IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(12)

O.A. No. 623/87
T.A. No. 199

DATE OF DECISION 31.1.1994

Shri V.P. Madan	Petitioner
Shri V.S.R. Krishna	Advocate for the Petitioner(s)
Versus	
Union of India & Others	Respondent
Shri Sethuramalingam, Presenting Officer	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Vice_Chairman (A)

The Hon'ble Mr. B.S. Hegde, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A)

(N.V. KRISHNAN)
Vice-Chairman(A)

(13)

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.623 of 1987

31st day of January, 1994

Shri N.V. Krishnan, Vice-Chairman(A)

Shri B.S. Hegde, Member (J)

Shri V.P. Madan,
Computer,
Army Hqrs.,
Directorate of Management &
Information Systems,
Ministry of Defence,
New Delhi. Applicant

By Advocate Shri V.S.R. Krishna

Versus

1. Union of India through
   Secretary,
   Ministry of Defence,
   New Delhi.

2. Chief Administrative Officer,
   Ministry of Defence,
   D.H.Q.,P.O.,
   New Delhi. Respondents

By Shri Sethuramalingam, Presenting Officer

O R D E R (Oral)

Shri N.V. Krishnan, Vice-Chairman

The applicant was a Computer in the Directorate of Management & Information Systems, Army Headquarters, under the 2nd Respondent, the Chief Administrative Officer, Ministry of Defence. While so, disciplinary proceedings were initiated against him by the issue of a Memo. of charges dated 22.10.1985 for unauthorised absence w.e.f. 23.5.1984 to 2.6.1984 and again from 1.7.1984. As the

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Memo. of charges could not be served on the applicant though it was sent by registered post to three known addresses, the 2nd respondent exercising the powers under Rule 19(ii) of the CCS (CCA) Rules, 1965 - 'Rules' for short -, dismissed the applicant from service on the ground that he was satisfied that in the circumstances, it was not reasonably practicable to hold an enquiry against the applicant in accordance with the provisions of Rule 14. The appeal filed against this order has been dismissed by the impugned order (Annex.'C') dated 26.8.1986.

2. Hence, this O.A. has been filed to quash the impugned orders and direct the respondents to reinstate the applicant with immediate effect. Alternatively, it is prayed that the applicant be given permission to retire voluntarily with full benefits.

3. In the application, it is mainly contended that on the grounds given in the impugned Annex. 'A' order, the 2nd respondent was not authorised to invoke the provisio of Rule 19(ii) of the Rules.

4. The respondents have filed a reply contending that, in the circumstance when even the charge-sheet could not be served on the applicant, though three attempts were made in this regard, the 2nd respondent was left with no alternative except to proceed under Rule 19(ii).

5. The only question that arises is whether Rule 19(ii) was properly invoked in this case.

6. The learned counsel for the applicant draws our attention to Rule 14(20) which stipulates that, in certain

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circumstances mentioned therein, the enquiring authority may hold the enquiry ex parte. One such circumstance is when a Government servant to whom a copy of the Article of charges has been delivered, does not submit a written statement of defence. He contends that in the circumstances of the case, it was open to the respondents to construe that service has actually been effected of the Memo. of charges and, therefore, under Sub-rule (20) of Rule 14, ex parte enquiry proceedings should have been held.

7. He, however, also derives support from Rules 63 and 64 in P & T Manual, Vol.3, which have been summarised in Swamy's Compilation of the CCS(CCA) Rules (18th edition), page 45 under Item No.6 which states as follows:-

> "(6) Procedure for holding ex parte enquiry- 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 disciplinary authority may initiate action under Rule 14 of the CCS(CCA) Rules, 1965. In all such cases, the competent authority should, by a registered A.D. letter addressed to the official at his last known address, issue a charge-sheet in the form prescribed for the purpose and call upon the official to submit a written statement of defence within a reasonable period to be specified by that authority. If the letter is received undelivered or if the letter having been delivered, the official does not submit a written statement of defence on or before the specified date or at a subsequent stage does not appear in person before the inquiry officer, or otherwise, fails or refuses to comply with the provisions of C.C.A. (C.C.A.) Rules, the inquiring authority may hold an ex parte inquiry."

In this case, the Memo. of charges was sent by registered post but received undelivered and, therefore, an ex parte enquiry should have been held.

8. He, therefore, contends that the Annex.A order of the disciplinary authority and the Annex.C order of

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the appellate authority are incompetent and, therefore, should be quashed and the applicant be reinstated in service.

9. We have heard the Presenting Officer of the Department. In reply to our query, he submitted that even in a case where the Department has framed charges - thereby signifying that it has no objection to hold an enquiry - it could resort to the procedure under Rule 19(ii) if the charge could not be served on the delinquent, despite its best efforts. This is made clear with regard to the provisions of Article 311 of the Constitution by the Supreme Court in Tulsi Ram Patel's case, SLR 1985 (2) 576. It is stated therein as follows:-

> "132. It is necessary that a situation which makes the holding of an enquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an enquiry, for instance, after the service of a charge-sheet upon a government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing as the case may be, when at the commencement of the enquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed removed or reduced in rank in violation of the safeguards provided by Article 311(2)." (emphasis ours).

Therefore, even though the respondents prepared a charge-sheet to be served on the applicant, it does not mean that they can never invoke the provisions of Rule 19(ii) on the ground that it was not possible or practicable to continue the enquiry.

10. In so far as Instruction 6 of Swamy's Compilation reproduced above is concerned, he states that this is an instruction issued by the P & T Department which is not binding on the respondents, i.e., the Ministry of Defence.

11. We have carefully considered the rival contentions. We are of the view that when once the respondents have decided to frame charges and taken steps to serve the charges on the delinquent, it is clear that there are no circumstances on the basis of which it could be held that it was not reasonably practicable to hold such an enquiry. In the present case, the only circumstance is that after the charge was framed, the respondents noticed that they were unable to serve the charge on the delinquent. This circumstance by itself, will not justify any disciplinary authority to take recourse to the provisions of clause (b) of the second proviso of Article 311 of the Constitution or to Rule 19(ii) which derives its authority from this provision only. For, evidently, the extraordinary power given by the said provision of the Constitution was not meant to cover such a mundane situation. The Constitution makers must, undoubtedly, have been aware of the fact in civil law, if a defendant cannot be served notice by ordinary methods, service can be effected by pasting the notice on his house or work place and this will be deemed to

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be complete service on him. If the defendant still remains absent, proceedings can be taken against him ex parte. Therefore, this special power given to the disciplinary authority in the Constitution, on the basis of which alone Rule 19 has been framed, cannot be exercised in this circumstance. That could be exercised in the extra-ordinary situations which arose when the railway workmen went on strike, which was not quite peaceful, or when the Central Police Force defied their superiors and resorted to coercive and violent methods to ventilate their grievance.

12. No doubt, the Supreme Court has made the observation referred to by the Presenting Officer and extracted in para.9 above. This does not support the respondents' case. On the contrary, in the portion which we have emphasised, which deals with a situation as in the present case, it has been held that ex parte proceedings should be taken. This precisely is the view taken in Rabindra Nath Mitra Vs. Union of India, 1991 (15) A.T.C. 208. In para.25 of that judgement, it is observed there that refusal to accept a registered document, is good service. In that view of the matter, the charge-sheet should have been taken to have been served on the applicant. In such circumstances, the respondents could have completed the enquiry ex parte if the applicant had not cooperated. For this proposition, the Tribunal had relied on para.6 (62) of the Supreme Court in Satyabir Singh's case, i.e., 1985(4) SCC 252. It is well known that in that case, the Supreme Court has given an excellent summation of the judgement in Tulsiram Patel's case (supra.).

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The following observation of the Supreme Court in that para covers the situation in the present case also:-

> "It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the enquiry or pending it, the civil servant absconds and cannot be served or will not participate in the enquiry. In such case, the matter must proceed ex parte and on the materials before the disciplinary authority."

13. That takes us to the question whether the Instruction 6 of Swamy's Compilation from the P & T Manual should have been followed by the respondents. That question is only of academic interest now in the view we have already taken. But we find it necessary to make some observations on that issue. The plea that this Instruction has been issued by the P & T Department and is not binding on the respondents, is not tenable. What is good for the P & T Department, should be good enough for the Ministry of Defence also, particularly to avoid the charge of discrimination. Secondly, if the Ministry of Defence felt that the Instruction 6 based on the P & T Manual, was totally wrong and was likely to be invoked against Government, it could have taken steps to have got it annulled by the competent authority. We are of the view that a reasonable view that can be taken is that, unless there are other compelling circumstances on account of which it is not possible to hold an enquiry as visualised in Rule 14, the mere absence of the delinquent should be met only by proceeding in the matter ex parte.

14. The Presenting Officer for the Department has drawn our attention to the decision rendered by this

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Tribunal in OA-1135/86 (Shri Rafi Uddin Vs. Union of India, wherein the order under Rule 19 was not quashed, but the appellate authority was directed to dispose of the appeal. We have seen that judgement. That is disginguishable on the ground that the effective prayer made was to give the applicant ~~for~~ one more opportunity. The order under Rule 19, passed in similar circumstances, was not challenged on the ground that it is incompetent under the Rules.

15. In this view of the matter, we allow this application and quash the impugned Annex.'A' order dated 14.2.86 of the disciplinary authority. In the circumstance, we are not required to consider the alternative prayer made in this O.A. We, therefore, direct the respondents to reinstate the applicant within a period of one month from the date of receipt of this order. The period of the applicant's absence from kthe date of his dismissal until his reinstatement, in accordance with this order, shall be regulated in accordance with the provisions of the relevant laws.

16. We also make it clear that this order will not stand in the way of the respondents from proceeding against the applicant in disciplinary proceedings, in accordance with law.

17. O.A. is diposed of as above. No costs.

(B.S. Hegde)
Member(J)

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(N.V. Krishnan)
Vice-Chairman(A)

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