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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.2280/97

New Delhi, this the 15th day of September, 2000.

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Mr. S.A.T.Rizvi, M (A)

Sh. Yatinder Kumar, S/O Sh. Ratan Chand
Mahajan, R/O H-11, Masjid Moth, Greater
Kailash-II, New Delhi.

.....Applicant.

(By Advocate: Sh. V.K.Rao)

VERSUS

1. Union of India, through the Secretary, Deptt. of Telecommunication, Sanchar Bhawan, New Delhi.
2. The Sr. D.D.G. (Tec), Deptt. of Telecommunication, Sanchar Bhawan, New Delhi.

....Respondents

(By Advocates: Sh. K.C.D.Gangwani & Sh. S.M.Arif)

O R D E R

By Hon'ble Mr. S.A.T.Rizvi, M (A):

Under challenge in this OA is the order dated 17.1.96 passed by the disciplinary authority dismissing the applicant from service as also the order dated 20.1.97 passed in the review petition filed by the applicant. The competent authority has upheld the order passed by the disciplinary authority. Since the President himself is the disciplinary authority, no appeal could be preferred by the applicant and, as stated, he did file a review petition although without success.

2. Briefly stated the facts of the case not in dispute, are the following:-

3. The applicant while working as DGM (TP) in Telecom. Engineering Centre, New Delhi proceeded to

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Saudi Arabia on two years' deputation w.e.f. 19.12.89, and was accordingly, required to return home and resumed his duties on 19.12.91. He did not do so and, therefore, the respondents sent a few communications to him in 1992 and 1993 which also failed to evoke a response from the applicant. In view of this, the respondents decided to institute disciplinary proceedings against him for unauthorised absence from duty. In the process, the Memo of charges dated 12.11.93 was sent to the applicant at his last known address in India but the same was received back un-delivered. The respondents made another attempt through the Embassy of India at Riyadh, Saudi Arabia but, the Embassy wrote back to say that the applicant was not working with his original employer. Thus, in the absence of any response from him, an oral enquiry was conducted in order to give adequate opportunity to the applicant to defend himself. The Enquiry Officer found the charge of unauthorised absence from duty as proved. A copy of the enquiry report was also sent to the applicant but it was also received back undelivered and no representation in the matter was received from the applicant. Consequently, the applicant was dismissed from service. A review petition was thereafter received from him for the consideration of the President under Rule 29-A CCS (CCA) Rules, 1965. This petition was also rejected.

4. We have heard the learned counsel for both the parties and have perused the material on record.

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5. The respondents have all along insisted that they have followed the correct and just procedure in communicating the charge memo and the enquiry report to the applicant at his last known address in India. That address was C/O Brig. R.S.Trehan, Mohan Meakin Brewaries, Solan (HP). Their contention is that the relevant rules do not provide for any method other than the method followed by them for securing the service of the charge memo etc. on the applicant. In other words, according to them, mere communication of the charge memo was enough and it was not necessary to ensure that the memo was actually delivered to the delinquent official. The applicant has seriously disputed the claim of the respondents that the ex-parte proceedings were in order and that the charge memo etc. should be taken to have been served on the applicant.

6. Our attention has been drawn to the specific provisions made in the CCS (CCA) Rules, 1965 in this regard and also to the judgement of the Hon'ble Supreme Court in Union of India & Ors. Vs. Dinanath Shantaram Karekar & Ors., AIR 1998 SC 2722. We will first take up the specific provision made in the CCS (CCA) Rules. Rule 14 (4) provides that "the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge,.....shall require the Government servant to submit,....a written statement of his defence....." A plain reading of this provision would reveal that the expectation raised in the said rule is nothing short of actual delivery of the charge memo to the delinquent official. This very rule

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equally clearly provides that whenever the disciplinary authority himself cannot do so, he should cause the charge memo to be delivered to the delinquent official. Thus, in our view, according to the said rule, it has to be ensured, in any case, that the charge memo is actually delivered to the delinquent official. This would, according to us, mean that in the event of the delinquent official not found willing to receive the memo etc., the respondents should be able to produce verifiable proof of his refusal to receive the same.

7. The applicant has denied that genuine effort was made to serve the charge memo on him. According to him, he had taken house building advance from the Govt. which stood mortgaged to the Govt. in accordance with the rules. The address in question was H-11, Masjid Moth, New Delhi. According to us, the applicant is right in saying that the disciplinary authority could and should have sent the charge memo etc. at the aforesaid address also which was his permanent address available in the records of the respondents. The applicant has also referred to the need for serving the charge sheet etc. in such cases by publishing a proper notice in a vernacular newspaper. We find that the respondents did not make any attempt to serve the charge memo at his permanent address at Masjid Moth nor did they publish a proper notice in a vernacular newspaper of the area commanding good circulation. We would wish to add here that the absence of response from a delinquent official despite publication of notice in a vernacular newspaper commanding good circulation in the

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area(s) where the delinquent official is known to reside or be available would amount to refusal to receive in the same way in which we have looked at this aspect in the previous paragraph.

8. The learned counsel for the applicant has quoted extensively from the judgement of the Hon'ble Supreme Court (Supra) which deals with the essential requirements of service of the charge memo etc. on delinquent officials. Here, since we have already taken advantage of the said observations of the Hon'ble Court in discussing the question of service of memo etc. in paragraphs 6 and 7 above, we cannot do better than reproduce what the Hon'ble Supreme Court had to say, in the said case, *in-extenso* as, in our view, any attempt to economise might result in failure to convey the real message contained in the Hon'ble Court's observations so crucial for taking a proper view in the instant case. The relevant extract is given below:-

....The order of the removal as also the appellate order were challenged by him before the Tribunal on the grounds, *inter alia*, that neither the charge sheet nor the show-cause notice were ever served upon him and, therefore, the entire proceedings are vitiated. The tribunal has found that the charge sheet which was issued to him by registered post was returned with the postal endorsement "not found" while the show-cause notice was published straightway in *Dainiki Sagar*, *Navshakti*. The Tribunal found the service of the charge-sheet and the show cause notice on the respondent as insufficient and, therefore, set aside the order dated 19.8.85, by which he was removed from service.

2. Learned counsel for Union of India has strenuously urged that since the respondent had been absenting himself from the office unauthorisedly, the

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service of charge-sheet sent to him through registered post should be treated as sufficient. This contention cannot be accepted.

3. Respondent was an employee of the appellant. His personal file and the entire service record was available in which his home address also had been mentioned. The charge sheet which was sent to the respondent was returned with the postal endorsement "not found". This indicates that the charge sheet was not tendered to him even by the postal authorities. A document sent by registered post can be treated to have been 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. The appellant should have made further efforts to serve the charge sheet on the respondent. Single effort, in the circumstances of the case, cannot be treated as sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex-parte even from the stage of charge sheet which, at no stage, was served upon the respondent.

4. So far as the service of show cause notice is concerned, it also cannot be treated to have been served. Service of this notice was sought to be effected on the respondent by publication in a newspaper without making any earlier effort to serve him personally by tendering the show-cause notice either through the office peon or by registered post. There is nothing on record to indicate that the newspaper in which the show-cause notice was published was a popular newspaper which was excepted to be read by the public in general or that it had wide circulation in the area or locality where the respondent lived. The show-cause notice cannot, therefore, in these circumstances, be held to have been served on the respondent. In any case, since the very initiation of the disciplinary proceedings was bad for the reason that the charge sheet was not served, all subsequent steps and stages, including the issuance of the show-cause notice would be bad.

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9. In the same judgement, the Hon'ble Supreme Court has also dealt with the question of mere communication of charge sheet etc. in a case of disciplinary proceedings. Dealing with this limited question, the Hon'ble Supreme Court has clearly stated that the principle of communication referred to cannot be invoked in such a case. Here again, we reproduce the relevant extracts from the same judgement in the following:-

"5.....It is contended that it is the communication of the charge sheet and the show-cause notice which is material and not its actual service upon the delinquent....."

XXX XXXX XXXX XXXXX XX

8.....But this principle cannot be invoked in the instant case.

XXX XXXX XXXX XXXXX XX

"10. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

10. In view of the above detailed discussions, we have no hesitation in holding that the ex parte proceedings undertaken against the applicant stand

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vitiated and are bad in law. The OA, therefore, succeeds and both the impugned orders dated 17.1.96 and 20.1.97 are quashed and set aside. The applicant will be re-instated and a decision in regard to the period of absence of the applicant will be taken in accordance with the extant rules and instructions. Since, the disciplinary proceedings have been quashed on a ground of a technical nature and not on merits, the respondents will be at liberty to undertake disciplinary proceedings afresh, if they so want, and proceed further in the matter in accordance with law, rules and instructions on the subject. There shall be no order as to costs.

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(S.A.T.Rizvi)
Member (A)

/sunil/

V.Rajagopala Reddy
(V.Rajagopala Reddy)
V.C. (J)