

(A5)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Lucknow Circuit Bench
Registration O.A.No.352 of 1989(L)

Arshad Ullah Khan Applicant

Versus

Union of India & Others.... Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. K.Obayya, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing an order dated 31.8.1987, Annexure-A1 by which the applicant was removed from service after a departmental disciplinary enquiry; there is also a prayer for quashing order dated 5.12.89, Annexure-A2 by which his appeal against Annexure-A1 was dismissed. Applicant, Arshad Ullah Khan was a highly skilled grade II Mechanist under the Production Engineer, Northern Railway, Loco Workshop, Charbagh, Lucknow when on his application dated 18.3.81, three months leave was granted to him for the period from 18.3.81 to 17.6.81 with permission to leave for Saudi Arabia for Hajj. On expiry of leave the applicant did not report for duty.

2. Annexure-3 is copy of application dated 6.6.81 for extension of leave for further nine months for Hajj. Annexure-4 is an application dated 25.3.1982 for extension of leave till he might return to duty on his choice on account of the serious illness of his cousin due to heart attack. Annexure-5 is an application dated 17.12.82 for further extension of leave till he

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(A6)

- 2 -

might resume his duty. All these applications were rejected by the competent authority and the applicant was considered to be on unauthorised absence since 18.6.81. A chargesheet dated 18.2.82 was framed against him to hold an enquiry into his unauthorised absence from 18.6.81. The chargesheet and the connected papers are said to have been issued to him by registered post on 9.7.84 both at his Saudi Arabia address and the local address at Lucknow. The applicant did not file any reply. Inquiry Officers were appointed and various dates fixed from time to time are said to have been communicated to him by registered post again at both the addresses. The applicant did not respond to any; and when on 14.7.87 did not make appearance the enquiry officer recorded the statement of witnesses and proceeded to decide the case ex parte. The Inquiry Officer recorded a finding that the applicant was absconding from duty from 18.6.81 to 18.7.87 (when the Inquiry Officer submitted his report) without permission from the competent authority and thus was guilty of unauthorised absence constituting misconduct. Annexure-A11 is the enquiry report.

3. The disciplinary authority examined the enquiry record and agreed with the finding of the Inquiry Officer and on that basis passed the impugned removal order on 31.8.87. This punishment order is said to have been despatched to the applicant by registered post both at the Saudi Arabia address and the local address.

4. The applicant returned to the place of his employment on 9.2.88 and gave an application, Annexure-A9 for permission to resume duty. He was not allowed to join duty and on his application he was furnished with

92

his correct addresses either in Saudi Arabia or locally in Lucknow. For the first time, in the rejoinder he stated that his correct local address was 46, Tehri Bazar, Molviganj, Lucknow whereas the various letters meant for him had been despatched by the Department on an address either of Teli Bagh, Molviganj, Lucknow or Teli Bazar, Molviganj, Lucknow. He did not state in his rejoinder that his Saudi Arabia address used by the respondents was incorrect. Annexure-A1, the punishment order dated 31.8.87 sets out both the addresses of the applicant. The Saudi Arabia address is mentioned as Post Box No.1884, Macca Saudi Arabia and the local address is mentioned as Apsar Manzil, Teli Bazar, Molviganj, Lucknow. There is no mention anywhere that the Saudi Arabia address was incorrect. It is stated in the Counter that the applicant never intimated any change in his address; this statement is not denied in the rejoinder. It must be held therefore that the communications, if any, at the applicant's Saudi Arabia address were correctly addressed. It is only to be seen what those communications were.

9. In respect of the local address mentioned in the punishment order, Annexure-A1 it is correct in respect of the name of the house namely Apsar Manzil and Mohalla namely Molviganj; the error lies only in the description of the locality : the address mentioned in Annexure-A1 is Teli Bazar whereas, according to the applicant, it should have been Tehri Bazar. Even in this respect the word "Bazar" is common in both the addresses. We think that even if the description of the locality should have been Tehri Bazar instead of

92

of the letter dated 11/16.7.81 containing the order on the applicant's extension application dated 6.6.81 and stating that the request had not been granted and he must report for duty; the applicant's address is given as PBO 1884 Mukkah, Saudi Arabia.

11. Annexure-A4 is the photo copy of the application dated 25.3.82 whereby the applicant sought extension of leave "upto joining date"; no period was specified. The applicant did not give his address on this application. By letter dated 11.5.82 the applicant was informed that the application was rejected and he must report for duty. This letter was addressed to the applicant on the same address including Post Box No.1884. The original application as well as the original order are placed as Paper Nos 8 and 9 in the disciplinary enquiry file which also had been produced before us.

12. Annexure-A5 is the photo copy of an application dated 17.12.82 for further extension of leave till "resuming my duties". This application does not contain the applicant's address. The original application is paper No.14 in the enquiry file; alongwith it is placed Paper No.13 in the enquiry file which is a registered envelope containing the applicant's address as despatcher as Post Box No.1287 Mukkah Saudi Arabia. Final orders do not appear to have been passed on this application, perhaps because the two earlier leave extension applications had already been rejected.

13. We have already pointed out that the applicant had not set out the Saudi Arabia or local address in O.A.

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(A11)

- 7 -

for the purposes of communication of orders or other documents in connection with his service affairs and even though in the rejoinder he had mentioned that the local address mentioned by the Department in various letters was erroneous, he did not say a word about the Saudi Arabia address which was mentioned in the impugned termination order, Annexure-A1 at Post Box No.1884 Mukkah Saudi Arabia. The important fact borne out by the record as indicated above is that while on the one hand the applicant never disclosed his Saudi Arabia address in any of the applications given by him, the envelope of the application dated 10.6.81 mentioned Post Box No.1884 Mukkah Saudi Arabia as his address and it is on this address that letters containing orders of rejection of his leave applications dated 6.6.1981 / 10.6.81 and 25.3.82 were despatched. It is the admitted case of the respondents that the letters have been received back "unclaimed". We think that in the facts and circumstances of the case, the applicant cannot make a grievance that the rejection orders had not been addressed to him on the correct address. It was only with the application of 17.12.82 that the envelope contained the address of Post Box No.1287 instead of 1884. If the address of Post Box No.1884 was wrong, there is no guarantee that the address at Post Box No.1287 was correct; indeed the correspondence file shows that even letters sent on P.O.B. No.1287 were returned as "unclaimed". There was nothing else which the Department could do in the matter of communication of the orders of rejection of leave; the motion for leave contained in applications dated 25.3.82 and 17.12.82 were themselves presumptuous because the applicant wanted leave to be

sanctioned till the time he reported for duty or resumed duty at his pleasure. There is no presumption that the letters despatched by the Department on the addresses of the indicated Post Boxes were not actually seen by the applicant in Saudi Arabia; the applicant could well have evaded them. In para 7 and 11 of the Counter Affidavit there is specific statement that rejection orders had been despatched to the applicant by registered post but were returned unclaimed. In any case, the Department did send the rejection orders of applications for extension of leave made upon 6th and 10th of June, 1981 and 25.3.1982 and they could not have done better.

14. It also appears to us that if the letters were to be addressed to the applicant on the Post Box Numbers and not on any residential address - the applicant never disclosed any residential address in Saudi Arabia - the arrival of the letters at the Post Boxes is enough delivery to the applicant because, in the eyes of law, the postal Department would be the agent of the applicant and delivery to agent would be enough delivery to the applicant. The delivery at the Post Box is to be obtained by the person operating the Post Box; if such person does not obtain it from the Post Box, the responsibility^b entirely his, and he cannot complain of non-delivery. The Postal Authorities also cannot retain such postal article indefinitely especially when it is a registered article; they have to return the article to the sender. The expression used by the Postal Authorities in connection with the registered

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letters addressed to the applicant on the given Post Box Numbers that the letters were " unclaimed " only signifies that although the letters had reached the Post Box, the applicant did not care to claim and receive it. In fairness and justice the applicant cannot claim a benefit of his own wrong; he must suffer the consequences of his wrong. The letters must be deemed to have duly tendered to him but not received by him.

15. The chargesheet SF-5 is dated 13.2.82. In para 11 of the Counter Affidavit it was stated that it was sent by registered post to the applicant in Saudi Arabia as well as to the local address but was received back from both the places. Paper Nos 61 and 62 of the correspondence file contain reports of the Despatch Section stating that the chargesheet had been despatched on 19.2.82 at the address of Post Box No.1884 Mukkah Saudi Arabia. As stated in the Counter Affidavit, and obvious from the correspondence file, the chargesheet was given fresh dates every time when the earlier chargesheet was returned unclaimed. In para 11 of the Counter Affidavit, it was stated that effort was also made to serve the chargesheet through the Embassy ^{at} Jeddah in Saudi Arabia. Paper No.82 is the Department's letter to the Embassy informing that not only the two orders of rejection of leave but also the chargesheet despatched to the applicant had been returned back unclaimed; it was requested that the chargesheet might be delivered to the applicant on the new address i.e. Post Box No.1287 Mukkah Saudi Arabia. Paper No.83 is the Embassy's letter addressed to the applicant alongwith the chargesheet at Post Box No.1287. It is not quite clear whether the letters sent at Post Box No.1287 were delivered to the

(A14)

- 10 -

applicant or not; but the significant noticeable point is that the Department had sent the chargesheet to the applicant on the address of both Post Boxes. The enquiry file contains letters dated 19.1.87, 4/10.3.87, 7.3.87 addressed to the applicant both at Post Box 8.4.87 No. 1884 and the local Lucknow address intimating the various dates fixed for hearing in the enquiry proceedings. We do not think that the applicant, in these circumstances, can make any grievance that he did not get notice of the chargesheet, dates of hearing, or of the orders rejecting the leave applications. This is apart from the notice and orders despatched to his local Lucknow address. Indeed, the Department could have acted in the light of proviso (b) to Article 311(2) of the Constitution of India inasmuch as the applicant having deliberately kept himself out of way of communication from the Department, there was good reason to believe that it was not reasonably practicable to hold the enquiry after actually serving the applicant with a notice of the case.

16. On a very careful and anxious consideration of the material on the record and the facts and circumstances, we are satisfied that the applicant cannot make a grievance that he had no notice either of the rejection of leave applications or of the disciplinary proceedings.

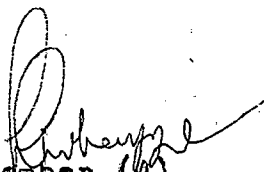
17. No flaw in the proceedings in any other manner has been pointed out to us. In the circumstances,


(A15)

- 11 -

we hold that there is no illegality or error in the impugned order, Annexure-A1 of the applicant's removal from service. The appellate order is a speaking order and we find no infirmity therein. The application must fail.

18. The application is dismissed. Parties shall bear their costs.


Member (A)


Vice Chairman

Dated the 4th February, 1991.

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