

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

D.A.No.672/1987.

Date of decision: July 9, 1990.

Shri Rajendra Kumar Kashiv ... Applicant.

Vs.

Union of India & Others . .... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. M.M. Mathur, Member (A).

For the applicant ...

Shri A.K. Sikri and  
Shri B.B. Srivastava,  
Counsel.

For the respondents ...

Shri P.P. Khurana,  
Counsel.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman).

The applicant, Shri Rajendra Kumar Kashiv, was working as an Auditor, Local Audit Office (Air Force) 'B', Kanpur (LAO (AF), Kanpur). He took two days leave. He proceeded on leave on 1.9.1981 to Delhi where he fell ill and was compelled to remain on Medical Leave w.e.f. 3.9.1981. He did not report for duty at L.A.O. (AF), Kanpur until 12.5.1986. He was denied an opportunity to join his post. Thereafter he made a representation dated 28.5.1986 to Controller General Defence Accounts, respondent No.3. Subsequently, on 6.6.1986, he received a letter dated 30.5.1986 informing him that <sup>he</sup> had been declared absent without leave with effect from 1.9.1981 and that proceedings had been taken against him under Rule 14 of the C.C.S (CCA) Rules, 1965 and he had been removed from service as a

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consequence thereof. The applicant thereafter prayed for the disposal of the representation made by him to respondent No.3. Later he preferred an appeal to the Financial Adviser, Ministry of Defence (Finance) respondent No.2. Further, he made a supplementary appeal to respondent No.2 on 7.11.1986 which had also not been disposed when he approached the Tribunal and filed the present O.A. on 11.5.1987. He has challenged his removal from service and has prayed that the order of removal be quashed. He be allowed to join his duty immediately and to treat the applicant in service without any break from 4.9.1981 and give him all the consequential benefits including full back salary.

The respondents have taken the stand that the applicant is not entitled to any relief at all. He had proceeded on leave out of station for two days to Delhi and thereafter was not heard of for a period of five years. He continuously remained absent. The applicant had not informed his office at Kanpur as to where he was and what was his problem. No application for further leave or medical certificate etc. was ever received by the respondents. Departmental inquiry was held and the proceedings had to be ex parte because there was no response from the applicant. Number of letters were sent to his address but to no avail. It was open to the Department to proceed ex parte in the Departmental inquiry and the proceedings there were in accordance with law.

The applicant has stated that he proceeded on leave on 1.9.1981 to Delhi from Kanpur and was compelled to remain

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on leave . For this purpose, the applicant had sent a leave application supported by Medical Certificate to L.A.O. (AF), Kanpur under certificate of posting. The applicant had suffered severe 'Sciatica' pain which confined him to bed for a long time and the Doctor who had treated him given his certificate. His case further is that he sent a Medical Certificate issued by the same Doctor for extension of leave under certificate of posting on 20.2.1982. His case further is that before he could fully recover from the aforesaid ailment, he suffered from chronic conjunctivitis and was referred to an Eye Specialist. He had consulted Dr. Arun Kumar Jain, Eye Specialist on 1.3.1983 who advised him that it was a case of 'papellate R.E.' with chronic 'open eye angle glaucoma'. He was advised complete rest for long time. The applicant stated that he sent another application to the L.A.O. (AF), Kanpur on 4.3.1983 under certificate of posting for extension of his leave. Ultimately, Dr. A.K.Jain certified him to be fit on 6.5.1986.

In the reply, it has been stated that it has not been specified as to from which address the applicant<sup>allegedly</sup> sent various communications for leave. It was also stated that the allegations about the applicant being ill were not correct and were, therefore not admitted. It was asserted that no application for extension of leave was received in the LAO (AF), Kanpur. It was reiterated that no application or Medical Certificate in support of the same was received by his office. The respondents denied that the applicant

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has been regularly informing them about his ailment and sending his applications along with Medical Certificates. All this was stated to be false. It was pointed out that the procedure in such cases as outlined in the Departmental, Office Manual, Part I has not been followed inasmuch as no intimation in regard to grant of leave was ever sent. The applicant had applied for two days Casual Leave from 2.9.1981 to 3.9.1981 without making a mention of the fact that he was leaving the station. It was necessary in such cases to obtain prior permission to leave the station and to record his leave address. He had, therefore, not disclosed where he was going and the address of that place. Even the Medical/Fitness certificate issued by Dr. Arun Kumar Jain was a photostat copy. Even though the original had not been filed and the Medical Certificate/Fitness Certificates were not in prescribed forms. The absence from duty at one stretch was for more than three years.

The question for consideration in this regard is that if the applicant was leaving the station, it was incumbent on him to take permission and mention leave address of the place he was visiting so that if need be, he could be contacted. In the present case, the applicant proceeded to Delhi without obtaining permission to leave the station. At Delhi, it is stated that he fell ill. No application for extension of his leave on the ground of illness was ever received at the L.A.C.(AF), Kanpur. In the normal course, one would have sent the leave application by Registered post. If that had been done and the letter

was correctly addressed, a presumption under Section 27 of the General Clauses Act would have arisen. The presumption would have been that a Registered letter correctly addressed would have reached the addressee. However, a letter sent under certificate of posting does not raise such a presumption. There is no presumption that a letter sent by ordinary post or even under certificate of posting reaches the addressee after a certain period of time. If the applicant was so severely ill as he has alleged, he must have consulted some Doctor. Being a Government servant it is presumed that he would have known the procedure for making an application for extension of leave supported by a Medical Certificate. The respondents say that nothing was received at their end. What is significant is that it is not known what was written in these letters which the applicant alleges have been sent on 3.9.1981 and 20.8.1982. The applicant has not filed copies of such letters. Thereafter for a period of almost three years, admittedly, no application for extension of leave or his being medically unfit was ever sent to the LAD(AF), Kanpur. This is unbelievable that a government servant kept away from his office for three years without any endorsement or application to the office explaining that he was ill. If he could not write himself, he would have taken help from someone and sent a letter along with Medical Certificate. But there is no such proof that any such letter was sent or received at Kanpur. What is significant is that

none of those letters alleged to have been sent by the applicant were even sent under Registered A.D. The above facts indicate<sup>that</sup> the conduct of the applicant was callous and wholly irresponsible. He has not been able to explain why he kept quiet and did not go to Kanpur even once during this period nor communicated his nature of illness and inability to write due to his illness etc.

The second part of the case is about the disciplinary proceedings initiated by the respondents. The order of removal from service passed against the applicant vide order dated 12.3.1984 (Annexure -XII(B) to the O.A.) concludes the first paragraph by the following words:

"The undersigned is, therefore, satisfied that it is not reasonably practicable to hold an inquiry in this case."

It was asserted by the respondents that departmental inquiry was held against the applicant which was ex parte as the applicant could not be served with the notice of the show cause or the chargesheet despite repeated efforts by the respondents. Reference was made to Rule 14 of the CCS(CCA) Rules, 1965 which sets out procedure for holding inquiries and imposing of penalties. In Government of India's Instructions under the said Chapter, paragraph (6) elaborates the procedure for holding ex parte inquiry, which reads 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 C.C.S.(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 CCS(CCA) Rules, the inquiring authority may hold an ex parte inquiry. The notices of all hearings should be served on the accused or communicated to him unless the first notice says that the inquiry will continue from day-today. In ex parte proceedings, the entire gamut of the enquiry has to be gone through. The notices to witnesses should be sent, the documentary evidences should be produced and marked, the Presenting Officer should examine the prosecution witnesses and the inquiring authority may put such questions to the witnesses as it thinks to be fit. The enquiring authority should record the reasons why he is proceeding ex parte and what steps he had taken to ask the accused official to take part in the enquiry..... "

In order dated 12.3.1984 removing the applicant from service, the Controller General of Defence Accounts narrates the sequence of facts leading to the inquiry. After the appeal had been filed against the order of removal, the Appellate Authority viz. the Financial Adviser (Defence Services), respondent No.2 has narrated in detail as to why the proceedings were ex parte. Even in the Appellate order, he has stated in detail as to what

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steps had been taken by the Inquiry Officer to effect service on the applicant and to what result. The reasons were mentioned for proceeding ex parte. These reasons also appear to be sound.

Learned counsel for the applicant raised three contentions. Firstly, that even in the ex parte proceeding the entire procedure of an inquiry has to be gone through except that the delinquent government servant is not there. Learned counsel urged that the witnesses and documentary evidence have to be produced. The Presenting Officer has to present his case and ultimately the Inquiry Officer may seek clarification of the evidence from the witnesses examined. The Inquiry Officer has to complete his report and submit it to the Disciplinary Authority. But before all this is done, the Inquiry officer has to satisfy himself that all necessary and possible efforts have been taken to serve the delinquent government servant so that he may appear in the proceeding. Learned counsel contended that mere sending of Registered letters and notices to the applicant at his permanent home address is not enough. In the present case, the Postman has returned the letters by saying that the applicant has not been residing here and that he was not found. Learned counsel stated that it was imperative that the respondents <sup>should</sup> ~~xxx~~ have found out the applicant's address and sent the Registered letters there. The question is: How does the respondents come to know of the address of the applicant if he has not given the same. Except for his revealing that he stayed in Delhi

for two days viz. on 2nd 3rd September, 1981, he had not disclosed his address at any stage. Consequently, it was not possible to send the Registered letters to any address except to his permanent home address which was recorded in his Service Book. Learned counsel for the applicant contended that while seeking two days Casual Leave, he had mentioned the Delhi address and all communications should have been sent there. The applicant has not asserted at all anywhere that he had mentioned his Delhi address or any other address in any of the letters or even otherwise to the Department. As a matter of fact, he had not disclosed his whereabouts at all during these five years. How is it possible to serve such a person? This is an <sup>un</sup>impossible situation. This situation is a creation by the applicant himself. He does not disclose his whereabouts, his address for a period of five years. It is more or less like a situation where one asks a question: How do you serve a person by a Registered letter when he is dumb, deaf and blind? He can't speak, hear and see.

Assuming that the applicant was afflicted with Sciatica pain and thereafter with an eye trouble, it was still necessary for him as a government servant to inform his office about his illness and about his inability to resume the duty. He had to disclose his address for future communication. The very fact that he did not give his address in Delhi for a period of five years is significant. An inference can be drawn that he was not interested that his office knew about his address.

The <sup>second</sup> argument of the learned counsel is that since the applicant had left his leave address at the LAO(AF), Kanpur, the respondents could have used it. We are not impressed that this would prevent the applicant for communicating with his office during his stay at Delhi or at a place where he was staying. In the normal course, when a person suddenly falls ill and seeks extension of leave, he sends immediate letters and telegrams informing his office of the position followed by an application for extension of leave. If the leave has to be extended further, application is made well before the earlier period has expired. The address should be mentioned so that the office could communicate with him and inform him whether the leave has been granted or not. Kanpur is not very far away from Delhi. The journey involves 7 to 8 hours by train and one could have reached Kanpur without much difficulty. It is well known that Sciatica pain does not continue indefinitely or for months together. Even a glaucoma patient can move about. We are, therefore, of the view that silence on the part of the applicant for a period of five years, of which for a period of over three years, there was no allegation of any letter or application or telegram having been ever sent by the applicant. These facts and circumstances certainly impress us that the applicant could not be located or approached and the department had made enough efforts to serve him. If he could not be served, in these circumstances, the Inquiry Officer could certainly proceed

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ex parte.

Learned counsel for the applicant <sup>then</sup> urged that if the applicant was not found, it was the duty of the respondents to have given an advertisement in the news papers or got the notice pasted in his house at Etah in the presence of the two witnesses. In our opinion, these considerations do not weigh at all. The reason is that the applicant has stated that he was not staying in Etah and, consequently, the endorsement of the Postman unless rebutted could be believed to be correct since the letter/notice was sent per Registered post. The applicant has not denied that the Etah address was incorrect address. Consequently, the respondents have made several attempts to serve the applicant but had failed. As regards the question of service by giving an advertisement in the newspapers, it may be mentioned that unless it was known where the applicant was residing, there was no point in publishing the advertisement in a paper at Kanpur or Delhi even. These arguments could be resorted to where the Department or office was aware of the address of the delinquent government servant and they did not take necessary action to send the notice accordingly.

Learned counsel for the applicant cited before us several decisions. In the case of T.D.SATHYAKUMAR Vs. THE DIRECTOR, GOVERNMENT OF INDIA. MINISTRY OF DEFENCE, RESEARCH & DEVELOPMENT ORGANISATION, AERONAUTICAL DEVELOPMENT ESTABLISHMENT & ORS ( 1989(2)SLC(CAT) 689)

a Division Bench of the Tribunal held that non-service of charge sheet was the only reason for dispensing with inquiry. This was held to be wrong.

Learned counsel then cited the case of LAKSHMI NARAIN PANI & L.N. PANI Vs. UNION OF INDIA AND OTHERS (ATR 1988 (2) CAT 67) where too the Division Bench of the Tribunal at Calcutta held that the dispensing of the inquiry could not be done where the applicant was not served.

In the case of SHYAMALENDU B. KANJILAL AND ANOTHER Vs. UNION OF INDIA AND OTHERS (1990 (12) ATC 209) the Division Bench of the Tribunal at Calcutta held that departmental inquiry could not be dispensed with unless it was held that the inquiry was reasonably not practicable and that such information of the Disciplinary authority should be based on positive material and not on conjectures.

In the case of R. RAGHAVAN Vs. DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, TRIVANDRUM AND OTHERS (1989 (10) ATC 195), the Division Bench at Ernakulam held that the mere absence of employee whose whereabouts are not known does not lead to conclusion that it is not reasonably practicable to hold an inquiry. The Division Bench held that in such cases, inquiry should proceed ex parte.

None of the above cases is helpful or applicable to the present case. In the present case, the inquiry

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has not been dispensed with. The inquiry proceeded ex parte and that is permissible. The Inquiry Officer gave his findings, the Disciplinary authority accepted the findings and awarded the punishment. The applicant's appeal to the respondent No.2 was considered and decided by a speaking order.

The Disciplinary authority passed an order dated 12.3.1984. Although the last sentence of first paragraph of the above order is not properly worded and indicates as if no inquiry was held but the fact is, and we have ascertained from the original record that an ex parte inquiry was held. Consequently, there is some error in the above sentence when it says that it is not reasonably practicable to hold an inquiry in this case. Presumably, what he meant to say was that it was not possible to hold an inquiry with the participation of the applicant. Be that as it may be, factually the position is that an ex parte inquiry was held and there was an appeal against that order and that too was decided with a speaking order and the points raised in the appeal were dealt with by the Appellate Authority.

We are further satisfied that due procedure was followed and that this is not a case where we should exercise our discretionary jurisdiction to pass an order setting aside the order of removal. The applicant himself is responsible for the present situation. We find no merits in this case. The Application is accordingly dismissed without any order as to costs.

(M.M. Mathur)  
Member (A)

(Amitav Banerji)  
Chairman.

Transmitted in open  
Court by me today  
SKS

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