newspaper of his being absconder on 8.8.1984. The applicant further alleges that the enquiry was completed ex-parte and on the finding that the charges had been proved the impugned order of dismissal was issued on 2.1.1987. According to the applicant the criminal case was finally decided on 6.2.1991 whereby the applicant was acquitted on the ground that the prosecution had failed to prove the charge. The applicant states that after his acquittal he requested the authorities to reinstate him in service but as his request was turned down by the appellate authority, he filed a revision petition before the Chief Secretary but even that having been rejected he has now come before the Tribunal.

2. The case of the applicant is that the disciplinary proceedings against him are vitiated inasmuch as the charge sheet, the order of initiating the disciplinary proceedings as well as the order of dismissal etc. have never been communicated to the applicant by registered post as required under the rules. The department had also without any basis declared the applicant as absconder even though he had presented himself before the Additional District Magistrate on 22.8.1984. The charge regarding

Dr

non-submission of the receipt books and misappropriation of the Government funds have been rejected by the Criminal Court. Thus, according to the applicant both on procedure as well as on merits, the impugned orders are unwarranted and are liable to be set aside.

3. The aforesaid contentions of the applicant have been denied by the respondents. They state that the applicant had sent an application for leave for the period of 19.5.1983 to 19.7.1983 to the Tehsildar, Mehrauli, New Delhi which was in fact received on 13.7.1983 but no leave was, however, granted to him and he was asked to report back to duty vide memos dated 1.7.1983, 29.8.83 and 1.10.83. The applicant, however, neither gave any reply nor intimation regarding his coming back on duty. The charge sheet dated 31.1.1985 was issued to him but was returned by the postal department with the remarks that despite frequent visits the applicant could not be found at the said address.

4. We have heard the counsel. We find that there is some confusion because the applicant had been issued not one but two charge-sheets. The first charge sheet was issued vide memo no.F.4(K)/Rev.DC/Vig/3671 dated 28.11.1983 on the following articles of charge :-

- "1. That Shri Kishori Lal, Bailiff, while posted as such in Mehrauli Tehsil, has been absenting himself from duty wilfully and without any intimation or application w.e.f. 19/5/1983.
2. That said Shri Kishori Lal, Bailiff has failed to deposit the Receipt Book bearing No. 713 (containing 99 receipts) issued to him.
3. That said Shri Kishori Lal, Bailiff is guilty of violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964".

Dr

However, another charge sheet was issued to the applicant on 31.1.1985 vide memo no.1(19)05-DC/Vig/Rev/346 (Annexure-A-5). In this, the articles of charge against the applicant were as follows :-

1. That Sh. Kishori Lal Bailiff while posted as such in Mehrauli Tehsil has been wilfully absenting from duty w.e.f. 19.5.83.
2. That said Sh. Kishori Lal, Bailiff failed to deposit receipt books bearing No. 701 & 713 issued to him during the period from 19.5.83 till 22.9.84.
3. That on scrutiny of aforesaid receipt, it revealed that said Sh. Kishori Lal bailiff had made recovery of govt. dues from various parties amounting to Rs. 21,723/- (Rupees Twenty One Thousand & Seven Hundred Twenty Three) prior to 19.5.83 and failed to deposit the same in the Govt. account till date. Thus, said Sh. Kishori Lal bailiff has embezzled the govt. money amounting to Rs. 21,723/-.
4. That Sh. Kishori Lal bailiff has failed to maintain devotion to duty.
5. That Sh. Kishori Lal bailiff failed to maintain absolute integrity; and
6. That Sh. Kishori Lal bailiff (under suspension) acted in a manner unbecoming of govt. servant.

It was in respect of the second charge sheet that the applicant was declared as an absconder vide a notice in the Newspaper dated 8.8.1984.

5. The case of the applicant is that the first charge sheet was never served upon the applicant. We have seen the record of the disciplinary proceeding and find that registered notice was sent to the applicant at his residential address 358, Gulabi Bagh but was returned with the following remarks : "despite of many visits 358 Gulabi Bagh is found locked". The enquiry

Dr

officer found that as per the remarks on the registered letter the postman had visited the premises on more than six occasions. There upon a fresh registered letter was sent at his permanent address available in the official record but the postal authority returned the same with the remarks that 'no such person was found residing in Garhi village'.

6. As per Rules 63 & 64 of the P&T Manual, Volume III reproduced as Govt. of India's instruction no.(6) below Rule 14 of the CCS( CCA) Rules, 1965 (Swamy's compilation - Tweenty-First Edition-1995) whenever an official continues to remain absent from duty or overstays leave without permission and his movements are not known, or he fails to reply to official communications, the competent authority should by a registered A.D. letter addressed to the official at his last known address, issue a charge-sheet. If the letter is received undelivered the inquiring authority may hold an ex-parte enquiry. There is, however, a stipulation that notices of all hearings should be served or communicated to the accused unless the first notice says that the enquiry will continue from day to day. We find, however, from the order sheet that the enquiry was held on 23.3.1984, 26.3.84, 5.5.1984, 9.5.84 and 17.5.1984. However, no notices were sent to the applicant after 23.3.1984.

7. The Supreme Court has also held in the case of Union of India and others Vs. Dinanath Shantaram Karekar and others, JT 1998 (6) SC 1 that a document sent by registered post can be treated to have been

or

served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement "not found", it cannot be legally treated to have been served.

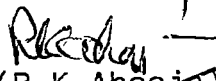
8. In the present case, therefore, the ex-parte enquiry against the applicant was vitiated for two reasons. Firstly, the notice of the enquiry was not served as the registered letters issued to the applicant had been returned by the postal authorities with the remarks that the applicant was not found at those addresses. Secondly, even if the notice for the disciplinary enquiry was given, separate notices for further dates when the case had been adjourned were not sent to the applicant as required under the Government instructions. The enquiry in the present case was not held day-to-day and consequently the enquiry officer was duty bound to send intimation regarding each fresh date to the applicant.


9. We, therefore, conclude on this short ground that the applicant did not have an opportunity to show cause in regard to the allegations against him. The ex-parte enquiry being thus vitiated, has to be quashed and set aside.

10. In the result, we quash and set aside the impugned orders of the disciplinary authority and appellate authority. The respondents, however, are at liberty, if they so choose to resume the enquiry against

Dr

the applicant from the stage of service of charge-sheet.  
In case they do so, they shall complete the enquiry and  
pass the final orders within a period of 4 months from  
the date of receipt of a copy of this order.

  
(R.K. Ahooja)  
Member (Admnv)

  
(V. Rajagopala Reddy)  
Vice Chairman (J)

rkv