

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

(THIS THE 4th DAY OF Nov, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.864 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

R. P. Verma, S/o Late Sri Natthi Lal Verma, Resident of 29 Janta Colony, Shahganj, District Agra.

..... Applicant

By Adv. Shri R. Verma,

Versus

1. *Union of India, through its Secretary, Ministry of Telecommunication and Postal Department, New Delhi.*
2. *Post Master General, Agra Division, Agra.*
3. *Senior Superintendent of Post Offices, Agra Division, Agra.*

..... Respondents

By Adv: Shri R. K. Srivastava

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The applicant is aggrieved by the impugned order dated 29th April, 2005, passed by the appellate authority, in respect of his appeal dated 25-01-2005. This appeal was filed against the order dated 10-11-2004 (Annexure 5) passed by the Disciplinary authority, whereby penalty of "removal from service" was imposed by the disciplinary authority and by the impugned appellate order, the afore

said penalty of removal from service had been reduced to one of compulsory retirement.

2. The facts leading to the issue of the above penalty order are as under:-

(a) The applicant was serving as Postal Assistant (Dak Sahayak) and he was allegedly on unauthorized absence from 03-01-1999 to 05-05-1999. He was proceeded with an inquiry vide Charge sheet dated 19-09-2001 (Annexure CA - 6) and the charge reads as under:-

"Article-I

That Shri R.P. Verma PA Agra Fort HD was absent from duty w/o any information w.e.f. 03.05.99. Said Shri Verma joined his duty on 06.05.99 submitting M.C.03.01.99 to 05.05.09 issued by (NON AMA) Dr. S.K. Kashyap M.B.B.S. 37/169 Negla Padi, Agra-5 with fitness 6.5.99. Thus he remained unauthorized absent from duty without any information w.e.f. 03.01.99 to 5.5.99.

Thus said Shri Verman violated the provision of Rule 62/162 of Postal Manual Vol-III and failed to maintain absolute integrity devotion to duty and acted in such a manner which is unbecoming of a Govt. servant violating the provision of rule-3(x)(i)(ii) & (iii) of CCS (Conduct) Rules, 1965. "

(b) The charge sheet was returned undelivered. This memorandum dated 19-09-2001 together with certain other communication was sought to be delivered through the RRI (P) Agra Fort but the said authority had by his communication dated 28-11-2001 informed that the applicant had refused to receive the same.

(c) The disciplinary authority then proceeded with the inquiry proceedings and according to the respondents, the applicant did not respond to any communication sent to him by the inquiry authority and hence, the proceedings were throughout *ex parte*. Certain notices emanated from the inquiry authority were stated to have been pasted on the applicant's residence as well.

(d) After conducting the inquiry, the inquiry authority had sent his report to the disciplinary authority, who in turn sent a copy of the same to the applicant. The applicant had intimated that some page in the inquiry report was missing and the same was also sent by communication dated 22-09-2004 (Annexure CA-11). The applicant did not send any proper representation to the disciplinary authority. Hence, Annexure A-5 was passed after considering the inquiry report.

(e) The applicant preferred an appeal and it was by that time he also had preferred OA No. 1580/2004 which was decided with a direction to the appellate authority to decide the appeal. The appeal was rejected vide impugned order dated 29-04-2005 against which the applicant has preferred this O.A. inter-alia on the following grounds:-

- (i) Documents demanded by the applicant not supplied and the reply not considered by the disciplinary authority.
- (ii) Witness statements were based on mala fide considerations.

(iii) Respondents having accepted the medical certificate, the impugned orders are vitiated in the eyes of law.

(vi) Certificate from A.M.A. being not at all mandatory insistence of the certificate from A.M.A., the lapse of 4 years, vitiates the impugned orders.

(v) Punishment grossly disproportionate.

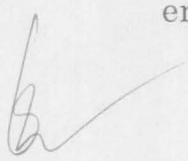
(vi) Impugned order are based upon mala fide considerations.

(vii) Proceedings are based upon extraneous considerations.

3. Respondents have contested the O.A. According to them, the inquiry was conducted strictly in accordance with the provisions of the Rules. Again, they have stated that the applicant refused to receive the charge sheet and thereafter too, he of his own, chose not to participate in the inquiry, which compelled the Inquiry Officer to proceed *ex parte* and after duly conducting the inquiry, the applicant was served with a copy of the inquiry report to which the applicant had responded stating that page 3 of the report was missing and he had in addition added matters totally unrelated to the subject matter of disciplinary proceedings. The reportedly missing page 3 was again sent to him, but there being no further communication from him, the disciplinary authority passed the penalty order of removal from service. Against the same the applicant had preferred the Appeal and the appellate authority had after meeting all the grounds raised in the appeal, rejected the same, but considering that the penalty (of removal from service) is harsh, had converted it to one of compulsory retirement. The respondents have refuted all the grounds of the OA stating that none of them is tenable.

4. Applicant had filed his rejoinder reiterating all the contentions as raised in the O.A.

5. Counsel for the applicant vehemently argued that this is a case where the principles of natural justice had been given a complete go bye right from the stage of issue of charge sheet and in fact, the charge sheet had not been issued bona fide, but on extraneous grounds. The authorities had entertained the applicant on his resuming duties after his illness in May 1999 and there had been no charge sheet. However, when the applicant made some complaints against some officers, this charge sheet has been mala fide issued. He had argued that when for the period of absence due to illness, necessary medical certificate and fitness certificates from the Ayurvedic Doctor were produced, and the same were accepted by the respondents as early as in 1999, there was no reason as to why should charge sheet be issued, that too as late as 2001. Again, issue of charge sheet is such that it never landed upon the lap of the applicant at all and the applicant is totally ignorant about either the appointment of inquiry officer, or conducting of the inquiry. None of the notices, purported to have been sent by the Inquiry Officer had reached him. There was no communication after the prosecution closed its evidence. No written brief was called for. The respondents failed to furnish the documentary proof over the issue of notice by inquiry officer. The entire matter has been vitiated as the very inquiry had been



accentuated with malafide on account of the fact that the applicant had made certain complaints against certain officers.

6. Counsel for the respondents submitted that the inquiry has been conducted strictly in accordance with the rules and the Appellate authority had been considerate towards the individual and on appreciating the hardship that would be caused to individual diluted the penalty from removal from service to one of compulsory retirement.


7. Arguments were heard and documents perused. The legal grounds on which the applicant challenges the impugned order for which analyses, they are as under:-

(a) Non-observance of Principles of Natural Justice:

The applicant claims that

- (i) charge sheet has not been served upon him;
- (ii) no notices from the inquiry office were received;
- (iii) proof of service of notices asked for in respect of inquiry proceedings has not been furnished;
- (iv) the inquiry report was not in a full form which incapacitated the applicant from filing an effective representation.

As regards non service of charge sheet is concerned it is observed from the pleadings that initially the charge sheet despatched to the applicant had returned undelivered vide



paragraph (C) of the Counter Affidavit. However, this was once again sent to the applicant through RRI (P) Agra Fort in November 2001 and vide Annexure CA-8 letter dated 28.11.2001, The RRI (P) Agra fort had categorically stated as under:-

“श्री आर०पी० वर्मा डाक सहा० आज्ञा दि० 28.11.01 को अपनी duty पर आपे थे उनको (i) B₁ /R.P. Verma/2/Ch-II दि० 19.05.2010 R.L. 68PO (2) R.L. 674, B1/R.P.Verma/Dis/I दि० 19.09.01 (3) B1/R.P. Verma/2/Ch-II दि० 22.11.01 तथा (4) B1/R.P.Verma/Ch-II दि० 23.11.01 दिने परन्तु उसने उक्त प्रपत्रों को साफ लेने से इन्कार कर दिया और कहा कि मैं कोई भी चारो पत्रों में से नहीं लूँगा अतः आप तुरन्त वापिस भेज दो। अतः चारो प्रपत्र आपका वापिस भेजे जा रहे हैं”

The question is whether the refusal to receive the charge-sheet would amount to deemed service of charge sheet. The applicant relied upon the decision in *Union of India & Ors. V. Dinanath Shantaram Karekar & Ors 1998 Supreme Court Cases (L&S) 1837*, wherein the apex Court has held that alternate mode of service should be effected in case service through normal mode could not be possible. This decision does not support the case of the applicant because of a vital difference in two cases. In the above case, the charge sheet which was sent to the delinquent official returned undelivered with endorsement “Not Found”. It was under that circumstance that the question of publication in a popular Newspaper arose. In the case of the applicant, however, there is a flat refusal. Thus, we have to see whether the same is sufficient to meet the requirement as per the Rules.

In the case of *Dr. Ramesh Chandra Tyagi V. Union of India & Ors. 1994 Supreme Court Cases (L&S) 562*, the Apex court has held as under:

It was vehemently argued that there was no procedural irregularity. But that is writ large on the face of it. No charge-sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement "left without address" and on other occasion, "on repeated visits people in the house that he has gone out and they do not disclose where he has gone. Therefore, it is being returned". May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under Postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge-sheet was returned. In absence of any charge-sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity. No further need be said as the appellant having been removed for not complying with the transfer order and it having been held that it was invalid and non est the order of dismissal falls automatically.

Taking into account the above decision of the Apex Court in Ramesh Chandra Tyagi (supra), if we analyses the case of the applicant it would be seen that the RRI (P) Agra Fort had returned the registered letter containing the charge sheet to the respondents. In that case, as an additional witnesses, the said RRI(P) should have been examined giving an opportunity to the applicant to cross examine him. Admittedly, this drill was not performed. As such we have to come to the conclusion



that the very charge sheet itself has not been served upon him.

The above serious legal lacuna itself would suffice to demolish the defence of the respondents. However, it will be appropriate to analyse the other aspect also and the same are discussed as hereunder:-

(b) As regards non service of full inquiry report: The respondents have stated that the missing Page-3 of the report was sent to the applicant by annexing CA-II communication dated 22.09.2004, paragraph G of the CA refers. Though, the applicant has contended that the averments made in Paragraph-G is not admitted, he has not categorically stated that he has not received a copy of the missing page.

(c) As regards non issue of notice by the Inquiry Authority: The Inquiry Officer has made a mention as under:-

“जॉच कार्यवाही में श्री आर०एन०यादव कार्यालय पर्यवेक्षक मण्डलीय कार्यालय प्रस्तुतकर्ता अधिकारी के रूप में सम्मिलित हुये।

जॉच कार्यवाही में नौ बैठके में कार्यालय आगरा में क्रमशः 19.06.02, 16.07.02, 30.07.02, 13.08.02, 04.09.02, 31.10.02, 07.11.02, 20.11.02 एवं 12.12.02 को हुई।

सभी बैठकों की सूचनाये आरोपित कर्मचारी को पंजीकृत डाक से तथा जन सम्पर्क निरीक्षक आगरा के माध्यम से भेजी गयी लेकिन आरोपित कर्मचारी किसी भी बैठक में उपस्थित नहीं हुआ।

नोटिस के माध्यम से श्री आर०पी०वर्मा को यह स्पष्ट रूप से अवगत करा दिया गया था कि यदि वे जॉच

कार्यवाही में उपस्थित नहीं होते हैं तो भी जाँच एक पक्षीय जारी रखी जायेगी।’

The above does not reflect whether actual delivery of notice had taken place or whether the documents were/were not received back. In the absence of same it cannot be presumed that the notices were served upon the applicant. In fact it was precisely this question that was raised by the applicant in his representation dated 13.09.2004, wherein the applicant has stated as under:-

“यह कि पेज नम्बर दो पर दर्शाया गया है कि आरोपित कर्मचारी को पंजीकृत डाक से व जन सम्पर्क निरीक्षक के माध्यम से सूचना भेजी है तथा नोटिस के माध्यम से आ०पी० वर्मा को स्पष्ट रूप से अवगत करा दिया गया था वह जाँच में उपस्थिति नहीं होते हैं यह विल्कुल गलत है यदि विभाग के पास कोई रजिस्टर्ड या नोटिस या कोई सूचना प्राप्त कराने की रसीद हो तो उपलब्ध कराने की कृपा करें।”

The respondents in response to the same had not furnished any such material to the applicant but the Disciplinary Authority dismiss the same as extraneous stating as under:-

“श्री आ०पी० वर्मा आरोपित कर्मचारी ने अपने पत्र दि० ०१.१०.२००४ जो इस कार्यालय में दि० ०४.१०.०४ को प्राप्त हुआ था। पैरा-१ में लिखा है कि उन्हें उनके पत्र दि० १३.०९.०४ के द्वारा मॉगी पूरी जानकारी उपलब्ध कराये, यदि उसकी पूरी जानकारी उपलब्ध नहीं होती है तो नियम-१४.४ जबाब देने में असमर्थ है।

आरोपित कर्मचारी को इस कार्यालय के पत्र संख्या सम दि० २२.०९.२००४ जो दि० २४.०९.२००४ को वितरित हो चुका है स्पष्ट रूप से सूचित कर दिया गया था कि वह जाँच आख्या के सम्बन्ध में अपना प्रतिवेदन १० दिनों के अन्दर प्रस्तुत करें। जाँच आख्या के अतिरिक्त कुछ कहना है तो अलग से पत्र द्वारा कह सकते हैं। इस प्रकार आरोपित कर्मचारी ने अपना बचाव प्रतिवेदन प्रस्तुत नहीं किया।”



The above requirement of the applicant is proximately related to the disciplinary proceedings and the same cannot be dismissed as extraneous thing.

Thus, one can safely hold that the principles of natural justice have been violated in this case.

(B) The applicant has not been given opportunity after the closing of prosecution witnessed. This is a requirement as per Rule 14(18) of the CCS (CC&A) Rules, 1965. Rule No.14(18) of the CCS (CCA) Rules reads as under:-

4(18) The Inquiring Authority may, after the Government Servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

The above is a mandatory provision, as has been held by the Apex Court in a number of cases. In fact, corresponding provision in respect of Railway Employees, is Rule 9(21) of the Railway Servant (Disciplinary & Appeal) Rules, 1968 which has also been given the same status of mandatory provision by the Apex Court. In the case of **Mani Shankar V. Union of India & Ors 2008(3) 484,** wherein the Apex Court has held as under:-

"28. The High Court also committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances

appearing against him. In this case he has been denied the said opportunity."

(ii) The Apex Court in the case of **Sangram Singh v. Election Tribunal**, (1955) 2 SCR 1,, has held as under:-

"Therefore, if a party does appear on "the day to which the hearing of the suit is adjourned", he cannot be stopped from participating in the proceedings simply because he did not appear on the first or some other hearing.

30. But though he has the right to appear at an adjourned hearing, he has no right to set back the hands of the clock. Order 9 Rule 7 makes that clear."

(iii) The above law has been affirmed by the another three Judges Bench of the Apex Court in the case of **Arjun Singh v. Mohindra Kumar**, (1964) 5 SCR 946.

(iv) In the case of **Ministry of Finance v. S.B. Ramesh**, (1998) 3 SCC 227, the Apex Court has held as under:-

13. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:

"After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the

evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority.

On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it.

The bottom line of all the above judgments of the Apex Court is that the said provision is mandatory one and the same should be strictly adhered to. Thus, giving of an opportunity to the delinquent after prosecution closes its evidence cannot be marginalized (proceedings have been conducted *ex parte*, notwithstanding.)

8. In view of the above, the applicant's counsel has certainly made out a cast-iron case in favour of the applicant. The applicant has raised other issue such as validity of medical certificate issued by Ayurvedic Doctor and non commencement proceeding against him


immediately after he resume the duty but commencement of proceedings after he had made complaint against certain officials and thus the inquiry is vitiated as it is not a *bona fide* inquiry but has been initiated with *mala fide* intention. We do not find sufficient material in the pleadings in respect of consideration of this issue. Furthermore, once the fundamental fabric of the proceedings (viz. proceedings without serving charge sheet are legal and unjust) itself has been held to be invalid, the edifice upon the same too has to meet its Waterloo!

9. In view of the above, **the O.A. fully succeeds.** The Appellate Order (along with order of the Disciplinary Authority which axiomatically merges with the appellate authority) is quashed and set aside. The applicant is entitled to be reinstated in service with the period of absence being treated as duty. It is, however, left to the disciplinary authority to proceed further from the stage of issue of charge sheet if he so desires. In case further action is proposed to be taken, the period of absence from the date of removal till now shall be treated as period of suspension in accordance with the extant Rules, ie FR 54 A. As the applicant is now running around 57 of the years (He having stated in his verification column of the OA filed in 2005 that he was 52 years) and as such, if proceedings are continued, the disciplinary authority shall complete the proceedings as expeditiously as possible but not later then 8 month from the date of communication of this order. If the proceedings by the Disciplinary Authority are not concluded up to the stage of disciplinary authority's decision within

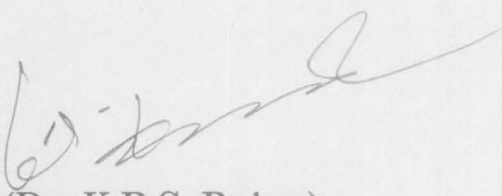
the above schedule time, the inquiry should be deemed as dropped. Necessary orders for reinstatement of the applicants, treatment of the interregnum period and payment of arrears of pay and allowances, if any, adjustment of pension against the payment due to the applicant etc. shall all be passed within time scheduled as under:-

- (a) Time calendared for reinstatement: Two months from the date of communication of this order.
- (b) Time for the rest of the action to be taken as directed above: Six months thereafter.

8. Under the above circumstances, there shall be no order as to costs.



(S.N. Shukla)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil