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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 709 of 1987

Date of Decision 23.4.90

SHRI ANIL KUMAR KARKARA

- APPLICANT
IN PERSON

-VERSUS-

UNION OF INDIA & OTHERS

- RESPONDENTS

SHRI P. P. KHURANA

- COUNSEL FOR
RESPONDENTS

CORAM :

1. THE HON'BLE MR. P. C. JAIN, MEMBER (A)
2. THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

1. Whether Reporters of local papers may be allowed
to see the judgment? js
2. To be referred to the Reporter or not? js
3. Whether their Lordships wish to see the fair
copy of the judgment? no
4. To be circulated to all Benches of the Tribunal? no

For me
Member (J)

(P. C. JAIN)
MEMBER (A)

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JUDGMENT DELIVERED BY HON'BLE MR. J. P. SHARMA, MEMBER (J)

J U D G M E N T

The present application under section 19 of the Administrative Tribunals Act, 1985 was moved by the applicant, who was posted as JSA-1 in EDP Systems, R & D Headquarters, New Delhi assailing the order No. Pers/21751/2/RD/Legal Cell dated 30/5/86 (Annexure 'I') passed by the Director General Research & Development. The applicant was dismissed from service and he has prayed that the said order be quashed with all consequential benefits with full pay and allowances till date.

2. The facts of the case are that the applicant was posted as Junior Scientific Assistant Grade-I in the Institute of Nuclear Medicine & Allied Sciences (in short INMAS) Delhi. He took a loan of Rs.3,000/- on August 14, 1981 and Rs.300/- in November, 1981 from the INMAS Employees Co-operative Thrift and Credit Society Ltd. and was to refund that loan totalling Rs.3,300/- in suitable monthly instalments. He had paid 8 instalments amounting to Rs.950/- by April, 1982 when he was relieved on transfer from INMAS Delhi to Directorate of EDPS, Sena Bhawan, New Delhi in the same capacity.

3. The applicant was served with a charge sheet on 22nd July, 1983 (Annexure 'A'). The Enquiry Officer was appointed and the hearing of the enquiry commenced during 1983. The applicant made a written submission to Scientific Advisor to Defence Minister, Government of India, New Delhi

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(Respondent No.2) who is appellate authority complaining against the Enquiry Officer on 15/3/84 (Annexure 'B'). The Enquiry Officer, therefore, stayed the proceedings of enquiry. The article of charge in this charge sheet of 22/7/83 is that while the applicant was functioning as JSA-1 in the office of the Director, EDPS at DRDO Headquarters during the period November, 1982 firstly he used derogatory and threatening language in communications against the Director, INMAS, secondly he was charged that he used threatening and impertinent language against his senior officers and failed to maintain absolute integrity and on June 9, 1983, he wrote a circular among others to the staff members in which he not only made derogatory statement and insinuations against his senior officers but also tried to create dissatisfaction amongst other staff members of the DRDO. Thus, he acted in a manner unbecoming of a Government servant and thereby violated Rule 3(1)(i) and 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964.

4. No enquiry proceeded on the above charges. The applicant was again charged on 21.2.84 with a fresh charge sheet (Annexure 'J'). The charge against the applicant was that he took a loan of Rs.3,300/- from the INMAS Employees Co-operative Thrift and Credit Society Ltd. and he returned in 8 instalments a sum of Rs.950/- by April, 1982 when he was transferred from INMAS to Directorate of EDPS. The applicant gave a written undertaking on April, 19, 1982 that the loan instalments which were regularly deducted will be sent to the said Society in the first week of every month. He failed to pay any amount to the Society after his transfer from INMAS. When the INMAS requested the office of the Chief Administrative Officer, Ministry of Defence, New Delhi, who was his drawing and disbursing officer to deduct the Society dues from his salary, the applicant wrote a letter to the Chief Administrative Officer that he had already paid a sum of Rs.2,350/- to Col. N. Lakshmipathi, Director, INMAS, Delhi and, in support of his statement, he produced a photocopy of receipt purported to have been issued by the said Director, INMAS. Brig. N. Lakshmipathi had denied in writing having received the said amount or having issued a receipt under his signature to this effect. Secondly, he was also charged

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for making a false statement to the above effect and also using offensive and derogatory language against his senior officer in support of his false contention and so the applicant indulged in gross misbehaviour unbecoming of a Government servant, thereby violating Rule 3 of C.C.S. (Conduct) Rules, 1964. In support of the articles of charge, the details of the imputations and the list of documents as well as of the witnesses, as also an expert from the Office of Government Examiner of Questioned Documents, Bureau of Police Research, Ministry of Home Affairs, Government of India, Simla, were given.

5. The applicant gave the reply (Annexure 'K') but only contended that the second charge sheet dated 21.2.1984 is illegal, null and void, ultra vires, bad in law, capricious and not tenable. He further added that if the second departmental enquiry against him was held, he reserves his right to deal with it as may be advised.

6. Shri S. S. JAMWAL was appointed Enquiry Officer on the charge sheet dated 21.2.1984.

7. The whole grievance of the applicant is that he has not been given reasonable opportunity in the matter by the Enquiry Officer which has totally prejudiced his case inasmuch as he could not even appear before the Enquiry Officer at any stage of the proceedings to the extent that even he could not know that any Enquiry Officer had been appointed in his case to enquire about the above charges. To appreciate these facts, the departmental file was summoned to find out whether the applicant was made aware of the commencement of the enquiry from the stages of the preliminary hearing upto the stage of the passing of the final order against him.

8. The departmental file clearly shows that a registered letter was sent by the Enquiry Officer Shri S. S. JAMWAL, Assistant Director (Pers.), Ministry of Defence, R & D.D., New Delhi and this registered letter was received at the address of the applicant as is evident from the Acknowledgement Due receipt in the departmental file. The office copy of this

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letter sent by registered post to the applicant is in departmental file and is reproduced below :-

"Please refer to Order No.Pers/21751/2/RD/LC dated 13th March 84 issued by Dr. M. KRISHNAMURTHI, Chief Controller Research & Development appointing me as Inquiring Authority for holding an oral inquiry into the charges framed against you, a copy of which has been endorsed to you.

2. I shall hold the preliminary hearing of the case on 9th April, 1984 at 10.00 A.M. at Room No. 228, 'B' Wing Sena Bhawan, New Delhi-110011 which you are hereby required to attend.

3. The Presenting Officer is also being asked to attend the hearing along with all the relevant records.

4. Please note that if you fail to appear at the appointed time and place, I shall proceed ex parte.

5. You are also requested to intimate the name, designation and address of the Government Servant who will be assisting you. If you have been allowed the assistance of a legal practitioner, a copy of the permission accorded by the Disciplinary Authority may please be sent.

6. Please acknowledge receipt."

9. A perusal of this letter shows that the Enquiry Officer had fixed preliminary hearing of the case on 9th April, 1984 at 10.00 A.M. at Room No. 228, 'B' Wing, Sena Bhawan, New Delhi. Since the acknowledgement due receipt shows that the registered letter was delivered at the address and there shall be as alleged by respondents presumption under Section 16 of the Evidence Act (1972), that the letter has been duly received by the applicant, so it cannot be questioned that he did not know about the enquiry proceedings. The applicant was under suspension and while under suspension he has to remain at the same address which he had given. The address given by the applicant is B-19/1003, Lodi Colony, New Delhi-110003 and, therefore, any communication addressed to that address and having been delivered as is evidenced by the acknowledgement due receipt returned by the Post Office duly signed, it cannot be, in any way, doubted as alleged and contended by respondents that the said registered letter was wrongly delivered, not at the address but at some other place.

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10. On 9th April, 1984, the enquiry proceedings were adjourned as the applicant did not appear and another registered letter was sent on 9th April, 1984 fixing the date 19th April, 1984. In this letter, the next date 27th April, 1984 was also shown for introduction of the case by the Presenting Officer on behalf of the department and of examining the witnesses. The applicant did not appear either on 19th April, 1984 or on 27th April, 1984, and both these Registered Acknowledgement Due letters were received back with the endorsement of the Post Office that the applicant was not found in spite of going again and again at the address. Another letter was again sent on 19th April, 1984 at the same address intimating that the proceedings shall be taken on 27th April, 1984 and the enquiry shall proceed ex parte if the applicant does not turn up. Again on 27th April, 1984 a Registered A.D. letter at the same address was sent to the applicant asking to appear on 11.5.1984 at the given address but the applicant did not appear. The applicant was informed on 27th April, 1984 through a registered letter of the minutes of the proceedings recorded on that day and the statement of Shri S. K. Saxena and opinion of the Assistant Government Examiner of Questioned Documents were also sent as an enclosure.

11. On 11th May, 1984, again the applicant did not appear and the statement of Brig. N. Lakshmi pathi was recorded and the applicant through registered A.D. letter was informed about the ex parte proceedings drawn and the statement recorded on 11.5.1984 of Brig. N. Lakshmi pathi was sent as an enclosure. The proceedings were adjourned to 22nd May, 1984 for which also intimation was sent in that letter. Again on 22nd May, 1984, the applicant did not appear and a registered letter with A.D. was sent for giving the brief and defence case by 31st May, 1984. The Presenting Officer was also directed to send a copy of the brief to the applicant within two days. The Presenting Officer on 23rd May, 1984, by Registered post sent the written brief to the applicant. These letters were received back undelivered with the endorsement that in spite of repeated calls at the residence of the applicant at the given address, the applicant was not found. Ultimately, the Enquiry Officer had drawn the

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enquiry report on 7th June, 1984 (Annexure 'P') and held that the applicant is guilty of the charge and has violated Rule 3 of CCS (Conduct) Rules, 1964. This report was submitted to the Disciplinary Authority who, on 3rd July, 1984, passed the order of dismissal from service (Annexure 'R'). An appeal was preferred by the applicant which was dismissed by the Appellate Authority on 16.10.1984 (Annexure 'S'). A review was preferred to the President under Rule 20 of CCS (CC&A) Rules, 1965 and it was rejected on 30th May, 1986 (Annexure 'T'). It is this order which the applicant has challenged and prayed for quashing the same.

12. The respondents besides above contentions from the applicant's departmental file in their reply clearly stated that the earlier enquiry was based on separate charges in 1983 and since the applicant himself had gone before the Appellate Authority against the Enquiry Officer, so the proceedings of that enquiry were discontinued, and on the new facts, new charge sheet was served on 21.2.1984 on the applicant. The applicant has grossly mis-represented and has confused the matter with the earlier enquiry based on different charges and the subsequent enquiry based on different charges in which the impugned order was passed.

13. It is stated by the respondent that the applicant did move under Rule 19(1) of the C.C.S. (Conduct) Rules, 1964, for permission to launch prosecution against Col. N. Lakshmipathi but since it was not purporting to be an official act of the said Military Officer, so the permission was refused.

14. That the applicant in the second charge sheet was given imputation of charges for filing a false receipt alleged to be signed by Col. N. Lakshmipathi on 19.4.1982 but the applicant did not produce the original to substantiate his contention. The Assistant Government Examiner of Questioned Documents Shri S. K. Saxena gave his statement which clearly shows that the writing above the signature is in print of a different typewriter.

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15. That regarding the publication of the name of the Enquiry Officer in the Official Gazette as desired by the applicant under Central Act XVIII of 1972, it was not necessary nor it was visualised under the C.C.S. (CC&A) Rules, 1965.

16. That the applicant was under suspension and he had given his address and he was served with the notices during the proceedings of the enquiry as well as of the preliminary hearing of 30.3.1984 which was received at the address of the applicant. All registered letters with A.D. sent to the applicant except the one dated 30.3.1984 were received back un-delivered with the remarks "on repeated visits, the addressee was not available". The applicant was given all reasonable opportunities for submitting his defence and for producing his witnesses and documents in his defence to which applicant did not respond. The applicant did not appoint any defence assistant and tried to confuse the matter with the proceedings of the earlier enquiry of 1983. The name of the defence assistant Shri T. K. Ratnam was intimated by the applicant for the enquiry conducted against the charge memo dated 21.2.1984 was nominated by the applicant. The respondents pointed out that there is no mis-carriage of justice and the applicant was afforded due opportunities time and again and if he has not availed of those opportunities, then the applicant has to blame himself. Regarding the visit of Ethiopian Ambassador to INMAS on 14.12.1981 un-authorisedly, the matter was enquired into and it was found that the said Ambassador was sent by a private consultant Dr. Shama whose entry exists in the OPD of INMAS and there was no lapse of security of the Institution. In past also, such facilities were made available to outsiders. In view of this, the respondent prayed for dismissal of the application.

17. The applicant in the rejoinder again reiterated the stand taken in the application.

18. We heard the applicant in person and the learned counsel for the respondents. The applicant challenged the enquiry proceedings firstly on the ground that he was not told about the name of the Enquiry Officer but it is not so. The notice of the preliminary enquiry was served at the

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address of the applicant in which a clear date 9th April, 1984, was mentioned and the acknowledgement due receipt in the departmental file, which has not been rebutted during the course of the arguments, is conclusive proof of the same. When the applicant has been served by the letter dated 30.3.1984 then he must be deemed to have the knowledge of the subsequent dates 9.4.84, 19.4.84, 27.4.84 and 11.5.84. In fact, on all dates also separate letters were despatched at the address of the applicant along with the minutes of the proceedings of that particular date intimating the next date. In the registered letter dated 9.4.84, the date 19.4.84 and 27.4.84 were also mentioned.

19. The reasonable opportunity to a charged officer under Rule 14 of the C.C.S. (CC&A) Rules, 1965, is very much material because it involved a major penalty. The opportunity was given to the applicant as is evident from the departmental file and in the reply filed by the respondents. The applicant cannot say that he was totally unaware of the enquiry proceedings. What the applicant desires is that if he was not served, then the matter should have got published in some local paper. In this connection, the learned counsel placed reliance on 1973 (1) Volume 8 SIR page 694 Gouri Shankar Singh versus The State of Bihar & Others. In that reported case, only once a notice was given by post to the delinquent officer which was returned un-served. So it was held that there was a violation of principle of natural justice. Reliance has also been placed on 1961 AIR Supreme Court page 1158 - The Bata Shoe Co. (P) Ltd. versus D. N. Ganguly. In this case, the proper procedure for service of charge sheet has been given by publication. Both the precedents lay down the ratio that every step should be taken to intimate the charged person to know about the charge sheet or enquiry against him. In the present case, the applicant was duly served with the charge sheet and so it cannot be said that he has no knowledge of the charge sheet. Not only that the applicant had the personal knowledge of the charge sheet dated 21.2.1984 but also the applicant received the registered letter intimating him the date of preliminary hearing on 9.4.1984. Subsequent thereto, the applicant was sent registered letter A/D at his given address and

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Section 16 of Indian Evidence Act, 1872 clearly lays down that when there is a question whether a particular act was done, the existence of any course or business according to which it would naturally have been done is a relevant fact. The writing of the postman on every registered letter and the endorsement that the addressee was not found would not in any way help the applicant in view of the fact that the applicant was personally served with the charge sheet and that the notice of preliminary hearing dated 30.3.84 for 9.4.84 served at the address of the applicant as is evident from the departmental file. The applicant has been in the same department and was under suspension. If there was any change of address that should have been notified. The applicant in the O.A. has given the same address. Thus, the contention that he had no knowledge of the enquiry proceedings does not help the applicant in view of the above facts.

20. The second question arises whether on the principle of natural justice, the applicant has not been given adequate and reasonable time to meet the charges against him. The simple answer to the question is that after the respondents have taken every step repeatedly to inform the applicant and he avoided the enquiry and is only awakened when an order of dismissal was served on him at the same address, then by any sympathetic and magnanimous discretion being extended to him it would be said that the principles of natural justice have not been violated. The first charge sheet was on different aspects. The second charge sheet dated 21.2.1984 was regarding false showing of a receipt allegedly issued by Col. N. Lakshminipathi and the original copy of which has not been filed, as only photocopy was filed which was held to be forged by an Expert of Questioned Documents.

21. On the consideration of the whole matter, there is nothing illegal or arbitrary in the enquiry proceedings, in the enquiry report and further nothing has come out with the appellate order or the order passed in review that any of these suffer from any discrimination violative of Article 14, 16 or 311(2) of the Constitution of India. The application is devoid of merits and is dismissed. Cost will be borne by the parties.

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(J. P. SHARMA) 25.4.90
MEMBER (J)

23/4/90
(P. C. JAIN)
MEMBER (A)