

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

THIS THE 28th DAY OF MARCH, 2006

Original Application No. 847 of 2003

HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A

Geetam Singh, S/o late Nathi Lal, C/o Sri Surendra Singh,
Advocate, Sector 16, Sikendra, Agra.

.. Applicant

By Advocate : Sri BB. Sirohi.

Versus

1. Union of India through Secretary,
Ministry of Human Resources Development,
Department of Culture, Government of
India, New Delhi.
2. The Director General Archeological Survey
of India, 11-Janpath, New Delhi.
3. The Superintending Archeologist,
Archaeological Survey of India, Agra
Circle 22, Mall Road, Agra.
4. Sri Dharamvir Sharma, Superintending
Archeologist through DG ASI II, Janpath,
New Delhi.


.. Respondents

By Advocate : Sri Anil Dwivedi.

O R D E R

By Hon. Mr. K.B.S. Rajan, Member (J)

"An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine."

 (Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan, (2003) 1 SCC 197)

2. This case is a solid example of the above situation. Admittedly, the charge sheet against the applicant was not served upon him. Vide para 16 of the counter, the charge sheet was stated to have been refused to be accepted by the applicant. No proof to this extent was, however, given by the respondents. The charge sheet was then sent by registered post. But, the same was refused by the family members (as per the endorsement, the addressee was not traceable). For deemed service of a communication, it is essential that the communication should be correctly addressed to the party concerned and the party should have refused. Nothing less; nothing else. Refusal by the family members cannot be deemed to be a refusal by the addressee. In the case of **Gujarat Electricity Board v. Atmaram Sungomal Poshani, (1989) 2 SCC 602, the Apex Court has held,** "There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that **the addressee refused** to accept the same. No doubt the presumption is refutable and it is open to the party concerned to place evidence before the court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service." (emphasis supplied)

3. Again, in the case of **P.T. Thomas v. Thomas Job, (2005) 6 SCC 478** the Apex Court has held as under:-

"Though the notice was correctly addressed and despite the intimation by the post office, **the notice was not accepted by the respondent** and was returned un-served. In such circumstances, the presumption of law is that the notice has been served on the respondent."

(Emphasis supplied).

4. The above would suffice to hold that the inquiry conducted by the respondents cannot stand judicial scrutiny. The impugned orders dated 13-06-2003 and 15-02-2002 (Annexures 1 and 2 respectively of the OA) are therefore liable to be quashed. Though the applicant has not specifically prayed for quashing of the inquiry report, considering the prayer at para 8(ii), "pass such other and further orders as may be deemed fit and proper in the circumstances of the case", the inquiry report is also liable to be set aside and we accordingly order. The applicant shall be reinstated in service forthwith and the period between the time of dismissal till the date of reinstatement shall be taken as deemed suspension in accordance with the Rules and the respondents are at liberty to serve upon the applicant a copy of the charge sheet and proceed ahead with the inquiry. Cost easy.


MEMBER-A


MEMBER-J

GIRISH/-